

Ex. 2

20060123-0003865

Fee: \$17.00 RPTT: EX#003
N/C Fee: \$0.00

01/23/2006 15:00:03
T20060013550

Requestor:
FIRST AMERICAN TITLE COMPANY OF NEVADA

Frances Deane ADF
Clark County Recorder Pgs: 6

APN# 177-35-610-137

65
Grant Bargain and Sale Deed

(Title on Document)

RE-RECORDED

Re-Recording to correct legal description

20050915 1446

Recording requested by:

First American Title

Return to:

Name

First American Title Company
Address 2490 Paseo Verde Parkway, Suite 100
Henderson, Nevada 89074

City/State/Zip

This page added to provide additional information required by NRS 111.312 Sections 1-2
(Additional recording fee applies).

This cover page must be typed or printed clearly in black ink only.

A.P.N.: 177-35-610-137
File No: 101-2226139 (TAR)
R.P.T.T.: \$838.96

When Recorded Mail To: Mail Tax Statements To:
Hawley McIntosh
11 Creeping Bend Court
Henderson, NV 89052

20050915-0004490

Fee: \$17.00 RPTT: \$838.95
N/C Fee: \$0.00

09/15/2005 15:01:46
T20050170024

Requestor:

FIRST AMERICAN TITLE COMPANY OF NEVADA

Frances Deane SOL
Clark County Recorder Pgs: 4

Re-recording to correct legal description 20050915:4490

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Goose Development LLC, a Nevada Limited Liability Company

do(es) hereby GRANT, BARGAIN and SELL to

Hawley McIntosh, a married man as his sole and separate property

the real property situate in the County of Clark, State of Nevada, described as follows:

PARCEL I:

UNIT 1411 ("UNIT") IN BUILDING 14 ("BUILDING") AND GARAGE NO. G 26 ("GARAGE") AND GARAGE BUILDING NO. G 4 AS SHOWN ON THE FINAL PLAT OF HORIZONS AT SEVEN HILLS RANCH, FILED IN BOOK 125 OF PLATS PAGE 58, IN THE OFFICIAL RECORDS OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA ("PLAT"), AND AS DEFINED AND SET FORTH IN AND SUBJECT TO THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HORIZONS AT SEVEN HILLS RANCH, RECORDED JULY 6, 2005 AS INSTRUMENT NO. 0003420 IN BOOK 20050706, OFFICIAL RECORDS, CLARK COUNTY, NEVADA ("HORIZONS AT SEVEN HILLS RANCH DECLARATION").

PARCEL II:

TOGETHER WITH AN UNDIVIDED ALLOCATED FRACTIONAL INTEREST IN AND TO THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

PARCEL III:

TOGETHER WITH AN EXCLUSIVE INTEREST IN AND TO THOSE LIMITED COMMON ELEMENTS, IF ANY, APPURTENANT TO THE UNIT, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

PARCEL IV:

TOGETHER WITH A NON-EXCLUSIVE EASEMENT OF REASONABLE INGRESS TO AND EGRESS FROM THE UNIT, AND OF ENJOYMENT OF THE GENERAL COMMON ELEMENTS, AS SET FORTH IN, AND SUBJECT TO, THE PLAT AND THE HORIZONS AT SEVEN HILLS RANCH DECLARATION.

Subject to

1. All general and special taxes for the current fiscal year.
2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 07/25/2005

ASSESSOR'S COPY

Goose Development LLC, a Nevada Limited
Liability Company

By: Treetops Management, LLC; it's Manager


By: Todd A. Mikles, Manager

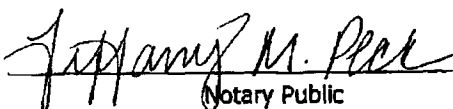

By: Michael O Leary, Manager

STATE OF CALIFORNIA)

: ss.

COUNTY OF SAN DIEGO)

This instrument was acknowledged before me on July 12, 2005 by
Goose Development LLC, a Nevada Limited Liability Company


Notary Public
(My commission expires: Aug 17, 2008)



This Notary Acknowledgement is attached to that certain Grant, Bargain Sale Deed dated
under Escrow No.

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a) 177-35-610-137
b) _____
c) _____
d) _____

2. Type of Property

- a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☒ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____

Date of Recording: _____

Notes: _____

3. Total Value/Sales Price of Property: _____

\$164,125.00

Deed in Lieu of Foreclosure Only (value of property) _____

(\$ _____)

Transfer Tax Value: _____

\$164,125.00

Real Property Transfer Tax Due _____

\$838.96

4. If Exemption Claimed:

a. Transfer Tax Exemption, per NRS 375.090, Section _____

b. Explain reason for exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.090, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: [Signature]

Capacity: agent

Signature: _____

Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Goose Development LLC

Address: 402 W. Broadway, Suite 1720

City: San Diego

State: CA Zip: 92101

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Hawley McIntosh

Address: 11 Creeping Bend Court

City: Henderson

State: NV Zip: 89052

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Company of

Print Name: Nevada

File Number: 101-2226139 TAR/JS

Address: 2490 Paseo Verde Parkway #100

City: Henderson

State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

RE-RECORDED 4/90

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a) 177-35-610-137
b) _____
c) _____
d) _____

65

2. Type of Property

- a) ☐ Vacant Land b) ☐ Single Fam. Res.
c) ☒ Condo/Twnhse d) ☐ 2-4 Plex
e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
g) ☐ Agricultural h) ☐ Mobile Home
i) ☐ Other _____

FOR RECORDERS OPTIONAL USE

Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property:

Deed in Lieu of Foreclosure Only (value of property) \$ _____
Transfer Tax Value: \$ _____
Real Property Transfer Tax Due \$ _____

4. If Exemption Claimed:

- a. Transfer Tax Exemption, per 375.090, Section: 3
b. Explain reason for exemption:
Re Recording to collect legal fees 20050915: 4490
5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____
Signature: _____

Capacity: agent
Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Goose Development LLC
Address: 402 W. Broadway, Suite 1720
City: San Diego
State: CA Zip: 92101

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Mc Intosh
Address: 11 Creepery Bend Ct
City: Henderson
State: NV Zip: 89052

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

First American Title Company of
Print Name: Nevada File Number: 101-2226139-746
Address: 2490 Paseo Verde Parkway #100
City: Henderson State: NV Zip: 89074

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

3005

Ex. 3

20050915-0004492

Assessor's Parcel Number: 177-35-610-137

Return To:
THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA
CORPORATION
727 WEST 7TH STREET, SUITE #850
LOS ANGELES, CA 90017

Prepared By:

Fee: \$44.00
N/C Fee: \$0.00

09/15/2005 15:01:46
T20050170024

Requestor:
FIRST AMERICAN TITLE COMPANY OF NEVADA

Frances Deane SOL
Clark County Recorder Pgs: 31

31

40/10
Recording Requested By:
THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA
CORPORATION

[Space Above This Line For Recording Data]

DEED OF TRUST

LOAN NO.: 0508168244
ESCROW NO.: 101-2226139

MIN 100141500000139326
MERS Phone: 1-888-679-6377

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated SEPTEMBER 08, 2005 together with all Riders to this document.

(B) "Borrower" is
HAWLEY MCINTOSH, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY

Borrower is the trustor under this Security Instrument.

(C) "Lender" is
THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA

NEVADA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
WITH MERS
VMP-6A(NV) (0307)

Page 1 of 15

LENDER SUPPORT SYSTEMS INC. MERS6ANV.NEW (07/05)

Initiate: *Hm*
Form 3029 1/01

Lender's address is
727 WEST 7TH STREET, SUITE #850, LOS ANGELES, CA 90017

(D) "Trustee" is

FIRST AMERICAN TITLE COMPANY OF NEVADA

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. **MERS is the beneficiary under this Security Instrument.** MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(F) "Note" means the promissory note signed by Borrower and dated SEPTEMBER 08, 2005

The Note states that Borrower owes Lender

ONE HUNDRED THIRTY ONE THOUSAND THREE HUNDRED AND NO/100 X X X X X X X X

Dollars

(U.S. \$131,300.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than OCTOBER 01, 2035

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider

☒ Condominium Rider

☒ 1-4 Family Rider

☐ Graduated Payment Rider

☐ Planned Unit Development Rider

☐ Biweekly Payment Rider

☐ Balloon Rider

☐ Rate Improvement Rider

☐ Second Home Rider

☒ Other(s) [specify]

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER
PREPAYMENT RIDER

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]

SEE COMPLETE LEGAL DESCRIPTION DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Parcel ID Number: 177-35-601-011 which currently has the address of
950 SEVEN HILLS DRIVE, UNIT 1411 [Street]
HENDERSON [City], Nevada 89052 [Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.


25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. \$

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

-Witness

-Witness



HAWLEY MCINTOSH (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

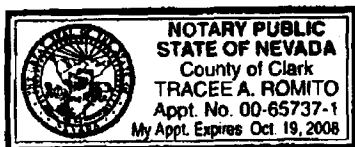
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

STATE OF NEVADA
COUNTY OF *Clark*

This instrument was acknowledged before me on *September 9, 2005* by
HAWLEY MCINTOSH



Tracee A Romito

Mail Tax Statements To:

THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA
CORPORATION
727 WEST 7TH STREET, SUITE #850
LOS ANGELES, CA 90017

Loan Name: HAWLEY MCINTOSH

LOAN NO.: 0508168244

Property Address: 950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

LENDER SUPPORT SYSTEMS INC. EX-A-XX.FRM (02/97)

ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

SEE "INTEREST-ONLY ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.

LOAN NO.: 0508168244

MIN: 100141500000139326
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 8th day of SEPTEMBER, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

("Lender") of the same date and covering the property described in the Security Instrument and located at:

950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 6.750 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of OCTOBER, 2007, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

Initials: *HJM*

Form 3138 1/01

MULTISTATE ADJUSTABLE RATE RIDER - LIBOR SIX-MONTH INDEX (AS PUBLISHED IN THE WALL STREET JOURNAL) - Single Family - Fannie Mae Uniform Instrument

VMP-838R (0402)

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LENDER SUPPORT SYSTEMS INC. 838R.NEW (07/04)

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding FIVE AND 000/1000THS percentage points (5.000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 9.750 % or less than 6.750 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than ONE AND 000/1000THS percentage points (1.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 12.750 % , or less than 6.750 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

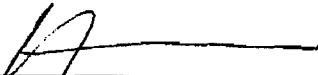
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.


HAWLEY MCINTOSH (Seal) _____ (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

CONDOMINIUM RIDER

LOAN NO.: 0508168244

MIN: 100141500000139326
MERS Phone: 1-888-679-6377

THIS CONDOMINIUM RIDER is made this 8th day of SEPTEMBER, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052

[Property Address]

The Property includes a unit in, together with an undivided interest in the common elements of, a condominium project known as:

SEVEN HILLS

[Name of Condominium Project]

(the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Property also includes Borrower's interest in the Owners Association and the uses, proceeds and benefits of Borrower's interest.

CONDOMINIUM COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Condominium Obligations. Borrower shall perform all of Borrower's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, from which Lender requires insurance, then: (i) Lender waives the provision in

MULTISTATE CONDOMINIUM RIDER - Single Family -
Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
V-8R (0411)

Page 1 of 3

Initials: *HM*
Form 3140 1/01

LENDER SUPPORT SYSTEMS INC. 8R.NEW (03/05)

Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender for application to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.


C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property, whether of the unit or of the common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay condominium dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Condominium Rider.



HAWLEY MCINTOSH (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

1-4 FAMILY RIDER (Assignment of Rents)

LOAN NO.: 0508168244

MIN: 100141500000139326
MERS Phone: 1-888-679-6377

THIS 1-4 FAMILY RIDER is made this 8th day of SEPTEMBER, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052
[Property Address]

1-4 FAMILY COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADDITIONAL PROPERTY SUBJECT TO THE SECURITY INSTRUMENT. In addition to the Property described in the Security Instrument, the following items now or hereafter attached to the Property to the extent they are fixtures are added to the Property description, and shall also constitute the Property covered by the Security Instrument: building materials, appliances and goods of every nature whatsoever now or hereafter located in, on, or used, or intended to be used in connection with the Property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, attached mirrors, cabinets, paneling and attached floor coverings, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the Property covered by the Security Instrument. All of the foregoing together with the Property described in the Security Instrument (or the leasehold estate if the Security Instrument is on a leasehold) are referred to in this 1-4 Family Rider and the Security Instrument as the "Property."

Initials HH

Form 3170 1/01

MULTISTATE 1-4 FAMILY RIDER - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT
V-57R (0411)

Page 1 of 4

LENDER SUPPORT SYSTEMS INC. 57R.NEW (03/05)

B. USE OF PROPERTY; COMPLIANCE WITH LAW. Borrower shall not seek, agree to or make a change in the use of the Property or its zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property.

C. SUBORDINATE LIENS. Except as permitted by federal law, Borrower shall not allow any lien inferior to the Security Instrument to be perfected against the Property without Lender's prior written permission.

D. RENT LOSS INSURANCE. Borrower shall maintain insurance against rent loss in addition to the other hazards for which insurance is required by Section 5.

E. "BORROWER'S RIGHT TO REINSTATE" DELETED. Section 19 is deleted.

F. BORROWER'S OCCUPANCY. Unless Lender and Borrower otherwise agree in writing, Section 6 concerning Borrower's occupancy of the Property is deleted.

G. ASSIGNMENT OF LEASES. Upon Lender's request after default, Borrower shall assign to Lender all leases of the Property and all security deposits made in connection with leases of the Property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph G, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.

H. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. Borrower absolutely and unconditionally assigns and transfers to Lender all the rents and revenues ("Rents") of the Property, regardless of to whom the Rents of the Property are payable. Borrower authorizes Lender or Lender's agents to collect the Rents, and agrees that each tenant of the Property shall pay the Rents to Lender or Lender's agents. However, Borrower shall receive the Rents until: (i) Lender has given Borrower notice of default pursuant to Section 22 of the Security Instrument, and (ii) Lender has given notice to the tenant(s) that the Rents are to be paid to Lender or Lender's agent. This assignment of Rents constitutes an absolute assignment and not an assignment for additional security only.

If Lender gives notice of default to Borrower: (i) all Rents received by Borrower shall be held by Borrower as trustee for the benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the Rents of the Property; (iii) Borrower agrees that each tenant of the Property shall pay all Rents due and unpaid to Lender or Lender's agents upon Lender's written demand to the tenant; (iv) unless applicable law provides otherwise, all Rents collected by Lender or Lender's agents shall be applied first to the costs of taking control of and managing the Property and collecting the Rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, repair and maintenance costs, insurance premiums, taxes, assessments and other charges on the Property, and then to the sums secured by the Security Instrument; (v) Lender, Lender's agents or any judicially appointed receiver shall be liable to account for only those Rents actually received; and (vi) Lender shall be entitled to have a receiver appointed to take possession of and manage the Property and collect the Rents and profits derived from the Property without any showing as to the inadequacy of the Property as security.


If the Rents of the Property are not sufficient to cover the costs of taking control of and managing the Property and of collecting the Rents any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by the Security Instrument pursuant to Section 9.

Borrower represents and warrants that Borrower has not executed any prior assignment of the Rents and has not performed, and will not perform, any act that would prevent Lender from exercising its rights under this paragraph.

Lender, or Lender's agents or a judicially appointed receiver, shall not be required to enter upon, take control of or maintain the Property before or after giving notice of default to Borrower. However, Lender, or Lender's agents or a judicially appointed receiver, may do so at any time when a default occurs. Any application of Rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of Rents of the Property shall terminate when all the sums secured by the Security Instrument are paid in full.

I. CROSS-DEFAULT PROVISION. Borrower's default or breach under any note or agreement in which Lender has an interest shall be a breach under the Security Instrument and Lender may invoke any of the remedies permitted by the Security Instrument.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this 1-4 Family Rider.


HAWLEY MCINTOSH (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

PREPAYMENT RIDER

LOAN NO.: 0508168244

MIN: 100141500000139326
MERS Phone: 1-888-679-6377

This "PREPAYMENT RIDER" (hereinafter "Rider") is made this 8th day of SEPTEMBER, 2005 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date made by the undersigned (the "Borrower") to secure Borrower's Note (the Note") to

THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

(the "Lender") which is secured by the Security Instrument on real property located at:

950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052
(Property Address)

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note or Security Instrument, Borrower and Lender further covenant and agree as follows:

I have the right to make payments of Principal at any time before they are due. A prepayment of all of the unpaid principal is known as a "Full Prepayment." A prepayment of only part of the unpaid principal is known as a "Partial Prepayment."

Except as provided below, I may make a Full or Partial Prepayment at any time. If I make a Partial Prepayment equal to one or more of my monthly payments, my due date may be advanced no more than one month. If I make any other Partial Prepayment, I must still make each later payment as it becomes due and in the same amount. I may make a Full Prepayment at any time. However, if within the first TWENTY FOUR (24) months after the execution of the Deed of Trust, I make any prepayment(s) within any 12-month period the total amount of which exceeds TWENTY percent (20.00 %) of the original Principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of SIX (6) months' advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY percent (20.00 %) of the original Principal amount of the loan.


Prepayment - HARD

Page 1 of 2

LENDER SUPPORT SYSTEMS INC. PRE-NV-R-PRE (05/05)

Initials: *HM*

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Rider.


HAWLEY MCINTOSH (Seal) _____ (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

(Seal) (Seal)
-Borrower -Borrower

**INTEREST-ONLY ADDENDUM
TO ADJUSTABLE RATE RIDER**

LOAN NO.: 0508168244

MIN: 100141500000139326
MERS Phone: 1-888-679-6377

PROPERTY ADDRESS: 950 SEVEN HILLS DRIVE, UNIT 1411, HENDERSON, NV 89052

THIS ADDENDUM is made this 8th day of SEPTEMBER, 2005, and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to

THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

(the "Lender").

THIS ADDENDUM supersedes Section 4(C) of the Rider. None of the other provisions of the Note are changed by this Addendum.


4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding FIVE AND 000/1000THS percentage point(s) (5.000 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

During the Interest-Only Period, the Note Holder will then determine the amount of the monthly payment that would be sufficient to repay accrued interest. This will be the amount of my monthly payment until the earlier of the next Change Date or the end of the Interest-Only Period unless I make a voluntary prepayment of principal during such period. If I make a voluntary prepayment of principal during the Interest-Only Period, my payment amount for subsequent payments will be reduced to the amount necessary to pay interest at the then current interest rate on the lower principal balance. At the end of the Interest-Only Period and on each Change Date thereafter, the Note Holder will determine the amount of the monthly payment that would be sufficient to repay in full the unpaid principal that I am expected to owe at the end of the Interest-Only Period or Change Date, as applicable, in equal monthly payments over the remaining term of the Note. The result of this calculation will be the new amount of my monthly payment. After the end of the Interest-Only Period, my payment will not be reduced due to voluntary prepayments.

Initials: *HM*



HAWLEY MCINTOSH (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

1 dots next to it on the left and it looks like a separate
2 category.

3 MR. ADAMS: Yeah, you're right. Sorry about that.
4 It's -- this is -- you're my -- you're my guinea pig, Your
5 Honor, for my --

6 THE COURT: No, okay.

7 MR. ADAMS: -- first PowerPoint. So --

8 THE COURT: All right.

9 MR. ADAMS: Yeah, it's -- it's all one sentence.
10 And I'll put it all up there. "So to the extent of the
11 assessments for common expenses based on the periodic budget."
12 Now, every association has a periodic budget. It has been
13 argued in the past that, while we have to look somewhere else,
14 we have to look to another Nevada revised statute for what --
15 what the common expenses are based upon. But the -- the
16 language is very clear is that we're looking at the
17 assessments for common expenses based on the periodic budget.

18 Now, in this particular case, Horizon at Seven Hills'
19 budget is specifically defined in the CC&Rs. "Budget shall
20 mean a written itemized estimate of the expenses to be
21 incurred by the association in performing its functions under
22 this declaration, prepared, approved and ratified pursuant to
23 provisions of this declaration."

24 So we know that every -- every homeowners association
25 projects a budget, how much is it going to cost the

1 association to -- to survive in the next year? Let's say it's
2 \$120,000. Let's say there's 100 houses in the association.
3 So each house is going to get assessed \$1,200 as their annual
4 assessment. And if, under the CC&Rs, they're payable in
5 installments, every house will have to pay \$100 a month. So
6 we're looking to the assessments for common expenses based on
7 the periodic budget adopted by the association pursuant to NRS
8 116.3115, which is the enabling legislation for an association
9 to adopt a periodic budget.

10 So the statute goes on to say, "which would have
11 become due in the absence of acceleration during the nine
12 months immediately preceding institution of an action to
13 enforce the lien." Took me a little while to understand what
14 that phrase, "Which would have become due in the absence of
15 acceleration" meant. But it's -- it's rather simple after
16 looking at the CC&Rs. The CC&Rs for Horizon at Seven Hills
17 and I think every other association, basically says that the
18 first annual assessment for each unit shall be prorated on the
19 number of months remaining in the fiscal year.

20 So we have the annual assessment per home, and then
21 we have a CC&R provision saying, Okay, you can pay that,
22 homeowner, in monthly assessments. But if you accelerate at
23 all, the whole year's going to be due. But if you don't
24 accelerate it, then you pay it in monthly assessments. So
25 when it says "which would have become due in the absence of

1 acceleration during the nine months immediately preceding
2 institution of an action to enforce the lien," we're talking
3 about monthly installments, or quarterly installments,
4 depending on how the CC&Rs read.

5 So in this particular example for Horizon at Seven
6 Hills, it's a -- it's a monthly installment, so it would be
7 nine months of whatever it is the monthly assessment would be.
8 So, and then "immediately preceding institution of an action
9 to enforce the lien," this is one I think where, quite
10 honestly, the word action may be subject to a variety of
11 interpretations.

12 We see it as meaning what Nevada Revised Stat --
13 Procedures Rules -- 2 and 3 call it, which is there'll be one
14 form of action and that'll be a civil action where you file a
15 complaint with a court of law. And also in a -- in a -- in
16 this actual -- this very statute in subparagraph 7, it really
17 tells you what an action is. It's a -- it's a proceeding
18 wherein a judgment or a decree is rendered. And -- and that
19 really is only one type of action and only a judge can do that
20 in a court of law.

21 So I'll keep this up for you if you want to keep
22 looking at it, but --

23 THE COURT: No, that's okay. Go ahead.

24 MR. ADAMS: Okay. So now we're talking about what
25 is senior to the first mortgage. We've got the external

1 repair costs and we've got assessments for common expenses
2 based on periodic budget, adopted by the association, which
3 would have become due in the absence of acceleration during
4 those nine months just preceding the institution of an action
5 to enforce a lien.

6 Unfortunately, the statute's even longer. There's a
7 Fannie and Freddie provision here, and -- which is really not
8 before the Court, but I'll just give it to you real quick.
9 All of this is unless federal regulations adopted by Fannie
10 Mae or Freddie Mac require a shorter period of time for the
11 priority of the lien. And incidentally, they do require a
12 shorter period of time. Under the Fannie and Freddie selling
13 and servicing agreements that they enter into with the banks
14 and the loan servicers, there's a six-month cap on the
15 superpriority lien.

16 Now, it certainly can be interpreted that because
17 Fannie and Freddie only require a six-month cap, then the
18 superpriority lien is only six months. We're -- we're not --
19 actually not arguing that right now, and that's -- that's
20 something I'm -- I'm -- sort of would like to look into. But
21 -- and the -- the primary reason, Your Honor, why this is an
22 interesting sort of part of the statute is because Fannie Mae
23 and Freddie Mac are government sponsored entities. They're
24 not regulatory bodies, they're not administrative agencies.
25 Now they're under the FHFA, which is a government agency,

1 because of the -- they're under a conservatorship since 2008.

2 But Fannie Mae and Freddie Mac never pass
3 regulations. They pass internal underwriting guidelines.
4 They pass selling and servicing guidelines. They don't really
5 pass regulations. So I'm not sure if the -- the person that
6 wrote this language probably meant that, well, whatever Fannie
7 -- Fannie and Freddie have in their underwriting guidelines or
8 their internal policies is really what we're going to look at,
9 rather than, you know, passing regulations.

10 Anyway, if the federal regulations adopted by Fannie
11 Mae and Freddie Mac require a shorter period of time -- period
12 of priority for the lien, let's see, the period during which
13 the lien is prior to all security interests described in
14 paragraph B, that was the first mortgage, must be determined
15 with a court in accordance to those federal regulations.
16 Except notwithstanding those regulations, the period of
17 priority of the lien must not be less than six months
18 immediately preceding institution of an action to enforce the
19 lien. So we got the Fannie and Freddie guidelines. It's six
20 months for them. Perhaps it's six months for everybody,
21 depending on how you interpret the statute.

22 So to do a quick recap, Nevada's traditional lien
23 priorities state, "First in time, first in right." The UCIOA
24 breaks from the traditional lien priority law. We know that
25 NRS 116.3116 give the HOA a general lien against the homeowner

1 for construction penalties, assessments, and fines starting
2 from the date they become due. That general lien also
3 includes fees for common elements, external repair costs, for
4 late payment of assessments, for construction penalties, fines
5 for CC&Rs violations, charges to record amendments, the CC&Rs
6 and statements of unpaid assessments.

7 The HOA's lien is junior pursuant to the second sub
8 -- the second subsection of NRS 116.3116. "The HOA's lien is
9 junior to liens recorded before the CC&Rs were recorded to the
10 first mortgage and to tax liens; except" -- and here is the
11 break with traditional lien priority law -- "portion of the
12 HOA's lien is superior to the first mortgage to the extent of
13 exterior repair charges and to the extent of assessments for
14 common expenses based on the periodic budget adopted by the
15 association pursuant to 116.3115, which would have become due
16 in the absence of acceleration during the nine months
17 immediately preceding institution of an action to enforce the
18 lien."

19 So the calculation, how do you calculate a
20 superpriority lien according to the formula that's given to us
21 in NRS 116.3116? Well, first thing the Court would have to do
22 is determine the date that an action to enforce the lien
23 occurred. Because that's the triggering date that the Court
24 will look back in time, the nine-month -- nine-month
25 look-back.

1 So we need to know when an action to enforce the lien
2 occurred. Once we know that, the Court would take a look at
3 the association's periodic budget that it adopted pursuant to
4 NRS 116.3115 for that period of time immediately prior to the
5 action date. So we got the action date, we take a look at the
6 budget, it was passed just before the HOA instituted a civil
7 action to enforce the lien, and then the Court would then
8 determine what the assessments for common expenses based on
9 that periodic budget were absent accelerating the installments
10 for the period of nine months immediately prior to the action
11 date. So, it -- and then you add the exterior repair costs.

12 So the formula is this simple. This is a very long
13 statute for a very simple formula. Superpriority lien equals
14 nine months of assessments based on the periodic budget, plus
15 exterior repair costs. That's really what it says.

16 Now, we had mentioned earlier on that the Uniform
17 commissioners wanted it to be a fixed and limited amount so a
18 bank could escrow that amount. And so there'd be some sort of
19 equitable balance between given -- giving the HOA, you know,
20 something. Maybe not everything, but something. And also
21 giving the banks and Fannie Mae and Freddie Mac and mortgage
22 pulling trusts and investors some sort of certainty when
23 lending money or buying mortgage backed securities as to what
24 their liability is going to be.

25 And I'll try to quickly go through the rest here.

1 There's -- there's a laundry list of supporting authority that
2 I just want to point out real quick. We had an arbitration,
3 ADR 10 -- 10-87. And this was an arbitration, still currently
4 going on, on behalf of 18 investors versus about six or eight
5 law firms and collection agencies.

6 We did a Motion for Summary Judgment, this Motion for
7 Summary Judgment, before Arbitrator Percy Michelle, and he
8 declared -- or he actually gave us an interim award. And he
9 granted our motion. And he said in that award that NRS
10 116.3116(2), the Superpriority Lien Statute, provides a cap of
11 nine months of assessments for superpriority lien purposes.
12 Therefore, costs and fees related to the unpaid assessments
13 are subject to the nine month cap.

14 This arbitrator granted the claimant's Motion for
15 Summary Judgment on this issue, thus they are the prevailing
16 party on this issue. And the Motion for Summary Judgment, the
17 arbitrator stated, costs and fees related to unpaid
18 assessments may be included in an HOA's superpriority amount.
19 However, they may not be added on top of the superpriority
20 lien amount. In other words, they have not be added to the
21 superpriority amount to exceed the limit on the superpriority
22 lien amount, i.e., the limit of nine times the monthly
23 assessment amount.

24 So there's been a -- and the Colorado courts and the
25 Connecticut courts all -- all basically state the same thing.

1 On the superpriority portion of the lien, you can have a whole
2 lot of things up there. But whatever you put up there cannot
3 exceed that statutory limit in other states of six months of
4 assessments. Here in Nevada, it's nine months of assessments.

5 The attorney general and the Financial Institutions
6 Division issued an advisory opinion and a declaratory order on
7 this specific issue. Commission George Burns, represented by
8 the attorney general, stated, "A collection agency is limited
9 to the total of nine months of assessments for common charges
10 on the amount it can collect pursuant to priority status
11 provided in NRS 116.3116(2). This nine-month cap includes
12 fees and charges and interest and costs, penalties, or fines,
13 which the association could apply toward a lien pursuant to
14 NRS 116.3116." Again, Commissioner Burns and the attorney
15 general said, Yes, you can have a lot of different things in
16 the superpriority portion, as long as the -- as long as that
17 superpriority lien does not exceed the nine-month cap. That's
18 nine times the monthly assessments.

19 Commissioner Burns went on to say, "The amount of the
20 lien, which has priority over the first mortgage, cannot
21 exceed what the association would have regularly charged for
22 common expenses for the unit in the nine months prior to
23 institution of an action to enforce the lien. Any balance
24 exceeding the nine-month limitation would be subordinate to
25 the first mortgage holder."

1 That's important, because as -- as one law professor
2 commented, and the Colorado courts adopted, this is really a
3 split priority lien. We've got the superpriority portion,
4 which is capped at nine months of assessments, then we've got
5 the junior portion that gets totally extinguished by the first
6 mortgage holder's foreclosure. But that's not to say that the
7 homeowners association cannot proceed against that homeowner
8 civilly for that amount. So there is a remedy there.

9 Judge Elizabeth Gonzalez, in ruling on the exact same
10 motion that is -- that's now before this court in another
11 case, she ruled that "Homeowners associations have a
12 superpriority lien, which has priority -- priority over the
13 first security interest on a homeowner's unit." However, the
14 superpriority lien amount is not without limits. In NRS
15 116.3116, it's clear that the amount of the superpriority
16 lien, that is that amount of a homeowners association's lien,
17 which retains priority status over the first security
18 interest, is limited "to the extent," and that's the key
19 language -- key limiting language of the statute, "to the
20 extent of those assessments for common expenses based upon the
21 association's periodic budget that would have become due in
22 the nine months -- nine month period immediately preceding an
23 association's institution of an action to enforce its
24 statutory lien, and to the extent of those external repair
25 costs."

1 And she went on to rule, the words, "To the extent of
2 contained in the superpriority lien statute mean no more than,
3 which clearly indicates a maximum figure or a cap on the
4 superpriority lien, which cannot be exceeded." And then she
5 went on to rule, just like every other state court, just like
6 Commissioner Burns, just like Arbitrator Percy Michelle, that
7 that superpriority lien can include a lot of different things,
8 as long as the cap does not get exceeded.

9 Our 80 in our 10-49, there was another arbitration --

10 THE COURT: You realize that these are not
11 precedential --

12 MR. ADAMS: Actually, none of this stuff is
13 precedential --

14 THE COURT: Right. Okay.

15 MR. ADAMS: -- other than the Nevada Supreme Court
16 --

17 THE COURT: All right.

18 MR. ADAMS: -- which has a --

19 THE COURT: All right. So -- so you can tell me, I
20 accept --

21 MR. ADAMS: Okay.

22 THE COURT: -- what you're telling me is that a lot
23 of people who have decided these things have -- have made --

24 MR. ADAMS: The same ruling.

25 THE COURT: Right. Okay.

1 MR. ADAMS: Okay.

2 THE COURT: So.

3 MR. ADAMS: So I will whiz past that, then. There's
4 the Colorado Court of Appeals. That is contained in -- in the
5 briefing. But the Court of Appeals in Colorado in the first
6 Atlantic case said the exact same thing. There's a limit, but
7 you can include lots of stuff in the limit as long as the
8 limit's not exceeded. Connecticut Supreme Court ruled the
9 same thing. And U.S. District Court in Massachusetts ruled
10 the same thing.

11 Now, these are all states that adopted the -- the
12 UCIOA. They've amended it since then and tweaked it. But
13 essentially it says the same thing, with the exception of
14 Connecticut, who made a major amendment. Connecticut they --
15 the legislature allowed collection costs to be on top of the
16 superpriority lien, to -- to add it. That's what was tried
17 here in 2009, but it was defeated.

18 The general council for the FHFA for -- for Fannie
19 and Freddie wrote a letter to Governor Sandoval's attorney
20 saying that, "I would note Fannie Mae and Freddie Mac have
21 provided for reimbursement of six months of regular common
22 expenses. They do not reimburse for collection costs or
23 attorneys' fees."

24 THE COURT: Let me just ask a question --

25 MR. ADAMS: Go ahead.

1 THE COURT: -- about the institution of an action.
2 MR. ADAMS: Yes.
3 THE COURT: Could it not be that once a foreclosure
4 is instituted, that that would constitute the action?
5 MR. ADAMS: Yes.
6 THE COURT: Okay.
7 MR. ADAMS: Yeah. No, that -- it can be.
8 THE COURT: I know it's a nonjudicial foreclosure,
9 but, I mean, could it not be because I -- I was understanding
10 you to say that they'd still have to come in and --
11 MR. ADAMS: Well --
12 THE COURT: -- file an action, even if --
13 MR. ADAMS: -- yeah, the --
14 THE COURT: -- a foreclosure has been started.
15 MR. ADAMS: The word action, because it -- it
16 doesn't say civil action, it says action --
17 THE COURT: Right.
18 MR. ADAMS: -- and that's really the part of the
19 statute that I think is the only part that needs
20 interpretation.
21 THE COURT: Well, if they come in --
22 MR. ADAMS: I think the other part is clear.
23 THE COURT: -- and have to file an action after a
24 nonjudicial foreclosure has been started, that's going to
25 really make everything somewhat confused, right? Because then

1 you have a lis pendens recorded and the foreclosure --
2 foreclosure will be --

3 MR. ADAMS: Well, there -- there's no one action
4 rule when it comes to a homeowners association lien. So
5 they're free to actually file the action, try to collect their
6 money from the person that actually owes it --

7 THE COURT: Okay.

8 MR. ADAMS: -- before getting their right to go
9 after the person or institution that wasn't responsible for
10 it. And if there's a rationale lie action means civil action,
11 is because I think there's an obligation of a homeowners
12 association to proceed against the wrongdoer first before
13 proceeding against the person that didn't do anything wrong.
14 But that, you know, Judge, I want to be honest and -- and
15 that's -- that is a word that needs interpretation by the
16 Court.

17 The rest of the statute I think is clear. That word,
18 we interpret it as civil action. The Massachusetts U.S.
19 District Court interpreted it as a civil action, the
20 institution in a court of law. This court or some other court
21 may decide no, that -- that means something different.

22 But at least what needs to occur is the word needs to
23 be defined. It just can't be anything. Is -- is an action to
24 -- to enforce a lien the sending of a letter? Is it the
25 filing of a notice of default pursuant to NRS 116.3116? I

1 mean, what is it? So if it's not a civil action, it's got to
2 be something. So to the extent the Court would like to opine
3 on that, we'd love to see an order and at least we'd have
4 something.

5 THE COURT: All right.

6 MR. ADAMS: I'd mentioned Connecticut laws. Their
7 law changed. They had the same exact law, but they added that
8 little section down there that the superpriority lien is going
9 to be also composed of attorneys fees and collection costs.
10 Plus the six months. We here tried to pass that, but it
11 failed. Down at the bottom there you'll see the legislative
12 language that was proposed, which -- which did not pass. What
13 did pass is they bumped it up to nine months and they included
14 external repair costs.

15 2011, by the way, was an interesting legislative
16 session, because the collection industry tried to do the same
17 thing, once again, to add those attorneys fees and collection
18 costs on top of the nine month lien. That also failed.

19 Your Honor, I think I'll cut it off there, because I
20 think my opposing counsel is going to go into the Elkhorn case
21 and JP Morgan case, and I can address those later.

22 THE COURT: All right.

23 MR. ADAMS: Thank you.

24 THE COURT: Very well. Thank you. Counsel?

25 MR. HINCKLEY: Your Honor, based on Mr. Adams'

1 detailed history of the statute, I'll just stick to maybe our
2 differences of opinion as to the statute and the case law may
3 not be so one-sided with every decision limiting the
4 superpriority lien.

5 Start with NRS 116.3116, subsection 1, "Any
6 penalties, fees, charges, late charges, fines, and interest
7 are enforceable as assessments." He quoted that. Let's skip
8 to the superpriority lien exception, which Mr. Adams also
9 quoted. "The lien is also prior to all security interest
10 described in paragraph B to the extent of any charges incurred
11 by the association," yadda, yadda, "and to the extent of the
12 assessments for common expenses based on the periodic budget
13 adopted by the association pursuant to NRS 116.3115." NRS
14 116.3115 basically says the homeowners association can adopt a
15 budget based on the assessments. 116.3116 says late fees,
16 collection costs, those are enforceable as assessments. So
17 based on the association's ability to adopt a budget pursuant
18 to the assessments, that includes the late fees and collection
19 costs and interest.

20 THE COURT: What about Mr. Adams' argument that even
21 if they are included, they can't exceed what nine months of
22 the assessments would be. The regular assessments.

23 MR. HINCKLEY: I think that falls under the Allstate
24 Insurance Company case I cited in the brief. It basically
25 says, "When a statute contains words that have a plain and

1 certain meaning, no part of the statute should be rendered
2 superfluous or meaningless in manner that would produce an
3 absurd result." It's plaintiff's position that would produce
4 this absurd result. The legislators specifically gave
5 homeowners associations a superpriority lien and a right to
6 collect those liens, interest. If they're not allowed to
7 include these attorneys fees and collection costs, that part
8 of the statute is rendered superfluous.

9 Under Mr. Adams hypo --

10 THE COURT: But they're still being given a super
11 priority, at least up to the nine months. I mean, not
12 everybody gets that.

13 MR. HINCKLEY: Here's where the absurd part comes
14 in. Under Mr. Adams' hypothetical, we'll be generous and say
15 that homeowners association monthly assessment is \$100 a
16 month. Times that by his calculation, the homeowners
17 association is entitled to a superpriority lien of \$900. Yet
18 they have the -- the homeowners association has the right to
19 go collect attorneys fees, collections costs, and interest.
20 But they have to incur those costs. The homeowners
21 association has --

22 THE COURT: But he still can proceed against the
23 owner, right, on their contractual claim.

24 MR. HINCKLEY: As a practical matter, that would go
25 nowhere.

1 THE COURT: What about the argument --

2 MR. HINCKLEY: There's a reason they're foreclosed
3 on.

4 THE COURT: What about the argument that lenders
5 have to have some predictability in -- in the system or
6 they're not going to make loans? There has to be some --
7 something so that they're not caught off guard with some
8 assessment, if it just comes out of the --

9 MR. HINCKLEY: Sure. The lenders are on notice of
10 the lien. The homeowners association has to file the lien.
11 When they go in to decide whether or not they're going to lend
12 on this specific property, they're going to look at the -- the
13 recorder's office and see; there's been a lien recorded by the
14 association, we should find out how much that is and what
15 they're interested in getting. There's their predictability.
16 They're not notice of the lien, just as the investors are.
17 Mr. Adams' argument that the investors are these innocent
18 parties isn't necessarily the case. The investors are on
19 notice of the association's lien.

20 THE COURT: The lien may -- may come up after -- the
21 amount of the lien may come up after the loan's already been
22 made, right? I mean, they've made the loan for \$100,000 or
23 whatever and they -- they think that it's only going to be --
24 that their superpriority exposure's only going to be the nine
25 months for the -- the regular assessments that are made, and

1 then they find out, oh, by the way, there's another -- here's
2 another \$5,000 for attorneys fees and costs and things. I
3 don't know.

4 MR. HINCKLEY: Like I said, it'd be based on the
5 lender's interpretation of NRS 116, which is exactly why we're
6 here today. So if they risk the interpretation of the statute
7 and the -- it's not interpreted as they see it, I guess that's
8 -- that's their decision to make.

9 Investors aren't the innocent parties here. The
10 innocent parties are the other homeowners who timely pay their
11 assessments. Because their assessments are going to increase
12 when the previous homeowner doesn't make the assessments and
13 gets foreclosed on. Then the investor comes in.

14 I guess the -- the best part of argument is the case
15 law interpreting. This very same statute. And I know we've
16 gone through a lot of non-precedential case law with the
17 Wingbrook [phonetic] order, which was based on an abatement
18 lien and didn't even address collection costs. The Financial
19 Institute Division and Commissioner Burns, who Judge Johnson
20 ruled had no jurisdiction to interpret the statute. Didn't --
21 didn't get to the merits of the -- the order or decision. No
22 jurisdiction.

23 I don't believe Mr. Adams addressed the Commission
24 for Common Interest Communities in Condominiums opinion. As
25 the Financial Institute Division is not the agency given the

1 authority to interpret NRS 116, the Commission on Common --
2 for Common Interest Communities and Condominium Hotels is the
3 agency given authority to interpret NRS 116. They expressly
4 reject this finite amount argument that Mr. Adams put forth.
5 The argument has been advanced that limiting the superpriority
6 to a finite amount is necessary in order to preserve this
7 compromise and the willingness of lenders to continue to lend
8 in common interest communities. The same question that Your
9 Honor raised.

10 Accordingly, both a plain reading of the applicable
11 provisions of NRS 116.3116 and the policy determinations of
12 commentators, the State of Connecticut and lenders themselves,
13 support the conclusion that associations should be able to
14 include specified costs of collecting as part of the
15 association's superpriority lien. So they expressly reject
16 the idea of a finite amount. Taking into account these
17 lenders' concerns over the predictability and the need, maybe,
18 to even put in an escrow account.

19 The Connecticut case that they're referring was the
20 Hudson House case. In Hudson House, they also reject the
21 finite amount argument. Connecticut Supreme Court ruled that
22 attorneys fees and costs must be included in the superpriority
23 lien. And here's what the Connecticut Supreme Court stated:
24 "Since the amount of monthly assessments are in most instances
25 small, and since the statute limits the priority status to

1 only a six-month period, and since in most instances it is
2 going to be the only priority debt that in fact is
3 collectible, it seems highly unlikely that the legislature
4 would have authorized such foreclosure proceedings with out
5 including the costs of collection in the sum entitled to a
6 priority. To conclude that the legislature intended otherwise
7 would have that body fashioning a bow without string or
8 arrows."

9 Here's the absurd result that plaintiff's position
10 sets forth. They give the association right to -- to incur
11 these collection costs and attorneys fees, it's a bow without
12 an arrow. Because they could never do it under plaintiff's
13 reading. It wouldn't be cost effective.

14 With regards to the other district court cases, I'll
15 briefly go through them. As you know they may be non
16 precedential, but it may be probably just for this Court to
17 hear. The first decision at the district court level in the
18 state of Nevada dealing with this decision was the Corbel
19 [phonetic] decision, in which Judge Jackie Glass specifically
20 included attorneys fees, interest, and reasonable cost of
21 collection. Plaintiff's argument against the Corbel decision
22 is Judge Glass wasn't informed at the time. She made a wrong
23 decision. The law hasn't changed with regards to that portion
24 of NRS 116, since Judge Glass made that decision.

25 With regards to the Elkhorn and JP Morgan cases,

1 which have been cited in the briefs, plaintiff tries to make a
2 distinction as to the judicial foreclosure route versus the
3 nonjudicial foreclosure route. The orders in those two cases
4 don't limit the inclusion of attorneys fees and collection
5 costs to judicial foreclosures. Thereby expanding it to
6 nonjudicial foreclosure cases, as well. They don't base Mr.
7 Adams' reference NRS 116.3116, subparagraph 7, which talks
8 about if judgment or decree must include attorneys fees.
9 Those orders don't reference that portion of the statute.

10 If those judges wanted to limit that reading of the
11 statute or that award to that section of the statute, they
12 would have included it and said pursuant to NRS 116.3116,
13 subparagraph 7. They would have specifically included that.
14 They didn't. Therefore we can infer replies -- or applies to
15 both judicial and nonjudicial foreclosure.

16 With regards to the legislative failures, we know
17 that's irrelevant. As they referenced, the collection
18 agency's attempting to change NRS 116, investors tried to
19 change 116, as well, and limit to a finite amount of nine
20 months. That failed, as well.

21 As stated before, public policy; it's not the
22 investors who are the innocent parties because they're on
23 notice of the lien. It's the other homeowners. So to say
24 that the investors are, you know, this innocent party, is not
25 correct.

1 With regards to the filing of an action, Your Honor's
2 concern is exactly right. The legislature gave these
3 homeowners associations right to foreclose on these liens
4 without filing a complaint, without filing a civil action.
5 All the homeowners association needs to do to foreclose on
6 their lien is mail the unit's owner a notice of delinquent
7 assessment, record a notice of default and election to sell.
8 And if the unit owner doesn't care, they enforce their lien.
9 Under plaintiff's position, the homeowners association isn't
10 given a superpriority lien, or even a priority lien. They're
11 given a lien like any other, and they'd have to file a
12 complaint to get it enforced, otherwise, they're extinguished.

13 Lastly, NRS.3116 doesn't say the association's
14 institution of an action. It says, "The institution of an
15 action." Allowing other parties to come in and make these --
16 to start these actions, commence these proceedings with the
17 HOA's superpriority lien still attaching to that property.

18 I think my last argument is Mr. Adams presents a
19 simple formula of nine times monthly assessments. If it was
20 that simple, the legislature would have put that exact formula
21 in the statute. It's not -- it can't be calculated like that
22 due to the inclusion of attorneys fees, collections costs, in
23 addition to the abatement lien, which Mr. Adams referred to as
24 the external repair costs.

25 THE COURT: All right. Thank you.

1 MR. ADAMS: Thank you. Your Honor, there's --
2 there's no dispute that -- that collections costs and
3 attorneys fees can be included in the superpriority lien. So
4 can fines, fees, penalties, and lots of other stuff. But the
5 lien is capped at -- at a figure equaling nine months of
6 assessments.

7 So the one thing, I think it's important for us to
8 note where we are economically now and where we were
9 economically in 1991 when NRS 116 was -- was adopted. Back in
10 the heyday there'd be lots of equity in homes. Real estate
11 prices were going up and up in the '90s. So when a homeowners
12 association had to foreclose its lien, who'd probably get --
13 well, first of all, a bank would never let that happen,
14 because there'd be so much equity in the property. The --
15 there -- back when it was originally passed, there really
16 wasn't a possibility that the homeowners association wouldn't
17 get everything that it wanted, simply because there was so
18 much equity in the -- in the properties back in those days.
19 We had a crash, and now the homeowners associations are
20 complaining that they can only get nine months of assessments
21 plus external repair costs. And maybe it's a good complaint.
22 I mean, maybe they have a valid complaint.

23 But it's up to the Nevada legislature to make that
24 determination and to change the law to allow all of these
25 collection costs to be included on top of the superpriority

1 lien. Because as we've seen before the superpriority lien,
2 there's a specific formula, we know we have to look to the
3 periodic budget, we know we have a nine-month look-back on the
4 installments, and we know we include exterior repair costs.
5 It's specifically laid out. The policy reasons of whether
6 that's a good policy or not really aren't for the Court to
7 decide. The Court is just to -- to apply the law as written,
8 and to interpret those vague or ambiguous parts of it.

9 Now, there was reference made to a couple of district
10 court cases here. The Elkhorn case was one of them. And that
11 is one where Judge Vega had a specific declaratory relief
12 claim in front of her and specifically, taken right from the
13 -- the order is, "If the association" -- this is one of the
14 questions she had to answer. "If the association has the
15 right to bring a judicial foreclosure action to satisfy it's
16 superpriority lien in Nevada, are the non attorneys fees and
17 costs of collection accrued by the association to bring the
18 judicial foreclosure action considered a component of the
19 superpriority lien?"

20 So in this case, Judge Vega was specifically dealing
21 with a judicial foreclosure. And as we'll see, there's a
22 specific statute that says if the homeowners association gets
23 a judgment or there's a decree from a court, then yes,
24 attorneys fees and costs are included in the superpriority
25 lien. Judge Vega answered that question and she said yes, you

1 get attorneys fees and collection costs. If you file the
2 judicial action, you get a judgment. That's not any of these
3 cases before the Court. Every single case I'm dealing with
4 now are nonjudicial foreclosures where there's no judgment.

5 And the statute that says and homeowners association
6 gets attorneys fees is -- is in NRS 116.3116, subparagraph 7,
7 and it says, "A judgment or decree in any action brought under
8 this section must include costs and reasonable attorneys fees
9 for the prevailing party. So that's why Judge Vega ruled that
10 in a judicial foreclosure where you get a judgment, you get
11 attorneys fees and costs.

12 The same thing with Judge Williams in the JP Morgan
13 case that was alluded to. Judge Williams even cited, when he
14 awarded attorneys fees and costs on top of the superpriority
15 lien, he even cited, "Pursuant to NRS 116.3116, subparagraph
16 7." So I don't think there's any disagreement that if a
17 homeowners association gets a judgment, they get attorneys
18 fees and costs. That's not this case. And this, actually,
19 specific to this case, the Horizon at Seven Hills case, there
20 was never a judgment. There was never a lawsuit. It was just
21 a nonjudicial proceedings.

22 The CICC advisory opinion, Commissioner Michael
23 Buckley is the one that drafted and published the opinion for
24 the CICC. Commissioner Buckley is also a lawyer, a partner at
25 the law firm of Jones Vargas. Just coincidentally, Jones

1 Vargas was hired one week prior to his opinion coming out.
2 Hired by RMI Management, Red Rock Collections, one of the
3 largest homeowners association collections agencies in the
4 state of Nevada. So I'm just saying it was kind of
5 coincidental that one week prior to this opinion coming out,
6 Jones Vargas was hired -- they were hired to actually lobby to
7 change the law.

8 And Commissioner Buckley was very frank about that
9 when we discussed that on the record at one of the commission
10 hearings, is that, yes, indeed, their firm was hired. I
11 personal thought that was conflict of interest for
12 Commissioner Buckley to be publishing this advisory opinion,
13 but he didn't think it was. So him being the -- the
14 commissioner, he won that argument.

15 But more importantly, the CICC's advisory opinion
16 doesn't address the issue that's before the Court. It asks a
17 specific question. That advisory opinion asked may the
18 association also recover as part of the superpriority lien the
19 costs and fees incurred by an association in collecting such
20 assessments. It didn't answer the question, is there a cap?
21 Everybody agrees that the superpriority lien can be composed
22 of lots of different things, including collection costs. But
23 the commission never addressed the question -- never answered
24 the question, it was never posed to them, whether there is a
25 statutory nine-month cap.

1 THE COURT: That one you were showing a moment ago
2 involving Judge Williams --

3 MR. ADAMS: Yes.

4 THE COURT: -- forty-some thousand dollars in fees?

5 MR. ADAMS: That was attorneys fees, yeah.

6 THE COURT: Right. Did he determine that that was
7 recoverable in excess of the cap, or was that -- recover that
8 amount up to the cap? That's what I'm trying to make sure
9 I --

10 MR. ADAMS: He -- well, he -- I think he -- he
11 determined that pursuant to the subparagraph 7, that the
12 prevailing party was entitled to those fees and costs. I
13 think that's --

14 THE COURT: That would all be part of the
15 superpriority lane in excess of the cap that you're arguing,
16 or -- or not?

17 MR. ADAMS: You know the answer to that -- I -- I'm
18 not sure that that's what he ruled.

19 THE COURT: Okay.

20 MR. ADAMS: I mean, I -- I'd -- quite frankly, I'd
21 have to take a look at his decision again.

22 THE COURT: What I understand you to be saying is
23 that all these other things, apart fro the regular assessments
24 that are made periodically or whatever --

25 MR. ADAMS: Yeah.

1 THE COURT: -- can be included in the superpriority
2 lien as long as collectively all items don't exceed what would
3 be the nine months for the regular assessments.

4 MR. ADAMS: Plus exterior repair costs.

5 THE COURT: Right.

6 MR. ADAMS: And that's -- that's what the word to
7 the extent is meant for.

8 THE COURT: Okay. That -- that's what you --

9 MR. ADAMS: And the reason why I -- I have that
10 opinion and the Colorado courts and the Connecticut court and
11 the Massachusetts court all agree with that, is because the --
12 the UCIOA says that, well, all of these other things are
13 enforceable as assessments are enforceable. Assessments are
14 enforceable against the original homeowner by filing a lien,
15 so all of this stuff is included in the general basic lien pot
16 against the homeowners association. But when you have the --
17 the incident of a mortgage foreclosure, then that all gets
18 wiped out pursuant to traditional lien priority law, except
19 for the little bit that gets prioritized, and that's what's in
20 the formula, basically, in the superpriority lien formula.

21 THE COURT: All right.

22 MR. ADAMS: By the way, the CICC did cite favorably
23 the Colorado case law, stating that there is a maximum limit
24 on the lien. It -- it stated that they -- they found very
25 helpful in their analysis the Colorado case law, and then they

1 actually cited the case law that basically states that the --
2 to the extent of the assessments which would have been due
3 during the six months immediately preceding an action to
4 enforce the lien merely limits the maximum amount of all fees
5 and charges that are contained in the superpriority lien. So
6 I think -- I think they acknowledged, and they said -- they
7 said it favorably to the Colorado case law.

8 But the question really wasn't before them. And I --
9 incidentally, Michael Buckley shot me an e-mail and said, you
10 know, here's -- here's my advisory opinion and -- and do you
11 have any comments on it? And I said, well, you don't -- you
12 don't address the problem as -- of whether there's a cap or
13 not. But he just went ahead and published his original
14 version, anyway. So I -- I don't think -- and I don't know
15 what he would say, but I think clearly the question asked in
16 the advisory opinion is not the question we're asking the
17 Court to resolve.

18 And in conclusion, we've got the plain language of
19 the superpriority lien, nine months assessments plus exterior
20 repair costs. And then we've got the plethora of cases and
21 advisory opinions and so forth that -- that promote that. I
22 want to just quickly address the Hudson House case. The
23 Connecticut Hudson House case was, I believe it was 1991 or
24 1992 when that case came out. Connecticut actually changed
25 its law right after that case. But that was another judicial

1 foreclosure case. The only reason why Connecticut in that
2 case included attorneys fees and collection costs was because
3 they have the same prevailing party language. There was a
4 lawsuit, there was a judicial foreclosure, and the court
5 awarded attorneys fees, and that was proper pursuant to that
6 -- their version of the super -- or of the prevailing party
7 attorneys fees cost.

8 Unless -- I think -- I think we've -- I think the
9 Court probably knows more than its ever wanted to know about
10 this issue. So --

11 THE COURT: No, that -- no, that's fine. It's --

12 MR. ADAMS: If the Court has any questions --

13 THE COURT: -- very interesting.

14 MR. ADAMS: -- I'd be happy to --

15 THE COURT: All right. I will take it under
16 advisement, though. I want to review it further before I
17 rule.

18 MR. ADAMS: Sure.

19 THE COURT: It's got some -- the language and
20 everything and -- and are you going to make your PowerPoint
21 part of the record here?

22 MR. ADAMS: I can, Your Honor. I do have some
23 copies.

24 THE COURT: I -- I think that for purposes of the
25 record, the PowerPoint should be made part of it, so --

1 MR. ADAMS: Thank you, Your Honor.
2 THE COURT: -- that any reviewing court can --
3 MR. ADAMS: Okay. I agree. May I approach?
4 THE COURT: -- the reviewing court, I should say,
5 can know what it was that was presented to me. All right?
6 MR. ADAMS: Thank you, Your Honor.
7 MR. HINCKLEY: Thank you, Your Honor.
8 MS. PREMSRIRUT: Thank you, Your Honor.
9 THE COURT: All right, thank you. Have a nice
10 holiday season.

11 (Court recessed at 12:08 p.m.)
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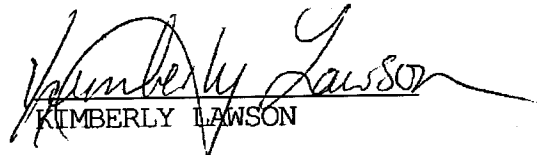
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

December 12, 2011

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

December 12, 2011 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

PARTIES James Adams, Esq., and Puonyarat Premsrirut, Esq., for Plaintiff
PRESENT: Eric Hinckley, Esq., for Defendant

JOURNAL ENTRIES

**MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF ...
DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNERS' ASSOCIATION'S OPPOSITION
TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT and COUNTERMOTION
FOR SUMMARY JUDGMENT**

Mr. Adams accompanied his arguments with a power point presentation that was lodged with the Court and identified as Court Exhibit 1. Mr. Adams explained the evolvement of the Super Priority Lien (SPL) given to HOAs over first mortgage holders in Nevada and other states. He stressed that NRS 116.3116 caps the amount of such liens to nine (9) months of assessments and any charges incurred on external improvements. He added that the HOA can civilly sue the former homeowner for any additional fees owed but the amount over the stated term should not be enforced against a subsequent purchaser.

Mr. Hinckley argued that including costs and attorney fees within this same capped limit seriously harms HOA's in their ability to keep to their annual budgets and recommended improvements. The purpose of the SPL was to enable the HOA to get the monies owed to them without having to file a Complaint and become embroiled in an expensive court proceeding. He concluded that had the Legislature intended to limit the total amount of a SPL to nine months of assessment, they would have explicitly stated their intentions in the revised statute.

Following argument, COURT ORDERED matter TAKEN UNDER ADVISEMENT.

PRINT DATE: 12/12/2011

Page 1 of 2

Minutes Date:

December 12, 2011

A-11-647850-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

December 16, 2011

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

December 16, 2011 11:20 AM **Decision Re: Plaintiff's Motion for Partial
Summary Judgment & Defendant's
Counter-motion**

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Sharry Frascarelli

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- HAVING further reviewed the matter relative to Plaintiff's Motion for Partial Summary Judgment heard and taken under advisement on December 12, 2011, the Court is persuaded that Plaintiff's position is correct relative to the components of the superpriority lien (exterior repair costs and 9 months of regular assessments) and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position concerning the need for a civil action to trigger the entitlement to the superpriority. Therefore, the Motion is GRANTED IN PART to the extent indicated, and Defendant's Counter-motion is GRANTED IN PART relative to the civil-action issue. Counsel for Plaintiff is directed to submit a proposed order after passing the same by Defendant's counsel. Instead of seeking to litigate any disapproval through correspondence directed to the Court or to counsel with copies to the Court, any such disapproval should be the subject of motion practice following entry of order.
IT IS SO ORDERED.

CLERK'S NOTE: A copy of this minute order was provided to: James R. Adams, Esq. (Adams Law Group); Puonyarat Premsrirut, Esq. and Eric Hinckley, Esq. (Alverson, Taylor, Mortensen & Sanders

A-11-647850-B

A-11-647850-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Business Court

COURT MINUTES

January 09, 2012

A-11-647850-B Ikon Holdings LLC, Plaintiff(s)
vs.
Horizon at Seven Hills Homeowners Association, Defendant(s)

January 09, 2012 2:45 PM **Mandatory Rule 16
Conference**

HEARD BY: Denton, Mark R.

COURTROOM: CHAMBERS

COURT CLERK: Linda Denman

PARTIES Puonyarat Premsrirut, Esq., for Plaintiff
PRESENT: Eric Hinckley, Esq., for Defendant

JOURNAL ENTRIES

MANDATORY RULE 16 CONFERENCE

IN CHAMBERS: Counsel advised this is a superpriority lien claim. Competing proposed Orders as to the Court's ruling of Plaintiff's Motion for Summary Judgment were provided for the Court's consideration with the parties in dispute as to the whether the language should be specific or general.

Court urged the parties to conduct the 16.1 Conference within the next few weeks and ORDERED that the Case Conference Report (CCR) be filed by February 10, 2012, with a follow-up Status Check to ensure same to which the parties do not need to attend if the CCR has been filed. A copy of the CCR must be provided to Discovery Commissioner Bulla for preparation of the scheduling order and then this Department will process the trial order. All Discovery will be heard by the Department.

Court stated that if and when there is a consensus that the matter was ripe for a settlement conference, counsel should contact the Department's JEA as to scheduling; however, if there is no consensus, either party can file a motion for same.

There were no issues of confidential documents or other business to discuss.

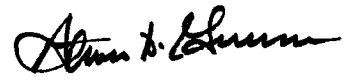
2/16/2012 AT 9:00AM STATUS CHECK: CASE CONFERENCE REPORT

PRINT DATE: 01/11/2012

Page 1 of 2

Minutes Date: January 09, 2012

A-11-647850-B



CLERK OF THE COURT

1 MSJD
2 ADAMS LAW GROUP, LTD.
3 JAMES R. ADAMS, ESQ.
4 Nevada Bar No. 6874
5 ASSLY SAYYAR, ESQ.
6 Nevada Bar No. 9178
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11 james@adamslawnevada.com
12 assly@adamslawnevada.com
13 Attorneys for Plaintiff

8 PUOY K. PREMSRIRUT, ESQ., INC.
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12 Las Vegas, NV 89101
13 (702) 384-5563
14 (702)-385-1752 Fax
15 ppremsrirut@brownlawlv.com
16 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

18 HORIZONS AT SEVEN HILLS HOMEOWNERS
19 ASSOCIATION, and DOES 1 through 10 and ROE
20 ENTITIES 1 through 10 inclusive,

21 Defendant.

Case No: A-11-647850-C
Dept: No. 13

Date of Hearing
Time of Hearing

MOTION FOR SUMMARY JUDGMENT

22 COMES NOW the Plaintiff, IKON HOLDINGS, LLC, a Nevada limited liability company,
23 by and through its counsel, James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K.
24 Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., and file this Motion for Summary Judgment. This
25 Motion is made based upon the following Points and Authorities and all other pleadings and papers
26 on file herein.
27
28

1 Dated this 14th day of January, 2012.

2 ADAMS LAW GROUP, LTD.

3 /s/ James R. Adams
4 JAMES R. ADAMS, ESQ.
5 Nevada Bar No. 6874
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18 (702)-385-1752 Fax
19 ppremsrirut@brownlawlv.com
20 Attorneys for Plaintiff

21 **NOTICE OF MOTION**

22 YOU AND EACH OF YOU will please take notice that Plaintiff's MOTION FOR
23 SUMMARY JUDGMENT will be heard in the above entitled court on the 21 day of
24 February, 2012, at hour of 9 : 00 or as soon thereafter as counsel can be heard.

25 Dated this 14th day of January, 2012.

26 ADAMS LAW GROUP, LTD.

27 /s/ James R. Adams
28 JAMES R. ADAMS, ESQ.
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MEMORANDUM OF POINTS AND AUTHORITIES

I

STATEMENT OF UNDISPUTED FACTS

The following is the relevant and undisputed time-line of events:

- 7/6/2005 Defendant, a Nevada homeowners' association, recorded in the Clark County, Nevada, Recorder's Office, the Declaration of Covenants Conditions & Restrictions and Reservations of Easements for Horizon at Seven Hills Homeowners Association (Ex. 1, "CC&RS").
- 9/15/2005 Hawley McIntosh purchased a home located within the Defendant association at 950 Seven Hills Drive, Suite 1411, Henderson Nevada 89052, APN 177-35-610-137 (Ex. 2, the "McIntosh Deed") (the "Unit"). Mr. McIntosh obtained a first mortgage secured against the Unit (Ex. 3, "First Deed of Trust").
- 6/3/2009 Mr. McIntosh became delinquent in his first mortgage payments and his first mortgage lender filed a Notice of Default (Ex. 4, "First Mortgage Default").
- 8/4/2009 Defendant filed a Notice of Default against Mr. McIntosh for Mr. McIntosh's non-payment of Association assessments and other costs of \$4,289.50 (Ex. 5, "HOA Default").
- 6/28/2010 Mr. McIntosh's first mortgage lender foreclosed on Mr. McIntosh's Unit and, at the foreclosure auction, Scott M. Ludwig purchased the Unit (Ex. 6, "Trustee's Deed") ("6/28/10 Foreclosure Auction").
- 7/14/2010 Scott M. Ludwig transferred the Unit by quit claim deed to Plaintiff (Ex. 7, "Ikon Deed").
- 9/30/2010 Defendant filed a lien against the Unit and included past due assessments and costs which were incurred by the former owner, Mr. McIntosh, and which were extinguished by the foreclosure auction pursuant to NRS 116.3116(2) and Section 7.9 of Defendant's CC&RS (Ex. 8 "Notice of Delinquent Assessment Lien").
- 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the current balance for the above property is \$6,287.94." (Ex. 9, the "10/18/10 Collection Letter"). The 10/18/10 Collection Letter included amounts owed to the Defendant by Mr. McIntosh, the original owner, which had been extinguished as against Plaintiff by the foreclosure auction.
- 11/18/2010 Defendant filed a Notice of Default against the Unit and included past due assessments and costs which were incurred by the former owner, Mr. McIntosh, and which were extinguished by the foreclosure auction (Ex. 10, "Association Notice of Default").

1 There is no dispute that the Unit, being located within Defendant homeowners' association, is subject
2 to NRS 116 (Common Interest Ownership Uniform Act) and Defendant's CC&RS.

3 II

4 ARGUMENT AT LAW

5 A. THE SUMMARY JUDGMENT STANDARD - THIS COURT MAY DECIDE QUESTIONS OF LAW 6 WHERE THERE IS NO FACTUAL DISPUTE

7 Summary Judgment is appropriate where the pleadings and affidavits on file show that there
8 exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a
9 matter of law. Montgomery v. Ponderosa Construction, Inc., 101 Nev. 416, 418, 705 P.2d 652, 655
10 (1985). See also, Burnett v. CBA Security Services, 107 Nev. 787, 788, 820 P.2d 750, 751 (1991).
11 The non-moving party "bears the burden to 'do more than simply show that there is some metaphysical
12 doubt' as to the operative facts in order to avoid summary judgment being entered." Wood v. Safeway,
13 Inc., 121 P.3d 1026, 1031 (Nev. 2005). To this end, the Nevada Supreme Court has recently overruled
14 the "slightest doubt" standard and has adopted the standard as set forth in Anderson v. Liberty Lobby
15 Inc., 477 U.S. 242 (1986). See Wood v. Safeway, Inc., 121 P.3d 1026, 1031 (Nev. 2005). Therefore,
16 the non-moving party must set forth specific facts demonstrating the existence of a "genuine" issue for
17 trial or have summary judgment entered against him. Collins v. Union Federal Savings & Loan, 99
18 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The non-moving party's documentation must be
19 admissible evidence and he or she "is not entitled to build a case on the gossamer threads of whimsy,
20 speculation and conjecture." Id., 99 Nev. at 302, 662 P.2d at 621 (quoting Hahn v. Sergeant, 523 F.2d
21 461, 467 (1st Cir. 1975)). When there is no genuine issue of material fact and the non-moving party
22 provides no admissible evidence to the contrary, summary judgment is "mandated." Celotex Corp.
23 v. Catrett, 477 US 317, 322 (1986).

24 B. BY ITS DEMANDS, LIENS AND NOTICES OF DEFAULT, DEFENDANT VIOLATED SECTION 7.9 25 OF THE CC&RS AND NRS 116.3116(2).

26 1. Violation of CC&RS

27 Pursuant to Section 7.9 of the CC&RS, the foreclosure of the first mortgage lender of the Unit
28 extinguishes the Defendant's lien against the Unit but for an amount equal to 6 months of assessments

1 Regarding priority of homeowner association assessment liens, Section 7.9 of the CC&RS state the
2 following:

3 **A lien for assessments, including interest, costs, and attorneys' fees,**
4 **as provided for herein, shall be prior to all other liens and**
5 **encumbrances on a Unit, except for... (b) a first Mortgage**
6 **Recorded before the delinquency of the assessment sought to be**
7 **enforced (except to the extent of Annual Assessments which would**
8 **have become due in the absence of acceleration during the six (6)**
9 **months immediately preceding institution of an action to enforce**
10 **the lien)... subject to foregoing provision of this Section 7.9, the sale**
11 **or transfer of any Unit pursuant to judicial or non-judicial**
12 **foreclosure of a First Mortgage shall extinguish the lien of such**
 assessment as to payments which became due prior to such sale or
 transfer... the Person who obtains title and his or her successors
 and assigns shall not be liable for the share of the Common
 Expenses or assessments by the Association chargeable to such Unit
 which became due prior to the acquisition of title to such Unit by
 such Person (except to the extent of Annual Assessments which
 would have become due in the absence of acceleration during the
 six (6) months immediately preceding institution of an action to
 enforce the lien). (Ex. 1, CC&RS)

13 Thus, pursuant to the CC&RS, two legal concepts are clear:

- 14 1. Defendant's lien against a Unit includes assessments, interest, costs and
15 attorney's fees; and
- 16 2. Defendant's lien is subordinate to the first mortgage holder and is extinguished
17 by the foreclosure of the Unit but for an amount equal to 6 months of
18 assessments.

19 At the time of foreclosure, Defendant's monthly assessments were \$190.00 (See Ex. 9, the 10/18/10
20 Collection Letter, breakdown of fees). Thus, pursuant to the CC&RS, the maximum amount of
21 Defendant's lien which could survive foreclosure was 6 times \$190.00 (or \$1,140.00) (see Section 7.9
22 of the CC&RS above).

23 However, the 10/18/2010 Collection Letter demanded \$6,287.94 from Plaintiff. A portion of
24 that amount for was assessments and fees accrued for the period of time after the 6/28/10 Foreclosure
25 Auction and a portion of that amount was for assessments and fees accrued before the 6/28/10
26 Foreclosure Auction. Fortunately, the 10/18/10 Collection Letter was accompanied by a breakdown
27 of fees and costs. A review of the breakdown of the fees and costs on Ex. 9 reveals that Defendant was
28 demanding a total of \$3,684.52 for amounts incurred by Mr. McIntosh (the prior owner who was

1 Pursuant to Section 7.9 of the CC&RS, Plaintiff was only liable for 6 times Defendant's monthly
2 assessment for the period of time prior to taking title at the foreclosure auction (or \$1,140.00). Thus,
3 for the time period prior to the 6/28/10 Foreclosure Auction, Defendant demanded from Plaintiff
4 \$2,544.52 more than Section 7.9 of the CC&RS allowed (\$3,684.52 - \$1,140.00). Therefore,
5 Defendant failed to comply with Section 7.9 of the CC&RS by demanding, noticing and liening
6 Plaintiff's Unit for more than \$1,140.00 for the time period prior to the 6/28/10 Foreclosure Auction.

7 **2. Violation of NRS 116.3116**

8 Further, pursuant to NRS 116.3116, a homeowners' association, such as Defendant, has a lien
9 on any unit within the association for any assessment levied against that unit or any fines imposed
10 against the unit's owner from the time the assessment or fine becomes due. As the aforementioned
11 Unit had been foreclosed upon by the Unit's first mortgage lender, any existing Defendant
12 homeowners' assessment liens were also extinguished as against the Unit pursuant to NRS
13 116.3116(2). Nevada Revised Statutes §116.3116 governs liens against properties located within
14 homeowners' associations, such as the Unit, and generally states as follows:

- 15 a. Defendant has a statutory lien on any unit of real property located with its
16 association for any assessment imposed against a unit or fine imposed against
17 the unit's owner from the time the assessment or fine became due;
18 b. However, Defendant's lien is junior to the first security interest of the unit's
19 first mortgage lender except for a certain, limited and specified portion of the
20 lien as defined in Nevada Revised Statutes §116.3116 which remains senior to
21 the first security interest of the unit's first mortgage lender, provided that
22 Defendant had instituted an "action" to enforce their liens.

23 On and after October 1, 2009, the statutory formula for calculating the Super Priority Lien was as
24 follows: the lien is prior to the first security interest on the unit to the extent of any charges incurred
25 by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for
26 common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115
27 which would have become due in the absence of acceleration during the 9 months immediately
28 preceding institution of an action to enforce the lien unless federal regulations adopted by the Federal

1 Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter
2 period of priority for the lien (the "Super Priority Lien")¹. Therefore, pursuant to NRS 116.3116(2)
3 the maximum amount of the Super Priority Lien against the Unit was limited to 9 times the
4 Defendant's monthly assessments (which, at \$190.00 per month equaled \$1,710.00). However, for the
5 time period prior to the foreclosure auction, Defendant demanded from Plaintiff \$1,974.52 more than
6 NRS 116.3116(2) allowed (\$3,684.52 - \$1,710.00).

7 Pursuant to NRS 116.4117, Plaintiff has a private right of action against Defendant for
8 Defendant's violations of NRS 116. NRS 116.4117 states:

9 1. Subject to the requirements set forth in subsection 2, if a
10 declarant, community manager or any other person subject to this
11 chapter fails to comply with any of its provisions or any provision of
12 the declaration or bylaws, any person or class of persons suffering
actual damages from the failure to comply may bring a civil action for
damages or other appropriate relief.

13 2. Subject to the requirements set forth in NRS 38.310 and except
14 as otherwise provided in NRS 116.3111, a civil action for damages or
15 other appropriate relief for a failure or refusal to comply with any
16 provision of this chapter or the governing documents of an
17 association may be brought:

18 (a) By the association against:

- 19 (1) A declarant;
20 (2) A community manager; or
21 (3) A unit's owner.

22 (b) By a unit's owner against:

23 (1) The association;

24 (2) A declarant; or

25 (3) Another unit's owner of the association....

26 5. The civil remedy provided by this section is in addition to, and
27 not exclusive of, any other available remedy or penalty.

28 ¹ On 12/16/2010, this Court granted Plaintiff's Motion for Summary Judgment on Declaratory
Relief ruling that the Super Priority Lien is capped at 9 times an association's monthly assessment
plus exterior repair costs.

1 Defendant failed to comply with NRS 116.3116(2) by demanding, noticing and liening Plaintiff's Unit
2 for more than \$1,710.00 for the time period prior to the 6/28/10 Foreclosure Auction. Therefore,
3 Defendant violated NRS 116.3116(2).

4 In short, Defendant has been, and is demanding amounts of monies from Plaintiff that pursuant
5 to NRS §116.3116 and the CC&RS have been legally extinguished by the trustee's sale of the first
6 mortgage lender. For example:

7 • 9/30/10 Defendant filed a "Notice of Delinquent Assessment Lien" against Plaintiff and
8 the Unit, this time stating, "Total amount due through today's date is
9 \$6,050.14." (Ex. 8). However, this was incorrect. Plaintiff did not owe said
10 amount to the Defendant because the assessment lien upon which the demand
11 amount was based was extinguished by the 6/28/10 Foreclosure Auction
12 pursuant to NRS 116.3116 and the CC&RS.

13 • 10/18/10 Defendant sent Plaintiff another letter stating, "Per your request, the current
14 balance for the above property is \$6287.94." (Ex. 9). However, this was
15 incorrect. Plaintiff did not owe said amount to the Defendant because the
16 assessment lien upon which the demand amount was based was extinguished
17 by the 6/28/10 Foreclosure Auction pursuant to NRS 116.3116 and the
18 CC&RS.

19 • 11/18/10 Defendant filed a Notice of Default against the Unit and included past due
20 assessments and costs which were incurred by the former owner, Mr. McIntosh,
21 and which were extinguished by the foreclosure auction (Ex. 10, "Association
22 Notice of Default"). The Notice of Default stated an amount of \$7,349.50 as
23 being due. However, this was incorrect. Plaintiff did not owe that amount
24 because a portion of the amount due was extinguished by the 6/28/10
25 Foreclosure Auction pursuant to NRS 116.3116 and the CC&RS.

26 As noted in NRS 116.4117, Plaintiff has an action against Defendant for, "... failure or refusal to
27 comply with any provision of this chapter or the governing documents of an association...." By
28 demanding and liening Plaintiff's Unit for more money than permitted by Section 7.9 of the CC&RS

1 and for more money than permitted by NRS 116.3116, Defendant has violated both NRS 116.3116(2)
2 and Section 7.9 of the CC&RS.

3 **CONCLUSION**

4 Plaintiff, therefore, requests a judgment from the Court declaring that Defendant violated both
5 NRS 116.3116(2) and Section 7.9 of the CC&RS and declaring that the maximum amount of money
6 Plaintiff could owe to Defendant prior to the 6/28/2010 Foreclosure Auction is \$1,140.00.

7
8 Dated this 14th day of January, 2012.

9 ADAMS LAW GROUP, LTD.

10 /s/ James R. Adams

11 JAMES R. ADAMS, ESQ.

12 Nevada Bar No. 6874

13 ASSLY SAYYAR, ESQ.

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27 Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **MOTION FOR SUMMARY JUDGMENT** upon all parties to this action by:

<input checked="" type="checkbox"/>	<u>Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;</u>
<input type="checkbox"/>	<u>Hand Delivery</u>
<input type="checkbox"/>	<u>Facsimile</u>
<input type="checkbox"/>	<u>Email</u>
<input type="checkbox"/>	<u>Certified Mail, Return Receipt Requested.</u>

addressed as follows:

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Office: 702.384.7000
Fax: 702.385.7000
Kbonds@AlversonTaylor.com

Dated the 14th day of January, 2012.

/s/ James R. Adams
An employee of Adams Law Group, Ltd.

Ex. 1



APR: 177-35-601-011

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
4780 South Pecos Road, Suite 203
Las Vegas, Nevada 89121
(702) 966-6388

(Space Above Line for Recorder's Use Only)

DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
HORIZONS AT SEVEN HILLS

(a Nevada Residential Condominium Common-Interest Community)
CITY OF HENDERSON, CLARK COUNTY, NEVADA

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DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS AND RESERVATION OF EASEMENTS FOR HORIZONS AT SEVEN HILLS

THIS DECLARATION ("Declaration"), made as of the 2nd day of June, 2005, by GOOSE DEVELOPMENT, LLC, a Nevada limited-liability company ("Declarant");

WITNESSETH:

WHEREAS:

A. Declarant currently owns certain real property and project located in the City of Henderson, Clark County, Nevada, and sometimes generally referred to as HORIZONS AT SEVEN HILLS, or HORIZONS AT SEVEN HILLS; and

B. Said property, including an aggregate maximum number of three hundred twenty-eight (328) residential units ("Maximum Units"), as more particularly described in Exhibit "A" hereto, shall constitute the property covered by this Declaration ("Properties"); and

C. Declarant intends that the Properties shall be a Nevada Common-Interest Community, and a Condominium, as respectively defined in NRS § 116.021 and § 116.027, created pursuant to NRS § 116.2101 upon the recordation of this Declaration, and a common-interest community containing converted buildings pursuant to NRS Chapter 116; and

D. Declarant intends to convey the Properties pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

E. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Properties pursuant to the provisions of this Declaration, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the covenants and restrictions, and collecting and disbursing the Assessments and charges hereinafter created. Declarant will cause, or has caused, the Association to be formed for the purpose of exercising such functions; and

F. The name of the Community shall be known as HORIZONS AT SEVEN HILLS, and the name of the Nevada nonprofit corporation which has been organized as the homeowners association in connection therewith is HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION ("Association");

G. This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of the Community.

NOW, THEREFORE, Declarant hereby declares that all of the Properties shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the provisions of this Declaration and to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose

of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale and lease of the Properties or any portion thereof. The covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth in this Declaration shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, and their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and limited exclusively to single Family residential use.

ARTICLE 1 DEFINITIONS

Section 1.1 "AEC" (sometimes referred to as "NRS Chapter 116") shall mean Nevada's Uniform Common Interest Ownership Act, set forth in Chapter 116 of Nevada Revised Statutes, as the same may be amended from time to time. Except as otherwise indicated, capitalized terms herein shall have the same meanings ascribed to such terms in the Act.

Section 1.2 "Allocated Interests" shall mean the following interests allocated to each Unit: an undivided fractional pro-rata interest in the Common Elements (other than any Common Elements conveyed to the Association), in which the numerator is one (1) and the denominator is 328; the Allocated Interests of each Unit shall be 1/328; a non-exclusive easement of enjoyment of all Common Elements in the Properties; allocation of Exclusive Use Areas (Limited Common Elements) pursuant to the Plat and as set forth herein; liability for assessments pro-rata for Common Expenses in the Properties (in addition to any Specific Assessments as set forth herein); membership and one vote in the Association, per Unit owned, which membership and vote shall be appurtenant to the Condominium Unit; and an Assigned Parking Space, as designated by Declarant.

Section 1.3 "ARC" shall mean the Architectural Review Committee created pursuant to Article 18 hereof.

Section 1.4 "Articles" shall mean the Articles of Incorporation of the Association as filed in the Office of the Nevada Secretary of State, as such Articles may be amended from time to time.

Section 1.5 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments, Supplemental Assessments, and Specific Assessments.

Section 1.6 "Assessment Annual" shall mean the annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid in advance in equal periodic (monthly, or quarterly as determined from time to time by the Board) installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and at the times and proportions provided herein.

Section 1.7 "Assessment Capital" shall mean a charge against each Owner and his Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any improvements on any portion of the Common Elements which the Association may from

time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.8 "Assessment Specific" shall mean a charge against a particular Owner and his Unit, directly attributable to or reimbursable by that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or levied by the Board as a reasonable fine or penalty for noncompliance herewith, plus interest and other charges on such Specific Assessment as provided for in this Declaration.

Section 1.9 "Assessment Supplemental" shall mean a charge against each Owner and his or her Unit, representing a prorated portion of extraordinary costs which the Association may from time to time encounter and need to authorize payment thereof, pursuant to the provisions of this Declaration, including but not necessarily limited to Section 6.13 hereof. Supplemental Assessments normally shall be prorated and levied among all Owners and their Units in the same proportion as Annual Assessments, or in such other reasonable manner as the Board in its reasonable discretion may determine.

Section 1.10 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.11 "Assigned Parking Space" shall mean a parking space, identified as such on the Plat and/or expressly designated by Declarant as an Assigned Parking Space, which shall be an Exclusive Use Area for a designated Unit.

Section 1.12 "Association" shall mean HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, and its successors and assigns.

Section 1.13 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 6 hereof.

Section 1.14 "Balcony" shall mean a balcony, as originally constructed, which shall be an Exclusive Use Area as to a designated Condominium Unit, as set forth on the Plat. No Owner or Person shall have any right to materially alter, or to construct, or shall materially alter or construct, any Balcony from and after the date of recordation of this Declaration.

Section 1.15 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.16 "Board" or "Board of Directors" shall mean the Board of Directors of the Association, elected or appointed in accordance with the Bylaws and this Declaration. The Board is an "Executive Board" as defined by NRS § 116.045.

Section 1.17 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared, approved, and ratified pursuant to the provisions of this Declaration, including, but not limited to, Section 8.4 below.

Section 1.18 "Building" shall mean a Condominium Building.

Section 1.19 "Bylaws" shall mean the Bylaws of the Association, which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.20 "Capital Contributions" shall have the meaning set forth in Section 6.6 below.

Section 1.21 "City" shall mean the City of Henderson, Nevada.

Section 1.22 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.23 "Common Elements" shall mean all portions of the Properties, other than the Units, as provided in NRS § 116.017, and all improvements thereon. Subject to the foregoing, and subject further to NRS § 116.2102, Common Elements may include, without limitation: Common Recreational Areas; entry area features, gates and monumental; emergency access; "crash gate"; Private Streets; private street lights, building lights and entrance lights; walls, fences, bearing walls and perimeter walls; landscape and greenbelt areas; hardcape and parking areas; watercourse and common water features; roofs, exterior walls, and foundations; all water and sewer systems, lines and connections, from the boundaries of the Properties, to the boundaries of Units (but not including such internal lines and connections located inside Units); pipes, ducts, files, chutes, conduits, wires, and other utility systems and installations (other than outlets located within a Unit, which outlets shall be a part of the Unit), and heating, ventilation and air conditioning, as installed by or for the Association for common use (but not including HVAC which serves a single Unit exclusively).

Section 1.24 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of: maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti from perimeter walls; unpaid Specific Assessments, and/or Capital Assessments; the costs of any commonly metered utilities and other commonly metered charges for the Units; and Common Elements (including, but not necessarily limited to, the allocated costs of master water supply and sewage disposal, and costs of master trash pickup and disposal); costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to the Manager, accountants, attorneys, consultants, and employees; costs of all utilities, gardening, and other services benefiting the Properties; costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Association, Common Elements, or Properties; or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, Manager, or any other Person handling the funds of the Association; any statutorily required ombudsman fees; taxes paid by the Association (including, but not limited to, any and all unsegregated or "blanket" real property taxes for all or any portions of the Properties); amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or portions thereof or deemed prudent and necessary by the Board; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116.

Section 1.25 "Common Recreational Area" shall mean the common recreational area, as shown on the Plat, the improvements on which may consist of, but not necessarily be limited to, a swimming pool, spa, cabana, or similar amenity, for common use by all Owners, subject to the Rules and Regulations.

Section 1.26 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.021, and a Condominium, as defined in NRS § 116.027.

Section 1.27 "Condominium Building" shall mean each residential condominium building housing Units within the Properties, as shown on the Plat.

Section 1.28 "Condominium Unit" shall mean a Unit, as set forth in Section 1.70, below.

Section 1.29 "County" shall mean Clark County, Nevada.

Section 1.30 "Declarant" shall mean GOOSE DEVELOPMENT, LLC, a Nevada limited-liability company, its successors and any Person(s) to which it shall have assigned any rights hereunder by an express written and Recorded assignment (but specifically excluding Purchasers, as defined in NRS § 116.079). A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then-existing Declarant and encumbering all or any portion of the Properties, which beneficiary has acquired any of the Properties by foreclosure, power of sale, or deed in lieu thereof, and has elected in writing to become the Declarant.

Section 1.31 "Declarant Control Period" shall have the meaning set forth in Section 3.7 below.

Section 1.32 "Declarant Rights Period" shall mean the period during which Declarant owns any real property subject to this Declaration.

Section 1.33 "Declaration" shall mean this instrument as may be further amended from time to time.

Section 1.34 "Deed of Trust" shall mean a mortgage or deed of trust, as the case may be.

Section 1.35 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.36 "Dwelling" shall mean a Condominium Unit, designed and intended for use and occupancy as a residence by a single Family.

Section 1.37 "Eligible Holder" or "Eligible Mortgagee" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering a Unit, which has filed with the Board a written request for notification as to relevant matters as specified in this Declaration.

Section 1.38 "Exclusive Use Areas" shall mean the Limited Common Elements.

Section 1.39 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable Ordinances.

Section 1.40 "FHA" shall mean the Federal Housing Administration.

Section 1.41 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as the Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

Section 1.42 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.43 "FNMA or GNMA". FNMA shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation. GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.44 "Garage" shall mean an enclosed garage, identified as such on the Plat and/or expressly designated and assigned by Declarant as a Garage, appurtenant to and part of a designated Unit. A Condominium Unit shall not have a Garage appurtenant thereto, unless specifically so designated in writing by Declarant. A Garage shall consist of a fee simple interest bounded by the interior surfaces of the walls, floor, ceiling, and exterior door (and any exterior window) thereof, in like manner as a Unit is bounded. A Garage includes both the portions of the building so described and the airspace so encompassed. A Garage shall not be deemed independently to constitute a Unit, but shall be a part of and appurtenant to a Unit as designated and assigned by Declarant pursuant to this Declaration.

Section 1.45 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and the Rules and Regulations. Any irreconcilable inconsistency among the Governing Documents shall be governed pursuant to Sections 17.13 and 17.16, below.

Section 1.46 "HVAC" shall mean heating, ventilation, and/or air conditioning equipment and systems. HVAC, located on easements in Common Elements, which serve one Unit exclusively, shall constitute Exclusive Use Areas as to such Unit, pursuant to Sections 2.15 and 2.15, below.

Section 1.47 "Identifying Number", pursuant to NRS § 116.063, shall mean the number which identifies a Unit on the Plat.

Section 1.48 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, located in the Properties, including but not limited to Condominium Buildings and other structures, walkways, sprinkler pipes, Common Recreational Area, Balconies, swimming pools, spas, and other recreational facilities, carports, roads, Private Streets, entryway, parking areas, walls, perimeter walls, handscapes, curbs, gutters, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennas, handscapes, features, hedges, windbreaks, railings, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

Section 1.49 "Limited Common Elements" (sometimes referred to herein as "Exclusive Use Areas") shall mean the Balconies, Patios, entryways, and/or exterior stairways, and areas shown as limited common elements on the Plat, and allocated exclusively to individual Units, together with such HVAC designed to serve a single Unit, but located outside of the Unit's boundaries. Use, maintenance, repair and replacement of Limited Common Elements shall be as set forth in this Declaration. If any chime, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion respectively thereof serving only the Unit is a Limited Common Element allocated solely to that Unit, and any portion respectively thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements.

Section 1.50 "Manager" shall mean the Person, whether an employee or independent contractor, hired as such by the Association, acting through the Board, and delegated the authority to implement certain duties, powers or functions of the Association as provided in this Declaration.

Section 1.51 "Maximum Units" shall mean the total "not to exceed" maximum number of aggregate Units within the Properties (i.e., 328 Units).

Section 1.52 "Member", "Membership", "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.53 "Member In Good Standing" shall mean a Member whose voting rights have not been suspended in accordance with the Governing Documents or applicable Nevada law.

Section 1.54 "Mortgage", "Mortgages", "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage". "Mortgage" shall not include any judgment lien, mechanics lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgages" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgage" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the trustee of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor", and "Beneficiary" shall be synonymous with "Mortgagee". For purposes of this Declaration, "First Mortgage" or "First Deed of Trust" shall mean a Mortgage or Deed of Trust with first priority over other mortgages or deeds of trust on a Unit in the Properties and "First Mortgage" or "First Beneficiary" shall mean the holder of a first Mortgage or Beneficiary under a first Deed of Trust.

Section 1.55 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.56 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.57 "Ordinances" shall mean any and all applicable ordinances, resolutions, and rules of the City, and/or any other local governmental entity or agency with jurisdiction.

Section 1.58 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees. A vendee under an installment land sale contract shall be deemed an "Owner" (hereunder, provided the Board has received written notification thereof, executed by both vendor and vendee thereunder).

Section 1.59 "Patio" shall mean a patio as originally constructed, which shall be an Exclusive Use Area as to a designated Condominium Unit, as set forth on the Plat. No Owner or

Person shall have any right to materially alter or construct, or shall materially alter or construct, a Patio from and after the date of recordation of this Declaration.

Section 1.60 "Perimeter Wall(s)/Fence(s)" shall mean the walls and/or fences located generally around the exterior boundary of the Properties.

Section 1.61 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.62 "Plat" shall mean, the final recorded plat of HORIZONS AT SEVEN HILLS RANCH, recorded on June 29, 2005, in Book 125 of Plats, Page 0058, as the same may have been or may be amended and/or supplemented from time to time, and any other map(s) which may hereafter affect the Properties.

Section 1.63 "Private Streets" shall mean all private streets, rights of way, street escapes, and vehicular ingress and egress easements in the Properties, shown as such on the Plat.

Section 1.64 "Project" shall mean the Properties.

Section 1.65 "Properties" shall mean all of the real property described in Exhibit "A," attached hereto.

Section 1.66 "Purchaser" shall have that meaning as provided in NRS § 116.079.

Section 1.67 "Record," "Recorded," "Filed," or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.68 "Resident" shall mean any Owner, tenant or other person who is physically residing in a Unit.

Section 1.69 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.70 "Unit" or "Condominium Unit" shall mean each Dwelling unit space identified as such on the Plat, and shall consist of a fee simple interest bounded by the interior surfaces of the following features of Units as originally constructed: (a) exterior walls and party walls, (b) floors and ceilings, and (c) exterior windows and doors thereof; (and all interior: iath, turring, wallboard, plasterboard, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished interior surfaces thereof), and a Unit includes both the portions of the Condominium Building so described and the airspace so encompassed; together with the exclusive right to use, possess and occupy the Limited Common Elements serving such Unit exclusively; an undivided pro-rata fractional interest as tenants in common in the Common Elements (other than the Common Recreational Area, and any other Common Element conveyed in fee to the Association); easements of ingress and egress over and across all entry or access areas and Private Streets and of use and enjoyment of all other Common Elements in the Properties; membership and one vote in the Association (which membership and vote shall be appurtenant to the Condominium Unit); and the right to use an Assigned Parking Space as an Exclusive Use Area, pursuant and subject to the Governing Documents.

Section 1.71 "VA" shall mean the United States Department of Veterans Affairs.

Any capitalized term not separately defined in this Declaration shall reasonably have the meaning ascribed thereto in applicable provision of NRS Chapter 116.

ARTICLE 2 OWNERS' PROPERTY RIGHTS; EASEMENTS

Section 2.1 **Ownership of Unit; Owners' Easements of Enjoyment.** Title to each Unit in the Properties shall be conveyed in fee to an Owner. Ownership of each Unit within the Properties shall include (a) a Condominium Unit, (b) an undivided interest in the Common Elements as designated on the Plat, which have not separately been conveyed to the Association, (c) one membership in the Association, and (d) any exclusive or non-exclusive easements appurtenant to such Unit over those Common Elements conveyed, or to be conveyed, to the Association, as described in this Declaration, the Plat, and the deed to the Unit. Each Owner shall have a nonexclusive right and easement of ingress and egress and of use and enjoyment in, to and over all Common Elements, including, but not limited to, the Common Recreational Area and Private Streets, which easement shall be appurtenant to and shall pass with the title to the Owner's Unit, subject to the following:

(a) the right of the Association to reasonably limit the number of guests an Owner or Resident may authorize to use the Common Elements;

(b) the right of the Association to establish uniform Rules and Regulations regarding use, maintenance and upkeep of the Common Elements, and to amend same from time to time (such Rules and Regulations may be amended upon a majority vote of the Board), provided that such Rules and Regulations shall not irreconcilably conflict with this Declaration or the other Governing Documents;

(c) the right of the Association in accordance with the Declaration, Articles and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and, in aid thereof, and subject further to the Mortgagee protection provisions of Article 12 and elsewhere in this Declaration, to mortgage, pledge, deed in trust or hypothecate any or all of the Common Elements as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

(d) subject to the voting and approval requirements set forth in Subsection 2.1(c) above, and subject further to the provisions of Article 12 and 13 of this Declaration, the right of the Association to dedicate, release, alienate, transfer or grant easements, licenses, permits and rights of way in all or any portion of the Common Elements to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be approved by the Association and the Members;

(e) subject to the Declarant reserved rights provisions of Article 13 hereof, the right of Declarant and its sales agents, representatives and prospective purchasers, to the non-exclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s), until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other

development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

(f) the other easements, and rights and reservations of Declarant as set forth in this Article 2, in Article 13, and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any improvement or portion thereof in the Common Elements in accordance with the original design, finish or standard of construction of such improvement, or of the general improvements within the Properties, as the case may be, and if not substantially in accord with the original design, finish or standard of construction, only with the vote or written consent of Owners holding a majority of the voting power of the Association and the vote or written consent of a majority of the voting power of the Board, and the approval of a majority of the Eligible Holders;

(h) the right of the Association, acting through the Board, to replace destroyed trees or other vegetation and to plant trees, shrubs and other ground cover upon any portion of the Common Elements;

(i) the right of the Association, acting through the Board, and/or of Declarant, pursuant to Article 13 hereof, to place and maintain upon the Common Elements such signs as the Board reasonably may deem appropriate for the identification, marketing, advertisement, sale, use and/or regulation of the Properties or any other project of Declarant;

(j) the right of the Association, acting through the Board, to reasonably restrict access to and use of portions of the Common Elements;

(k) the right of the Association, acting through the Board, to reasonably suspend voting rights and to impose fines as Specific Assessments and to reasonably suspend the right of an Owner and/or Resident to use Common Elements for nonpayment of any Assessment levied by the Association against the Owner's Unit, or if an Owner or Resident is otherwise in breach of obligations imposed under the Governing Documents;

(l) the obligation of all Owners to observe "quiet hours" in the Common Recreational Area and other Common Elements during the hours of 10:00 p.m. until 9:00 a.m. (or such other hours as shall be reasonably established from time to time by the Board in advance) during which "quiet hours," loud music, loud talking, shouting, and other loud noises shall not be permitted;

(m) the right of all Owners to similarly use and enjoy the Common Elements, subject to the Governing Documents;

(n) the exclusive rights of individual Units (and the Owners thereof) with regard to Limited Common Elements, as set forth in this Declaration - the obligations and covenants of Owners as set forth in Article 8 and elsewhere in this Declaration;

(o) the restrictions, prohibitions, limitations, and/or reservations set forth in Article 9 and elsewhere in this Declaration;

(p) the easements reserved in various sections of Article 2 and/or any other provision of this Declaration, and

(q) the rights of any other easement holders.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Section 8, 14, below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, to accommodate ordinary and reasonable guest parking, and to establish Rules and Regulations governing such parking and to reasonably enforce such parking limitations and rules by all means which would be lawful for such enforcement on public and/or private streets, including the removal of any violating vehicle by those so empowered, at the expense of the owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked for such purpose. Without limiting the foregoing, no vehicle may be continuously parked in the same Association parking space for more than forty-eight consecutive hours, and no Association parking space may be used for any storage purpose whatsoever.

Section 2.3 Easements for Vehicular and Pedestrian Traffic. In addition to the general easements for use of the Common Elements reserved herein, there are hereby reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, non-exclusive appurtenant easements for vehicular and pedestrian traffic over the private main entry gate area and all Private Streets and common walkways within the Properties, subject to the parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 9, below.

Section 2.4 Easement Right of Declarant Incident to Cosmetic, Marketing and/or Sales Activities. An easement is hereby reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests, and other invitees, for access, ingress, and egress over, in, upon, under, and across the Common Elements and Common Recreational Area, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use and cosmetic, advertising, marketing and/or sales related to the Properties, or any portions thereof, or any other project of Declarant; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his or her family, guests, or invitees, to or of that Owner's Unit, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 13.1(g) below. Without limiting the generality of the foregoing, Declarant reserves the right to control any and all entry gate(s) to the Properties until such time as the Close of Escrow to a Purchaser of the last Unit in the Properties, or for so long as Declarant utilizes sales and/or management offices and/or model homes in connection with Declarant's marketing and/or sale of other projects of Declarant pursuant to Section 13.1(c) below, and neither the Association nor any one or more of the Owners shall at any time or in any way, without the prior written approval of Declarant in its discretion, cause any entry gate to the Properties to be closed during Declarant's marketing or sales hours (including on weekends and holidays), or shall in any other way impede or hinder Declarant's cosmetic, marketing or sales activities.

Section 2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement, use, maintenance and/or replacement of any fire hydrants on portions of Common Elements, and other purposes regularly or normally related thereto; and (b) City, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees

and agents, to enter upon any part of the Properties, for the purpose of carrying out their official duties.

Section 2.6 Easements for Water, Sewage, Utility and Irrigation Purposes. In addition to the foregoing easements there shall be and Declarant hereby reserves and covenants for itself, the Association, and all future Owners within the Properties, easements reasonably upon, over and across Common Elements and portion of Units, for installation, maintenance, repair and/or replacement of public and private utilities, electric power, telephone, cable television, water, sewer, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district, of ingress or egress over the Common Elements and portions of Units, and easements for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Common Elements). There is hereby created a blanket easement in favor of Declarant and the Association upon, across, over, and under all Units and the Common Elements, for the installation, replacement, repair, and maintenance of utilities (including, but not limited to, water, sewer, gas, telephone, electricity, "smart" data cabling, if any, and master and cable television systems, if any). By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances in the Properties and to install, repair, and maintain water, sewer and gas pipes, electric, telephone and television wires, circuits, conduits and meters. Notwithstanding anything to the contrary contained in this Section, no sewer, electric, water or gas lines or other utilities or service lines may be installed or relocated within the Properties until the Close of Escrow of the last Unit in the Properties, except as approved by Declarant. This easement shall in no way affect any other Recorded easements in the Properties. There is also hereby reserved to Declarant during such period the non-exclusive right and power to grant such specific easements as may be necessary in the sole discretion of Declarant in connection with the orderly development of any portion of the Properties. Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the occupancy or use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant thereof. Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Units, for the control, installation, use, inspection, maintenance, repair and replacement of water and/or sewage lines and components and/or systems for watering or irrigation of any landscaping on, and/or sewage disposal from or related to Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

Section 2.7 Additional Reservations of Easements. Declarant hereby expressly reserves for the benefit of each Owner and his Unit, reciprocal, non-exclusive easements over the adjoining Unit(s), for the support, control, maintenance and repair of the Owner's Unit and the utilities serving such Unit. Declarant further expressly reserves, for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, non-exclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Properties, for drainage of water resulting from the normal use thereof or of neighboring Units and/or Common Elements, for the inspection, painting, maintenance and/or repair of these United Common Elements for which the Association is expressly responsible pursuant to this Declaration, and for painting, maintenance and repair of any Unit or portion thereof pursuant to this Declaration, in the event that any utility or third Person exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or damaged

Owners shall pursue any resultant claim against the offending utility or third Person, and not against Declarant or the Association. In the event of any minor encroachment of an Exclusive Use Area upon the Common Elements (or vice versa), or other Unit or Exclusive Use Area, as a result of original construction, or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist, so long as the minor encroachment exists. Declarant and each Owner of a Unit, shall have an easement appurtenant to such Unit over the Unit line to and over the adjacent Unit and/or Common Elements, for the purposes of accommodating any natural movement or settling of any Unit, any encroachment of any Unit due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, balconies, patios, and architectural features comprising parts of the original construction of any Unit. Declarant hereby further reserves a nonexclusive easement, appurtenant to the Common Elements and/or Unit (as the case may be, for the benefit of Declarant and the Association, and their respective agents and/or contractors, on and over the Common Elements and any Unit(s), for any inspections, and a non-exclusive easement, on and over the Common Elements, for the benefit (but not obligation) of the Association, and its agents, contractors, and/or other authorized party, for the maintenance and/or repair of any and all landscaping and/or other improvements located on the Common Elements. The provisions of this Section 2.7 shall be deemed to apply to Garages as well as to Condominium Units and Exclusive Use Areas.

Section 2.8 Encroachments. The physical boundaries of an existing Unit (or Exclusive Use Area), or of a Unit (or Exclusive Use Area) reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than any metes and bounds expressed in the Plat or in an instrument conveying, granting or transferring a Unit, regardless of setting or lateral movement and regardless of minor variances between boundaries shown on the Plat or reflected in the instrument of grant, assignment or conveyance and the actual boundaries existing from time to time. The provisions of this Section 2.8 shall be deemed to apply to Garages as well as to Condominium Units and Exclusive Use Areas.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any and all easements and licenses shown on and created by the Plat is the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his, Unit, reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his interest in any of the Common Elements or in any part of the component interests which comprise his Unit, except in conjunction with a conveyance of his Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Ownership of Common Elements. Subject to Article 2 hereof, each Owner shall own an undivided fractional interest in the Common Elements (other than the Common Recreational Area, or other Common Element(s) conveyed to the Association), ~~and~~ ^{and} ~~together with~~ ^{together with} all other Owners. Except as otherwise limited in this Declaration, each Owner shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a

place of residence, and such other incidental uses permitted by this Declaration, without hindering or encroaching upon the lawful rights of the other Owners, which right shall be appurtenant to and run with the Unit. The fractional undivided interest of each Owner in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned in the conveyance or other instrument.

Section 2.13 **Common Recreational Area.** The Association shall or may hold title to the Common Recreational Area (and may, but need not necessarily, hold title to the Private Streets and/or other Common Elements); provided that each Owner, by virtue of Membership in the Association, shall be entitled to non-exclusive use and enjoyment of the Common Recreational Area, Private Streets, and other Common Elements, subject to the Rules and Regulations thereof.

Section 2.14 **Limited Common Elements.** Each Owner of a Unit shall have an exclusive easement for the use of the Patio (if any) or Balcony (if any), and the entry designed for the sole use of said Unit, as Limited Common Elements, appurtenant to the Unit. The foregoing easements shall not entitle an Owner to construct anything or to change any structural part of the easement area. HVAC serving one Unit exclusively are also Limited Common Elements, as set forth in Section 2.15 below.

Section 2.15 **HVAC.** Easements are hereby reserved for the benefit of each Unit, Declarant, and the Association, for the purpose of maintenance, repair and replacement of any heating, ventilation, and/or air conditioning and/or heating equipment and systems ("HVAC") located in the Common Elements; provided, however, that no HVAC shall be placed in any part of the Common Elements other than its original location as installed, unless the approval of the Board is first obtained. Notwithstanding the foregoing or any other provision in this Declaration, any HVAC which is physically located within the Common Elements, but which serves an individual Unit exclusively, shall constitute a Limited Common Element as to the Unit exclusively served by such HVAC, and the Owner of the Unit (and not the Association) shall have the duty, at the Owner's cost, to maintain, repair and replace, as reasonably necessary, the HVAC serving the Unit, subject to the original appearance and condition thereof as originally installed, subject to ordinary wear and tear. Notwithstanding the foregoing, concrete pads underneath HVAC shall not constitute part of HVAC, but shall be deemed to be Common Elements.

Section 2.16 **Garages.** Declarant shall have the right to convey fee title to Garages to Owners of Units, as designated by Declarant in any manner not prohibited by this Declaration, provided that each such Garage shall be deemed to be appurtenant to the designated Unit, and shall not be deemed to independently constitute a Unit. The boundaries and dimensions of a Garage shall be as set forth in the Plat. Upon conveyance of a Garage by Declarant to a Purchaser in fee, the Garage shall be deemed forever after to be an inseparable part of the Unit to which appurtenant. In no event shall the Garage thereafter be conveyed, encumbered, or released from any lien except in conjunction with, and as an integral part of, the conveyance, encumbrance, or release of said Unit. Any purported conveyance, encumbrance, or release of a Garage separate from the entire Unit, shall be void and of no effect. Each Owner of a Garage, as and to the extent, if any, reasonably necessary, shall have an easement reasonably over portions of the adjoining Garage(s) for purposes of reasonable access to and maintenance and repair of electrical, sewer, and other utility lines serving such Garage. The use provisions set forth in Article 9 of the Declaration (including, but not limited to the nuisance provisions thereof) shall apply to Garages and activities therein or related thereto. No parking shall be permitted in any areas where such parking would hinder or obstruct ingress or egress by any Owner to or from his or her Garage

(provided that temporary loading and unloading may be permitted on an occasional and reasonable basis).

Section 2.17 **Assigned Parking Spaces.** Additionally, Declarant shall have the right to assign an Assigned Parking Space as an Exclusive Use Area for a designated Unit, as designated by Declarant in any manner not prohibited by this Declaration. Any purported conveyance, encumbrance, or release of an Assigned Parking Space shall be void and of no effect.

Section 2.18 **Cable Television.** Each Owner, by acceptance of a deed to his Unit, acknowledges and agrees that, in the event a Unit has been pre-wired or installed with a cable television system ("CATV") (including, but not limited to, cable television outlets for the Unit), such CATV system and all components as so installed, shall not constitute the property of the Owner, but shall be the sole property of a cable company selected by the Association, and there shall be, and hereby is, reserved a non-exclusive easement in gross on, over, under or across the Unit for purposes of installation and maintenance of such cable television equipment, for the benefit of the Association, or such cable company as may be selected thereby.

Section 2.19 **Waiver of Use.** No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or any facilities thereon, or by abandonment of his Unit or any other property in the Properties.

Section 2.20 **Alteration of Units.** Declarant reserves the right to change the interior design and arrangement of any Unit and to alter the boundaries between Units, so long as Declarant owns the Unit so altered. No such change shall increase the number of Units nor alter the boundaries of the Common Elements.

Section 2.21 **Taxes.** Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Condominium Unit. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Specific Assessment.

Section 2.22 **Additional Provisions for Benefit of Disabled Persons.** To the extent required by applicable law, provisions of the Governing Documents, and policies, practices, and services, shall be reasonably accommodated to afford disabled Residents with equal opportunity to use and enjoy their Dwellings. Pursuant to the foregoing, Declarant may cause to be installed certain handicaps or other accommodations for the benefit of disabled Residents, on or within certain Common Element areas, or areas appurtenant or proximate to certain Units, or other areas of the Properties, as may be deemed by Declarant to be reasonably necessary. Handicaps in areas which pertain to certain designated Units shall be Limited Common Elements appurtenant to such Units. To the extent required by applicable law, the Association shall reasonably accommodate disabled Residents, to afford such Residents equal opportunity to use and enjoy their Dwellings, and the Association shall permit disabled Residents to make reasonable modifications to their living areas which are necessary to enable them to have full enjoyment of the premises. The Association shall comply with all applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person. In the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, applicable law shall prevail, and the Association shall not adhere to or enforce any

provision of the Governing Documents which irreconcilably contravenes applicable law. Installation by Declarant of handrails in certain areas (or installation by Declarant of other devices to reasonably accommodate disabled Residents in other areas of the Properties) shall raise absolutely no inference that such devices are in any regard "standard" or that they will or may be installed with respect to all or any other Units or all or any other areas of the Properties.

Section 2.23 Aviation Easements. Declarant hereby reserves, for itself, and for the Association, the unilateral right to grant aviation easements over Common Elements, to applicable governmental entity or entities with jurisdiction, and each Owner hereby covenants to sign such documents and perform such acts as may be reasonably required to effectuate the foregoing.

Section 2.24 Master Metered Water. Water for Common Elements and Units may, in Declarant's discretion, be master metered. Periodic water costs allocable to each Unit shall be paid by the Owner of said Unit, regardless of level or period of occupancy (or vacancy) or use. Currently, master metered water charges are allocated equally to each Unit, regardless of size or usage. The Association, acting through the Board, reserves the right, in its business judgment, to allocate master metered water charges on any other reasonable basis. The Las Vegas Valley area is currently experiencing, and may continue to experience drought conditions. Without being limited by the preceding sentence, Owners and other occupants of Units, and their Families, shall not waste water in the Properties, and any person who is found to be using water in an unreasonable manner shall be subject to a Specific Assessment therefor, subject to Notice and Hearing.

Section 2.25 Boundaries of Units. The boundaries of each Unit created by the Declaration are the Unit lines shown on the Plat, along with their identifying number, and are described further as follows:

- (a) **Upper Boundary:** The uppermost horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams and rafters, extended to an intersection with the vertical perimeter boundaries.
- (b) **Lower Boundary:** The lowest horizontal plane or planes of the undecorated or unfinished upper surfaces of the floor, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills and structural components.
- (c) **Vertical Perimeter Boundaries:** The planes defined by the unfinished inner surfaces of poured concrete walls (if any), and the unfinished inner surfaces of closed windows and closed perimeter doors.
- (d) **Inclusions:** Each Unit will include the spaces and improvements lying within the boundaries described in (a), (b) and (c) above. Additionally, each Unit will have appurtenant to it one or more of the following items (as applicable): stairs provided for the exclusive use of a Unit; spaces and the improvements within those spaces outside the boundaries of (a), (b) and (c) above containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light fixtures and boxes serving that Unit exclusively.

(e) **Exclusions:** Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and improvements lying outside of the boundaries described in (a), (b) and (c) above; all exterior bearing studs and framing of bearing walls, columns, and bearing partitions and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose

of furnishing utility and similar services to all or any one or more of the other Units, or Common Elements.

(f) **Inconsistency with Plat:** If this definition is inconsistent with the information contained in the Plat, then this definition will control.

Section 2.26 Compliance with Applicable Law: It is the intent of Declarant that this Declaration and the other Governing Documents shall be enforceable pursuant to their respective terms, to the maximum extent permissible under the Act or other applicable law. Without limiting the foregoing, in the event any provision of this Declaration or other Governing Document is found to irreconcilably violate any applicable provision of the Act, or other applicable law, or any section respectively thereof, such violating provision of the relevant Governing Document shall be deemed automatically modified (or deleted, if necessary) to the minimum extent necessary to conform to the Act and/or other applicable law.

ARTICLE 3 HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association: The Association is or shall be, by not later than the date the first Unit is conveyed to a Purchaser, incorporated under the name of HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION (or, if said name is not then available from the Nevada Secretary of State, such other name as is available), as a non-profit corporation, under NRS Chapter 82. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents, and in compliance with applicable Nevada law.

Section 3.2 Duties, Powers and Rights: Duties, powers and rights of the Association are as set forth in the Governing Documents. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Unit, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents and all other books, records, and financial statements of the Association.

Section 3.3 Membership: Each Owner (including Declarant, by virtue of owning title to any Unit, upon acquiring title to a Unit, shall automatically become a Member of the Association, and shall remain a Member until such time as his ownership of the Unit ceases, at which time, his membership in the Association shall automatically cease. Membership shall not be assignable, except to the Person to whom title to the Unit has been transferred, and each Membership shall be appurtenant to, and may not be separated from, fee ownership of the Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership: The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and Assessments attributable to his

Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. Unit satisfactory evidence of such transfer (which may, but need not necessarily be, a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the transferee shall have a valid proxy from the transferor of said Unit, pursuant to Section 4.8, below. The Association may levy a reasonable transfer fee against a new Owner and his Unit (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or the Manager, and will be required to pay any costs necessary to obtain keys to Common Elements, special identification for use of Common Elements, and entry gate keys and/or remote controls, if not obtained from the prior Owner at Close of Escrow.

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be supplemented by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters, but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws shall include, without limitation, the following:

Officers:

- (a) the number of Directors (subject to Section 3.6 below) and the titles of the

- (b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;

- (c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;

- (d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager;

- (e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;

- (f) procedural rules for conducting meetings of the Association, and

- (g) a method for amending the Bylaws.

Section 3.6 Board of Directors.

- (a) The affairs of the Association shall be managed by a Board of not less than three (3) Directors, nor more than such number of Directors as set forth from time to time in the Bylaws; the majority of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association and all such Members must be in Good Standing. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable

provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his or her role as a Director, the Association shall indemnify him for his or her losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton mistreatment or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. In the event a Unit is owned by a trust or entity (and not by an individual), an officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file the proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person, and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

- (b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself or herself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held in the same month as the Annual Meeting, as set forth in Section 4.3 below.

- (c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

Section 3.7 Declarant's Control of Board. During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations:

- (a) Not later than sixty (60) days after conveyance from Declarant to Purchasers of twenty-five percent (25%) of the Maximum Units, at least one (1) Director and not less than twenty-five percent (25%) of the total Directors must be elected by Owners other than Declarant.

- (b) Not later than sixty (60) days after conveyance from Declarant to Purchasers of fifty percent (50%) of the Maximum Units, not less than one-third of the total Directors must be elected by Owners other than Declarant.

- (c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Maximum

Units; (ii) five (5) years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (iii) such time as Declarant, in its sole discretion, specifically and expressly elects to turn over control of the Board to the Owners other than Declarant.

Section 3.8 Control of Board by Owners. The following portions of this Section 3.8 shall be subject to and shall be applicable after the end of the Declarant Control Period. The Owners shall elect a Board of at least three (3) Directors, and the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within ninety (90) days of his or her appointment or election, certify in writing that he or she is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and the President, Secretary, Treasurer and Vice President additionally must all be Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 3.9 Election of Directors. The following portion of this Section 3.9 shall be subject to and following Declarant's control, as set forth in Section 3.7, above. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his or her eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his or her name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, for so long as so required by applicable Nevada law, with the vote publicly counted (which counting may be done as the meeting agenda progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes of the minutes of the meeting distributed to him upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution); and (2) speak to the Association or Board, during such time and for such periods of time as designated on the agenda for homeowner comments, or as designated by the President at the meeting, in the President's discretion (but not during such time as the Board is meeting in Executive Session and Owners generally are excluded pursuant to applicable Nevada law).

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.3 below); (3) the actual deposits and withdrawals for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116.3108.5.

Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions. Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

(a) consulting with an attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS §§ 49.035 to 49.115, inclusive, or to enter into, renew, modify, terminate or take any other action regarding a contract between the Association and an attorney; or

(b) discussing the character, alleged misconduct, professional competence, or physical or mental health of a Manager or an employee of the Association; or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by a person who may be sanctioned for the Alleged Violation ("Involved Person") (provided that the Involved Person shall be entitled to attend the hearing and testify concerning the Alleged Violation,

but the involved Person may be excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation).

Pursuant to applicable Nevada law, no other matter may be discussed in Executive Session, and any matter discussed in Executive Session must be generally described in the minutes of the Board meeting, provided that the Board shall maintain detailed minutes of the discussion of any Alleged Violation, and, upon request, shall provide a copy of said detailed minutes to the involved Person or his or her designated representative.

Section 3.12 General Record of Violations of Governing Documents. The Board shall cause to be maintained a general record concerning each violation of the Governing Documents, (other than a violation involving a failure to pay an Assessment), for which the Board has imposed a fine, or any other sanction. The general record:

- (a) must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine, the general record must specify the amount of the fine;
- (b) must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the Unit, if any, that is associated with the violation; and
- (c) must be maintained in an organized and convenient filing system or data system that allows an Owner to search and review the general records concerning violations of the Governing Documents.

Section 3.13 Board of Directors and ARC Discretion. Except as may be expressly provided in this Declaration, any consent or approval of the Board of Directors, ARC, or Association, that is required under the provisions hereof, may be granted or withheld in the sole discretion of the Board of Directors, ARC, or Association, as applicable. Further, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

ARTICLE 4 MEMBERS' VOTING RIGHTS; MEMBERSHIP MEETINGS

Section 4.1 Owners' Voting Rights. Subject to Section 3.7 above and other reserved rights of Declarant, and subject further to following provisions of this Section 4.1, and to Section 4.6 below, each Member in Good Standing shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member, and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The non-voting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or

in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that any Assessment levied against such Owner is delinquent.

Section 4.2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the apportionment membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance with the name and address of the transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting". The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members in Good Standing representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

Section 4.4 Meeting Notices; Agendas; Minutes. Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within the County as may be designated in the notice of the meeting.

(a) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: (i) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution; and (ii) speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

- (i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and
- (ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Agenda Items"), and

(iii) a period devoted to comments by Owners and discussion of such comments; provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Agenda item. If the matter is not an Agenda item, it shall be tabled at the current meeting, and specifically included as an Agenda item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(c) above), Members in Good Standing may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of times that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 17.4, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy.

Section 4.5 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

Section 4.6 Proxies. Every Member in Good Standing entitled to attend and vote at, or exercise consents with respect to, any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable. A Member in Good Standing may give a proxy only to a member of his or her immediate family, or a tenant of said Member who resides in the Community, or another Member in Good Standing who resides in the Community, or as otherwise may be authorized from time to time by applicable Nevada law. No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed. Such powers of designation and revocation may be exercised by the legal guardian of any Member in Good Standing or by his or her conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such

matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if: (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member in Good Standing who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be casting votes and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

Section 4.7 Quorums. The presence at any meeting of Members in Good Standing who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members in Good Standing present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members in Good Standing to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members in Good Standing required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by applicable law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members in Good Standing entitled to vote at least twenty percent (20%) of the total votes of the Association. Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e.g., 67%) of votes of the total voting Membership as set forth in this Declaration.

Section 4.8 Actions. If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by applicable law or by this Declaration.

Section 4.9 Action by Meeting, and Written Approval of Absentee Owners. The proceedings and transactions of any meeting of Members, either regular or special, however called and noticed and whenever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members in Good Standing not present in person or by proxy signs a written waiver of notice, a consent to the holding of such meeting or an approval of the minutes thereof. Neither the business to be transacted at, nor the purpose of any regular or special meeting of Members, need be specified in any written waiver of notice. All such waivers, consents or approvals shall be filed with the Association records or made a part of the minutes of the meeting. Attendance of a Member at a meeting shall constitute a waiver of notice of such meeting, except when the Member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened, and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law to be included in the notice but not so included, if such objection is expressly made at the meeting.

Section 4.10 Action by Written Consent, Without Meeting. Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members in Good Standing having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members in Good Standing were present

and voted, and filed with the Association Secretary; provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members in Good Standing. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members in Good Standing required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon its receipt by the Association Secretary. Unless the consents of all Members in Good Standing have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members in Good Standing who have not consented in writing, or the taking of any Association action approved by Members in Good Standing without a meeting, where practicable. Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

- (a) approval of any reorganization of the Association;
- (b) a proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest; or
- (c) approval for the indemnification of any person.

Section 4.11 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members in Good Standing present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in this Section 4.11. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members in Good Standing may transact any business that might have been transacted at the original meeting.

ARTICLE 5 FUNCTIONS OF ASSOCIATION

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units; until commencement of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

- (a) **Assessments.** The power and duty to levy assessments against the Owners of Units, and to enforce payment of such assessments in accordance with the provisions of Articles 6 and 7 below.

- (b) **Maintenance and Repair of Common Elements.** The power and duty to cause the Common Elements to be reasonably maintained and kept in good repair (which shall include the power to enter into one or more maintenance and/or repair contracts), including the power to enter into one or more maintenance and/or repair contracts for the maintenance and/or repair of the Common Elements, pursuant to this Declaration and in accordance with standards adopted by the Board, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that respectively of the applicable agency or public entity.

- (c) **Removal of Graffiti.** The power to remove or paint over any graffiti from walls or fences, pursuant to Section 8.10, below.

- (d) **Insurances.** The power and duty to cause to be obtained and maintained the insurance coverages in accordance with the provisions of Article 11 below.

- (e) **Taxes.** The power and duty to pay all taxes and similar assessments levied upon the Common Elements (except to the extent, if any, that property taxes on Common Elements are assessed pro-rata on the Units), and all taxes and assessments payable by the Association, and to timely file all tax returns required to be filed by the Association.

- (f) **Utility Services.** The power and duty to obtain, for the benefit of the Common Elements, any commonly metered water, gas, and/or electric services, (or other similar services) and/or refuse collection, and the power but not the duty to provide for all cable or master television service, if any, for all or portions of the Properties. The Association, by Recordation of this Declaration, and each Owner, by acquiring title to a Unit, acknowledge and agree that water for the Properties shall or may be commonly metered and paid by the Association, and allocated and billed by the Association to each Condominium Unit, on such basis deemed by the Board to be reasonable and necessary, regardless of the actual levels or periods of use or occupancy (or non-use or vacancy) of or by the Unit.

- (g) **Easements and Rights-of-Way.** The power (subject to rights of Declarant reserved in this Declaration), but not the duty to grant and convey to any Person, (i) easements, licenses and rights-of-way in, on, over or under the Common Elements, and (ii) with the consent of a majority of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder, (A) roads, streets, walks, driveway areas, parkways, park areas and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public improvements or facilities.

- (h) **Manager.** The power, subject to Section 5.5 below, but not the duty, to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association, and the power, but not the duty, to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Manager to the Association, shall be subject to cancellation

by either party, without cause, at any time upon not less than sixty (60) days written notice, or at any time immediately for cause.

(j) **Rights of Entry and Enforcement.** The power, but not the duty, after Notice and Hearing (except in the event of bona-fide emergency which poses an (a) imminent and substantial threat to health, or (b) imminent and substantial threat (as verified by an engineer, architect, or professional building inspector, duly licensed in the State of Nevada) of material property damage, in which event of emergency, Notice and Hearing shall not be required), to peaceably enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by the Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Specific Assessment pursuant to Section 6.12 below, and, if not paid timely when due, shall constitute an unpaid or delinquent Assessment pursuant to Article 7 below. The foregoing notwithstanding, the Association, through its agents, employees, or contractors, shall have the right to enter any Unit for the purpose of performing inspection, maintenance and/or repair of any Common Element or Limited Common Element not reasonably accessible other than through the Unit. Such entry for other than emergencies shall be made only after not less than three (3) days written notice to the Owner. Any such entry into a Unit shall be made with the least inconvenience to the Owner or Resident reasonably necessary to accomplish the purpose of such entry, and any damage to the Unit caused by such entry shall be repaired by the entering party at its expense. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Unit without the prior consent of the Owner thereof. Any damage caused by an entry upon any Unit shall be repaired by the entering party. Subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(j) **Rights of Enforcement.** Without limiting any other provision of the Governing Documents, and subject to Section 5.3 below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(k) **Other Services.** The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(l) **Employees, Agents and Consultants.** The power but not the duty, if deemed appropriate by the Board, to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(m) **Acquiring Property and Construction on Common Elements.** The power but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including improvements and personal property. The power but not the duty, by action of the Board, to construct new improvements or additions to the Common Elements, or demolish existing improvements (other than maintenance or repairs to existing improvements), subject to Section 2.1(g) hereof.

(n) **Contracts.** The power, but not the duty, to enter into contracts with Owners to provide services or to maintain and repair improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(o) **Records and Accounting, Annual Audit.** The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) A pro forma operating statement (Budgets, including a Reserve Budget), and Reserve Studies for each fiscal year shall be distributed pursuant to Section 6.4, below.

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year), and a statement of cash flow for the Fiscal Year, shall be made available within one hundred twenty (120) days after the close of each Fiscal Year.

(p) **Maintenance of Other Areas.** The power and duty to maintain and repair slopes, parkways, entry structures, and Community signs identifying the Properties, to the extent deemed by the Board to be reasonable or prudent.

(q) **Use Restrictions.** The power and duty to enforce use restrictions pertaining to the Properties.

(r) **Licenses and Permits.** The power and duty to obtain from applicable governmental authority any and all licenses and permits necessary or reasonably appropriate to carry out Association functions hereunder.

Section 5.2 **Rules and Regulations.** The Board, acting on behalf of the Association, shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties, as follows:

(a) **General.** A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member and also kept on file with the Association. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having

any interest in, or making any use of any part of the Properties, whether or not Members, provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

- (i) reasonably related to the purpose for which adopted;
- (ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;
- (iii) adopted without intent to evade any obligation of the Association;
- (iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

(c) Enforcement. Subject to Sections 5.3, 5.8, and Articles 16 and 17, below, the Association shall have the right to enforce any of the Rules and Regulations and the obligations of any Owner under any provision of the other Governing Documents, by assessing a reasonable fine as a Specific Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use the Common Recreational Area or other Common Elements (other than ingress and egress, by the most reasonably direct route, to the Condominium Unit), subject to the following:

(i) the person alleged to have violated the provision must have had written notice (either actual or constructive, by inclusion in any Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties.

(iii) no fine imposed under this Section 5.2 may exceed the maximum permitted from time to time by applicable Nevada law for each failure to comply or may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of

a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially threatens the health and welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(iv) subject to Section 5.2(c)(iii) above, if any such Specific Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Specific Assessment shall be enforceable pursuant to Articles 6 and 7; and

(v) subject to Section 5.3 below, the Association may also take judicial action against any Owner or Resident to enforce compliance with such Rules and Regulations and/or provision of other Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) Responsibility for Violations. Should any Resident violate any of the Rules and Regulations or any provision of the other Governing Documents, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident.

Section 5.3 Proceedings. The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). Subject to Article 16, below, the Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration or the Common Elements and as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (i) to enforce the payment of an assessment, or an assessment lien or other lien against an Owner as provided for in this Declaration, or (ii) to otherwise enforce compliance with the Governing Documents by, or to obtain other relief from, any Owner who has violated any provision thereof; or (iii) to protect against any matter which imminently and substantially threatens all of the health, safety and welfare of the Owners, or (iv) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association and in the ordinary course of business, or (v) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate, shall be referred to herein as an "Operational Proceeding". The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as a "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent,

to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section 5.3 shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

(1) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars (\$2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members in Good Standing for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, and shall obtain the written opinions of each and every one of: (A) a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); (B) a reputable appraiser and/or real estate consultant regularly conducting business in Clark County, Nevada, expressly opining that the marketability and market value of Units will not be substantially or materially affected by such Non-Operational Controversy ("Appraiser's Opinion"); and (C) a senior executive from a reputable lender in the business of regularly making residential loans in Clark County, Nevada, that financing and refinancing of Units will not be affected by such Non-Operational Controversy, and that such financing and refinancing will be readily available ("Lender's Opinion"). (The Legal Opinion, Appraiser's Opinion, and Lender's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars (\$2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$2,000.00 limit, with the express consent of seventy-five percent (75%) or more of all of the Members in Good Standing of the Association, at a special meeting called for such purpose.

(2) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including without limitation court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee

arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, the Appraiser's Opinion, and the Lender's Opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, the Appraiser's Opinion, and the Lender's Opinion, together with a written report ("Specific Assessment Report") prepared by the Board (A) itemizing the amount necessary to be assessed to each Member ("Specific Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Appraiser's Opinion, Lender's Opinion, and Specific Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members in Good Standing, whereupon: (x) if not more than seventy-five percent (75%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than seventy-five percent (75%) of the total voting power of the Association (i.e., more than seventy-five percent (75%) of all of the Members in Good Standing of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Specific Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorney's fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited

to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Sections 6.2 and 6.3, below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding; (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors, and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) the current management contract with the Manager, or (iii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration.

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for reasonable expenses incurred in carrying on the business of the Association, subject to the Governing Documents.

Section 5.5 Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be subject to cancellation by either party, without cause, at any time upon not less than sixty (60) days written notice, or at any time immediately for cause.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant to the provisions of NRS Chapter 645 and/or NRS § 16.700, or duly certified pursuant to NRS § 16.700.6. Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee of the Manager, may be a Director or Officer of the Association.

(d) As a condition precedent to the employ of, or agreement with, a Manager, the Manager (or any replacement Manager) first shall be required, at its expense, to review the Governing Documents, Plat, and any and all Association Reserve Studies and Inspection reports pertaining to the Properties.

(e) By execution of its agreement with the Association, each and every Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association by the Manager; (3) to comply fully, at its expense, with all regulations of the Nevada Real Estate Division applicable to qualifications, certification, and regulation of community managers; (4) to refrain, without specific prior written direction of a majority of the voting power of the Board, from referring or introducing to the Association, or contacting directly or indirectly for or on behalf of the Association, any attorney regarding any matter in any way related to the Community or any portion thereof; (5) prior to time of hire, and from time to time thereafter upon request of the Board: (a) to disclose to the Board, in writing, the identities of any and all other communities, managed by Manager (at such time, and within the three year period preceding such time), and involved in litigation involving any claim of construction defect, and the current status of any and all such litigation; and (b) to certify in writing to the Board that Manager, and its then current and prior employees, have had no relationship to, and have received no benefit, or thing of value from, the attorney(s) commencing and/or prosecuting such litigation, and/or any attorney referred to the Association at the specific written direction of the Board (or if there was or is any such relationship or benefit, to disclose and identify the same); and (6) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in the event of a turnover. In any event not later than thirty (30) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed, by qualified Person designated by the Board, of the books and records of the Association, to verify assets, provided that the Association shall retain the right, in its business judgment, to be self-managed.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary, or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. To the extent reasonably practicable, such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.6 Inspection of Books and Records.

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association; and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law).

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties, or any portion(s) thereof. Declarant further reserves the right and easement, without obligation, from time to time whether before or after the end of Declarant Control Period, throughout the term of this Declaration, to enter upon the Properties at reasonable times to conduct inspections. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited or reviewed annual reports, as required in Section 5.1(n), above. Such notices and information shall be delivered to Declarant at its most recently designated address. This Section 5.7 may not be amended or terminated without

Declarant's prior written consent, and any purported amendment or termination of this Section 5.7 in violation of the foregoing shall be null and void.

Section 5.8 Compliance with Applicable Laws. The Association and its governance shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a dwelling because of a disability of such person) relating thereto. The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or applicable Ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Documents shall be deemed amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

Section 5.9 Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association (including the Board and any committees) nor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of the above-mentioned parties be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Properties cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

Section 5.10 Security/Covenants of Owners. Each Owner acknowledges, understands and covenants to inform all residents of its Unit, and their respective families and invitees, that neither the Association (including the Board and any committees) nor all other persons involved with the governance, maintenance, and management of the Properties, including Declarant, are insurers of safety or security within the Properties. All Owners and Residents, and their respective families and invitees, assume all risks of personal injury and loss or damage to persons, units, and the contents of units, and further acknowledge that neither the Association (including the Board and any committees), nor Declarant have made representations or warranties regarding any entry gate, patrolling of the properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties. All Owners and Residents, and their respective families and invitees, further acknowledge that they have not relied upon any such representations or warranties, expressed or implied.

ARTICLE 6 ASSESSMENTS AND FUNDS

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Specific Assessments; (c) Supplemental Assessments; (d) any Capital Assessments; and (e) any other charge levied by the Association on one or more Owner(s), such Assessments to be established and collected as provided in this Declaration. All assessments, together with interest thereon, late charges, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing

lien upon the Unit against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors-in-title of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish and maintain at least the following separate accounts (the "Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as accounts, in the name of the Association, at a federally insured banking or savings institution and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, (2) an Association reserve fund ("Reserve Fund") for capital repairs and replacements, as set forth in Section 6.3 below, and (3) any other funds which the Board of Directors may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than Reserve Fund which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate savings or checking account, at a federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer. In the event that either the President or the Treasurer is absent or not reasonably available, the Secretary may co-sign in lieu of the absent officer (but not in lieu of both). In the event that either the President or the Treasurer is absent or not reasonably available, and the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Treasurer (but not in lieu of both). After the Declarant Control Period, all of the Directors must also all be Owners, and the President, Vice President, Secretary and Treasurer must also first be Directors.

Section 6.3 Reserve Fund: Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacements of major components of the Common Elements (including, without limitation, repair and replacement of roofs, building exteriors, private streets, walkways, hardscape, watercourse, and Common Recreational Areas ("Major Components")); (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any proceeding, or for any other purpose whatsoever; and (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary or Vice President may co-sign in lieu of either the President or the Treasurer, if either is not reasonably available and provided further that if the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Secretary (but not in lieu of both)); and (vi) under no

circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund.

(b) The Board, in its reasonable judgment, shall periodically retain the services of a qualified reserve study analyst, with reasonably sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study").

(c) The Board shall cause to be prepared a Reserve Study at such times as the Board deems reasonable and prudent, but in any event initially within one (1) year after the Close of Escrow for the first Unit within the Properties, and thereafter at least once every five (5) years (or at such other intervals as may be required from time to time by applicable Nevada law). The Board shall review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient, and shall make such adjustments as the Board deems reasonable and prudent to maintain the required reserves from time to time (i.e., by increasing Assessments). It shall be an obligation of the Manager to timely remind the Board in writing of these Reserve Study requirements from time to time as applicable.

(d) Each Reserve Study must be conducted by a person qualified by training and experience to conduct such a study (including, but not limited to, a Director, an Owner or a Manager, who is so qualified) ("Reserve Analyst"). The Reserve Study must include, without limitation: (1) a summary of an inspection of the Major Components which the Association is obligated to repair, replace or restore; (2) an identification of the Major Components which have a remaining useful life of less than 30 years; (3) an estimate of the remaining useful life of each Major Component so identified; (4) an estimate of the cost of repair, replacement or restoration of each Major Component so identified during and at the end of its useful life; and (5) an estimate of the total annual assessment that may be required to cover the cost of repairing, replacement or restoration the Major Components so identified (after subtracting the reserves as of the date of the Reserve Study). The Reserve Study shall be conducted in accordance with any applicable regulations promulgated from time to time by the Nevada Real Estate Division.

(e) Each Reserve Study shall be prepared in accordance with any legal requirements from time to time as applicable, applied in each instance on a prospective basis. Subject to the foregoing sentence, the Association (upon Recordation of this Declaration) and each Owner (by acquiring title to a Unit) shall be deemed to have unequivocally agreed that the following, among others, shall be deemed reasonable and prudent for and in connection with preparation of each Reserve Study: (i) utilization, by a Reserve Analyst, of the "pooling" or "cash flow" method, or other generally recognized method, and/or (ii) utilization or reliance, by a Reserve Analyst, of an assumption that there will be future annual increases in amounts from time to time allocated to the Reserve Fund (provided that, subject to and without limiting Sections 6.4 or 6.5 below, no assumption shall be made of such future increases in excess of 10% per year plus an annual inflationary factor), with corresponding increases in Assessments.

Section 6.4 Budget: Reserve Budget.

(a) The Board shall adopt a proposed annual Budget (which shall include a Reserve Budget) at least thirty (30) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget

is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

(b) Notwithstanding the foregoing, except as otherwise provided in subsection (c) below, the Board shall, not less than 30 days or more than 60 days before the beginning of each Fiscal Year, prepare and distribute to each Owner a copy of:

(i) the Budget (which must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the Reserve Fund), and

(ii) the Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each Major Component;

(B) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the Major Components;

(C) a statement as to whether the Board has determined or anticipates that the levy of one or more Capital Assessments will be required to repair, replace or restore any Major Component or to provide adequate reserves for that purpose; and

(D) a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (B) above, including, without limitation, the qualifications of the Reserve Analyst.

(c) In lieu of distributing copies of the Budget and Reserve Budget, the Board may distribute to each Owner a summary of those budgets, accompanied by a written notice that the budgets are available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request.

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members in Good Standing representing at least a majority of the total voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessment levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification as provided in Section 6.4, above.

Section 6.5 Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant to a Purchaser, the Purchaser of such Unit shall be required to pay an initial capital contribution to the Association, in an amount not to exceed 1/3 of the initial or then-applicable Annual Assessment. Such initial capital contribution is in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and shall be deposited at each Close of Escrow as follows: (a) an amount equal to two (2) full monthly installments of the initial or then-applicable Annual Assessment shall be deposited into the Association Reserve Fund, and used exclusively to help fund the Association Reserve Fund; and (b) the remainder of the initial capital contribution shall be deposited into an Association Operating Fund, and/or applied to operating expenses, as the Board deems appropriate in its reasonable business judgment. Additionally, at the Close of Escrow for each subsequent resale of a Unit by an Owner (other than Declarant), the Purchaser of such Unit shall be required to pay a resale capital contribution to the Association, in an amount equal to 1/6 of the then-applicable Annual Assessment. Such resale capital contribution is in addition to the foregoing described initial capital contribution, and is further in addition to, and is not to be considered as, an advance payment of the Annual Assessment for such Unit, and may be applied to working capital needs and/or the Reserve Fund, in the Board's business judgment.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Properties; provided that Declarant may establish, in its sole and absolute discretion, a later Assessment Commencement Date, uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. From and after the Assessment Commencement Date, Declarant may, but shall not be obligated to, make loan(s) to the Association, to be used by the Association for the sole purpose of paying Common Expenses, to the extent the budget therefor exceeds the aggregate amount of Annual Assessments for a given period, provided that any such loan shall be repaid by Association to Declarant as soon as reasonably possible. The first Annual Assessment for each Unit shall be prorated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be deposited into the Association Reserve Fund, or may be retained by the Association for purposes determined by the Board, which may include, but are not limited to, in reducing the following year's Annual Assessment. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 6.8 Application of Payments. Unless otherwise requested by an Owner before or at the time of payment, assessment payments shall be applied to the Owner's obligations in the following order: fines, attorneys' fees, late charges, interest, Supplemental Assessments, Annual Assessments, and other Assessments, if any. An Owner's request may be denied or modified by the Board, in its sole discretion.

Section 6.9 Capital Assessments. The Board, may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or such other such addition upon the Properties, including fixtures and personal property related thereto; provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 6.10 Uniform Rate of Assessment. Annual Assessments shall be assessed at an equal and uniform rate against all Owners and their Units, subject to Section 2.23 hereof (which provides for allocation of master metered water charges on such reasonable basis as determined from time to time by the Board).

Section 6.11 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

(a) all portions, if any, of the Properties dedicated to and accepted by the United States, the State of Nevada, the City, County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) the Common Elements owned by the Association in fee.

Section 6.12 Specific Assessments. The Association may, subject to the provisions of Article 6, Section 8.4 and Section 10.1(b), hereof, levy Specific Assessments against specific Owners who have caused the Association to incur specific expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Specific Assessments also shall include, without limitation, late payment penalties, interest charges, administrative fees, attorneys' fees, amounts expended to enforce Assessment liens against Owners as provided for herein, and other charges of similar nature. Specific Assessments, if not paid timely when due, shall constitute unpaid or delinquent Assessments, pursuant to Article 7, below.

Section 6.13 Supplemental Assessments. The Association from time to time may levy Supplemental Assessments as deemed reasonably necessary by the Board, which Supplemental Assessments may include, but not necessarily be limited to, Supplemental Assessments for extraordinary payment(s) to cover a bona-fide "emergency". As used in this Section 6.13, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible action by, the Board; and (4) makes it impracticable to comply with regular notice and/or agenda provisions. Supplemental Assessments, if not paid timely when due, shall constitute unpaid or delinquent Assessments, pursuant to Article 7 below.

Section 6.14 Subsidy Agreements; Declarant Advances. To the maximum extent not prohibited from time to time by applicable Nevada law:

(a) The Association is specifically authorized to enter into an agreement (a "Subsidy Agreement") with the Declarant or other entities under which such party agrees to subsidize, directly or indirectly, the operating costs of the Association in exchange for a temporary suspension of Annual Assessments which would otherwise be payable by Declarant with respect to Units owned by Declarant and/or those Units owned by any Declarant affiliate, holding company, finance company or other third party, while the Unit is used by Declarant as model home and/or sales office.

(b) During the Declarant Control Period, Declarant shall have the right, but not the obligation, to advance funds and/or make loan(s) to the Association ("Declarant Advances") from time to time for the sole purpose of paying Common Expenses in excess of Association funds then reasonably available to pay Common Expenses. The aggregate amount of any Declarant Advances outstanding from time to time, together with interest at a reasonable rate established by Declarant, shall be repaid by Association to Declarant as soon funds are reasonably available therefor (or, at Declarant's sole and absolute discretion, may be set off and applied by Declarant from time to time against any and all past, current, or future Annual Assessments and/or contributions to Reserve Funds, to such extent, if any, Declarant is obligated to pay any such amounts under this Declaration, any Subsidy Agreement, or under applicable Nevada law).

(c) Each Owner, by acceptance of a deed to his or her Unit, shall be conclusively deemed to have acknowledged and agreed to all of the foregoing provisions of this Section 6.14, whether or not so stated in such deed.

ARTICLE 7 EFFECT OF NONPAYMENT OF ASSESSMENTS; ASSOCIATION REMEDIES

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Specific Assessment, or Capital Assessment, shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of up to eighteen percent (18%) per annum (or such lower rate as may be approved from time to time by the Board in its business judgment), but in any event not greater than the maximum rate permitted by applicable Nevada law, as well as a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or to foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or by abandonment of his Unit. For purposes of this Section 7.1, a lien on a Condominium Unit also shall constitute a lien on the Garage (if any) appurtenant to such Condominium Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an assessment is not paid within fifteen (15) days after its due date, the Board shall be entitled to mail a notice of delinquent Assessment to the Owner and to each Eligible Mortgagee of the Unit, and each Owner, by acquiring title to a Unit, shall be deemed to have unconditionally covenanted to authorize the Board from time to time to mail such notices to each and every lien holder of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Unit to be immediately due

and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. No action shall be brought to enforce any assessment then herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Board to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of Homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS § 116.31164 and Covenants Nos. 6, 7 and 8 of NRS § 107.030 and § 107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.31163.

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a Specific Assessment or a fine for a violation of the Governing Documents, unless the violation is of a type that substantially and immediately threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for an Annual Assessment, Supplemental Assessment, or Capital Assessment, or any portion respectively thereof, pursuant to this Article 7.

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies

which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 7.8 Mortgage Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value, provided that after such Beneficiary or some other Person obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title, subject to the following: The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit (except to the extent of Annual Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien), and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an assessment lien. However, subject to foregoing provision of this Section 7.8, the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or non-judicial foreclosure or "deed in lieu thereof," the Person who obtains title and his or her successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person (except to the extent of Annual Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien). Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his or her successors and assigns.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded; (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced (except to the extent of Annual Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien); and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an assessment lien. However, subject to foregoing provision of this Section 7.9, the sale or transfer of any Unit pursuant to judicial or non-judicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or non-judicial foreclosure or "deed in lieu thereof," the Person who obtains title and his or her successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person (except to the extent of Annual Assessments which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien). Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his or her successors and assigns.

ARTICLE 8 MAINTENANCE AND REPAIR OBLIGATIONS

Section 8.1 Maintenance and Repair Responsibilities of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than by the Association or its authorized agents. Subject to this Declaration (including, but not limited to, the provisions of Article 6, and Sections 8.4 and 10.1(b) hereof), upon the Assessment Commencement Date, the Association, acting through the Board and/or Manager, shall provide for the care, management, maintenance, and repair of the Common Elements (and

of any other portions of the Properties as expressly required hereunder), as set forth in detail in this Article 8. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its reasonable business judgment to be appropriate, provided that all maintenance shall be performed to maintain the original condition of the applicable item, ordinary wear and tear excepted. Without limiting the foregoing, the Board and/or Manager shall cause all improvements in the Common Elements to be repaired and/or repainted as necessary to maintain the original appearance thereof (normal wear and fading excepted).

(a) Inspections. After the end of the Declarant Control Period, the Board and Manager shall conduct regular periodic inspections of the Common Elements as set forth above, and shall provide Declarant with at least ten days' prior written notice of each such inspection. Declarant shall have the option, in its sole discretion, without obligation, to attend each such inspection.

(b) Reports. Throughout the term of this Declaration, the Board and the Manager shall promptly deliver to Declarant information copies of all written inspections and reports rendered pursuant to the Association's maintenance and repair responsibilities hereunder (without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith).

(c) Other Responsibilities. Without limiting the generality of any of the foregoing, the Association shall also be responsible for:

(i) maintenance, repair, and/or replacement of all exterior walls of buildings, including the exterior of exterior walls and the ceilings of Patios, all roofs, and all exterior stairways, landings and decks;

(ii) periodic painting, maintenance, and repair of the exterior (but not the interior), and/or replacement of the front doors to Units and exterior utility closet doors (if any) located on the exterior of Buildings, any and all wrought iron features on Patios, stair railings and decks, provided that the Association shall not be responsible for maintenance of exterior door hardware;

(iii) replacement of burned-out light bulbs and broken fixtures on street lights and exterior building lights (but not with respect to the front door light in front of the Unit, and Patio lights, which shall be the responsibility of Owners, pursuant to Section 8.4(f), below, provided that, in the event that the Owner of the affected Unit does not immediately make such replacement, then the Association shall have the right to make such replacement, and to assess such Owner a reasonable sum set by the Board, for each such replacement, as a Specific Assessment);

(iv) removing any trash, garbage, or debris from Common Elements; and

(v) cleaning and making necessary repairs and replacement to and of the Common Recreational Area facilities, walls, fencing and gates, entry gate features and monumentalization, emergency "crash" gate, and permitted signage.

(d) Failure to Maintain. The Association shall be responsible for accomplishing its maintenance and repair obligations fully and timely from time to time, as set forth in this Declaration. Failure of the Association to fully and timely accomplish such maintenance and repair responsibilities may result in deterioration and/or damage to improvements, and such damage and/or deterioration shall in no event be deemed to constitute a constructional defect.

Section 8.2 Association Preventive Maintenance Workbooks. At the sole option of the Board, the Association may prepare and maintain preventive maintenance workbooks setting forth the minimum requirements and additional requirements suggested to be deemed necessary by the Board for the continuing upkeep and maintenance of the Common Elements (including, but not necessarily limited to, the items set forth in Section 8.1 above). Any such Preventive Maintenance Workbooks shall also include requirements for periodic maintenance, repairs and improvements, not required to be performed monthly, quarterly, or annually, for which Reserve Funds may be used.

Section 8.3 Inspection Responsibilities of Association. Within thirty (30) days after the date which is one (1) year after the first Close of Escrow of a Unit, and annually thereafter, the Board (and, so long as Declarant owns any portion of the Properties, a representative of Declarant) shall conduct a thorough walk-through inspection of the Common Elements (including, but not necessarily limited to, all exterior portions of buildings, including roofs), and Patios. If, at the time of such inspection, there are no Directors other than those appointed by Declarant, up to two (2) Owners, other than Declarant, shall be permitted to accompany such inspection. At the Board's sole option, the inspection may be videotaped. Following the inspection, the Board shall prepare a detailed written description of the then-existing condition of all such areas, facilities and buildings, including a checklist of all items requiring repairs or special attention. A similar checklist shall be prepared and signed by the Board and/or Manager within thirty (30) days after the election of the first Board elected following the end of the Declarant Control Period. It shall at all times be an express obligation of the Association to properly inspect (as aforesaid), repair, maintain, and/or replace such items, facilities, structures, landscaping and areas as are required to maintain the Properties in as good condition thereof as originally constructed (reasonable wear and tear, settling and deterioration excepted). The Board shall report the contents of such written reports to the Members, at the next meeting of the Members following receipt of such written report, or as soon thereafter as reasonably practicable, and shall include such written reports in the minutes of the meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired or otherwise pursued in accordance with prudent business practices, and the recommendations of the inspectors. Copies of such reports shall also be delivered to Declarant. The foregoing notwithstanding, neither Declarant nor the Board shall be liable for any failure or omission under this Section 8.3, so long as Declarant and/or the Board (as may be applicable) has acted in good faith and with reasonable due diligence in carrying out its responsibilities hereunder.

Section 8.4 Maintenance and Repair Obligations of Owners. Each Owner shall, at such Owner's sole expense, keep the interior of his Unit and its equipment and appurtenances in good, clean and sanitary order and condition, and shall do all interior redecorating and interior painting which may at any time be necessary to maintain the good appearance and condition of his Unit. If any Owner shall permit any improvement, the maintenance of which is his or her responsibility, to fall into disrepair or to become unsafe, unsanitary, unsightly or unattractive, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Specific Assessment, enforceable as set forth in this Declaration. In addition to decorating and keeping the interior of his Unit in good repair, each Owner shall be responsible, at such Owner's sole expense, for:

(a) cleaning, maintenance, repair, and/or replacement of any and all plumbing fixtures, electrical fixtures, and/or appliances (whether "built-in" or free-standing, including, by way

of example and not of limitation: water heaters (and associated pans), furnaces, plumbing fixtures, lighting fixtures, refrigerators, dishwashers, garbage disposals, microwave ovens, washers, dryers, and ranges), within the Unit or within an enclosure originally constructed on the Patio;

(b) cleaning, maintenance, repair, and/or replacement of: (i) the door connecting the Unit to the Patio (including, if such door is a glass door, the metal frames, tracks, and exterior screens thereof), and (ii) any storage room door located on the Patio, respectively subject to the requirement that the exterior appearance of such doors shall not deviate from their external appearance as originally installed;

(c) cleaning, maintenance, painting and repair of the interior of the front door of the Unit, cleaning and maintenance of the exterior of said front door, subject to the requirement that the exterior appearance of such door shall not deviate from its external appearance as originally installed;

(d) cleaning, maintenance, repair, and/or replacement of all windows and window glass within or exclusively associated with, the Owner's Unit, including the metal frames, tracks, and exterior screens thereof, subject to the requirement that the exterior appearance of such items shall not deviate from its external appearance as originally installed;

(e) cleaning, maintenance, and non-structural repair of the Patio floor, ceiling, and the interior surfaces of the Patio exterior wall, subject to the requirement that the appearance of such areas, visible from ground level adjacent to the Unit, shall not deviate from their appearance as originally installed;

(f) cleaning, and immediate, like-kind replacement of burned-out light bulbs, and broken light fixtures with respect to the front door light in front of the Unit, and the Patio light;

(g) cleaning of the stairway landing and deck area adjacent to the front door of the Unit; and

(h) cleaning, maintenance, repair, and replacement of the HVAC, located on an easement within the Common Elements, serving such Owner's Unit exclusively (but not the concrete pad underneath such HVAC), subject to the requirement that the appearance of such items shall not deviate from their appearance as originally installed;

(i) cleaning, maintenance, repair and replacement of screened front door (in the event a screened front door is allowed by the Board).

Section 8.5 Restrictions on Alterations.

(a) No Owner shall make any alterations, repairs of or additions to any portion of the exterior of the Condominium Building in which such Owner's Unit is located.

(b) Nothing shall be done in or to any part of the Properties which will impair the structural integrity of any part of the Properties except in connection with the alterations or repairs specifically permitted or required hereunder.

(c) Anything to the contrary herein notwithstanding, there shall be no alteration or impairment of the structural integrity of, or any plumbing or electrical work within, any common wall without the prior written consent of the Board and all Owners of affected Units, which consent

shall not be unreasonably withheld. Each Owner shall have the right to paint, wallpaper, or otherwise furnish the interior surfaces of his Unit as he sees fit.

(d) No improvement or alteration of any portion of the Common Elements shall be permitted without the prior written consent of the Board. The foregoing provisions shall not apply to any activities of Declarant.

(e) No exterior carpeting or other floor covering, except for one (1) standard doormat at the front door, shall be installed on any Patio, stairway, or stair landing, without the prior written approval of the Board.

(f) No Owner shall change or modify the condition or appearance of any exterior window or door or any portion thereof, as viewed from any portion of the Properties, without the prior written consent of the Board.

(g) Notwithstanding any other provision herein, in an effort to minimize noise nuisance problems, for the welfare and benefit of the Community, no Owner shall install hard surface flooring in any bedroom, den, master bath, and/or master closet area in an "Upper Level Unit" (i.e., a Unit that is stacked on another Unit, unless and until the Owner has obtained written approval of the Association Board. Such approval may not be sought by an Owner unless the requested change will comply with the Group R Occupancy Sound Transmission Control requirements of the Uniform Building Code and/or International Residential Code (as applicable), incorporated by reference in the Municipal Code applicable to this Community, and satisfactory evidence of such compliance is presented by the Owner as part of such Owner's application.

(h) "Cutting out" (for example, but not limited to, for installation of speakers or "can" lights) or penetration or other alteration of any portion of wall, ceiling, and/or floor within a Unit, may seriously damage or adversely affect sound insulation or other important features of the Unit. Notwithstanding any other provision herein, to minimize noise nuisance problems, for the welfare and benefit of the Community, cutting out or penetration or other alteration by an Owner of any portion of wall, ceiling, and/or floor within a Unit is strictly prohibited.

(i) Notwithstanding any other provision herein, the Board, in compliance with applicable law, shall give prompt consideration to, and shall reasonably accommodate, the request of any Resident who suffers from visual or hearing impairment, or is otherwise physically disabled, to reasonably modify his or her Unit (including, but not necessarily limited to, the entrance thereto through Common Elements, and the front door of the Unit), at the expense of such disabled Resident, to facilitate access to the Unit, or which are otherwise necessary to afford such disabled Resident an equal opportunity to use and enjoy his or her Dwelling.

(j) Any and all damage arising from or related to failure by an Owner to comply with this Section 8.5 shall be the responsibility of said Owner, and the Association shall have the right, but not the obligation, and an easement, together upon any property to repair any such damage and to assess the cost of such repair, and any reasonably related cost, as a Specific Assessment against the relevant Owner.

(k) The foregoing provisions shall not apply to any activities of Declarant.

Section 8.6 Reporting Responsibilities of Owners. Each Owner shall promptly report in writing to the Board and/or Manager any and all visually discernible items or other conditions, with respect to his or her Condominium Building, and/or Unit, or Patio, building, stairway, landing and

deck areas adjacent to his Unit, which reasonably appear to require repair. Delay or failure to fulfill such reporting duty may result in further damage to improvements, requiring costly repair or replacement.

Section 8.7 Disrepair: Damage by Owners. If any Owner shall permit any improvement, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, and after affording such Owner reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Owner's Unit, for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Specific Assessment pursuant to Section 6.12 above, and, if not paid timely when due, shall constitute unpaid or delinquent assessments for all purposes of Article 7, above. The Owner of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor. Any other provision herein notwithstanding, the cost of any cleaning, maintenance, repairs, and/or replacements by the Association within the Common Elements or any other Unit, arising out of or caused by the willful or negligent act of an Owner, his or her tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Specific Assessment against such Owner pursuant to Section 6.12, above, and, if not paid timely when due, shall constitute unpaid or delinquent assessments pursuant to Article 7, above.

Section 8.8 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the willful or negligent act of an Owner, his or her tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Specific Assessment against such Owner as provided pursuant to Section 6.12, above, and if not paid timely when due, shall constitute unpaid or delinquent assessments pursuant to Article 7 above.

Section 8.9 Pest Control Program. If the Board adopts an inspection, prevention and/or eradication program ("pest control program") for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Owner and the Residents of the Unit, may require such Owner and Residents to temporarily relocate from the Unit in order to accommodate the pest control program. The notice shall state the reason for the temporary relocation, the anticipated dates and times of the beginning and end of the pest control program, and that the Owner and Residents will be responsible, at their own expense, for their own accommodations during the temporary relocation. Any damage caused to a Unit or Common Elements by the pest control program shall be promptly repaired by the Association. All costs involved in maintaining the pest control program, as well as in repairing any Unit or Common Elements shall be a Common Expense, subject to a Specific Assessment therefor, and the Association shall have an easement over the Unit for the purpose of effecting the foregoing pest control program.

Section 8.10 Graffiti Removal. The Association shall have the right, but not the obligation, to remove or paint over any graffiti on the Properties (the costs of which graffiti removal or painting over shall be a Common Expense).

Section 8.11 Notice Regarding Water Intrusion. Notwithstanding any other provision herein, in the event that there is intrusion of water into any Unit (including, without limitation, as a result of any roof, window, sliding or other leaks (including, without limitation, plumbing leaks), the

Owner of the affected Unit shall be obligated to immediately notify the Board of such event, and Owner shall take all necessary and appropriate action to stop any such water intrusion. Failure of any Owner to timely notify the Board of any such water intrusion shall be cause to deny future claims relating thereto, which claims could have been mitigated had earlier action been taken.

Section 8.12 Mold. Each Owner, by acceptance of a deed to a Unit, acknowledges and understands that there is, and will always be, the presence of certain biological organisms within the Unit. Most typically, this will include the common occurrence of mold and/or mildew. It is important to note that mold and mildew tend to proliferate in warm, wet areas. As such, it is each Owner's responsibility to maintain his or her Unit so as to avoid the accumulation of moisture and/or mold and mildew within the Unit. Such mitigation matters should include, without limitation, the frequent ventilation of the Unit, removal of standing water on Balcony, prompt repair of any leaks which permit water intrusion into the Unit, and prompt repair of plumbing leaks within the Unit (irrespective of who may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase moisture and/or mold and mildew. Also, the propping of large pieces of furniture against wall surfaces may lead to mold or mildew accumulation. It is the responsibility of each Owner to monitor and maintain his or her Unit so as to mitigate and avoid the conditions which are likely to lead to the existence and/or growth of mold and/or mildew. In the event that mold does appear and/or grow within the Unit, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected improvements.

Section 8.13 Maintenance Responsibilities Pertaining to Garages; No Alteration by Owner. Notwithstanding any other provision herein, the following provisions shall apply with regard to maintenance of Garages and related matters. The Association shall be responsible for periodic painting, maintenance, repair, and/or replacement of the exterior walls and roofs of Garages (which exterior walls and roofs shall be Common Elements) and Garage sectional roll-up doors, and the costs thereof shall be Common Expenses, subject to the other provisions of the Declaration. Each Owner shall, at such Owner's sole expense, keep the interior of his or her Garage and its equipment and furnishings in good, clean and sanitary order and condition, and shall do all interior redecorating and interior painting which may at any time be necessary to maintain the good interior appearance and condition of his or her Garage. In addition to keeping the interior of the Garage in good repair, each Owner shall be responsible, at such Owner's sole expense, for: (a) maintenance, repair, and replacement of the Garage remote opener, and (b) without limiting any of the foregoing, cleaning, maintenance, repair, and replacement of the door, opener and opening mechanism located in the Garage, so as to reasonably minimize noise related to or caused by an unserviced Garage door opener and/or opening mechanism. No Owner shall make any alterations, repairs or additions to any portion of the exterior or roof of the structure in which such Owner's Garage is located.

Section 8.14 Rules and Regulations. The Board shall have the right, but not the obligation, from time to time to promulgate, amend, and/or supplement Rules and Regulations pertaining to maintenance and/or related matters.

ARTICLE 9 USE RESTRICTIONS

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying and controlling the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 9 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective directors, officers, members, agents or employees shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 9.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single family and for no other purpose. No part of the Properties shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering", destructive construction testing, or any other non-residential purposes; except that Declarant may exercise the reserved rights described in Article 13 hereof. The provisions of this Section 9.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-family children, when added to the number of family children being cared for at the Unit, shall not exceed a maximum aggregate of three (3) children, and provided further that there is no nuisance under Section 9.5 below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to Section 9.3, below, and any Rules and Regulations.

Section 9.2 Insurance Rates. Nothing shall be done or kept in the Properties which would substantially increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation or insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, the Board shall have no power whatsoever to waive or modify this restriction.

Section 9.3 Rentals. No Unit shall be rented for transient, time share, or hotel purposes. Any lease of, or rental agreement pertaining to, a Unit ("lease") shall be in writing, shall be for a term of not less than thirty (30) days, and shall expressly provide that such lease is subject to all terms, covenants and conditions of this Declaration. The terms of any such lease shall be made expressly subject to this Declaration and the Rules and Regulations. Any failure by the lessee of such Unit to comply with the terms of this Declaration or the Rules and Regulations shall constitute a default under the lease. A copy of any such lease (or a reasonable summary of its relevant terms, certified by the Owner to be true and correct), shall be provided by the Owner to the Board promptly upon request, solely to verify compliance with this Section 9.3. The Board shall not use any such lease or summary for any purpose other than internally to verify compliance with this Section 9.3. Subject to this Section, each and every Owner desiring to rent a Unit to a tenant shall provide each such tenant with copies of the Governing Documents, and shall advise each such tenant of the obligation to abide by the Governing Documents.

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Section 9.4 Animal Restrictions. Each Owner or lessee of a Unit may keep no more than an aggregate of two (2) common household pet dogs, and/or cats in the Unit, provided that each of said pets shall not exceed sixty (60) pounds; provided further that the Board, in its sole and absolute discretion, shall have the power and authority, but not the obligation, from time to time to grant and/or withdraw variance(s), on a case by case basis, for bona fide medical need or other special and unusual circumstances, subject to applicable law. No animal shall be kept, bred or maintained for commercial purposes, and each Owner or Resident shall be responsible at all times for: (i) keeping the animal properly restrained on a leash at all times when located outside of the Unit (no animal may be located on any portion of the Properties other than the Unit except on a temporary basis), and (ii) immediately cleaning up any excrement or other unclean or unsanitary condition caused by his or her animal in the Unit or Common Elements. The Board shall have the right to prohibit any animal within the Properties when the Board determines, in its reasonable judgment, such animal constitutes a private nuisance or otherwise unreasonably interferes, because of incessant or unreasonable barking or other compelling circumstance, with the peaceful and quiet enjoyment by other Owners and Residents of their respective property. The Board may also promulgate additional Rules and Regulations further regulating the keeping of pets. Notwithstanding the foregoing and any other provision in this Declaration, and subject to applicable law, no pet shall be permitted at any time in the Common Recreational Area clubhouse or pool area, other than to the extent required by applicable law to assist disabled Owners or Residents. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, their Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or by members of his Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner at all times to immediately clean up after such animal(s) anywhere in the Properties or abutting areas. Without limiting the foregoing all Owners shall comply fully in all respects with all applicable Ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 9.5 Nuisances. No noxious or offensive activity shall be carried on, nor shall any outside lighting or loudspeakers or other sound producing devices be used, nor shall anything be done in any part of the Properties, which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners. Unit security systems shall be interior alarm horns with automatic shut/off/reset features, and/or monitored by phone only, and no exterior alarm horns or speakers may be installed without the prior written consent of the Board. All refuse, garbage and trash shall be placed in dumpsters or other common receptacles placed on the Properties by Declarant or the Association. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be substantially and materially offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. The Board shall have the right to determine if any noise, odor, or activity or circumstance reasonably constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit, and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 9.6 Trash. All refuse, garbage and trash shall be kept at all times in covered, sanitary containers. The Owners and Residents of Units in a Building shall reasonably cooperate

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with each other and with the Association to ensure that their Building and immediately surrounding areas are kept in a neat and sanitary condition, free of noxious odors or other nuisance. If any Owner or Resident, or their respective Families, guests or other invitees should by act or omission cause or create an unsanitary or offensive condition in the Properties, then such act or omission shall be in contravention of this Section, and the Board shall have the power and authority to cause a fine to be imposed on such person, reasonably commensurate with the gravity of the offense, subject to applicable law.

Section 9.7. No Hazardous Activities. No activities shall be conducted, nor shall any improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, or Common Elements.

Section 9.8. No Unsightly Articles. No unsightly articles, facilities, equipment, objects, or conditions (including, but not limited to, clotheslines or garden or maintenance equipment, or inoperable vehicle), shall be permitted to remain on any Limited Common Element, so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. Without limiting the generality of the foregoing or any other provision herein, all refuse, garbage and trash shall be kept at all times in covered, sanitary containers and are to be left in an area that is not visible from other Units, Limited Common Elements, or Common Elements, or to be placed in the enclosed areas designed for such purpose.

Section 9.9. Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any improvement from any street, or from any other portion of the Properties without the prior written approval of the Board, which approval may be withheld in the Board's sole and absolute discretion.

Section 9.10. Signs. Subject to the reserved rights of Declarant contained in Article 13 hereof, no sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view from any Unit or any other portion of the Properties, except for permitted signs of permitted dimensions in such areas of the Common Elements as shall be specifically designated by the Board for sign display purposes, subject to Rules and Regulations. The foregoing restriction shall not limit traffic and other signs installed as part of the original construction of the Properties, and the replacement thereof (if necessary) in a professional and uniform manner.

Section 9.11. Antennas and Satellite Dishes. The provisions of this Section 9.11 shall be subject to Section 2.18 above. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (a) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (b) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is installed in a location (if any) designated by the Board, if such location is not reasonably practicable, then an Owner must obtain prior written approval of the ARC before affixing a Permitted Device to any Balcony or exterior of a Condominium Building, and, subject to the preceding portion of this sentence, an Owner shall be fully responsible to the Association for any and all liability and/or damage caused by or related to such installation and/or removal of a Permitted Device.

Section 8.12. Parking Areas. Parking areas, including, but not limited to Assigned Parking Spaces, shall be used exclusively for the normal and regular parking of vehicles, and shall not be used for the storage of vehicles or other items.

Section 9.13. Other Restrictions.

(a) No Owner or Resident shall keep or store any item in the Common Elements (subject to the right of such Person reasonably to store items in any private storage area exclusively allocated to such Person's Unit, subject to the Rules and Regulations), and nothing shall be altered, or constructed or planted in, or removed from, the Common Elements, without the written consent of the Board. No article shall be kept or stored on Patios or Balconies, except reasonable quantities (in reasonable sizes) of regular porch furniture and potted plants, subject to the "nuisance" provisions of Section 9.5, above, and further subject to regulation by the Board. Any such porch furniture and/or potted plants must be maintained in an attractive condition, and the care and watering of such plants must not damage or soil the Unit, or any other Unit, or any portion of the Common Elements.

(b) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and other neighboring properties. Subject to the foregoing Section 9.13(a), no clothes, clothesline, sheets, blankets, laundry of any kind or any other article shall be hung out or exposed on any external part of the Units or Common Elements.

(c) No Owner shall cause or permit anything to be placed on the outside walls of his Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to any part thereof.

(d) Any treatment of windows or glass doors (other than interior shutters, draperies, curtains, or blinds, of neutral color and normal appearance, which shall be permitted without the need for Board approval) shall be subject to the prior written approval of the Board. Aluminum foil or other "irregular" or "non-standard" material shall not be permitted in any exterior window or glass door. Window tinting shall require the prior written approval of the Board, and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly. Screens on doors and windows, other than any which may be installed as or the date of recordation of this Declaration, are permitted only if approved in advance by the Board. Notwithstanding the foregoing, the Board shall have the power and authority, but not the obligation, in its reasonable judgment, to require any unsightly or offensive window or glass door covering or screening material to be promptly taken down and/or removed.

(e) Holiday decorations which may be viewed from other portions of the Properties may only be installed inside the windows of a Unit or on a Patio, provided that such installation shall be done in such manner as not to compromise or damage the surface or item to which installed or attached. Such decorations must be installed and removed in a reasonably seasonal manner, and, during the appropriate period of display, shall be maintained in a neat and orderly manner.

(f) All Units and Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(g) No barbecue shall be kept or operated on any Balcony or Unit.

(h) No spa, jetted tub, hot tub, water bed, or similar item (except for any bathroom tub installed as part of the original construction of a Unit) shall be permitted or located within any Unit.

(i) No wrought iron fencing or the exterior of any other material used to enclose a porch, and no exterior wall, or ceiling or interior wall or a patio, shall be painted, erected or altered by any Owner.

Section 9.14 Parking and Vehicular Restrictions.

(a) No Person shall park, store or keep anywhere within the Properties any vehicle (which is deemed by the Board in its reasonable judgment to unreasonably disrupt the peaceful and quiet enjoyment by other Owners and Residents of their respective property. The term "vehicle" for purposes herein shall include any vehicle, boat, aircraft, motorcycle, golf cart, jet ski, motor home, recreational vehicle, trailer, camper, other motorized item, vehicular equipment, and/or other item used in connection with or pertaining to any of the foregoing, whether mobile or not). Subject to, and without limiting, the foregoing, no Person shall park, store or keep anywhere on the Properties, any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, fuel truck or delivery truck); provided that any truck up to and including one (1) ton when used normally for everyday-type personal transportation, may be kept by an Owner or Resident.

(b) No maintenance or repair of any vehicle shall be undertaken within the Properties. No vehicle shall be left on blocks or jacks. No washing of any vehicle shall be permitted anywhere within the Properties.

(c) Subject to the "nuisance" provisions of Section 9.5, above, no Person shall park, store or keep anywhere in the Properties any unregistered or inoperable vehicle.

(d) No parking whatsoever shall be permitted in any designated "no parking" area, or any entry gate area of the Properties. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for temporary parking, subject to Rules and Regulations established by the Board, and subject further to all applicable laws and ordinances. The Board may designate additional "no parking" areas from time to time.

(e) The Association shall have the right to tow vehicles parked in violation of this Declaration and/or the Rules and Regulations. These restrictions shall not be interpreted in such a manner as to permit any activity which would be contrary to any applicable Ordinance.

Section 9.15 Further Subdivision. No Unit shall be further subdivided or partitioned, no two or more Units may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may alter or permanently remove any wall between Units.

Section 9.16 Additional Vibrations and Noise Restrictions. No Owner shall attach to the walls or ceilings of any Unit, or Exclusive Use Area, any fixtures or equipment, which will cause vibrations or noise to the adjacent Condominium Units. Additionally, "hard surface flooring" (e.g., wood, tile, vinyl, or linoleum, or similar non-carpet flooring) shall not be permitted on interior floor surfaces any Unit above the ground floor shall be subject to restrictions and Rules and Regulations. Additionally, there shall be no speakers, sound equipment, television sets, or similar items mounted directly to or on or against a party wall of a Unit. Such items may be permitted on shelves, provided that such shelves are carpeted so as to provide insulation from sound or vibration.

Section 9.17 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Condominium Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Condominium Unit(s). The exterior lighting initially installed on the Condominium Units shall not be modified or altered by the Owner, and shall be maintained, repaired and replaced by the Owners as necessary, to provide lighting of the same character and quality (including light bulb wattage) as was initially installed in the Properties. Further rules regarding exterior lighting may be promulgated by the Board.

Section 9.18 Garages. Without limiting any of the use restrictions or other provisions set forth in this Declaration, the following use restrictions additionally shall apply with particular reference to Garages. Garages shall be used exclusively for the parking or storage of vehicles, and shall not be used solely for the storage of items other than vehicles. Ordinary household goods may be stored in addition to vehicles, provided that: (i) no flammable, dangerous, hazardous or toxic materials shall be kept, stored, or used in any Garage, and (ii) doors to Garages shall be kept fully closed at all times except for reasonable periods during the removal or entry of vehicles or other items therefrom or thereto. No Garage may be used for a permanent or temporary dwelling, and no animal shall be housed or kept in any Garage. No Owner shall cause or permit anything to be placed on the outside walls of his Garage. Notwithstanding the foregoing, this Section 9.18 shall not apply to Declarant or Declarant's activities.

Section 9.19 No Separate Rental of Garages. No Owner shall have any right whatsoever to rent a Garage only, or to rent a Garage separately from the Condominium Unit, to which apartment, and any such purported separate rental of a Garage shall be null and void.

Section 9.20 Abatement of Violations. The violation of any of the Rules and Regulations, or the breach of this Declaration, shall give the Board the right, in addition to any other right or remedy elsewhere available to it:

(a) to enter into a Unit in which, or as to which, such violation or breach exists, and to summarily abate and remove, at the expense of its Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions of any of the foregoing documents, and the Board shall not be deemed to have trespassed or committed forcible or unlawful entry or detainer; and/or

(b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

All expenses of the Board in connection with such actions or proceedings, including court costs and attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the rate set forth in Section 8.1, above, until paid, shall be charged to and assessed against such defaulting Owner, and the Board shall have the right to lien for all of the same upon the Unit of such defaulting Owner. Any and all of such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Board.

Section 9.21 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain

in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

Section 9.22. Declarant Exemption. Each Unit owned by Declarant shall be exempt from the provisions of this Article 9, until such time as Declarant conveys title to the Unit to a Purchaser, and activities of Declarant reasonably related to Declarant's advertising, marketing and sales efforts, and Declarant's related activities shall be exempt from the provisions of this Article 9. This Article 9 shall not and may not be amended without Declarant's prior written consent.

ARTICLE 10 DAMAGE OR CONDEMNATION

Section 10.1. Damage or Destruction. Damage to, or destruction or condemnation of all or any portion of the Common Elements shall be handled in the following manner:

(a) Repair of Damage. Any portion of this Community for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Common-Interest Community is terminated, in which case the provisions of NRS §§ 116.2118, 116.2119 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, (1) the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community, (2) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units, and (3) the remainder of the proceeds must be distributed to all Owners or lien holders, as their interests may appear, in proportion to the liabilities of all Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated on the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements, provided the damage is: (i) caused by or related to pet(s) or kept by, or (ii) is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any improvement by said Owner, or the Persons deriving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his or her respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association, and (2) levy against such Owner a Specific Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to the extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Specific Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance.

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against any Unit owned by such Owner, and such Specific Assessment may be enforced as provided herein.

Section 10.2. Eminent Domain. If part of the Common Elements is acquired by eminent domain, the portion of the award attributable to the Common Elements taken must be paid to the Association. For the purposes of NRS § 116.1107.2(e), if part of a Unit is acquired by eminent domain, the award shall compensate the Unit's Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the Residents of the Unit were impaired from enjoying the Common Elements. In cases where the Unit may still be used as a dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 11 INSURANCE

Section 11.1. Casualty Insurance. The Board shall cause to be obtained and maintained a master policy of condominium casualty insurance (which may be standard "all risk of loss or perils") covering fire and extended coverage casualty insurance for loss of or damage, including malicious mischief, to all insurable improvements (including, but not necessarily limited to, all buildings and structures) in the Properties and all fixtures duly installed on the Common Elements (but excluding the cost of land, foundations, excavations and footings, and such other items normally excluded from such coverage), for the full insurable value replacement cost thereof without deduction for depreciation or coinsurance, and, in the Board's reasonable business judgment, shall obtain insurance against such other hazards and casualties as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property, whether real or personal, owned by the Association or located within the Properties (including, but not limited to the Units), against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders as their interests may appear as named insured, subject to the loss payment requirements as set forth herein. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association. The Association, acting through the Board, shall be the named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any policies shall be paid to the Board as trustee. The Board shall have full power to receive and receipt for the proceeds and to deal therewith as deemed necessary and appropriate. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of insurance maintained by the Association and of all the renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Eligible Mortgagees who have expressly requested the same in writing.

Section 11.2. Liability and Other Insurance. The Board shall further cause to be obtained and maintained a comprehensive public liability insurance, including medical payments, in such limits as it shall deem prudent (but in no event less than \$1,000,000.00, covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests, and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association,

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or with respect to property maintained or required to be maintained by the Association, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available and reasonably necessary, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Workers' Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 11.3 Directors & Officers Insurance; Fidelity Insurance.

(a) The Board shall further cause to be obtained and maintained Directors and Officers insurance, and such other insurance as it deems prudent, insuring the Board, the Directors, and Officers, and any Manager, and/or agents, against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof, in the amount of not less than \$1,000,000.00. If such coverage is reasonably available, said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period, if such endorsement is reasonably available.

(b) From and after the end of the Declarant Control Period, blanket fidelity insurance coverage which names the Association as an obligee shall be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be handled by or in the custody of such persons at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds) (or such other amount as may be required by FIMA, VA or FHA from time to time, if applicable).

(c) The Association shall also require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent.

Section 11.4 Other Insurance Provisions. The Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Workers' Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction, except to the extent such coverage is not reasonably available or has been waived by the applicable agency.

Section 11.5 Insurance Obligations of Owners. Each Owner shall be responsible for payment of any and all deductible amount for loss to such Owner's Unit. Each Owner shall further be responsible for obtaining and maintaining insurance on his or her personal property, on all property, fixtures, and improvements within his Unit, for which the Association is not required to carry insurance, and such public liability insurance as the Owner deems prudent to cover his or her individual liability for bodily injury or property damage occurring inside his Unit or elsewhere upon the Properties. Notwithstanding the foregoing, no Owner shall carry any insurance in any manner which would cause any diminution in insurance proceeds from any insurance carried by the Association. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all premiums and deductible amounts under such Owner's policy or policies of insurance.

Section 11.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on insurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 11.7 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 11, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his or her interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his or her family; (c) no act or omission by any Owner or member of his or her family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 12 MORTGAGE PROTECTION

Section 12.1 General. In order to induce FHA, VA, FHLBC, GNMA and FNMA and any other governmental agency or other entity to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto if, and for so long as, such agency or entity is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, and, in such case, to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control:

(a) Each Eligible Holder is entitled to written notification from the Association of (i) any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under the Declaration, which default is not cured within sixty (60) days after the Association learns of such default; (ii) any condemnation or casualty loss which affects either a material portion of the project or the Unit securing its Mortgage; (iii) a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action requiring the consent of a specified percentage of Eligible Mortgagees.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

(c) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(d) The Reserve Fund described in Article 6 of this Declaration must be funded by regularly scheduled monthly, quarterly, semiannual or annual payments rather than by large, extraordinary assessments.

(e) The Board shall require that any Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

(f) When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and of the Board respectively, and the Eligible Beneficiaries of at least fifty-one percent (51%) of the first Mortgagees of Units in the Properties.

Section 12.2 Additional Provisions for FNMA. If and for so long as FNMA (or HUD, as applicable pursuant to Section 12.3(a) below) is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, and FNMA (or HUD, as applicable) requires the following provisions, then, pursuant to applicable FNMA (or HUD, as applicable) requirement:

(a) The Association shall make an audited statement for the preceding Fiscal Year (if the Project has been established for a full fiscal year) available to an Eligible Holder on submission of a written request therefor. The audited financial statement is to be available within 120 days of the end of the Association's Fiscal Year.

(b) Amendments of a material nature must be agreed to by Owners who represent at least 67% of the total voting power in the Association and by Eligible Holders representing at least 51% of the votes of Units subject to Eligible Holders. A change to any of the provisions governing the following would be considered as material:

(i) voting rights;

(ii) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

(iii) reductions in reserves for maintenance, repair, and replacement of Common Elements;

(iv) responsibility for maintenance and repairs;

(v) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;

(vi) redefinition of any Unit boundaries;

(vii) convertibility of Units into Common Elements, or vice versa;

(viii) expansion or contraction of the Project, or the addition or withdrawal of property to or from the Project;

(ix) hazard or fidelity insurance requirements;

(x) imposition of any restrictions on the leasing Units;

(xi) imposition of any restrictions on an Owner's rights to sell or transfer his or her Unit;

(xii) a decision by the Association to establish self-management if professional management had been required previously by the Governing Documents or by an Eligible Holder;

(xiii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; or

(xiv) any provision that expressly benefits mortgage holders, insurers, or guarantors.

(c) The amenities and facilities - including parking and recreational facilities - within the Project shall be owned by the Owners or the Association, and shall not be subject to a lease between the Owners (or the Association) and another party.

(d) In the event of condemnation, destruction, or liquidation of all or any part of the Project, the Association shall be designated to represent the Owners in any related proceedings, negotiations, settlements, or agreements. Each Owner hereby appoints the Association as attorney in fact, in accordance with NRS §§ 111,460 and 111,460, or such Owner and his or her successors and assigns) for such purpose. The proceeds from a settlement shall be payable to the Association, or to the insurance trustee, for the benefit of the Owners and their mortgage holders. Any distribution of funds in connection with the termination of the Project should be made in a manner consistent with the relative value of each Unit and in accordance with Section 605 of the Fannie Mae Selling Guide, 06/30/02, as may be amended from time to time.

(e) A working capital fund shall be established, to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be in an amount at least equal to two months of Annual Assessments applicable to a Unit, and shall be funded from a portion of the initial capital contribution collected at Close of Escrow of a Unit pursuant to Section 8.6 above. Any amounts paid into this fund shall not be considered as an advance payment of Annual Assessments. The working capital fund shall be transferred to the Association in a segregated fund when control of the Association is transferred by Declarant to the Owners. Declarant shall be prohibited from using the working capital funds to defray any of its expenses, reserve contributions, or construction costs, or to make up any budget deficits while Declarant is in control of the Association.

Section 12.3 Additional Provisions for HUD. If and for so long as HUD is insuring or guaranteeing loans or has agreed to insure or guarantee loans or any portion of the Properties, and HUD requires the following provisions, then pursuant to applicable HUD requirement:

(a) If HUD has accepted legal documents for this Project that have been accepted by FNMA, then the provisions of Section 12.2 above shall apply, to the extent from time to time relevant.

(b) In instances other than as set forth in subsection (a) above, the HUD legal requirements analogous to the requirements set forth in the above Section 12.2, as set forth in Appendix 24 to HUD Handbook 4265.1 ("HUD Legal Policies"), as required by HUD for this condominium Project, are incorporated herein by this reference. Without limiting the preceding sentence:

(i) Eligible Holders, upon written request to the Association, will be entitled to timely written notice of:

(A) any proposed amendment of the Governing Documents effecting a change in (1) the boundaries of any Unit or the exclusive easement rights appurtenant thereto; (2) the interests in the Common Elements or Limited Common Elements appurtenant to any Unit; (3) the number of votes in the Association appurtenant to any Unit; or (4) the purposes to which any Unit or the Common Elements are restricted;

(B) any proposed termination of the condominium regime;

(C) any condemnation loss or any casualty loss which affects a material portion of the condominium or which affects any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder.

(D) any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days;

(E) any lapse, cancellation or material modification of any insurance policy maintained by the Association pursuant to HUD Legal Policies.

(ii) The Association shall use generally acceptable insurance carriers.

Section 12.4 Additional Provisions for VA. If and for so long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: (1) action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); (2) dedication, conveyance, or mortgage of the Common Elements; or (3) amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document previously approved by the VA, provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time.

Section 12.5 Additional Agreements. In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the applicable express requirements of FHA, VA, FHLMC, FNMA, GNMA, or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their respective Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies and rules and regulations, as adopted from time to time.

Section 12.6 Information from Mortgagees. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

ARTICLE 13 DECLARANT'S RESERVED RIGHTS

Section 13.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS § 116.2705.1(b), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below. Unless otherwise expressly set forth in this Declaration, Declarant's reserved rights hereunder shall terminate at the end of the period set forth in Section 13.1(a) below:

(a) Right to Enter Upon Properties. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of the Recordation of this Declaration, the right, in Declarant's sole discretion, to enter upon and to conduct such activities on the Properties as Declarant, in its sole discretion, may deem appropriate, and an easement over, across, and under the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue, for one additional successive period of ten (10) years thereafter.

(b) Offices, Model Homes and Promotional Signs. Declarant hereby reserves unto itself the right to maintain (a) a sales and/or management office in any portion of the Common Elements or any Unit owned or leased by Declarant, and (b) model Units located in any Units owned or leased by Declarant. Such office and models may be of such size and number as Declarant may see fit. Declarant shall have the right to relocate such office from time to time within the Common Elements or any Unit owned by Declarant. Declarant, for itself and its managers, employees, contractors, agents, sales personnel, guests, prospective homebuyers, and other business invitees, shall have unfettered access to all Common Elements and Units (including model homes, salesmanagement office, and sufficient parking) for Declarant's marketing, sales, and related activities during such hours as determined by Declarant in its sole and absolute discretion, and Declarant additionally reserves the right to maintain signs on the Common Elements, and Declarant hereby reserves, for itself and its officers, managers, employees, contractors, agents, sales personnel, guests, prospective homebuyers, and other business invitees a non-exclusive easement onto, over and across the Common Elements to accomplish all or any portion of the foregoing reserved rights. Without limiting the generality of the foregoing, Declarant reserves the right to control any and all entry gate(s) to the Properties for so long as Declarant utilizes sales and/or management offices and/or model homes in connection with Declarant's marketing and/or sale of projects of Declarant pursuant to this Section 13.1(b), and neither the Association nor any one or more of the Owners shall at any time or in any way, without the prior written approval of Declarant, in its discretion, cause any entry gate to the Properties to be closed during Declarant's marketing, or sales hours (including on weekends and holidays), or shall in any other way impede, hinder, obstruct, or interfere with Declarant's marketing, and/or sales activities.

(c) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, during the Declarant Control Period.

(d) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 13.3, below, and any other provision of this Declaration, during the time periods set forth therein.

(e) Assignment of Assigned Parking Spaces. Declarant reserves the right from time to time to designate individual Assigned Parking Spaces to be appurtenant to individual Units, designated by Declarant in its sole discretion.

(f) Easements. Declarant reserves certain easements, and related rights, as set forth in this Declaration.

(g) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a Declarant under NRS Chapter 116.

(h) Certain Other Rights. Notwithstanding any other provision of this Declaration, Declarant reserves the right (but not the obligation), in its sole and absolute discretion, at any time and from time to time, to unilaterally: (1) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (2) modify, expand, or limit, by recorded instrument, the maximum total number of Units in the Community, subject to Section 17.16 below.

(i) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in Community, to unilaterally control all entry gates, and to keep all entry gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's sales and marketing activities.

(j) Parking Restrictions. Declarant reserves the right (but not the obligation) from time to time in its sole discretion to limit or prohibit parking in certain areas within the Properties, as determined by Declarant.

(k) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Community, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's sales and marketing and other activities, provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(l) Control of Parking Spaces. Declarant reserves the right to control parking spaces near the model complex during Declarant's regular business or marketing hours, and to tow unauthorized vehicles at the Owner's expense, for as long as Declarant is conducting marketing or sales or any other activities in the Community or any portion thereof.

(m) Marketing Names. Declarant reserves the right, for so long as Declarant owns or has any interest in any of the Properties, to market and/or advertise different portions of the Properties under different marketing names.

(n) Certain Property Line Adjustments. Declarant reserves the right to adjust the boundary lines between Units, and/or between Units and Common Elements shown on the Plat prior to conveyance of an affected Unit to a Purchaser.

(o) Additional Reserved Rights. Without limiting the foregoing or any other right of Declarant reserved in this Declaration, all Developmental Rights and Special Declarant Rights, as set forth in the Act, are hereby reserved to and for the benefit of Declarant, to the maximum extent permissible under the Act.

Section 13.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units, provided, however, that if FHIA or VA approval is sought by Declarant, then the FHIA and/or the VA shall have the right to approve any such grants as provided herein.

(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 13.1(c) above, or any other provision herein, Declarant may use any Units or structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, for this Community or for any other project of Declarant and/or its affiliates, subject to the time limitations set forth herein, after which time, Declarant shall restore the improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity.

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) The prior written approval of Declarant as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 13) can be effective.

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate at the end of the period set forth in Section 13.1(a) above.

Section 13.3. Limitations on Amendments. In recognition of the fact that the provisions of this Article 13 operate in part to benefit the Declarant, no amendment to this Article 13, and no amendment in derogation of any other provision(s) of this Declaration benefiting Declarant, may be made without the express prior written approval of the Declarant, and any purported amendment of Article 13, or any other such provision, or any portion respectively thereof, or the effect respectively thereof, without the express prior written approval of Declarant, shall be null and void; provided that the foregoing shall not apply to amendments made by Declarant.

ARTICLE 14 INTENTIONALLY RESERVED

ARTICLE 15 ADDITIONAL DISCLOSURES, DISCLAIMERS, AND RELEASES

Section 15.1. Additional Disclosures, Disclaimers, and Releases of Certain Matters. Without limiting any other provision in this Declaration, by acquiring title to a Unit, or by possession or occupancy of a Unit, each Owner (for purposes of this Article 15, and all of the Sections thereof, the term "Owner" shall include the Owner, and the Owner's tenants, if any, and their respective family, guests and other invitees), and by residing within the Properties, each Resident (for purposes of this Article 15, the term "Resident" shall include each Resident, and the Resident's family, guests and other invitees) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) There are presently, and may in the future be other, major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) from time to time located within or nearby the Properties, which generate certain electric and magnetic fields

("EMF") around them; and Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF.

(b) The Units and other portions of the Properties from time to time are or may be located within or nearby certain airplane flight patterns, and/or subject to significant levels of airplane traffic and noise; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to airplane flight patterns, and/or airplane noise.

(c) The Units and other portions of the Properties are or may be located adjacent to or nearby major roads, all of which may, but need not necessarily, be constructed, reconstructed, or expanded in the future (all collectively "roadways"), and subject to high levels of traffic, noise, construction, maintenance, repair, dust, and other nuisance from such roadways; and Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to roadways and/or noise, dust, and other nuisance related thereto.

(d) The Units and other portions of the Properties are or may be located adjacent to or nearby major water facilities and major water and drainage channels and/or wastes (all, collectively, "Facilities"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not necessarily within Declarant's control, and over which Declarant does not necessarily have jurisdiction or authority, and, in connection therewith, (1) the Facilities may be an attractive nuisance to children; (2) maintenance and use of the Facilities may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Facilities maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Facilities, as the result of nonfunction, malfunction, or overtaxing of the Facilities or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Owner and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property.

(e) There are or may be certain Common Element water features located in the Properties ("Water Features"), and, in connection therewith: (1) the Water Features may be an attractive nuisance to children; (2) there is a possibility of damage to improvements and property on the Properties, particularly in the event of overflow of water from or related to the Water Features, as the result of nonfunction, malfunction, or overtaxing of the Water Features or any other reason; and (3) any or all of the foregoing may cause inconvenience and disturbance to Owner and other persons in or near the Units and/or Common Elements, and possible injury to person and/or damage to property.

(f) The Units and other portions of the Project are or may be nearby major regional underground natural gas transmission pipelines. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to gas transmission lines.

(g) Construction or installation of improvements and/or trees or other vegetation by the Association or third parties nearby a Unit or Properties, may impair or eliminate the view, if any, of or from Unit(s) and/or Common Elements. Each Owner, by acquiring title to his or her Unit, whether or not specifically so expressed in the deed therefor, shall conclusively be deemed to have

acknowledged and agreed that (notwithstanding any oral representation of any sales agent or other person to the contrary) acts, omissions, and/or conditions (including, but not necessarily limited to, any construction or installation by third parties, or installation or growth of trees or other plants), may impact or eliminate the view of such Owner, and accepts and consents to such view impairment or elimination, and releases any and all claims in connection therewith.

(h) Residential condominium construction is an industry inherently subject to variations and imperfections and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to: reasonable wear, tear, or deterioration; shrinkage, swelling, expansion or settlement, squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work, and like items) and not constructional defects.

(i) The finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to variations and imperfections and expected minor flaws. Issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the improvement has been built within such industry standards.

(j) Indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, including, without limitation, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on.

(k) Installation and maintenance of a gated community, and/or any security or traffic access device, operation, or method, shall not create any presumption, or duty whatsoever of Declarant or Association (or their respective officers, directors, managers, employees, agents, and/or contractors), with regard to security or protection of person or property within or adjacent to the Properties; and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have agreed to take any and all protective and security measures and precautions which such Owner would have taken if the Properties had been located within public areas and not gated. Gated entrances may restrict or delay entry into the Properties by law enforcement, fire protection, and/or emergency medical care personnel and vehicles, and each Owner, by acceptance of a deed to a Unit, whether or not so stated in the deed, shall be deemed to have voluntarily assumed the risk of such restricted or delayed entry.

(l) The Properties are or may be located adjacent to or nearby a school, and school bus drop off/pickup areas, and subject to levels of noise, dust, and other nuisance resulting from or related to proximity to such school and/or school bus stops.

(m) The Properties are or may be located adjacent to or nearby a commercial site, and subject to substantial levels of sound, noise, and other nuisances, from such commercial site, and any commercial buildings or facilities developed thereon.

(n) The Las Vegas Valley contains a number of earthquake faults, and that the Properties or portions thereof may be located on or nearby an identified or yet to be identified seismic fault line, and that Declarant specifically disclaims any and all representations or warranties, express or implied, with regard to or pertaining to earthquakes or seismic activities.

(o) There are and/or will be various molds present within the Unit and other portions of the Properties. Molds occur naturally in the environment, and can be found virtually everywhere life can be supported. Units are not and cannot be designed or constructed to exclude mold spores. Not all molds are necessarily harmful, but certain strains of mold may result in adverse health effects in susceptible persons.

(p) Certain other property located or nearby the Properties may be zoned to permit commercial uses, and/or may be developed for commercial uses. Declarant makes no other representation or warranty, express or implied, with regard to or pertaining to the future development or present or future use of property adjacent to or within the vicinity of the Properties.

(q) The Las Vegas Valley currently is undergoing severe drought conditions, and relevant water districts and authorities have announced certain water conservation measures and restrictions on outdoor watering and/or outdoor water features. It is possible that these drought conditions may continue or worsen, and/or that the relevant water districts and authorities may announce further water conservation measures and restrictions, which may affect Units and/or Common Element landscaping and features, and the appearance and/or use of same. Each Owner must make its own independent determination regarding such matters, and hereby releases Declarant and/or Association from any and all claims arising from or relating to drought or water conservation measures or restrictions, and/or the effects respectively thereof.

(r) Certain portions of land ("Neighboring Developments") outside, abutting and/or near the Perimeter Wall/Fence have not yet been developed, and in the future may or will be developed by third parties over whom Declarant has no control and over whom the Association has no jurisdiction, and accordingly, there is no representation as to the nature, use or architecture of any future development or improvements on Neighboring Developments, and such use, development and/or construction on Neighboring Developments may result in noise, dust, or other "nuisance" to the Community or Owners, and may result in portions of Perimeter Wall/Fence and/or Exterior Wall/Fence being utilized by third persons who are not subject to this Declaration or the Governing Documents; and Declarant and Association specifically disclaim any and all responsibility and/or liability thereof.

(s) Each Purchaser, by acquiring title to a Unit, shall conclusively be deemed to have acknowledged and agreed having received from Declarant information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent zoning enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to any zoning uses or issues. Each Purchaser is hereby advised that the master plan and zoning ordinances, and zoning enterprise districts, are subject to change from time to time. If additional or more current information concerning such matters is desired, a prospective purchaser of a Unit should contact the appropriate governmental planning department. Each Purchaser acknowledges and agrees that its decision to purchase a Unit is based solely upon such Purchaser's own investigation, and not upon any information provided by any sales agent.

(t) The Properties may, but need not necessarily, experience problems with scorpions, bees, ants, spiders, termites, pigeons, snakes, rats and/or other insects or pest (all, collectively, "pests"). Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to any pest, and each Owner must make its own

independent determination regarding the existence or non-existence of any pests which may be associated with the Unit and/or other portions of the Properties.

(u) There is a high degree of alkalinity in soils and/or water in the Las Vegas Valley; that this alkalinity tends to produce, by natural chemical reaction, discoloration, leaching and erosion or deterioration of concrete walls and other improvements ("alkaline effect"); that the Unit and other portions of the Properties may be subject to such alkaline effect, which may cause inconvenience, nuisance, and/or damage to property; and that the Governing Documents require Owners other than Declarant to not change the established grading and/or drainage, and to not permit any sprinkler or irrigation water to strike upon any wall or similar improvement.

(v) Residential condominiums are subject to and accompanied by substantial levels of noise, dust, construction-related traffic and traffic restrictions, parking restrictions and other "nuisances". Each Owner acknowledges and agrees that it is purchasing a Unit which is within a residential condominium subdivision, and that the Owner will experience and accept substantial level of "nuisances".

(w) The Unit is one unit in a multi-unit condominium building, located in close proximity to other condominium units and buildings, and private streets and parking areas in the Properties, and, accordingly, is and will be, subject to substantial levels of sound, noise, and other potential "nuisances".

(x) Declarant shall have the right (but not the obligation), at any time and from time to time, in its sole and absolute discretion, to: (a) establish and/or adjust sales prices or price levels for Condominium Units; (b) supplement and/or modify of Record all or any parts of the descriptions set forth in the exhibits hereto; and/or (c) unilaterally modify and/or limit, by Recorded Instrument, the Maximum Units.

(y) Model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded flooring, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to Purchaser unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement.

(z) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(aa) Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(ab) Water and/or sewer for the Properties may but need not necessarily, be master metered and paid by the Association, subject to monthly or other periodic assessment of

allocated amounts to the Owners of Units in the Properties. Each Owner shall be required to promptly pay such allocated water assessments, regardless of actual levels or periods of use of such water (i.e., regardless of occupancy or vacancy of the Unit, and regardless of family size, or other factors).

(ac) Owners are prohibited from changing the external appearance of any portion of a Condominium Building.

(ad) The Owners of Units are subject to "quiet hours", and the noise, vibration, and other nuisance provisions set forth in the Declaration with respect to use of and activities within their respective Units.

(ae) Certain "bare-floor" or "hard-floor" limitations and restrictions are set forth in this Declaration with respect to Upper Level Units, and may be supplemented from time to time in Rules.

(af) Even with a "slip sheet" underneath, certain hard surface flooring may still be subject to hairline cracks, and grout may crack and/or deteriorate, and any involved Owner shall be solely responsible for any such cracking or deterioration.

(ag) Cutting out or alteration of any portion of wall, ceiling, and/or floor by an Owner within a Unit is strictly prohibited, and such "cutting out" (for example, but not limited to, for installation of speakers or "can" lights) or alteration may seriously damage or adversely affect sound insulation or other important features of the Unit.

(ah) Representations of square footage are approximate only. Purchaser shall not be entitled to rely upon the Condominium Plan or any written brochures and other sales documents or oral statements by Declarant or Declarant's agents regarding the exact square footage of any Unit. The computation of square footage varies depending on the method and criteria used.

(ai) Other matters, limitations, and restrictions, uniquely applicable to this Community, are set forth in the Declaration, and may be supplemented from time to time by Rules and Regulations. Each Owner in this Community is expected to behave in a reasonable and cooperative "good neighbor" manner at all times, particularly with respect to the other Owners of Units in the same Condominium Building and in the Properties.

(aj) Declarant reserves the right to correct or repair any improvement, as set forth in Section 17.17 below.

(ak) Certain mandatory arbitration provisions are set forth in this Declaration, including, but not necessarily limited to, Section 17.18 below.

(al) Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 118, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a Declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.089).

(am) Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration.

(an) Each Purchaser understands, acknowledges, and agrees that Declarant has reserved certain rights in the Declaration, which may limit certain rights of Purchaser and Owners other than Declarant respectively.

Section 15.2 "As-Is" Condition: Release. The Project (and improvement(s)) was developed and constructed by an unrelated third party or parties in the mid 1990s and has been used and occupied by tenants as a rental apartment complex, and is not new construction. Declarant acquired the Project in July 2004. Declarant did not develop or construct the Project, and has not made, and although the Project consists of converted buildings, Declarant has not made, and does not intend to make, any structural improvements to the Property or Project. The Owners and Association acknowledge and agree that Declarant did not develop or construct the improvements on the Property and that such improvements were completed as long ago as the early 1990s. Declarant does not represent to be completely familiar with the Project. Declarant makes no warranty or representation at all concerning the Project or the existing improvements thereon, and each Owner has agreed to accept the Property and the related interests "AS-IS, WHERE-IS," WITH ALL FAULTS, AND WITHOUT REPRESENTATION OF ANY SORT OR NATURE. THE OWNERS AND THE ASSOCIATION UNDERSTAND AND AGREE THAT DECLARANT MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER, AND THAT THE OWNERS AND THE ASSOCIATION RELEASE DECLARANT FROM ANY AND ALL CLAIMS AND LIABILITY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WITH REGARD TO DEVELOPMENT AND/OR CONSTRUCTION OF THE PROJECT, THE PROPERTY, THE UNIT, AND THE COMMON ELEMENTS AND COMMON RECREATIONAL AREA, AND ANY BUILDING OR OTHER IMPROVEMENTS OR APPURTENANCES.

Section 15.3 Specific Disclaimer of All Warranties. DECLARANT SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND/OR IMPLIED (INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR THAT THE PROPERTY OR PROJECT INCLUDING THE UNIT, THE BUILDINGS, THE COMMON ELEMENTS, AND/OR THE COMMON RECREATIONAL AREA) WAS CONSTRUCTED OR IMPROVED OR REFURBISHED IN A WORKMANLIKE MANNER, WITHOUT LIMITING THE FOREGOING, DECLARANT DOES NOT WARRANT LIKE ORIGINAL CONSTRUCTION, OR SUBSEQUENT REPAIRS, REPLACEMENTS, OR RECONSTRUCTION OF COMPONENTS, IF ANY, MADE BY THE ORIGINAL BUILDER OR OWNER. There are no warranties, express or implied, provided to any Purchaser, Owner, or Association by Declarant, and any warranty, express or implied, is hereby expressly disclaimed by Declarant and waived by each Purchaser, Owner, and the Association. Each Purchaser and Owner and the Association hereby expressly waive any and all other claims against Declarant, sounding in contract, tort, or otherwise, relating to the Units, Common Elements, and/or appurtenances respectively thereto.

Section 15.4 Limited Non-Structural Activities, Sales and Rental Activities. Limited non-structural or cosmetic activities, and sales and rental activities may be occurring within the Project. This may result in inconvenience to residents in the Project, due to increased noise and debris from such refurbishment activities and the operation of the model units, and sales and rental office, and other activities. Each Purchaser and Owner acknowledges and agrees that any potential noise and traffic issues have been considered, and that neither Declarant nor any representative of Declarant has made any oral or written statement, representation or warranty as to the effects of such noise and traffic on the Unit or on any Purchaser or Owner.

Section 15.5 Releases. BY ACCEPTANCE OF A DEED TO A UNIT, EACH OWNER, FOR ITSELF AND ALL PERSONS CLAIMING UNDER SUCH OWNER, SHALL CONCLUSIVELY BE DEEMED TO HAVE ACKNOWLEDGED AND AGREED TO RELEASE DECLARANT AND THE ASSOCIATION, AND ALL OF THEIR RESPECTIVE OFFICERS, MANAGERS, AGENTS, EMPLOYEES, SUPPLIERS, AND CONTRACTORS, FROM ANY AND ALL CLAIMS, CAUSES OF ACTION, LOSS, DAMAGE OR LIABILITY (INCLUDING, BUT NOT LIMITED TO, ANY CLAIM FOR NUISANCE OR HEALTH HAZARD, PROPERTY DAMAGE, BODILY INJURY, AND/OR DEATH) ARISING FROM OR RELATED TO ALL AND/OR ANY ONE OR MORE OF THE CONDITIONS, ACTIVITIES, OCCURRENCES, OR OTHER MATTERS DESCRIBED IN THE FOREGOING SECTIONS 15.1 THROUGH 15.4.

ARTICLE 16 CLAIMS AGAINST DECLARANT: RIGHT TO CURE: ARBITRATION

Subject to Section 5.3 and 5.8 above, and Section 17.18 below, the following provisions shall apply, to the maximum extent not prohibited from time to time by applicable Nevada law:

Section 16.1 Declarant's Right to Cure Alleged Defects. It is Declarant's intent that all improvements of every type and kind which may be installed as of the date of recordation of this Declaration, including, but not limited to, residences, sidewalks, driveways, streets, roads, parking areas, fences, walls, landscaping, signs, utility pipes, lines or wires, sewer and drainage systems, and grading on all of the Units and Common Elements within the Properties (collectively, the "Existing Improvements") be of a quality that is consistent with construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, all Owners and the Association and the Board shall be bound by the following claim resolution procedure:

(a) Declarant's Right to Cure. In the event that the Association, the Board, or any Owner or Owners (collectively, "Claimant") claim, contend, or allege that any portion of the Units or other portion of the Properties and/or any Existing Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors, or subcontractors (collectively, "Declarant's Agents") were negligent in the planning, design, engineering, grading, construction, or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, cure, repair, and/or replace such Alleged Defect as set forth herein.

(b) Notice to Declarant. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, as follows:

Goose Development, LLC
950 Seven Hills Drive
Henderson, Nevada 89052
Attention: Michael O'Leary

or such other address as may be designated from time to time by Declarant unilaterally by Recorded instrument(s), of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Cure, Repair and/or Replace. Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any portion of the Common Element and/or any Unit, and/or any Existing Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing, and/or replacing such Alleged Defect. In conducting such inspection, cure, repairs, and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect, or (b) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect, and (ii) Declarant has, within one hundred twenty (120) days after its receipt of such Notice of Alleged Defect, either (1) failed to cure, repair, or replace such Alleged Defect or (2) if such Alleged Defect can not reasonably be cured, repaired, or replaced within such one hundred twenty (120) day period, failed to commence such cure, repair, or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair, or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair, or replacement of the Alleged Defect, Claimant shall not stop, restrict, hinder, interrupt, or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents, or independent contractors, to inspect, cure, repair, or replace any Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.

(e) No Additional Obligations, Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, cure, repair, or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units and/or the Existing Improvements constructed thereon, nor shall anything set forth in this Article constitute an express or implied representation, warranty or guarantee by Declarant concerning any Existing Improvements, the Properties, or the Project. The right of Declarant to enter, inspect, cure, repair, and/or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of the Clark County Recorder.

(f) NRS Chapter 40. The terms, conditions and procedures set forth in this Article 16 are in addition to the terms, conditions and procedures set forth in NRS Chapter 40, and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and/or commencing an action under Chapter 40 for "construction defects" as defined in Chapter 40; provided, however, the procedures set forth in this Article 16 shall not abrogate any of the requirements of Claimant under Chapter 40, inclusive of the requirement that Claimant, at the end of the foregoing one hundred twenty (120) day period, notify Declarant in writing of any alleged construction defects which Declarant failed to cure during that one hundred twenty (120) day period at least sixty (60) days prior to bringing an action under Chapter 40 (subject to the limitations contained in Section 16.2 hereof). Such notification shall be given in a format that substantially complies with the notice requirements set forth in NRS 40.645. Further, to the extent any provisions of this Article 16 are inconsistent with the provisions of Chapter 40, the provisions of this Article 16 shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in Section 11 of Chapter 40 until expiration of the one hundred twenty (120) day

period set forth in this Article 16. It is the express intent of Declarant to provide, by this Article 16, an initial one hundred twenty (120) day period for Declarant to investigate and cure any construction defects alleged by Claimant before the provisions of Chapter 40 are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Chapter 40. Each Owner, by acquiring title to a Unit or any other portion of the Properties, as evidenced by recordation of a deed to Owner describing that land, agrees to be bound by all of the provisions of this Article 16.

Section 16.2 Arbitration of Disputes. DECLARANT AND EACH CLAIMANT, BY ACCEPTING TITLE TO OR AN INTEREST IN ANY PORTION OF THE PROJECT, AGREE AS FOLLOWS:

(a) FOR PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS SHALL APPLY:

(i) "DECLARANT" SHALL MEAN THE ENTITY EXECUTING THIS DECLARATION AND ITS RESPECTIVE PREDECESSORS, SUCCESSORS, SUBSIDIARIES, AND/OR AFFILIATED CORPORATIONS, PARENT COMPANIES, SISTER COMPANIES, DIVISIONS, OR OTHER ENTITIES, PARTNERS, JOINT VENTURERS, THE GENERAL CONTRACTOR FOR THE PROJECT, AFFILIATES, OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS, AND ASSIGNS.

(ii) "CLAIMANT" SHALL INCLUDE ALL OWNERS, THE ASSOCIATION, THE BOARD AND THEIR SUCCESSORS, HEIRS, ASSIGNS, SUBSEQUENT OWNERS, AND ANY THIRD PARTY CLAIMING ANY RIGHT OR INTEREST IN THE PROPERTY THROUGH THE FOREGOING.

(iii) "PROPERTY" SHALL MEAN THE LAND AND IMPROVEMENTS, WHICH ARE THE SUBJECT OF THIS DECLARATION, INCLUDING, WITHOUT LIMITATION, THE UNITS AND THE COMMON ELEMENTS.

(iv) "PROJECT" SHALL MEAN THE COMMON-INTEREST COMMUNITY WHICH IS THE SUBJECT OF THIS DECLARATION, INCLUDING THE PROPERTY, THE COMMON ELEMENTS, AND ANY NEIGHBORING OR ADJACENT PROPERTIES.

(b) ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES, OR DISPUTES (EACH A "DISPUTE") BY, BETWEEN OR AMONG ANY CLAIMANT ON THE ONE HAND, AND DECLARANT AND/OR ANY OF DECLARANT'S AGENTS ON THE OTHER HAND, EXCEPT FOR DISPUTES SUBJECT TO ARBITRATION PURSUANT TO THE EXPRESS LIMITED WARRANTY, ARISING OUT OF OR RELATED TO THE PROPERTY OR THE PROJECT OR THE SALE OF ANY PORTION OF THE PROJECT BY DECLARANT OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING, WITHOUT LIMITATION, ANY DISPUTE OVER (i) THE DISPOSITION OF ANY DEPOSITS, (2) BREACH OF CONTRACT, (3) NEGLIGENCE OR INTENTIONAL MISREPRESENTATION OR FRAUD, (4) NONDISCLOSURE, (6) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (5) ANY CLAIM RELATED TO CONSTRUCTION OR INSTALLATION OF ANY IMPROVEMENTS ON THE PROPERTY OR PROJECT, THE GRADING OF THE PROPERTY OR PROJECT, OR ANY WORK OR SERVICES PERFORMED BY OR ON BEHALF OF DECLARANT OR IN CONNECTION WITH THE PROPERTY OR PROJECT, INCLUDING, WITHOUT LIMITATION, CLAIMS OF ANY ALLEGED DEFECT

(INCLUDING, WITHOUT LIMITATION, DISPUTES SUBJECT TO THE PROVISIONS OF NRS 40.680 TO 40.696 (AS SAME MAY BE AMENDED FROM TIME TO TIME, THE "CONSTRUCTION DEFECT ACT"), OR (7) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION HEREOF OR OF ANY AGREEMENT BY, BETWEEN OR AMONG SUCH PARTIES, OR ANY DEFENSE RELATED THERETO, INCLUDING, WITHOUT LIMITATION, ALLEGATIONS OF UNCONSCIONABLE, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEEDURES SET FORTH IN THIS PARAGRAPH. FOR CLAIMS SUBJECT TO THE CONSTRUCTION DEFECT ACT, BEFORE ANY SUCH DISPUTE CAN BE SUBMITTED TO ARBITRATION, THE CLAIMANT SHALL, AT LEAST SIXTY (60) DAYS PRIOR TO FILING A DEMAND FOR ARBITRATION, GIVE DECLARANT WRITTEN NOTICE OF THE DISPUTE DESCRIBING WITH REASONABLE SPECIFICITY THE ACTIONS THAT SHOULD BE TAKEN BY DECLARANT TO RESOLVE THE DISPUTE. THIS SIXTY (60) DAY NOTICE SHALL COMPLY WITH THE REQUIREMENTS OF NRS 40.645. THE PROVISIONS OF THIS SECTION ARE INTENDED TO BE BINDING UPON CLAIMANT AND DECLARANT FOR ALL CLAIMS REGULATED BY THE CONSTRUCTION DEFECT ACT, AFTER ALL THE REQUIREMENTS OF NRS 40.645 TO 40.675 FOR RESOLUTION OF THE DISPUTE PRIOR TO COMMENCEMENT OF A CIVIL ACTION HAVE BEEN SATISFIED OR WAIVED BY CLAIMANT AND DECLARANT IN ACCORDANCE WITH SAID STATUTES AND IN PLACE AND INSTEAD OF ANY COURT ACTION DESCRIBED THEREIN, THIS ARBITRATION AGREEMENT SHALL BE DEEMED TO BE SELF-EXECUTING ENFORCEABILITY OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OR THE VALIDITY OF THIS AGREEMENT, OR THIS SECTION, OR THE SCOPE OF ARBITRABLE ISSUES HEREUNDER, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING, WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS SECTION AND NOT BY A COURT OF LAW. ANY AND ALL SUCH DISPUTES SHALL BE SUBMITTED TO BINDING ARBITRATION BY AND PURSUANT TO THE RULES OF CONSTRUCTION ARBITRATION SERVICES, INC. (HEREINAFTER, "CAS") IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION. IN THE EVENT CAS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY TO APPOINT SUCH AN ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE ARBITRATION SERVICE IN EFFECT AT THE TIME OF THE INITIATION OF THE ARBITRATION SHALL BE FOLLOWED.

(c) GENERAL ARBITRATION PROVISIONS.

(i) THIS DECLARATION INVOLVES AND CONCERNS INTERSTATE COMMERCE AND IS GOVERNED BY THE PROVISIONS OF THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, ET SEQ.) NOW IN EFFECT AND AS THE SAME MAY FROM TIME TO TIME BE AMENDED, TO THE EXCLUSION OF ANY DIFFERENT OR INCONSISTENT STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE. ACCORDINGLY, ANY AND ALL DISPUTES SHALL BE ARBITRATED - WHICH ARBITRATION SHALL BE MANDATORY AND BINDING - PURSUANT TO THE FEDERAL ARBITRATION ACT.

(ii) TO THE EXTENT THAT ANY STATE OR LOCAL LAW, ORDINANCE, REGULATION, OR JUDICIAL RULE SHALL BE INCONSISTENT WITH ANY PROVISION OF THE RULES OF THE ARBITRATION SERVICE UNDER WHICH THE ARBITRATION PROCEEDING SHALL BE CONDUCTED, THE LATTER RULES SHALL GOVERN THE CONDUCT OF THE PROCEEDING.

(iii) THIS PARAGRAPH SHALL INURE TO THE BENEFIT OF, AND BE ENFORCEABLE BY, DECLARANT AND EACH OF DECLARANT'S AGENTS, INCLUDING, WITHOUT LIMITATION, ANY OF DECLARANT'S SUBCONTRACTORS, AGENTS, VENDORS, SUPPLIERS, DESIGN PROFESSIONALS, INSURERS AND ANY OTHER PERSON WHOM ANY CLAIMANT CONTENDS IS RESPONSIBLE FOR ALL OR ANY PORTION OF A DISPUTE.

(iv) IN THE EVENT ANY DISPUTE IS SUBMITTED TO ARBITRATION, EACH PARTY SHALL BEAR ITS OWN ATTORNEY'S FEES AND COSTS (INCLUDING EXPERT COSTS) FOR THE ARBITRATION.

(v) THE ARBITRATOR SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE DECISION OF THE ARBITRATOR SHALL BE FINAL AND BINDING. BUYER AND DECLARANT EXPRESSLY AGREE THAT AN APPLICATION TO CONFIRM, VACATE, MODIFY, OR CORRECT AN AWARD RENDERED BY THE ARBITRATOR SHALL BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY.

(vi) THE PARTICIPATION BY ANY PARTY IN ANY JUDICIAL OR OTHER PROCEEDING RELATING TO ANY MATTER ARBITRABLE HEREUNDER SHALL NOT BE ASSERTED OR ACCEPTED AS A REASON TO DELAY OR TO REFUSE TO PARTICIPATE IN ARBITRATION HEREUNDER, OR TO REFUSE TO ENFORCE THIS PARAGRAPH.

(vii) THE FEES TO INITIATE THE ARBITRATION SHALL BE ADVANCED BY DECLARANT. SUBSEQUENT FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR SHALL BE BORNE EQUALLY BY THE PARTIES TO THE ARBITRATION; PROVIDED, HOWEVER, THE FEES AND COSTS OF THE ARBITRATION AND/OR THE ARBITRATOR ULTIMATELY SHALL BE BORNE AS DETERMINED BY THE ARBITRATOR.

(viii) THE ARBITRATOR APPOINTED TO SERVE SHALL BE A NEUTRAL AND IMPARTIAL INDIVIDUAL.

(ix) THE VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY UNLESS THE PARTIES AGREE IN WRITING TO ANOTHER LOCATION.

(x) IF ANY PROVISION OF THIS PARAGRAPH SHALL BE DETERMINED TO BE UNENFORCEABLE OR TO HAVE BEEN WAIVED, THE REMAINING PROVISIONS SHALL BE DEEMED TO BE SEVERABLE THEREFROM AND ENFORCEABLE ACCORDING TO THEIR TERMS.

(xi) IN THE EVENT THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY AND/OR IS HELD INVALID, VOID OR UNENFORCEABLE FOR ANY REASON, EACH CLAIMANT AND DECLARANT AGREE, BY ACCEPTANCE OF A DEED TO A UNIT, THAT ALL DISPUTES RELATING TO THE PROPERTY AND/OR THE PROJECT SHALL BE TRIED

BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION IN THE COUNTY, WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD DAMAGES. EACH CLAIMANT, BY ACCEPTANCE OF A DEED TO A UNIT HEREBY WAIVES AND COVENANTS NOT TO ASSERT ANY CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTE, INCLUDING, WITHOUT LIMITATION, DISPUTES RELATING TO DESIGN AND CONSTRUCTION DEFECTS NOT COVERED UNDER THE EXPRESS LIMITED WARRANTY, AND MISREPRESENTATION FOR FAILURE TO DISCLOSE MATERIAL FACTS. EACH CLAIMANT, BY ACCEPTANCE OF A DEED TO A UNIT COVENANTS AND AGREES THAT THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON EACH CLAIMANT'S AND DECLARANT'S RESPECTIVE SUCCESSORS AND ASSIGNS AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF SUCH PERSON(S) OR THEIR SUCCESSORS AND ASSIGNS.

ARTICLE 17 ADDITIONAL PROVISIONS

Section 17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until terminated in accordance with NRS § 116.2118.

Section 17.2 Effect of Provisions of Declaration. Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration (i) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in the Properties or in any Unit is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument; (ii) shall, by virtue of acceptance of any right, title or interest in the Properties or in any Unit by an Owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, and shall be binding on such Owner and such Owner's heirs, personal representatives, successors and assigns to, with and for the benefit of the Association and with and for the benefit of any other Owner; (iii) shall be deemed a real covenant by Declarant for itself, its successors and assigns and also an equitable servitude, running, in each case, as a burden with and upon the title to the Properties and each Unit for the benefit of the Properties and each Unit; and (iv) shall be deemed a covenant, obligation and restriction secured by a lien in favor of the Association, burdening and encumbering the title to the Properties and each Unit in favor of the Association.

Section 17.3 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties hereby consents and agrees, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Properties, or any portion thereof.

Section 17.4 Enforcement. Subject to Sections 5.2 and 5.3 above, and 17.16 through 15.18 inclusive, below, the Governing Documents may be enforced by the Association as follows:

(a) Enforcement shall be subject to the overall "good neighbor" policy underlying and controlling this Declaration and this Community (in which the Owners seek to enjoy a quality lifestyle), and the fundamental governing policy of courtesy and reasonableness.

(b) Breach of any of the provisions contained in this Declaration or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorney's fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material, unreasonable and continuing failure by the Association to comply with material and substantial provisions of this Declaration, or of the Bylaws or Articles.

(c) The Association shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Specific Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use Common Elements, (other than ingress and egress over Private Streets, by the most reasonably direct route, to the Unit), subject to the following:

(i) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in a Recorded document) of the provision and the alleged violation for at least thirty (30) days before the alleged violation; and

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after actual notice of such violation has been given to such Owner or Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(iii) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his or her Unit by the most reasonably direct route over and across the relevant streets;

(iv) no fine imposed under this Section may exceed the maximum amount(s) permitted from time to time by applicable provision of Nevada law for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2, 5.3, and/or 5.8 above);

(v) if any such Specific Assessment imposed by the Association on an Owner or Resident by the Association is not paid or reasonably disputed in writing delivered to the Board by such Owner or Resident (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after

written notice of the imposition thereof, then such Specific Assessment shall be enforceable pursuant to Articles 6 and 7 above, and

(v) subject to Section 5.3 above and Section 17.18 below, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(d) **Responsibility for Violations.** Should any Resident violate any material provision of the Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion in a "good neighbor" manner, followed (if the dispute continues) by informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator). Fines or suspension of voting privileges shall be utilized only as a "last resort", after all reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

(e) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(f) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(g) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(h) If any Owner, his or her Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Specific Assessment upon such Owner for each violation and, if any such Specific Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner. Such Specific Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Specific Assessment or suspension.

Section 17.5. Amendment. Except as otherwise provided in this Declaration, and except in cases of amendments that may be executed by a Declarant or by the Association or by certain Owners (as enumerated in NRS §116.2117), this Declaration, including the Plat, may only be amended by both: (a) the affirmative vote and/or written consent of Owners constituting at least two-thirds (2/3) of the total voting power of the Association, and (b) the written consent of at least

a majority of the total voting power of the Board. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by at least sixty-seven percent (67%) of the Eligible Holders at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned:

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles 7, 10, 11, and 12 hereof.

(b) Any amendment which would necessitate a Mortgagee, after it has acquired a Unit through foreclosure, to pay more than its proportionate share of any unpaid Assessment or Assessments accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article 11 hereof, or to the application of insurance proceeds as set out in Article 11 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit, in any manner inconsistent with the provisions of the Declaration.

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Unit is proposed to be sold, transferred or otherwise conveyed.

(g) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; and (vii) Assessments, Assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association to the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding; or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §116.31123 and §116.31135.

A copy of each amendment shall be certified by at least two (2) Officers, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) Officers, that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate

reflecting any termination or amendment which requires the written consent of any of the Eligible Holders of first Mortgages shall include a certification that the requisite approval of such Eligible Holders has been obtained. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

Notwithstanding all of the foregoing, for so long as Declarant owns a Unit, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibit hereto, to make, and to process through appropriate governmental authority, minor revisions to the Plat, and otherwise to ensure that the Declaration conforms with the requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Community, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his or her successors and assigns, to unilaterally execute and Record, and to make, and to process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion.

If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the change made.

Section 17.6 Non-Avoidance. No Owner through non-use or abandonment of his or her Unit may avoid the burdens imposed on such Owner by this Declaration.

Section 17.7 No Public Right of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.8 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 17.9 Protection of Encumbrances. Notwithstanding any other provision hereof, no amendment, violation, breach of, or failure to comply with any provision of this Declaration and no action to enforce any such provision shall affect, defeat, render invalid or impair the lien of any Mortgage, deed of trust or other lien on any Unit taken in good faith and for value and recorded prior to the time of Recording of notice of such amendment, violation, breach or failure to comply. Any subsequent Owner of such Unit shall, however, take subject to this Declaration, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

Section 17.10 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular

shall include the plural and the plural the singular, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.11 Severability. Invalidation of any portion or provision of this Declaration by judgment or court order shall in no way affect any other portions and provisions, which shall remain in full force and effect to the maximum extent possible.

Section 17.12 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.13 Priorities and Inconsistencies. Subject to Section 5.8 above, and Section 17.16 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto); (c) in the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.14 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, neither Declarant nor Association, and/or none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.15 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's sale of Units in the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.16 Compliance with Applicable Law. Notwithstanding any other provision set forth herein, it is the intent of Declarant that this Declaration and the other Governing Documents shall be enforceable pursuant to their respective terms, to the maximum extent permissible under the Act or other applicable law. Without limiting the foregoing, in the event any provision of this Declaration or other Governing Document is found to irreconcilably violate any applicable provision of the Act, or other applicable law, or any section respectively thereof, such violating provision of the relevant Governing Document shall be deemed automatically modified (or deleted, if necessary) to the minimum extent necessary to conform to the Act and/or other applicable law.

Section 17.17 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) to promptly provide Declarant with specific written notice from time to time of any improvement requiring correction or repair(s) for which Declarant

is or may be responsible, and (b) following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant improvement, and to take reasonable steps, if necessary or appropriate, to undertake and to perform corrective or repair work, and (c) to reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith and/or to undertake and to perform such inspection and such work; and (d) that Declarant shall unconditionally be entitled (i) to specific prior written notice of any such corrective or repair work requested (and shall not be held responsible for any corrective or repair work in the absence of such written notice), (ii) to inspect the relevant improvement, and (iii) to take reasonable steps, in Declarant's reasonable judgment, to undertake and to perform any and all necessary or appropriate corrective or repair work. The foregoing portion of this Section 17.17 shall not be deemed to modify or toll any applicable statute of limitation or repose, or any contractual or other limitation pertaining to such work.

Section 17.18 Arbitration. Any dispute that may arise between the Association, subject to the procedural requirements set forth in Section 5.3, above, and/or Owner of a Unit, and Declarant or any person or entity who was involved in the construction of any Common Element or any Unit shall be resolved by submitting such dispute to arbitration before a mutually acceptable arbitrator who will render a decision binding on the parties which can be entered as a judgment in court pursuant to NRS 38.000 et. seq. The arbitration shall be conducted according to the provisions of the Construction Industry Arbitration Rules of the American Arbitration Association. If the parties to the dispute fail to agree upon an arbitrator within forty-five (45) days after an arbitrator is first proposed by the party initiating arbitration, either party may petition the American Arbitration Association for the appointment of an arbitrator. Declarant has the right to assert claims against any contractor, subcontractor, person or entity, who may be responsible for any matter raised in the arbitration and to name said contractor, subcontractor, person, or entity as an additional party to the arbitration. Upon selection or appointment of the arbitrator, the parties shall confer with the arbitrator who shall establish a discovery schedule which shall not extend beyond ninety (90) days from the date the arbitrator is selected or appointed unless for good cause shown such period is extended by the arbitrator or such period is extended by the consent of the parties. If Declarant asserts a claim against a contractor, subcontractor, person, or entity, the discovery period may be extended, at the discretion of the arbitrator, for a period not to exceed one hundred twenty (120) days. The arbitration of a dispute between or among the Declarant, the Association, or any Owner of a Unit shall not be consolidated with any other proceeding unless Declarant chooses to consolidate the same with another similar proceeding brought by the Association or any Owner of a Unit. The arbitrator shall convene the arbitration hearing within one hundred twenty days (120) from the time the arbitrator is selected or appointed. Upon completion of the arbitration hearing, the arbitrator shall render a decision within ten (10) days. The date for convening the hearing may be adjusted by the arbitrator to accommodate extensions of discovery and the addition of parties or by consent of the parties. However, unless extraordinary circumstances exist, the hearing shall be convened no later than one hundred eighty (180) days from the date the arbitrator is appointed. To the extent practicable, any hearing convened pursuant to this provision shall continue, until completed, on a daily basis. The prevailing party shall be entitled to recover its attorney's fees and costs. The costs of the arbitration shall be borne equally by the parties thereto.

Section 17.19 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

Section 17.20 Further Assurances. The Association and each Owner hereby agree to do such further acts and execute and deliver such further instruments as may reasonably be required to effectuate the intent of this Declaration.

ARTICLE 18 ARCHITECTURAL CONTROL

Section 18.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until the end of the Declarant Rights Period; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 18.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 18, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including the right to inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, relocation, exterior repaving, installation, modification, or reconstruction of any improvement, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted by an Owner ("Applicant") to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The ARC shall approve plans and specifications submitted for its approval only if the ARC deems, in its business judgment, that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholeness, and attractiveness of the Common Elements or the enjoyment thereof by the Members; and (4) the upkeep and maintenance will not become a burden on the Association; and (5) the plans and specifications are subject to and comply with the noise abatement provisions set forth in this Declaration.

(b) The ARC may condition its review and/or approval of plans and specifications for any improvement upon any one or more of all of the following conditions: (1) such changes therein as the ARC deems appropriate; (2) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the improvement; (3) agreement of the Applicant to reimburse the Association for the costs of maintenance; (4) agreement of the Applicant to submit "as-built" record drawings certified by a licensed architect or engineer which describe the improvements in detail as actually constructed upon completion of the improvement; (5) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; and/or (6) agreement by the Applicant to furnish to the ARC a cash deposit or other security acceptable to the ARC in an amount reasonably sufficient to

(A) assure the completion of such improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions occurring as a result of the partial completion of such improvement, and (B) to protect the Association and the other Owners against mechanics liens or other encumbrances which may be recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (7) payment, by Applicant, of the professional fees of a licensed architect or engineer to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (8) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications.

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans and specifications submitted for approval. Any application submitted pursuant to this Section 18.2 shall be deemed disapproved, unless written approval shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the ARC of all required materials. The ARC will condition any approval required in this Article 18 upon among other things, compliance with Declarant's Architectural Guidelines, as amended from time to time, all of which are incorporated herein by this reference.

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggravating the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall extend only to the external appearance or "aesthetics" of any improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Units.

Section 18.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 18.8 below. In the absence of such designation, the vote

of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 18.4 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 18.5 Compensation of Members. Subject to the provisions of Section 18.2(D) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC.

Section 18.6 Correction by Owner of Nonconforming Items. Subject to all applicable requirements of governmental authority, ARC inspection (which shall be limited to inspection of the visible appearance of the size, color, location and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows:

(a) The ARC or its duly appointed representative shall have the right to inspect any improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of improvement has been completed. If, as a result of such inspection, the ARC finds that such improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 18 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Specific Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying improvement or otherwise to remedy the noncompliance shall be in

addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(g) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the improvement shall be deemed to be in compliance with ARC requirements (but of course shall remain subject to all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within ninety (90) days of the date on which the work commenced.

Section 18.7 Scope of Review. The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 18.2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all governmental (including, but not necessarily limited to City) requirements.

Section 18.8 Variances. When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, and must be signed by a majority of the Board of Directors, and shall become effective upon execution by a majority of the

Board of Directors. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any such variance by ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereby covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations and requirements affecting the use of his or her Unit, including but not limited to zoning ordinances and setback lines or requirements imposed by the City, or other public authority with jurisdiction. The granting of a variance by the ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

Section 18.9 Nonliability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 18.10 Architectural Guidelines. The ARC, in its sole discretion, from time to time, may promulgate Architectural and Landscape Standards and Guidelines for the Community.

Section 18.11 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 18 shall not apply to improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a Purchaser, to Units owned by Declarant. This Article 18 shall not be amended without Declarant's written consent set forth on the amendment.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first written above.

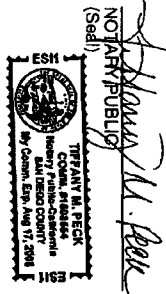
DECLARANT:

GOOSE DEVELOPMENT, LLC,
a Nevada limited liability company,
By: TREETOPS MANAGEMENT, LLC,
a Nevada limited liability company, its Manager

By: 
Todd A. Jinkes, Manager

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///
///
///
///

State of Nevada, ss. *California*
COUNTY OF CLARK, ss. *San Diego*
This instrument was acknowledged before me on this 17th day of June, 2005,
by Todd A. Miles, as Manager of TREETOPS MANAGEMENT, LLC, a Nevada limited liability
company, as Manager of GOOSE DEVELOPMENT, LLC, a Nevada limited liability company.



ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA,
DESCRIBED AS FOLLOWS:

EXHIBIT "A"
PROPERTIES

1. All of the real property shown by final map of **HORIZONS AT SEVEN HILLS RANCH**, as filed June 29, 2005, in Book 125 of Plats, Page 0058, Official Records, Clark County, Nevada (hereinafter, "Plat");
2. COMMON ELEMENTS appurtenant thereto, as shown by the Plat;
3. LIMITED COMMON ELEMENTS appurtenant to the Units described in paragraph 1 above;
4. UNDIVIDED ALLOCATED FRACTIONAL INTERESTS of Owners of said Units, as tenants in common ("Allocated Interests"), with all other Owners of Units, in and to the Common Elements as shown on the Plat and as set forth in the foregoing Declaration, pursuant to the following paragraph 5), subject to this Declaration, including the following portions of this Exhibit "A":

5. AS ALL AND/OR EACH OF THE FOREGOING ARE SUBJECT TO:

- (a) fee simple interests of individual Owners in and to their respective Units (and Garages appurtenant thereto); and
 - (b) non-exclusive easements of ingress, egress, and/or enjoyment, for the benefit of Declarant, Association, and/or all Owners within the Properties (and in accordance with and subject to the foregoing Declaration); and
 - (c) rights to use, possession, and occupancy, of Limited Common Elements as shown by the Plat (and in accordance with and subject to the foregoing Declaration).
8. A non-exclusive easement of ingress, egress, and/or enjoyment over, across and of, all Private Streets, Common Recreational Area, and all other Common Elements, pursuant and subject to the foregoing Declaration.

[Declarant reserves the right from time to time to unilaterally record supplements to this Exhibit "A," setting forth the legal descriptions of any plat map and/or to unilaterally supplement, delete, or otherwise modify or record all or any part(s) of the foregoing descriptions.]

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
4760 South Pecos Road, Suite 203
Las Vegas, Nevada 89121
(702) 966-6388

(form GO 041) (CONV/CCRS 03 wpd)

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 HORIZONS AT SEVEN HILLS
3 HOMEOWNERS ASSOCIATION,

4 Appellant,

5 v.

6 IKON HOLDINGS, LLC, a Nevada
7 limited liability company,

8 Respondent.

Supreme Court No. 63178

District Court Case No. A-11-647850-B

Electronically Filed
Nov 21 2013 10:31 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

10 **APPELLANT'S APPENDIX**

11 **VOLUME 4 OF 11**

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Ex.	Pleading	Date	Vol.	Pages
2	Answer to Complaint	11/3/2011	I	0099-0105
16	Appendix of Exhibits to Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	1002-1172
7	Business Court Order	12/8/2011	IV	0781-0785
1	Complaint	9/6/2011	I	0001-0098
49	Correspondence dated 3/28/13 re: Proposed Final Judgment	4/10/2013	X	2114-2140
10	Court Minutes: Decision re: Plaintiff's Motion for Partial Summary Judgment & Defendant's Countermotion	12/16/2011	IV	0833-0834
9	Court Minutes: All Pending Motions	12/12/2011	IV	0831-0832
27	Court Minutes: All Pending Motions	3/12/2012	VII	1538-1539
34	Court Minutes: All Pending Motions	5/7/2012	VIII	1755
38	Court Minutes: All Pending Motions	6/11/2012	IX	1888
63	Court Minutes: All Pending Motions	6/3/2013	XI	2464
48	Court Minutes: Bench Trial	3/12/2013	X	2112-2113
46	Court Minutes: Calendar Call	2/19/2013	IX	2101
30	Court Minutes: Decision	3/28/2012	VII	1550
40	Court Minutes: Decision	6/22/2012	IX	1893
11	Court Minutes: Mandatory Rule 16 Conference	1/9/2012	IV	0835-0836
25	Court Minutes: Minute Order	3/7/2012	VII	1511-1512
64	Court Minutes: Minute Order – Decisions re: 6/3/13 Motion for Attorney Fees and Costs	6/28/2013	XI	2465
43	Court Minutes: Motion for Reconsideration	7/12/2012	IX	2081-2082
60	Court Minutes: Motion to Retax	5/28/2013	XI	2427
29	Decision	3/28/2012	VII	1547-

				1549
39	Decision	6/22/2012	IX	1889-1892
65	Decision	6/28/2013	XI	2466-2470
56	Defendant's Case Appeal Statement	5/8/2013	X	2328-2331
70	Defendant's Case Appeal Statement	9/5/2013	XI	2505-2508
15	Defendant's Motion for Clarification or, in the alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	2/6/2012	V	0975-1001
37	Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	6/8/2012	VIII-IX	1774-1887
52	Defendant's Motion to Retax Costs	4/25/2013	X	2173-2186
69	Defendant's Notice of Appeal and Notice of Related Case	9/5/2013	XI	2485-2504
55	Defendant's Notice of Appeal and Notice of Related Cases	5/8/2013	X	2253-2327
57	Defendant's Notice of Filing Cost Bond on Appeal	5/10/2013	X	2332-2337
59	Defendant's Opposition to Motion for Attorney's Fees and Costs	5/24/2013	XI	2377-2426
5	Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment and Counter-Motion for Summary Judgment	11/30/2011	III-IV	0544-0756
18	Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Counter-Motion for Summary Judgment	2/14/2012	VI-VII	1181-1433
33	Defendant's Opposition to Plaintiff's Third Motion for Summary Judgment / Countermotion for Summary Judgment	4/25/2012	VIII	1668-1754
23	Defendant's Reply In Support of Motion for Clarification or, in the alternative, Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	3/6/2012	VII	1486-1507

42	Defendant's Reply in Support of Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/9/2012	IX	1952-2080
36	Defendant's Reply Memorandum in Support of Countermotion for Summary Judgment	6/4/2012	VIII	1766-1773
22	Defendant's Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment	3/6/2012	VII	1477-1485
50	Final Judgment	4/11/2013	X	2141-2168
53	Final Judgment	5/1/2013	X	2187-2212
17	Joint Case Conference Report	2/10/2012	VI	1173-1180
47	Joint Pre-Trial Memorandum	3/11/2013	IX	2102-2111
68	Judgment	8/18/2013	XI	2481-2484
54	Motion for Attorney Fees and Costs	5/2/2013	X	2213-2252
66	Order Denying Motion to Retax Costs	7/3/2013	XI	2471-2475
32	Order Denying Plaintiff's Motion for Summary Judgment/Order Granting Defendant's Countermotion for Summary Judgment	4/16/2012	VIII	1661-1667
71	Order for Return of Monies on Deposit	9/9/2013	XI	2509-2510
28	Order re: Defendant's Motion for Clarification	3/16/2012	VII	1540-1546
45	Order re: Defendant's Motion for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief	7/24/2012	IX	2095-2100
67	Order re: Plaintiff's Motion for Attorney Fees and Costs and Defendant's Motion to Retax Costs	7/23/2013	XI	2476-2480
14	Order re: Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief	1/19/2012	V	0967-0974

	and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief			
44	Order re: Plaintiff's Motion for Summary Judgment on Declaratory Relief and Defendant's Counter-Motion for Summary Judgment	7/20/2012	IX	2083-2094
13	Order re: Rule 16 Conference	1/18/2012	V	0964-0966
24	Order Setting Civil Non-Jury Trial and Calendar Call	3/6/2012	VII	1508-1510
51	Plaintiff's Memorandum of Costs and Disbursements	4/16/2013	X	2169-2172
4	Plaintiff's Motion for Partial Summary Judgment on Issue of Declaratory Relief	11/7/2011	I-III	0108-0543
12	Plaintiff's Motion for Summary Judgment	1/16/2012	IV-V	0837-0963
31	Plaintiff's Motion for Summary Judgment on Issue of Declaratory Relief	3/30/2012	VII-VIII	1551-1660
19	Plaintiff's Opposition to Motion for Clarification or in the alternative for Reconsideration of Order Granting Summary Judgment	2/27/2012	VII	1434-1472
41	Plaintiff's Opposition to Motion for Reconsider [sic] of Order Granting Summary Judgment on Claim of Declaratory Relief	6/27/2012	IX	1894-1951
58	Plaintiff's Opposition to Motion to Retax Costs	5/23/2013	X-XI	2338-2376
62	Plaintiff's Reply to Opposition to Motion for Attorney Fees and Costs	5/29/2013	XI	2444-2463
35	Plaintiff's Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	5/18/2012	VIII	1756-1765
3	Plaintiff's Request to Transfer to Business Court	11/4/2011	I	0106-0107
61	Plaintiff's Supplement to Memorandum of Costs and Disbursements	5/29/2013	XI	2428-2443
26	Recorder's Transcript of Proceedings: Plaintiff's Motion for Summary	3/12/2012	VII	1513-1537

	Judgment/Defendant's Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment			
6	Reply to Opposition to Motion for Partial Summary Judgment on Issue of Declaratory Relief & Opposition to Counter Motion for Summary Judgment	12/7/2011	III-IV	0757-0780
21	Scheduling Memo	2/28/2012	VII	1476
20	Scheduling Order	2/28/2012	VII	1473-1475
8	Transcript of Proceedings: Motions	12/12/2011	IV	0786-0830

- 7 -

1 practicable to be compatible with the style of the common-interest
2 community.

3 4. An association may not unreasonably restrict, prohibit or
4 withhold approval for a unit's owner to add shutters to improve the
5 security of the unit or to reduce the costs of energy for the unit,
6 including, without limitation, rolling shutters, that are attached to a
7 portion of an interior or exterior window, interior or exterior door or
8 interior or exterior wall which is not part of the unit and which is a
9 common element or limited common element if:

10 (a) The portion of the window, door or wall to which the
11 shutters are attached is adjoining the unit; and

12 (b) The shutters must necessarily be attached to that portion of
13 the window, door or wall during installation to achieve the
14 maximum benefit in improving the security of the unit or reducing
15 the costs of energy for the unit.

16 5. If a unit's owner adds shutters pursuant to subsection 4, the
17 unit's owner is responsible for the maintenance of the shutters.

18 6. For the purposes of subsection 4, a covenant, restriction or
19 condition which does not unreasonably restrict the addition of
20 shutters and which is contained in the governing documents of a
21 common-interest community or a policy established by a common-
22 interest community is enforceable so long as the covenant,
23 restriction or condition was:

24 (a) In existence on July 1, 2009; or

25 (b) Contained in the governing documents in effect on the close
26 of escrow of the first sale of a unit in the common-interest
27 community.

28 7. A unit's owner may not add to the unit a system that uses
29 wind energy as described in subparagraph 4 of paragraph (c) of
30 subsection 2 unless the unit's owner first obtains the written consent
31 of each owner of property within 300 feet of any boundary of the
32 unit.

33 Sec. 3. NRS 116.3102 is hereby amended to read as follows:

34 116.3102 1. Except as otherwise provided in this section, and
35 subject to the provisions of the declaration, the association may do
36 any or all of the following:

37 (a) Adopt and amend bylaws, rules and regulations.

38 (b) Adopt and amend budgets for revenues, expenditures and
39 reserves and collect assessments for common expenses from the
40 units' owners.

41 (c) Hire and discharge managing agents and other employees,
42 agents and independent contractors.

43 (d) Institute, defend or intervene in litigation or administrative
44 proceedings in its own name on behalf of itself or two or more units'
45 owners on matters affecting the common-interest community.



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- 1 (e) Make contracts and incur liabilities. Any contract between
- 2 the association and a private entity for the furnishing of goods or
- 3 services must not include a provision granting the private entity the
- 4 right of first refusal with respect to extension or renewal of the
- 5 contract.
- 6 (f) Regulate the use, maintenance, repair, replacement and
- 7 modification of common elements.
- 8 (g) Cause additional improvements to be made as a part of the
- 9 common elements.
- 10 (h) Acquire, hold, encumber and convey in its own name any
- 11 right, title or interest to real estate or personal property, but:
- 12 (1) Common elements in a condominium or planned
- 13 community may be conveyed or subjected to a security interest only
- 14 pursuant to NRS 116.3112; and
- 15 (2) Part of a cooperative may be conveyed, or all or part of a
- 16 cooperative may be subjected to a security interest, only pursuant to
- 17 NRS 116.3112.
- 18 (i) Grant easements, leases, licenses and concessions through or
- 19 over the common elements.
- 20 (j) Impose and receive any payments, fees or charges for the use,
- 21 rental or operation of the common elements, other than limited
- 22 common elements described in subsections 2 and 4 of NRS
- 23 116.2102, and for services provided to the units' owners, including,
- 24 without limitation, any services provided pursuant to
- 25 NRS 116.310312.
- 26 (k) Impose *collection costs and* charges for late payment of
- 27 assessments pursuant to NRS 116.3115.
- 28 (l) Impose construction penalties when authorized pursuant to
- 29 NRS 116.310305.
- 30 (m) Impose reasonable fines for violations of the governing
- 31 documents of the association only if the association complies with
- 32 the requirements set forth in NRS 116.31031.
- 33 (n) Impose reasonable charges for the preparation and
- 34 recordation of any amendments to the declaration or any statements
- 35 of unpaid assessments, and impose reasonable fees, not to exceed
- 36 the amounts authorized by NRS 116.4109, for preparing and
- 37 furnishing the documents and certificate required by that section.
- 38 (o) Provide for the indemnification of its officers and executive
- 39 board and maintain directors' and officers' liability insurance.
- 40 (p) Assign its right to future income, including the right to
- 41 receive assessments for common expenses, but only to the extent the
- 42 declaration expressly so provides.
- 43 (q) Exercise any other powers conferred by the declaration or
- 44 bylaws.



- 9 -

1 (r) Exercise all other powers that may be exercised in this State
2 by legal entities of the same type as the association.

3 (s) Direct the removal of vehicles improperly parked on property
4 owned or leased by the association, as authorized pursuant to NRS
5 487.038, or improperly parked on any road, street, alley or other
6 thoroughfare within the common-interest community in violation of
7 the governing documents. In addition to complying with the
8 requirements of NRS 487.038 and any requirements in the
9 governing documents, if ~~{a}~~ *any vehicle, regardless of the person*
10 *who owns the vehicle*, is improperly parked as described in this
11 paragraph, the association must post written notice in a conspicuous
12 place on the vehicle or provide oral or written notice to the owner or
13 operator of the vehicle at least 48 hours before the association may
14 direct the removal of the vehicle, unless the vehicle:

15 (1) Is blocking a fire hydrant ~~{}~~ or fire lane ; ~~{or parking~~
16 ~~space designated for the handicapped;}~~ or

17 (2) Poses an imminent threat of causing a substantial adverse
18 effect on the health, safety or welfare of the units' owners or
19 residents of the common-interest community.

20 (t) Exercise any other powers necessary and proper for the
21 governance and operation of the association.

22 2. The declaration may not impose limitations on the power of
23 the association to deal with the declarant which are more restrictive
24 than the limitations imposed on the power of the association to deal
25 with other persons.

26 3. Notwithstanding any provision of this chapter or the
27 governing documents to the contrary, an association may not impose
28 any assessment pursuant to this chapter or the governing documents
29 on the owner of any property in the common-interest community
30 that is exempt from taxation pursuant to NRS 361.125. For the
31 purposes of this subsection, "assessment" does not include any
32 charge for any utility services, including, without limitation,
33 telecommunications, broadband communications, cable television,
34 electricity, natural gas, sewer services, garbage collection, water or
35 for any other service which is delivered to and used or consumed
36 directly by the property in the common-interest community that is
37 exempt from taxation pursuant to NRS 361.125.

38 Sec. 4. NRS 116.3103 is hereby amended to read as follows:

39 116.3103 1. Except as otherwise provided in the declaration,
40 the bylaws, this section or other provisions of this chapter, the
41 executive board may act in all instances on behalf of the association.
42 In the performance of their duties, the officers and members of the
43 executive board are fiduciaries and shall act on an informed basis, in
44 good faith and in the honest belief that their actions are in the best
45 interest of the association. The members of the executive board are



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1 required to exercise the ordinary and reasonable care of directors of
2 a corporation, subject to the business-judgment rule.

3 2. The executive board may not act on behalf of the association
4 to amend the declaration, to terminate the common-interest
5 community, or to elect members of the executive board or determine
6 their qualifications, powers and duties or terms of office, but the
7 executive board may fill vacancies in its membership for the
8 unexpired portion of any term *if the executive board is able to*
9 *obtain a quorum pursuant to subsection 3 of NRS 116.3109* unless
10 the governing documents provide that a vacancy on the executive
11 board must be filled by a vote of the membership of the association.
12 *If the executive board is authorized to fill vacancies in its*
13 *membership pursuant to this subsection, the executive board may*
14 *not appoint to the executive board a person who has been removed*
15 *from the executive board pursuant to NRS 116.31036 within the*
16 *immediately preceding 6 years.*

17 3. *Notwithstanding the provisions of NRS 116.31175,*
18 *116.31177 and 116.3118, upon the request of a member of the*
19 *executive board, the association shall make available to the*
20 *member of the executive board, at no charge, the books, records*
21 *and other papers of the executive board and the association,*
22 *including, without limitation, records, invoices, contracts,*
23 *agreements, letters of instruction issued by the Division,*
24 *correspondence between a unit's owner and the community*
25 *manager, notices of violations, financial records, bank statements,*
26 *personnel records, employment contracts, reserve studies, notices*
27 *of delinquent assessments and notices of default and election to*
28 *sell mailed pursuant to NRS 116.31162, architectural plans and*
29 *specifications submitted by a unit's owner, minutes of executive*
30 *sessions of the executive board, voice recordings and any other*
31 *book, record or paper created by the executive board or the*
32 *association, its agents or a member of the executive board acting*
33 *in the course and scope of his or her duties as a member of the*
34 *executive board.*

35 4. *If the Commission, a mediator or an arbitrator who*
36 *conducts a mediation or arbitration pursuant to NRS 38.300 to*
37 *38.360, inclusive, or a court finds that the executive board has*
38 *committed a violation of any provision of the governing*
39 *documents, this chapter, any regulation adopted pursuant thereto*
40 *or any order of the Commission or a hearing panel, the executive*
41 *board must notify the units' owners of the findings by mailing a*
42 *statement of the findings to the mailing address of each unit*
43 *within the common-interest community or to any other mailing*
44 *address designated in writing by a unit's owner.*



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1 5. Notwithstanding any provision of this chapter or the
2 governing documents, if the executive board is unable to obtain a
3 quorum pursuant to subsection 3 of NRS 116.3109 because of
4 vacancies on the executive board, the association must, within 30
5 days, hold a meeting of the units' owners for the purpose of
6 conducting an election to fill such vacancies as necessary to
7 provide a quorum for the executive board. The meeting and
8 election must be conducted in the following manner:

9 (a) Not later than 10 days in advance of the meeting, the
10 secretary or other officer specified in the bylaws shall cause notice
11 of the meeting to be hand-delivered, sent prepaid by United States
12 mail to the mailing address of each unit or to any other mailing
13 address designated in writing by the unit's owner or, if the
14 association offers to send notice by electronic mail, sent by
15 electronic mail at the request of the unit's owner to an electronic
16 mail address designated in writing by the unit's owner. The notice
17 of the meeting must state the time and place of the meeting and
18 that the meeting is being held for the purpose of filling vacancies
19 on the executive board. The notice must include notification of the
20 right of a unit's owner to:

21 (1) Have a copy of the minutes or a summary of the
22 minutes of the meeting provided to the unit's owner upon request,
23 in electronic format at no charge to the unit's owner or, if the
24 association is unable to provide the copy or summary in electronic
25 format, in paper format at a cost not to exceed 25 cents per page
26 for the first 10 pages, and 10 cents per page thereafter.

27 (2) Speak to the association regarding the election to fill
28 vacancies on the executive board.

29 (b) At the meeting:

30 (1) A quorum of the units' owners is not required for the
31 nomination of any candidate to fill a vacancy on the executive
32 board or for the election to fill the vacancy.

33 (2) A units' owner may attend the meeting in person or by
34 proxy. The provisions of NRS 116.311 apply to the use of proxies
35 at the meeting.

36 (3) The units' owners present in person or by proxy shall
37 nominate candidates to fill such vacancies on the executive board
38 as are necessary to create a quorum for the executive board.

39 (4) After nominations are taken, the election to fill a
40 vacancy must be conducted by secret written ballot.

41 (5) The secret written ballots must be opened and counted
42 at the meeting and the candidate receiving a majority of the votes
43 cast for that seat on the executive board is elected to the executive
44 board for the period provided in paragraph (d).



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1 (c) The provisions of subsections 8, 9, 11 and 12 of NRS
2 116.3108 regarding the minutes of the meeting and the recording
3 of the meeting by a unit's owner are applicable to the meeting.

4 (d) Upon the election of members to the executive board
5 pursuant to this subsection:

6 (1) A candidate elected to the executive board pursuant to
7 this subsection is elected for a term of 90 days, except that if the
8 regular election for that seat on the executive board must be
9 conducted within 180 days after the candidate's election, the
10 candidate is elected for the unexpired portion of the term.

11 (2) The executive board may not fill any vacancy remaining
12 after the election but, within 90 days after the election pursuant to
13 this subsection, must call for an election to be conducted pursuant
14 to NRS 116.31034 to fill:

15 (I) Each remaining vacancy for which a regular election
16 is not required within 180 days; and

17 (II) The seats on the executive board which were filled
18 pursuant to this subsection, unless an election for such a seat is
19 required to be conducted within 180 days.

20 6. If, at an election conducted pursuant to subsection 5, the
21 units' owners do not fill a sufficient number of vacancies on
22 the executive board to provide a quorum for the executive board,
23 the Division must apply to a court of competent jurisdiction for the
24 appointment of a receiver for the association. In the application
25 for the appointment of the receiver, notice of a temporary
26 appointment of a receiver may be given to the association alone,
27 by process as in the case of an application for a temporary
28 restraining order or injunction. The hearing thereon may be had
29 after 5 days' notice unless the court directs a longer or different
30 notice and different parties. The court may appoint one or more
31 receivers to carry out the business of the association. The
32 members of the executive board must be preferred in making the
33 appointment. The powers of any receiver appointed pursuant to
34 this subsection may be continued as long as the court deems
35 necessary and proper. At any time, for sufficient cause, the court
36 may order the receivership terminated. Any receiver appointed
37 pursuant to this subsection has, among the usual powers, all the
38 functions, powers, tenure and duties to be exercised under the
39 direction of the court as are conferred on receivers and as
40 provided in NRS 78.635, 78.640 and 78.645, whether or not the
41 association is insolvent. Such powers include, without limitation,
42 the powers to:

43 (a) Take charge of the estate and effects of the association;

44 (b) Appoint an agent or agents;



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1 (c) Collect any debts and property due and belonging to the
2 association and prosecute and defend, in the name of the
3 association, or otherwise, any civil action as may be necessary or
4 proper for the purposes of collecting debts and property;

5 (d) Perform any other act in accordance with the governing
6 documents of the association and this chapter that may be
7 necessary for the association to carry out its obligations; and

8 (e) By injunction, restrain the association from exercising any
9 of its powers or doing business in any way except by and through
10 a receiver appointed by the court.

11 Sec. 5. NRS 116.310305 is hereby amended to read as
12 follows:

13 116.310305 1. A unit's owner shall adhere to a schedule
14 required by the association for:

15 (a) The completion of the design of a unit or the design of an
16 improvement to a unit;

17 (b) The commencement of the construction of a unit or the
18 construction of an improvement to a unit;

19 (c) The completion of the construction of a unit or the
20 construction of an improvement to the unit; or

21 (d) The issuance of a permit which is necessary for the
22 occupancy of a unit or for the use of an improvement to a unit.

23 2. ~~{The}~~ Except as otherwise provided by subsection 3, the
24 association may impose and enforce a construction penalty against a
25 unit's owner who fails to adhere to a schedule as required pursuant
26 to subsection 1 if:

27 (a) The maximum amount of the construction penalty and the
28 schedule are set forth in:

29 (1) The declaration;

30 (2) Another document related to the common-interest
31 community that is recorded before the date on which the unit's
32 owner acquired title to the unit; or

33 (3) A contract between the unit's owner and the association;
34 and

35 (b) The unit's owner receives notice of the alleged violation
36 which informs the unit's owner that he or she has a right to a
37 hearing on the alleged violation.

38 3. The association may not impose or enforce a construction
39 penalty against a unit's owner pursuant to subsection 2 if the
40 failure to adhere to the schedule as required pursuant to
41 subsection 1 is caused by circumstances beyond the control of the
42 unit's owner.

43 4. For the purposes of this chapter, a construction penalty is not
44 a fine.



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1 **Sec. 6.** NRS 116.31031 is hereby amended to read as follows:
2 116.31031 1. Except as otherwise provided in this section, if
3 a unit's owner or a tenant or an invitee of a unit's owner or a tenant
4 violates any provision of the governing documents of an association,
5 the executive board may, if the governing documents so provide:
6 (a) Prohibit, for a reasonable time, the unit's owner or the tenant
7 or the invitee of the unit's owner or the tenant from:
8 (1) Voting on matters related to the common-interest
9 community.
10 (2) Using the *specific common [elements-] element to which*
11 *the violation relates, if the violation relates to a common element.*
12 The provisions of this subparagraph do not prohibit the *executive*
13 *board from prohibiting a unit's owner from using the common*
14 *elements if the unit's owner is delinquent in the payment of any*
15 *assessment and do not prohibit the unit's owner or the tenant or the*
16 *invitee of the unit's owner or the tenant from using any vehicular or*
17 *pedestrian ingress or egress to go to or from the unit, including any*
18 *area used for parking.*
19 (b) Impose a fine against the unit's owner or the tenant or the
20 invitee of the unit's owner or the tenant for each violation, except
21 that:
22 (1) A fine may not be imposed for a violation that is the
23 subject of a construction penalty pursuant to NRS 116.310305; and
24 (2) A fine may not be imposed against a unit's owner or a
25 tenant or invitee of a unit's owner or a tenant for a violation of the
26 governing documents which involves a vehicle and which is
27 committed by a person who is delivering goods to, or performing
28 services for, the unit's owner or tenant or invitee of the unit's owner
29 or the tenant.
30 ↪ If the violation poses an imminent threat of causing a substantial
31 adverse effect on the health, safety or welfare of the units' owners or
32 residents of the common-interest community, the amount of the fine
33 must be commensurate with the severity of the violation and must
34 be determined by the executive board in accordance with the
35 governing documents. If the violation does not pose an imminent
36 threat of causing a substantial adverse effect on the health, safety or
37 welfare of the units' owners or residents of the common-interest
38 community, the amount of the fine must be commensurate with the
39 severity of the violation and must be determined by the executive
40 board in accordance with the governing documents, but the amount
41 of the fine must not exceed \$100 for each violation or a total amount
42 of \$1,000, whichever is less. *During the lifetime of the unit's*
43 *owner and any successor in interest who is the spouse of the unit's*
44 *owner, the total amount of fines imposed against the unit's owner*
45 *and the successor in interest must not exceed \$2,500. The*



1 limitations on the amount of the fine do not apply to any charges or
 2 costs that may be collected by the association pursuant to this
 3 section if the fine becomes past due.

4 2. *Notwithstanding any other provision of this chapter, the*
 5 *executive board may not impose a fine pursuant to subsection 1*
 6 *against a unit's owner or a tenant or an invitee of a unit's owner*
 7 *or a tenant if the executive board of another association has*
 8 *imposed a fine against the unit's owner, tenant or invitee for the*
 9 *same action, or failure to act, on the part of the unit's owner,*
 10 *tenant or invitee.*

11 3. The executive board may not impose a fine pursuant to
 12 subsection 1 against a unit's owner for a violation of any provision
 13 of the governing documents of an association committed by an
 14 invitee of the unit's owner or the tenant unless the unit's owner:

- 15 (a) Participated in or authorized the violation;
- 16 (b) Had prior notice of the violation; or
- 17 (c) Had an opportunity to stop the violation and failed to do so.

18 {3-} 4. The executive board may not impose a fine pursuant to
 19 subsection 1 unless:

20 (a) Not less than 30 days before the *alleged* violation, the unit's
 21 owner and, if different, the person against whom the fine will be
 22 imposed had been provided with written notice of the applicable
 23 provisions of the governing documents that form the basis of the
 24 *alleged* violation; and

25 (b) Within a reasonable time after the discovery of the *alleged*
 26 violation, the unit's owner and, if different, the person against whom
 27 the fine will be imposed has been provided with:

28 (1) Written notice specifying the details of the *alleged*
 29 violation, *the location of the alleged violation*, the amount of the
 30 fine, and the date, time and location for a hearing on the violation;
 31 and

32 (2) A reasonable opportunity to contest the *alleged* violation
 33 at the hearing.

34 ↪ For the purposes of this subsection, a unit's owner shall not be
 35 deemed to have received written notice unless written notice is
 36 mailed to the address of the unit and, if different, to a mailing
 37 address specified by the unit's owner.

38 {4-} 5. The executive board must schedule the date, time and
 39 location for the hearing on the *alleged* violation so that the unit's
 40 owner and, if different, the person against whom the fine will be
 41 imposed is provided with a reasonable opportunity to prepare for the
 42 hearing and to be present at the hearing.

43 {5-} *A hearing may be postponed if the unit's owner or, if*
 44 *different, the person against whom the fine will be imposed*
 45 *presents to the executive board or an officer of the association*



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1 *medical documentation indicating that he or she is unable to*
 2 *participate in the hearing for medical reasons. At the hearing on*
 3 *the alleged violation, the unit's owner and, if different, the person*
 4 *against whom the fine will be imposed may be represented by an*
 5 *attorney or any other representative. Notwithstanding any other*
 6 *provision of this chapter, the cost of an attorney representing the*
 7 *association or executive board at a hearing pursuant to this*
 8 *section may not be charged to the unit's owner or other person*
 9 *against whom the fine will be imposed.*

10 6. The executive board must hold a hearing before it may
 11 impose the fine, unless the fine is paid before the hearing or unless
 12 the unit's owner and, if different, the person against whom the fine
 13 will be imposed:

14 (a) Executes a written waiver of the right to the hearing; or

15 (b) Fails to appear at the hearing after being provided with
 16 proper notice of the hearing.

17 ~~{6. If a fine is imposed pursuant to subsection 1 and the~~
 18 ~~violation is not cured within 14 days, or within any longer period~~
 19 ~~that may be established by the executive board, the violation shall~~
 20 ~~be deemed a continuing violation. Thereafter, the executive board~~
 21 ~~may impose an additional fine for the violation for each 7-day~~
 22 ~~period or portion thereof that the violation is not cured. Any~~
 23 ~~additional fine may be imposed without notice and an opportunity to~~
 24 ~~be heard.}~~

25 7. If the governing documents so provide, the executive board
 26 may appoint a committee, with not less than three members, to
 27 conduct hearings on violations and to impose fines pursuant to this
 28 section. While acting on behalf of the executive board for those
 29 limited purposes, the committee and its members are entitled to all
 30 privileges and immunities and are subject to all duties and
 31 requirements of the executive board and its members.

32 8. A member of the executive board shall not participate in any
 33 hearing or cast any vote relating to a fine imposed pursuant to
 34 subsection 1 if the member has not paid all assessments which are
 35 due to the association by the member. If a member of the executive
 36 board:

37 (a) Participates in a hearing in violation of this subsection, any
 38 action taken at the hearing is void.

39 (b) Casts a vote in violation of this subsection, the vote is void.

40 9. *If a unit's owner or, if different, a person against whom a*
 41 *fine was imposed pursuant subsection 1 files a claim with the*
 42 *Division pursuant to NRS 38.320 which alleges that the executive*
 43 *board violated a provision of the governing documents in*
 44 *connection with the imposition of the fine, the imposition and*
 45 *collection of the fine is stayed until the conclusion of mediation or,*



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1 *if applicable, the issuance of an arbitration decision. If a unit's*
2 *owner or, if different, a person against whom a fine was imposed*
3 *pursuant to subsection 1 files an affidavit with the Division*
4 *pursuant to NRS 116.760 which alleges that the executive board*
5 *violated a provision of the governing documents in connection*
6 *with the imposition of the fine, the imposition and collection of the*
7 *fine is stayed until the resolution of the matter pursuant to*
8 *subsection 1 of NRS 116.785, the issuance of a decision by the*
9 *Division to not file a formal complaint pursuant to subsection 5 of*
10 *NRS 116.765 or the final decision of the Commission, whichever*
11 *is applicable.*

12 10. The provisions of this section establish the minimum
13 procedural requirements that the executive board must follow before
14 it may impose a fine. The provisions of this section do not preempt
15 any provisions of the governing documents that provide greater
16 procedural protections.

17 ~~{10.}~~ 11. Any past due fine must not bear interest, but may
18 include any costs incurred by the association during a civil action to
19 enforce the payment of the past due fine.

20 ~~{11.}~~ 12. If requested by a person upon whom a fine was
21 imposed, not later than 60 days after receiving any payment of a
22 fine, an association shall provide to the person upon whom the fine
23 was imposed a statement of the remaining balance owed.

24 Sec. 7. NRS 116.310312 is hereby amended to read as
25 follows:

26 116.310312 1. A person who holds a security interest in a
27 unit must provide the association with the person's contact
28 information as soon as reasonably practicable, but not later than 30
29 days after the person:

30 (a) Files an action for recovery of a debt or enforcement of any
31 right secured by the unit pursuant to NRS 40.430; or

32 (b) Records or has recorded on his or her behalf a notice of a
33 breach of obligation secured by the unit and the election to sell or
34 have the unit sold pursuant to NRS 107.080.

35 2. If an action or notice described in subsection 1 has been
36 filed or recorded regarding a unit and the association has provided
37 the unit's owner with notice and an opportunity for a hearing in the
38 manner provided in NRS 116.31031, the association, including its
39 employees, agents and community manager, may, but is not
40 required to, enter the grounds of the unit, whether or not the unit is
41 vacant, to take any of the following actions if the unit's owner
42 refuses or fails to take any action or comply with any requirement
43 imposed on the unit's owner within the time specified by the
44 association as a result of the hearing:



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1 (a) Maintain the exterior of the unit in accordance with the
2 standards set forth in the governing documents, including, without
3 limitation, any provisions governing maintenance, standing water or
4 snow removal. *The authorization to enter the grounds of the unit*
5 *for the purposes set forth in this paragraph continues until the*
6 *unit's owner or an agent of the unit's owner performs the*
7 *maintenance necessary to maintain the exterior of the unit in*
8 *accordance with the standards set forth in the governing*
9 *documents.*

10 (b) Remove or abate a public nuisance on the exterior of the unit
11 which:

12 (1) Is visible from any common area of the community or
13 public streets;

14 (2) Threatens the health or safety of the residents of the
15 common-interest community;

16 (3) Results in blighting or deterioration of the unit or
17 surrounding area; and

18 (4) Adversely affects the use and enjoyment of nearby units.

19 3. If a unit is vacant and the association has provided the unit's
20 owner with notice and an opportunity for a hearing in the manner
21 provided in NRS 116.31031, the association, including its
22 employees, agents and community manager, may enter the grounds
23 of the unit to maintain the exterior of the unit or abate a public
24 nuisance as described in subsection 2 if the unit's owner refuses or
25 fails to do so.

26 4. The association may order that the costs of any maintenance
27 or abatement conducted pursuant to subsection 2 or 3, including,
28 without limitation, reasonable inspection fees, notification and
29 collection costs and interest, be charged against the unit. The
30 association shall keep a record of such costs and interest charged
31 against the unit and has a lien on the unit for any unpaid amount of
32 the charges. The lien may be foreclosed under NRS 116.31162 to
33 116.31168, inclusive.

34 5. A lien described in subsection 4 bears interest from the date
35 that the charges become due at a rate determined pursuant to NRS
36 17.130 until the charges, including all interest due, are paid.

37 6. Except as otherwise provided in this subsection, a lien
38 described in subsection 4 is prior and superior to all liens, claims,
39 encumbrances and titles other than the liens described in paragraphs
40 (a) and (c) of subsection 2 of NRS 116.3116. If the federal
41 regulations of the Federal Home Loan Mortgage Corporation or the
42 Federal National Mortgage Association require a shorter period of
43 priority for the lien, the period during which the lien is prior and
44 superior to other security interests shall be determined in accordance
45 with those federal regulations. Notwithstanding the federal



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1 regulations, the period of priority of the lien must not be less than
 2 the 6 months immediately preceding the institution of an action to
 3 enforce the lien.

4 7. A person who purchases or acquires a unit at a foreclosure
 5 sale pursuant to NRS 40.430 or a trustee's sale pursuant to NRS
 6 107.080 is bound by the governing documents of the association and
 7 shall maintain the exterior of the unit in accordance with the
 8 governing documents of the association. Such a unit may only be
 9 removed from a common-interest community in accordance with the
 10 governing documents pursuant to this chapter.

11 8. Notwithstanding any other provision of law, an association,
 12 its directors or members of the executive board, employees, agents
 13 or community manager who enter the grounds of a unit pursuant to
 14 this section are not liable for trespass.

15 9. As used in this section:

16 (a) "Exterior of the unit" includes, without limitation, all
 17 landscaping outside of a unit and the exterior of all property
 18 exclusively owned by the unit owner.

19 (b) "Vacant" means a unit:

20 (1) Which reasonably appears to be unoccupied;

21 (2) On which the owner has failed to maintain the exterior to
 22 the standards set forth in the governing documents the association;
 23 and

24 (3) On which the owner has failed to pay assessments for
 25 more than 60 days.

26 Sec. 8. NRS 116.310313 is hereby amended to read as
 27 follows:

28 116.310313 1. ~~{An}~~ *If the governing documents authorize*
 29 *an association {may} to charge a unit's owner {reasonable fees to*
 30 *cover} for the costs of collecting any past due obligation {The*
 31 *Commission shall adopt regulations establishing the amount of the*
 32 *fees that an association may charge pursuant to this section.}* *the*
 33 *governing documents may not authorize the association to charge*
 34 *the unit's owner for any costs of collecting other than costs*
 35 *relating to filing, recording, title searches, bankruptcy searches*
 36 *and postage. The rate established by the association for the costs*
 37 *of collecting the past due obligation:*

38 (a) *May not exceed \$40, if the outstanding balance is less than*
 39 *\$200.*

40 (b) *May not exceed \$75, if the outstanding balance is \$200 or*
 41 *more but is less than \$500.*

42 (c) *May not exceed \$125, if the outstanding balance is \$500 or*
 43 *more but is less than \$1,000.*

44 (d) *May not exceed \$175, if the outstanding balance is \$1,000*
 45 *or more but is less than \$5,000.*



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1 (e) *May not exceed \$200, if the outstanding balance is \$5,000*
 2 *or more.*

3 2. The provisions of this section apply to any costs of
 4 collecting a past due obligation charged to a unit's owner, regardless
 5 of whether the past due obligation is collected by the association
 6 itself or by any person acting on behalf of the association, including,
 7 without limitation, an officer or employee of the association, a
 8 community manager or a collection agency.

9 3. As used in this section:

10 (a) "Costs of collecting" includes any fee, charge or cost, by
 11 whatever name, including, without limitation, any collection fee,
 12 filing fee, recording fee, fee related to the preparation, recording or
 13 delivery of a lien or lien rescission, title search lien fee, bankruptcy
 14 search fee, referral fee, fee for postage or delivery and any other fee
 15 or cost that an association charges a unit's owner for the
 16 investigation, enforcement or collection of a past due obligation.
 17 The term does not include any costs incurred by an association if a
 18 lawsuit is filed to enforce any past due obligation or any costs
 19 awarded by a court.

20 (b) "Obligation" means any assessment, fine, construction
 21 penalty, fee, charge or interest levied or imposed against a unit's
 22 owner pursuant to any provision of this chapter or the governing
 23 documents.

24 **Sec. 9.** NRS 116.31034 is hereby amended to read as follows:

25 116.31034 1. Except as otherwise provided in subsection 5 of
 26 NRS 116.212, not later than the termination of any period of
 27 declarant's control, the units' owners shall elect an executive board
 28 of at least three members, all of whom must be units' owners. The
 29 executive board shall elect the officers of the association. Unless the
 30 governing documents provide otherwise, the officers of the
 31 association are ~~not~~ required to be units' owners. The members of
 32 the executive board and the officers of the association shall take
 33 office upon election. *If two persons reside together in a unit, are*
 34 *married to each other or are related by blood, adoption or*
 35 *marriage, within the first degree of consanguinity or affinity, and*
 36 *if one of those persons is an officer of the association or a member*
 37 *of the executive board, the other person may not be an officer of*
 38 *the association or a member of the executive board.*

39 2. The term of office of a member of the executive board may
 40 not exceed 3 years, except for members who are appointed by the
 41 declarant. Unless the governing documents provide otherwise, there
 42 is no limitation on the number of terms that a person may serve as a
 43 member of the executive board.

44 3. The governing documents of the association must provide
 45 for terms of office that are staggered in such a manner that, to the



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1 extent possible, an equal number of members of the executive board
2 are elected at each election. The provisions of this subsection do not
3 apply to:

4 (a) Members of the executive board who are appointed by the
5 declarant; and

6 (b) Members of the executive board who serve a term of 1 year
7 or less.

8 4. Not less than 30 days before the preparation of a ballot for
9 the election of members of the executive board, the secretary or
10 other officer specified in the bylaws of the association shall cause
11 notice to be given to each unit's owner of the unit's owner's
12 eligibility to serve as a member of the executive board. Each unit's
13 owner who is qualified to serve as a member of the executive board
14 may have his or her name placed on the ballot along with the names
15 of the nominees selected by the members of the executive board or a
16 nominating committee established by the association.

17 5. Before the secretary or other officer specified in the bylaws
18 of the association causes notice to be given to each unit's owner of
19 his or her eligibility to serve as a member of the executive board
20 pursuant to subsection 4, the executive board may determine that if,
21 at the closing of the prescribed period for nominations for
22 membership on the executive board, the number of candidates
23 nominated for membership on the executive board is equal to or less
24 than the number of members to be elected to the executive board at
25 the election, then the secretary or other officer specified in the
26 bylaws of the association will cause notice to be given to each unit's
27 owner informing each unit's owner that:

28 (a) The association will not prepare or mail any ballots to units'
29 owners pursuant to this section and the nominated candidates shall
30 be deemed to be duly elected to the executive board unless:

31 (1) A unit's owner who is qualified to serve on the executive
32 board nominates himself or herself for membership on the executive
33 board by submitting a nomination to the executive board within 30
34 days after the notice provided by this subsection; and

35 (2) The number of units' owners who submit such a
36 nomination causes the number of candidates nominated for
37 membership on the executive board to be greater than the number of
38 members to be elected to the executive board.

39 (b) Each unit's owner who is qualified to serve as a member of
40 the executive board may nominate himself or herself for
41 membership on the executive board by submitting a nomination to
42 the executive board within 30 days after the notice provided by this
43 subsection.

44 6. If the notice described in subsection 5 is given and if, at the
45 closing of the prescribed period for nominations for membership on



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1 the executive board described in subsection 5, the number of
2 candidates nominated for membership on the executive board is
3 equal to or less than the number of members to be elected to the
4 executive board, then:

5 (a) The association will not prepare or mail any ballots to units'
6 owners pursuant to this section;

7 (b) The nominated candidates shall be deemed to be duly elected
8 to the executive board not later than 30 days after the date of the
9 closing of the period for nominations described in subsection 5; and

10 (c) The association shall send to each unit's owner notification
11 that the candidates nominated have been elected to the executive
12 board.

13 7. If the notice described in subsection 5 is given and if, at the
14 closing of the prescribed period for nominations for membership on
15 the executive board described in subsection 5, the number of
16 candidates nominated for membership on the executive board is
17 greater than the number of members to be elected to the executive
18 board, then the association shall:

19 (a) Prepare and mail ballots to the units' owners pursuant to this
20 section; and

21 (b) Conduct an election for membership on the executive board
22 pursuant to this section.

23 8. Each person who is nominated as a candidate for a member
24 of the executive board pursuant to subsection 4 or 5 must:

25 (a) Make a good faith effort to disclose any financial, business,
26 professional or personal relationship or interest that would result or
27 would appear to a reasonable person to result in a potential conflict
28 of interest for the candidate if the candidate were to be elected to
29 serve as a member of the executive board; and

30 (b) Disclose whether the candidate is a member in good
31 standing. For the purposes of this paragraph, a candidate shall not be
32 deemed to be in "good standing" if the candidate has any unpaid and
33 past due assessments or construction penalties that are required to be
34 paid to the association.

35 ↪ The candidate must make all disclosures required pursuant to this
36 subsection in writing to the association with his or her candidacy
37 information. Except as otherwise provided in this subsection, the
38 association shall distribute the disclosures, on behalf of the
39 candidate, to each member of the association with the ballot or, in
40 the event ballots are not prepared and mailed pursuant to subsection
41 6, in the next regular mailing of the association. The association is
42 not obligated to distribute any disclosure pursuant to this subsection
43 if the disclosure contains information that is believed to be
44 defamatory, libelous or profane.

45 9. Unless a person is appointed by the declarant:



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1 (a) A person may not be a member of the executive board or an
2 officer of the association if the person, the person's spouse or the
3 person's parent or child, by blood, marriage or adoption, performs
4 the duties of a community manager for that association.

5 (b) A person may not be a member of the executive board of a
6 master association or an officer of that master association if the
7 person, the person's spouse or the person's parent or child, by
8 blood, marriage or adoption, performs the duties of a community
9 manager for:

10 (1) That master association; or

11 (2) Any association that is subject to the governing
12 documents of that master association.

13 10. An officer, employee, agent or director of a corporate
14 owner of a unit, a trustee or designated beneficiary of a trust that
15 owns a unit, a partner of a partnership that owns a unit, a member or
16 manager of a limited-liability company that owns a unit, and a
17 fiduciary of an estate that owns a unit may be an officer of the
18 association or a member of the executive board. In all events where
19 the person serving or offering to serve as an officer of the
20 association or a member of the executive board is not the record
21 owner, the person shall file proof in the records of the association
22 that:

23 (a) The person is associated with the corporate owner, trust,
24 partnership, limited-liability company or estate as required by this
25 subsection; and

26 (b) Identifies the unit or units owned by the corporate owner,
27 trust, partnership, limited-liability company or estate.

28 11. Except as otherwise provided in subsection 6 or NRS
29 116.31105, the election of any member of the executive board must
30 be conducted by secret written ballot in the following manner:

31 (a) The secretary or other officer specified in the bylaws of the
32 association shall cause a secret ballot and a return envelope to be
33 sent, prepaid by United States mail, to the mailing address of each
34 unit within the common-interest community or to any other mailing
35 address designated in writing by the unit's owner.

36 (b) Each unit's owner must be provided with at least 15 days
37 after the date the secret written ballot is mailed to the unit's owner
38 to return the secret written ballot to the association.

39 (c) A quorum is not required for the election of any member of
40 the executive board.

41 (d) Only the secret written ballots that are returned to the
42 association may be counted to determine the outcome of the
43 election.

44 (e) The secret written ballots must be opened and counted at a
45 meeting of the association. A quorum is not required to be present



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1 when the secret written ballots are opened and counted at the
2 meeting.

3 (f) The incumbent members of the executive board and each
4 person whose name is placed on the ballot as a candidate for a
5 member of the executive board may not possess, be given access to
6 or participate in the opening or counting of the secret written ballots
7 that are returned to the association before those secret written ballots
8 have been opened and counted at a meeting of the association.

9 12. An association shall not adopt any rule or regulation that
10 has the effect of prohibiting or unreasonably interfering with a
11 candidate in the candidate's campaign for election as a member of
12 the executive board, except that the candidate's campaign may be
13 limited to 90 days before the date that ballots are required to be
14 returned to the association. A candidate may request that the
15 secretary or other officer specified in the bylaws of the association
16 send, 30 days before the date of the election and at the association's
17 expense, to the mailing address of each unit within the common-
18 interest community or to any other mailing address designated in
19 writing by the unit's owner a candidate informational statement. The
20 candidate informational statement:

21 (a) Must be no longer than a single, typed page;

22 (b) Must not contain any defamatory, libelous or profane
23 information; and

24 (c) May be sent with the secret ballot mailed pursuant to
25 subsection 11 or in a separate mailing.

26 ↪ The association and its directors, officers, employees and agents
27 are immune from criminal or civil liability for any act or omission
28 which arises out of the publication or disclosure of any information
29 related to any person and which occurs in the course of carrying out
30 any duties required pursuant to this subsection.

31 13. Each member of the executive board shall, within 90 days
32 after his or her appointment or election, certify in writing to the
33 association, on a form prescribed by the Administrator, that
34 the member has read and understands the governing documents of
35 the association and the provisions of this chapter to the best of his or
36 her ability. The Administrator ~~may~~ shall require the association to
37 submit a copy of the certification of each member of the executive
38 board of that association at the time the association registers with
39 the Ombudsman pursuant to NRS 116.31158.

40 14. *Within 3 months after his or her election or appointment*
41 *to the executive board, a member of the executive board shall*
42 *successfully complete 2 hours of instruction in a course of*
43 *education relating to the duties of a member of the executive*
44 *board. Every year thereafter during which the member of the*
45 *executive board is a member of the executive board, he or she*



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1 *shall complete 2 hours of instruction in such a course of*
2 *education.*

3 Sec. 10. NRS 116.31038 is hereby amended to read as
4 follows:

5 116.31038 In addition to any applicable requirement set forth
6 in NRS 116.310395, within 30 days after units' owners other than
7 the declarant may elect a majority of the members of the executive
8 board, the declarant shall deliver to the association all property of
9 the units' owners and of the association held by or controlled by the
10 declarant, including:

11 1. The original or a certified copy of the recorded declaration
12 as amended, the articles of incorporation, articles of association,
13 articles of organization, certificate of registration, certificate of
14 limited partnership, certificate of trust or other documents of
15 organization for the association, the bylaws, minute books and other
16 books and records of the association and any rules or regulations
17 which may have been adopted.

18 2. An accounting for money of the association and audited
19 financial statements for each fiscal year and any ancillary period
20 from the date of the last audit of the association to the date the
21 period of the declarant's control ends. The financial statements must
22 fairly and accurately report the association's financial position. The
23 declarant shall pay the costs of the ancillary audit. The ancillary
24 audit must be delivered within 210 days after the date the period of
25 the declarant's control ends.

26 3. A complete study of the reserves of the association,
27 conducted by a person who is registered as a reserve study specialist
28 pursuant to chapter 116A of NRS. At the time the control of the
29 declarant ends, the declarant shall:

30 (a) Except as otherwise provided in this paragraph, deliver to the
31 association a reserve account that contains the declarant's share of
32 the amounts then due, and control of the account. If the declaration
33 was recorded before October 1, 1999, and, at the time the control of
34 the declarant ends, the declarant has failed to pay his or her share of
35 the amounts due, the executive board shall authorize the declarant to
36 pay the deficiency in installments for a period of 3 years, unless the
37 declarant and the executive board agree to a shorter period.

38 (b) Disclose, in writing, *to the units' owners* the amount by
39 which the declarant has subsidized the association's dues on a per
40 unit or per lot basis.

41 4. The association's money or control thereof.

42 5. All of the declarant's tangible personal property that has
43 been represented by the declarant as property of the association or,
44 unless the declarant has disclosed in the public offering statement
45 that all such personal property used in the common-interest



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1 community will remain the declarant's property, all of the
2 declarant's tangible personal property that is necessary for, and has
3 been used exclusively in, the operation and enjoyment of the
4 common elements, and inventories of these properties.

5 6. A copy of any plans and specifications used in the
6 construction of the improvements in the common-interest
7 community which were completed within 2 years before the
8 declaration was recorded.

9 7. All insurance policies then in force, in which the units'
10 owners, the association, or its directors and officers are named as
11 insured persons.

12 8. Copies of any certificates of occupancy that may have been
13 issued with respect to any improvements comprising the common-
14 interest community other than units in a planned community.

15 9. Any renewable permits and approvals issued by
16 governmental bodies applicable to the common-interest community
17 which are in force and any other permits and approvals so issued
18 and applicable which are required by law to be kept on the premises
19 of the community.

20 10. Written warranties of the contractor, subcontractors,
21 suppliers and manufacturers that are still effective.

22 11. A roster of owners and mortgagees of units and their
23 addresses and telephone numbers, if known, as shown on the
24 declarant's records.

25 12. Contracts of employment in which the association is a
26 contracting party.

27 13. Any contract for service in which the association is a
28 contracting party or in which the association or the units' owners
29 have any obligation to pay a fee to the persons performing the
30 services.

31 **Sec. 11.** NRS 116.3108 is hereby amended to read as follows:

32 116.3108 1. A meeting of the units' owners must be held at
33 least once each year. If the governing documents do not designate
34 an annual meeting date of the units' owners, a meeting of the units'
35 owners must be held 1 year after the date of the last meeting of the
36 units' owners. If the units' owners have not held a meeting for 1
37 year, a meeting of the units' owners must be held on the following
38 March 1.

39 2. Special meetings of the units' owners may be called by the
40 president, by a majority of the executive board or by units' owners
41 constituting at least 10 percent, or any lower percentage specified in
42 the bylaws, of the total number of voting members of the
43 association. The same number of units' owners may also call a
44 removal election pursuant to NRS 116.31036. To call a special
45 meeting or a removal election, the units' owners must submit a



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1 written petition which is signed by the required percentage of the
2 total number of voting members of the association pursuant to this
3 subsection and which is mailed, return receipt requested, or served
4 by a process server to the executive board or the community
5 manager for the association. If the petition calls for a special
6 meeting, the executive board shall set the date for the special
7 meeting so that the special meeting is held not less than 15 days or
8 more than 60 days after the date on which the petition is received. If
9 the petition calls for a removal election and:

10 (a) The voting rights of the owners of time shares will be
11 exercised by delegates or representatives as set forth in NRS
12 116.31105, the executive board shall set the date for the removal
13 election so that the removal election is held not less than 15 days or
14 more than 60 days after the date on which the petition is received; or

15 (b) The voting rights of the units' owners will be exercised
16 through the use of secret written ballots pursuant to NRS 116.31036,
17 the secret written ballots for the removal election must be sent in the
18 manner required by NRS 116.31036 not less than 15 days or more
19 than 60 days after the date on which the petition is received, and the
20 executive board shall set the date for the meeting to open and count
21 the secret written ballots so that the meeting is held not more than
22 15 days after the deadline for returning the secret written ballots.

23 ➔ The association shall not adopt any rule or regulation which
24 prevents or unreasonably interferes with the collection of the
25 required percentage of signatures for a petition pursuant to this
26 subsection.

27 3. Not less than 15 days or more than 60 days in advance of
28 any meeting of the units' owners, the secretary or other officer
29 specified in the bylaws shall cause notice of the meeting to be hand-
30 delivered, sent prepaid by United States mail to the mailing address
31 of each unit or to any other mailing address designated in writing by
32 the unit's owner or, if the association offers to send notice by
33 electronic mail, sent by electronic mail at the request of the unit's
34 owner to an electronic mail address designated in writing by the
35 unit's owner. The notice of the meeting must state the time and
36 place of the meeting and include a copy of the agenda for the
37 meeting. The notice must include notification of the right of a unit's
38 owner to:

39 (a) Have a copy of the minutes or a summary of the minutes of
40 the meeting provided to the unit's owner upon request, in electronic
41 format at no charge to the unit's owner or, if the association is
42 unable to provide the copy or summary in electronic format, in
43 paper format at a cost not to exceed 25 cents per page for the first 10
44 pages, and 10 cents per page thereafter.



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- 1 (b) Speak to the association or executive board, unless the
2 executive board is meeting in executive session.
- 3 4. The agenda for a meeting of the units' owners must consist
4 of:
- 5 (a) A clear and complete statement of the topics scheduled to be
6 considered during the meeting, including, without limitation, any
7 proposed amendment to the declaration or bylaws, any fees or
8 assessments to be imposed or increased by the association, any
9 budgetary changes and any proposal to remove an officer of the
10 association or member of the executive board.
- 11 (b) A list describing the items on which action may be taken and
12 clearly denoting that action may be taken on those items. In an
13 emergency, the units' owners may take action on an item which is
14 not listed on the agenda as an item on which action may be taken.
- 15 (c) A period devoted to comments by units' owners and
16 discussion of those comments. Except in emergencies, no action
17 may be taken upon a matter raised under this item of the agenda
18 until the matter itself has been specifically included on an agenda as
19 an item upon which action may be taken pursuant to paragraph (b).
- 20 5. *Before the agenda is mailed to the units' owners pursuant*
21 *to subsection 3, a unit's owner may request items to be placed on*
22 *the agenda and any requested items must be included on the*
23 *agenda.*
- 24 6. If the association adopts a policy imposing fines for any
25 violations of the governing documents of the association, the
26 secretary or other officer specified in the bylaws shall prepare and
27 cause to be hand-delivered or sent prepaid by United States mail to
28 the mailing address of each unit or to any other mailing address
29 designated in writing by the unit's owner, a schedule of the fines
30 that may be imposed for those violations.
- 31 {6-} 7. *A guest of a unit's owner must be allowed to attend*
32 *any meeting of the units' owners.*
- 33 8. The secretary or other officer specified in the bylaws shall
34 cause minutes to be recorded or otherwise taken at each meeting of
35 the units' owners. Not more than 30 days after each such meeting,
36 the secretary or other officer specified in the bylaws shall cause the
37 minutes or a summary of the minutes of the meeting to be made
38 available to the units' owners. Except as otherwise provided in this
39 subsection, a copy of the minutes or a summary of the minutes must
40 be provided to any unit's owner upon request, in electronic format at
41 no charge to the unit's owner or, if the association is unable to
42 provide the copy or summary in electronic format, in paper format
43 at a cost not to exceed 25 cents per page for the first 10 pages, and
44 10 cents per page thereafter.



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1 ~~{7-}~~ 9. Except as otherwise provided in subsection ~~{8-}~~ 10, the
2 minutes of each meeting of the units' owners must include:

- 3 (a) The date, time and place of the meeting;
4 (b) The substance of all matters proposed, discussed or decided
5 at the meeting; and
6 (c) The substance of remarks made by any unit's owner at the
7 meeting if the unit's owner requests that the minutes reflect his or
8 her remarks or, if the unit's owner has prepared written remarks, a
9 copy of his or her prepared remarks if the unit's owner submits a
10 copy for inclusion.

11 ~~{8-}~~ 10. The executive board may establish reasonable
12 limitations on materials, remarks or other information to be included
13 in the minutes of a meeting of the units' owners.

14 ~~{9-}~~ 11. The association shall maintain the minutes of each
15 meeting of the units' owners until the common-interest community
16 is terminated.

17 ~~{10-}~~ 12. A unit's owner may record on audiotape, *videotape*
18 or any other means of sound *or video* reproduction a meeting of the
19 units' owners if the unit's owner, before recording the meeting,
20 provides notice of his or her intent to record the meeting to the other
21 units' owners who are in attendance at the meeting.

22 ~~{11-}~~ 13. The units' owners may approve, at the annual
23 meeting of the units' owners, the minutes of the prior annual
24 meeting of the units' owners and the minutes of any prior special
25 meetings of the units' owners. A quorum is not required to be
26 present when the units' owners approve the minutes.

27 ~~{12-}~~ 14. As used in this section, "emergency" means any
28 occurrence or combination of occurrences that:

- 29 (a) Could not have been reasonably foreseen;
30 (b) Affects the health, welfare and safety of the units' owners or
31 residents of the common-interest community;
32 (c) Requires the immediate attention of, and possible action by,
33 the executive board; and
34 (d) Makes it impracticable to comply with the provisions of
35 subsection 3 or 4.

36 Sec. 12. NRS 116.31083 is hereby amended to read as
37 follows:

38 116.31083 1. A meeting of the executive board must be held
39 at least once every quarter, and not less than once every 100 days
40 and must be held at a time other than during standard business hours
41 , *but not before 6 p.m.*, at least twice annually.

42 2. Except in an emergency or unless the bylaws of an
43 association require a longer period of notice, the secretary or other
44 officer specified in the bylaws of the association shall, not less than
45 10 days before the date of a meeting of the executive board, cause



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1 notice of the meeting to be given to the units' owners. Such notice
2 must be:

3 (a) Sent prepaid by United States mail to the mailing address of
4 each unit within the common-interest community or to any other
5 mailing address designated in writing by the unit's owner;

6 (b) If the association offers to send notice by electronic mail,
7 sent by electronic mail at the request of the unit's owner to an
8 electronic mail address designated in writing by the unit's owner; or

9 (c) Published in a newsletter or other similar publication that is
10 circulated to each unit's owner.

11 3. In an emergency, the secretary or other officer specified in
12 the bylaws of the association shall, if practicable, cause notice of the
13 meeting to be sent prepaid by United States mail to the mailing
14 address of each unit within the common-interest community. If
15 delivery of the notice in this manner is impracticable, the notice
16 must be hand-delivered to each unit within the common-interest
17 community or posted in a prominent place or places within the
18 common elements of the association.

19 4. The notice of a meeting of the executive board must state the
20 time and place of the meeting and include a copy of the agenda for
21 the meeting or the date, *which must not be later than 5 days before*
22 *the meeting*, on which and the locations where copies of the agenda
23 may be conveniently obtained by the units' owners. The notice must
24 include notification of the right of a unit's owner to:

25 (a) Have a copy of the audio recording, the minutes or a
26 summary of the minutes of the meeting provided to the unit's owner
27 upon request, in electronic format at no charge to the unit's owner
28 or, if the association is unable to provide the copy or summary in
29 electronic format, in paper format at a cost not to exceed 25 cents
30 per page for the first 10 pages, and 10 cents per page thereafter.

31 (b) Speak to the association or executive board, unless the
32 executive board is meeting in executive session.

33 5. The agenda of the meeting of the executive board must
34 comply with the provisions of subsection 4 of NRS 116.3108. A
35 period required to be devoted to comments by the units' owners and
36 discussion of those comments must be scheduled for both the
37 beginning and the end of each meeting. During the period devoted
38 to comments by the units' owners and discussion of those comments
39 at the beginning of each meeting, comments by the units' owners
40 and discussion of those comments must be limited to items listed on
41 the agenda. In an emergency, the executive board may take action
42 on an item which is not listed on the agenda as an item on which
43 action may be taken.

44 6. At least once every quarter, and not less than once every 100
45 days, unless the declaration or bylaws of the association impose



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1 more stringent standards, the executive board shall review, at a
 2 minimum, the following financial information at one of its
 3 meetings:

4 (a) A current year-to-date financial statement of the association;

5 (b) A current year-to-date schedule of revenues and expenses for
 6 the operating account and the reserve account, compared to the
 7 budget for those accounts;

8 (c) A current reconciliation of the operating account of the
 9 association;

10 (d) A current reconciliation of the reserve account of the
 11 association;

12 (e) The latest account statements prepared by the financial
 13 institutions in which the accounts of the association are maintained;
 14 and

15 (f) The current status of any civil action or claim submitted to
 16 arbitration or mediation in which the association is a party.

17 *A copy of the information described in paragraphs (a) to (f),
 18 inclusive, must be made available at no charge to each person
 19 present at the meeting. If a unit's owner requests a copy of such
 20 information, the association must provide a copy of the
 21 information in electronic format at no charge to the unit's owner.*

22 7. The secretary or other officer specified in the bylaws shall
 23 cause each meeting of the executive board to be audio recorded and
 24 the minutes to be recorded or otherwise taken at each meeting of the
 25 executive board, but if the executive board is meeting in executive
 26 session, the meeting must not be audio recorded. Not more than 30
 27 days after each such meeting, the secretary or other officer specified
 28 in the bylaws shall cause the audio recording of the meeting, the
 29 minutes of the meeting and a summary of the minutes of the
 30 meeting to be made available to the units' owners. Except as
 31 otherwise provided in this subsection, a copy of the audio recording,
 32 the minutes or a summary of the minutes must be provided to any
 33 unit's owner upon request, in electronic format at no charge to the
 34 unit's owner or, if the association is unable to provide the copy or
 35 summary in electronic format, in paper format at a cost not to
 36 exceed 25 cents per page for the first 10 pages, and 10 cents per
 37 page thereafter.

38 8. Except as otherwise provided in subsection 9 and NRS
 39 116.31085, the minutes of each meeting of the executive board must
 40 include:

41 (a) The date, time and place of the meeting;

42 (b) Those members of the executive board who were present and
 43 those members who were absent at the meeting;

44 (c) The ~~substance~~ details of all matters proposed, discussed or
 45 decided at the meeting;



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1 (d) A record of each member's vote on any matter decided by
2 vote at the meeting; and

3 (e) The substance of remarks made by any unit's owner who
4 addresses the executive board at the meeting if the unit's owner
5 requests that the minutes reflect his or her remarks or, if the unit's
6 owner has prepared written remarks, a copy of his or her prepared
7 remarks if the unit's owner submits a copy for inclusion.

8 9. The executive board may establish reasonable limitations on
9 materials, remarks or other information to be included in the
10 minutes of its meetings ~~[-]~~, *but any limitation on the page number*
11 *of such materials, remarks or information must not be less than*
12 *two double-sided pages.*

13 10. The association shall maintain the minutes of each meeting
14 of the executive board until the common-interest community is
15 terminated.

16 11. A unit's owner may record on audiotape or any other
17 means of sound reproduction a meeting of the executive board,
18 unless the executive board is meeting in executive session, if the
19 unit's owner, before recording the meeting, provides notice of his or
20 her intent to record the meeting to the members of the executive
21 board and the other units' owners who are in attendance at the
22 meeting.

23 12. As used in this section, "emergency" means any occurrence
24 or combination of occurrences that:

25 (a) Could not have been reasonably foreseen;

26 (b) Affects the health, welfare and safety of the units' owners or
27 residents of the common-interest community;

28 (c) Requires the immediate attention of, and possible action by,
29 the executive board; and

30 (d) Makes it impracticable to comply with the provisions of
31 subsection 2 or 5.

32 Sec. 13. NRS 116.31085 is hereby amended to read as
33 follows:

34 116.31085 1. Except as otherwise provided in this section, a
35 unit's owner may attend any meeting of the units' owners or of the
36 executive board and speak at any such meeting. The executive board
37 may establish ~~reasonable limitations~~ *a limitation of not less than 3*
38 *minutes on the time in which a unit's owner may speak at such a*
39 *meeting. With respect to each meeting of the units' owners and of*
40 *the executive board, the association shall comply with the*
41 *requirements of the Americans with Disabilities Act of 1990, 42*
42 *U.S.C. §§ 12101 et seq., and the regulations adopted pursuant*
43 *thereto.*

44 2. *At a meeting of the executive board, after a discussion by*
45 *the members of the executive board concerning an item for which*



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1 *a vote will be taken by the executive board and before such a vote,*
 2 *the executive board must provide a period devoted to comments by*
 3 *the units' owners on that item, but may establish a limitation of*
 4 *not less than 3 minutes on the time a unit's owner may speak on*
 5 *that item.*

6 3. An executive board may not meet in executive session to
 7 open or consider bids for an association project as defined in NRS
 8 116.31086, or to enter into, renew, modify, terminate or take any
 9 other action regarding a contract.

10 ~~{3-}~~ 4. An executive board may meet in executive session only
 11 to:

12 (a) Consult with the attorney for the association on matters
 13 relating to proposed or pending litigation if the contents of the
 14 discussion would otherwise be governed by the privilege set forth in
 15 NRS 49.035 to 49.115, inclusive.

16 (b) Discuss the character, alleged misconduct, professional
 17 competence, or physical or mental health of a community manager
 18 or an employee of the association.

19 (c) Except as otherwise provided in subsection ~~{4-}~~ 5, discuss a
 20 violation of the governing documents, including, without limitation,
 21 the failure to pay an assessment.

22 (d) Discuss the alleged failure of a unit's owner to adhere to a
 23 schedule required pursuant to NRS 116.310305 if the alleged failure
 24 may subject the unit's owner to a construction penalty.

25 ~~{4-}~~ 5. An executive board shall meet in executive session to
 26 hold a hearing on an alleged violation of the governing documents
 27 unless the person who may be sanctioned for the alleged violation
 28 requests in writing that an open hearing be conducted by the
 29 executive board. If the person who may be sanctioned for the
 30 alleged violation requests in writing that an open hearing be
 31 conducted, the person:

32 (a) Is entitled to attend all portions of the hearing related to the
 33 alleged violation, including, without limitation, the presentation of
 34 evidence and the testimony of witnesses;

35 (b) Is entitled to due process, as set forth in the standards
 36 adopted by regulation by the Commission, which must include,
 37 without limitation, the right to counsel ~~{-}~~ or any other
 38 representative chosen by the person, the right to present witnesses
 39 and the right to present information relating to any conflict of
 40 interest of any member of the hearing panel; and

41 (c) Is not entitled to attend the deliberations of the executive
 42 board.

43 ~~{5-}~~ 6. The provisions of subsection ~~{4}~~ 5 establish the
 44 minimum protections that the executive board must provide before it
 45 may make a decision. The provisions of subsection ~~{4}~~ 5 do not



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1 preempt any provisions of the governing documents that provide
2 greater protections.

3 {6-} 7. Except as otherwise provided in this subsection, any
4 matter discussed by the executive board when it meets in executive
5 session must be generally noted in the minutes of the meeting of the
6 executive board. The executive board shall maintain minutes of any
7 decision made pursuant to subsection {4} 5 concerning an alleged
8 violation and, upon request, provide a copy of the decision to the
9 person who was subject to being sanctioned at the hearing or to the
10 person's designated representative.

11 {7-} 8. Except as otherwise provided in subsection {4-} 5, a
12 unit's owner is not entitled to attend or speak at a meeting of the
13 executive board held in executive session.

14 Sec. 14. NRS 116.31086 is hereby amended to read as
15 follows:

16 116.31086 1. If an association solicits bids for an association
17 project, the bids must be opened during a meeting of the executive
18 board.

19 2. As used in this section, "association project" includes,
20 without limitation, a project that involves the maintenance, repair,
21 replacement or restoration of any part of the common elements or
22 which involves the provision of *durable goods or services* to the
23 association.

24 Sec. 15. NRS 116.31087 is hereby amended to read as
25 follows:

26 116.31087 1. If an executive board receives a written
27 complaint from a unit's owner alleging that the executive board has
28 violated any provision of this chapter or any provision of the
29 governing documents of the association, the executive board shall,
30 upon the written request of the unit's owner, place the subject of the
31 complaint on the agenda of the next regularly scheduled meeting of
32 the executive board.

33 2. Not later than 10 business days after the date that the
34 association receives such a complaint, the executive board or an
35 authorized representative of the association shall acknowledge the
36 receipt of the complaint and notify the unit's owner that, if the unit's
37 owner submits a written request that the subject of the complaint be
38 placed on the agenda of the next regularly scheduled meeting of the
39 executive board, the subject of the complaint will be placed on the
40 agenda of the next regularly scheduled meeting of the executive
41 board.

42 3. *At the meeting, the executive board shall discuss fully and*
43 *attempt to resolve any complaint placed on the agenda of the*
44 *meeting pursuant to this section. Any decision of the executive*



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1 *board with respect to the complaint must be included in detail in*
2 *the minutes of the meeting.*

3 Sec. 16. NRS 116.31107 is hereby amended to read as
4 follows:

5 116.31107 1. A person shall not knowingly, willfully and
6 with the intent to fraudulently alter the true outcome of an election
7 of a member of the executive board or any other vote of the units'
8 owners engage in, attempt to engage in, or conspire with another
9 person to engage in, any of the following acts:

10 (a) Changing or falsifying a voter's ballot so that the ballot does
11 not reflect the voter's true ballot.

12 (b) Forging or falsely signing a voter's ballot.

13 (c) Fraudulently casting a vote for himself or herself or for
14 another person that the person is not authorized to cast.

15 (d) Rejecting, failing to count, destroying, defacing or otherwise
16 invalidating the valid ballot of another voter.

17 (e) Submitting a counterfeit ballot.

18 2. A person who violates ~~{this section}~~ *subsection 1* is guilty of
19 a category D felony and shall be punished as provided in
20 NRS 193.130.

21 3. *Each ballot provided to the units' owners pursuant to this*
22 *chapter must contain in clear and prominent text a copy of the*
23 *provisions of this section.*

24 Sec. 17. NRS 116.3114 is hereby amended to read as follows:

25 116.3114 1. Unless otherwise provided in the declaration,
26 any surplus funds of the association remaining after payment of or
27 provision for common expenses and any prepayment of reserves
28 must be paid to the units' owners in proportion to their liabilities for
29 common expenses or credited to them to reduce their future
30 assessments for common expenses.

31 2. *For the purpose of this section:*

32 (a) *An association of a common-interest community with 200*
33 *or less units has "surplus funds" if the amount remaining after*
34 *payment of or provision for the common expenses and any*
35 *prepayment of reserves is greater than three times the monthly*
36 *operating expenses of the association based on the periodic budget*
37 *adopted by the association pursuant to NRS 116.3115.*

38 (b) *An association of a common-interest community with more*
39 *than 200 units has "surplus funds" if the amount remaining after*
40 *payment of or provision for the common expenses and any*
41 *prepayment of reserves is greater than two times the monthly*
42 *operating expenses of the association based on the periodic budget*
43 *adopted by the association pursuant to NRS 116.3115.*



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1 **Sec. 18.** NRS 116.31144 is hereby amended to read as
2 follows:

3 116.31144 1. Except as otherwise provided in subsection 2,
4 the executive board shall:

5 (a) If the annual budget of the association is less than \$75,000,
6 cause the financial statement of the association to be reviewed by an
7 independent certified public accountant during the year immediately
8 preceding the year in which a study of the reserves of the
9 association is to be conducted pursuant to NRS 116.31152.

10 (b) If the annual budget of the association is \$75,000 or more
11 but less than \$150,000, cause the financial statement of the
12 association to be reviewed by an independent certified public
13 accountant every fiscal year.

14 (c) If the annual budget of the association is \$150,000 or more,
15 cause the financial statement of the association to be audited by an
16 independent certified public accountant every fiscal year.

17 2. For any fiscal year, the executive board of an association to
18 which paragraph (a) or (b) of subsection 1 applies shall cause the
19 financial statement for that fiscal year to be audited by an
20 independent certified public accountant if, within 180 days before
21 the end of the fiscal year, 15 percent of the total number of voting
22 members of the association submit a written request for such an
23 audit.

24 3. The Commission shall adopt regulations prescribing the
25 requirements for the auditing or reviewing of financial statements of
26 an association pursuant to this section. Such regulations must
27 include, without limitation:

28 (a) The qualifications necessary for a person to audit or review
29 financial statements of an association; and

30 (b) The standards and format to be followed in auditing or
31 reviewing financial statements of an association.

32 4. *If a unit's owner requests a copy of a review or audit*
33 *performed pursuant to this section, the association must provide a*
34 *copy of the review or audit to the unit's owner in paper format or*
35 *electronic format, whichever is requested by the unit's owner, at*
36 *no charge.*

37 **Sec. 19.** NRS 116.3115 is hereby amended to read as follows:

38 116.3115 1. Until the association makes an assessment for
39 common expenses, the declarant shall pay all common expenses.
40 After an assessment has been made by the association, assessments
41 must be made at least annually, based on a budget adopted {at least
42 annually} by the association *and ratified by the units' owners at*
43 *least annually* in accordance with the requirements set forth in NRS
44 116.31151. Unless the declaration imposes more stringent standards,
45 the budget must include a budget for the daily operation of the



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1 association and a budget for the reserves required by paragraph (b)
2 of subsection 2.

3 2. Except for assessments under subsections 4 to 7, inclusive:

4 (a) All common expenses, including the reserves, must be
5 assessed against all the units in accordance with the allocations set
6 forth in the declaration pursuant to subsections 1 and 2 of
7 NRS 116.2107.

8 (b) The association shall establish adequate reserves, funded on
9 a reasonable basis, for the repair, replacement and restoration of the
10 major components of the common elements and any other portion of
11 the common-interest community that the association is obligated to
12 maintain, repair, replace or restore. The reserves may be used only
13 for those purposes, including, without limitation, repairing,
14 replacing and restoring roofs, roads and sidewalks, and must not be
15 used for daily maintenance ~~{ }~~ or *capital improvements*. The
16 association may comply with the provisions of this paragraph
17 through a funding plan that is designed to allocate the costs for the
18 repair, replacement and restoration of the major components of the
19 common elements and any other portion of the common-interest
20 community that the association is obligated to maintain, repair,
21 replace or restore over a period of years if the funding plan is
22 designed in an actuarially sound manner which will ensure that
23 sufficient money is available when the repair, replacement and
24 restoration of the major components of the common elements or any
25 other portion of the common-interest community that the association
26 is obligated to maintain, repair, replace or restore are necessary.
27 Notwithstanding any provision of *this chapter* or the governing
28 documents to the contrary, *a special assessment* to establish
29 adequate reserves pursuant to this paragraph, including, without
30 limitation, to establish or carry out a funding plan ~~{, the executive~~
31 ~~board may, without seeking or obtaining the approval of the units'~~
32 ~~owners, impose any necessary and reasonable assessments against~~
33 ~~the units in the common-interest community. Any such assessments~~
34 ~~imposed by the executive board must be based on the study of the~~
35 ~~reserves of the association conducted pursuant to NRS 116.31152.}~~
36 *may not exceed \$35 per unit per month.*

37 3. Any assessment for common expenses or installment thereof
38 that is 60 days or more past due bears interest at a rate equal to the
39 prime rate at the largest bank in Nevada as ascertained by the
40 Commissioner of Financial Institutions on January 1 or July 1, as
41 the case may be, immediately preceding the date the assessment
42 becomes past due, plus 2 percent. The rate must be adjusted
43 accordingly on each January 1 and July 1 thereafter until the balance
44 is satisfied.

45 4. Except as otherwise provided in the governing documents:



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1 (a) Any common expense associated with the maintenance,
2 repair, restoration or replacement of a limited common element
3 must be assessed against the units to which that limited common
4 element is assigned, equally, or in any other proportion the
5 declaration provides;

6 (b) Any common expense or portion thereof benefiting fewer
7 than all of the units must be assessed exclusively against the units
8 benefited; and

9 (c) The costs of insurance must be assessed in proportion to risk
10 and the costs of utilities must be assessed in proportion to usage.

11 5. Assessments to pay a judgment against the association may
12 be made only against the units in the common-interest community at
13 the time the judgment was entered, in proportion to their liabilities
14 for common expenses.

15 6. If any common expense is caused by the misconduct of any
16 unit's owner, the association may assess that expense exclusively
17 against his or her unit.

18 7. The association of a common-interest community created
19 before January 1, 1992, is not required to make an assessment
20 against a vacant lot located within the community that is owned by
21 the declarant.

22 8. If liabilities for common expenses are reallocated,
23 assessments for common expenses and any installment thereof not
24 yet due must be recalculated in accordance with the reallocated
25 liabilities.

26 9. The association shall provide written notice to each unit's
27 owner of a meeting at which an assessment *or expenditure* for a
28 capital improvement *in an amount of \$500 or more* is to be
29 considered or action is to be taken on such an assessment *or*
30 *expenditure* at least 21 calendar days before the date of the meeting.
31 *An assessment for a capital improvement may not exceed \$35 per*
32 *unit per month.*

33 10. *In a common-interest community with less than 500*
34 *units, the association shall not make or cause to make any visible*
35 *changes to the interior or exterior of the common elements,*
36 *including, without limitation, landscaping, unless:*

37 (a) *At least 21 calendar days before a meeting of the units'*
38 *owners to consider and take action on the changes, the association*
39 *provides written notice to each unit's owner of the meeting; and*

40 (b) *At the meeting, a majority of the units' owners approve the*
41 *changes by secret written ballot.*

42 11. *In a common-interest community:*

43 (a) *With less than 150 units, the association shall not make an*
44 *expenditure for a capital improvement of \$7,500 or more unless a*



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1 majority of the units' owners who vote on such an expenditure
2 approve the expenditure.

3 (b) With at least 150 but less than 250 units, the association
4 shall not make an expenditure for a capital improvement of
5 \$15,000 or more unless a majority of the units' owners who vote
6 on such an expenditure approve the expenditure.

7 (c) With at least 250 but less than 500 units, the association
8 shall not make an expenditure for a capital improvement of
9 \$25,000 or more unless a majority of the units' owners who vote
10 on such an expenditure approve the expenditure.

11 (d) With 500 or more units, the association shall not make an
12 expenditure for a capital improvement of \$35,000 or more unless a
13 majority of the units' owners who vote on such an expenditure
14 approve the expenditure.

15 12. As used in this section, "capital improvement" means an
16 expenditure by the association for the construction of a new
17 common element, an addition or improvement to an existing
18 common element or the installation of landscaping where no
19 landscaping previously existed.

20 Sec. 20. NRS 116.31151 is hereby amended to read as
21 follows:

22 116.31151 1. Except as otherwise provided in subsection 2
23 and unless the declaration of a common-interest community imposes
24 more stringent standards, the executive board shall, not less than 30
25 days or more than 60 days before the beginning of the fiscal year of
26 the association, prepare and distribute to each unit's owner a copy
27 of:

28 (a) The budget for the daily operation of the association. The
29 budget must include, without limitation, the estimated annual
30 revenue and expenditures of the association and any contributions to
31 be made to the reserve account of the association.

32 (b) The budget to provide adequate funding for the reserves
33 required by paragraph (b) of subsection 2 of NRS 116.3115. The
34 budget must include, without limitation:

35 (1) The current estimated replacement cost, estimated
36 remaining life and estimated useful life of each major component of
37 the common elements and any other portion of the common-interest
38 community that the association is obligated to maintain, repair,
39 replace or restore;

40 (2) As of the end of the fiscal year for which the budget is
41 prepared, the current estimate of the amount of cash reserves that
42 are necessary, and the current amount of accumulated cash reserves
43 that are set aside, to repair, replace or restore the major components
44 of the common elements and any other portion of the common-



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1 interest community that the association is obligated to maintain,
2 repair, replace or restore;

3 (3) A statement as to whether the executive board has
4 determined or anticipates that the levy of one or more special
5 assessments will be necessary to repair, replace or restore any major
6 component of the common elements or any other portion of the
7 common-interest community that the association is obligated to
8 maintain, repair, replace or restore or to provide adequate funding
9 for the reserves designated for that purpose; and

10 (4) A general statement describing the procedures used for
11 the estimation and accumulation of cash reserves pursuant to
12 subparagraph (2), including, without limitation, the qualifications of
13 the person responsible for the preparation of the study of the
14 reserves required by NRS 116.31152.

15 2. In lieu of distributing copies of the budgets of the
16 association required by subsection 1, the executive board may
17 distribute to each unit's owner a summary of those budgets,
18 accompanied by a written notice that:

19 (a) The budgets are available for review at the business office of
20 the association or some other suitable location within the county
21 where the common-interest community is situated or, if it is situated
22 in more than one county, within one of those counties but not to
23 exceed 60 miles from the physical location of the common-interest
24 community; and

25 (b) Copies of the budgets will be provided upon request.

26 3. Within 60 days after adoption of any proposed budget for
27 the common-interest community, the executive board shall ~~{provide}~~
28 :

29 (a) *Cause a summary of the proposed budget ~~{to each}~~, a secret*
30 *ballot and a return envelope to be sent, prepaid by United States*
31 *mail, to the mailing address of each unit within the common-*
32 *interest community or to any other mailing address designated in*
33 *writing by the unit's owner. ~~{and shall set}~~*

34 (b) *Set a date for a meeting of the units' owners to ~~{consider~~*
35 *ratification of the proposed budget} open and count the secret*
36 *written ballots. The meeting must be not less than 14 days or more*
37 *than 30 days after the mailing of the ~~{summaries. Unless}~~ ballots. At*
38 *the meeting, the president of the association shall preside, a*
39 *committee of the units' owners shall open and count only the*
40 *secret written ballots that are returned to the association. A*
41 *quorum is not required to be present when the secret written*
42 *ballots are opened and counted. If, at that meeting, a majority of*
43 *~~{all units' owners, or any larger vote specified in the declaration,~~*
44 *~~reject}~~ the votes cast are cast in favor of ratifying the proposed*
45 *budget, the proposed budget is ratified. ~~{, whether or not a quorum~~*



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1 ~~is present.~~ If the proposed budget is ~~rejected,~~ *not ratified*, the
 2 periodic budget last ratified by the units' owners must be continued
 3 until such time as the units' owners ratify a subsequent budget
 4 proposed by the executive board.

5 4. The executive board shall, at the same time and in the same
 6 manner that the executive board makes the budget available to a
 7 unit's owner pursuant to this section, make available to each unit's
 8 owner the policy established for the association concerning the
 9 collection of any fees, fines, assessments or costs imposed against a
 10 unit's owner pursuant to this chapter. The policy must include,
 11 without limitation:

12 (a) ~~The responsibility of~~ *A provision that a fee, fine,*
 13 *assessment or cost may not be referred for collection unless the*
 14 *unit's owner* ~~to pay any such fees, fines, assessments or costs in a~~
 15 ~~timely manner;~~ *has not paid the fee, fine, assessment or cost*
 16 *within 60 days after the first day of the month following the month*
 17 *in which notice of the fee, fine, assessment or cost is sent or*
 18 *otherwise communicated to the unit's owner or, if the amount of*
 19 *the fee, fine, assessment or cost is \$1,000 or more, within 90 days*
 20 *after the period set forth in this paragraph; and*

21 (b) The association's rights concerning the collection of such
 22 fees, fines, assessments or costs if the unit's owner fails to pay the
 23 fees, fines, assessments or costs ~~in a timely manner;~~ *within the*
 24 *period set forth in paragraph (a).*

25 Sec. 21. NRS 116.31152 is hereby amended to read as
 26 follows:

27 116.31152 1. The executive board shall:

28 (a) At least once every 5 years, cause to be conducted a study of
 29 the reserves required to repair, replace and restore the major
 30 components of the common elements and any other portion of the
 31 common-interest community that the association is obligated to
 32 maintain, repair, replace or restore;

33 (b) At least annually, review the results of that study to
 34 determine whether those reserves are sufficient; and

35 (c) At least annually, make any adjustments to the association's
 36 funding plan which the executive board deems necessary to provide
 37 adequate funding for the required reserves.

38 2. Except as otherwise provided in this subsection, the study of
 39 the reserves required by subsection 1 must be conducted by a person
 40 who holds a permit issued pursuant to chapter 116A of NRS. If the
 41 common-interest community contains 20 or fewer units and is
 42 located in a county whose population is 50,000 or less, the study of
 43 the reserves required by subsection 1 may be conducted by any
 44 person whom the executive board deems qualified to conduct the
 45 study.



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- 1 3. The study of the reserves must include, without limitation:
- 2 (a) A summary of an inspection of the major components of the
- 3 common elements and any other portion of the common-interest
- 4 community that the association is obligated to maintain, repair,
- 5 replace or restore;
- 6 (b) An identification of the major components of the common
- 7 elements and any other portion of the common-interest community
- 8 that the association is obligated to maintain, repair, replace or
- 9 restore which have a remaining useful life of less than 30 years;
- 10 (c) An estimate of the remaining useful life of each major
- 11 component of the common elements and any other portion of the
- 12 common-interest community that the association is obligated to
- 13 maintain, repair, replace or restore identified pursuant to
- 14 paragraph (b);
- 15 (d) An estimate of the cost of maintenance, repair, replacement
- 16 or restoration of each major component of the common elements
- 17 and any other portion of the common-interest community identified
- 18 pursuant to paragraph (b) during and at the end of its useful life; and
- 19 (e) An estimate of the total annual assessment that may be
- 20 necessary to cover the cost of maintaining, repairing, replacement or
- 21 restoration of the major components of the common elements and
- 22 any other portion of the common-interest community identified
- 23 pursuant to paragraph (b), after subtracting the reserves of the
- 24 association as of the date of the study, and an estimate of the
- 25 funding plan that may be necessary to provide adequate funding for
- 26 the required reserves.
- 27 4. *Upon completion of the study of the reserves required by*
- 28 *this section, the association shall notify the units' owners that the*
- 29 *study is available for review and make the study available in*
- 30 *electronic format to a unit's owner at no charge. Not earlier than*
- 31 *20 days after the association notifies the units' owners of the*
- 32 *completion of the study, the executive board must conduct a*
- 33 *meeting of the executive board for the purpose of approving the*
- 34 *study. Before approving the study at the meeting, the executive*
- 35 *board shall accept, review and consider comments by the units'*
- 36 *owners in the manner required by NRS 116.31085.*
- 37 *Notwithstanding any other provision of this chapter or the*
- 38 *governing documents, the executive board may not take any*
- 39 *actions based on the study, including, without limitation,*
- 40 *establishing a funding plan to provide adequate funding for the*
- 41 *reserves, unless and until the executive board approves the study*
- 42 *at a meeting of the executive board.*
- 43 5. A summary of the study of the reserves required by
- 44 subsection 1 must be submitted to the Division not later than 45



1 days after the date that the executive board adopts the results of the
2 study.

3 ~~{5-}~~ 6. If a common-interest community was developed as part
4 of a planned unit development pursuant to chapter 278A of NRS and
5 is subject to an agreement with a city or county to receive credit
6 against the amount of the residential construction tax that is imposed
7 pursuant to NRS 278.4983 and 278.4985, the association that is
8 organized for the common-interest community may use the money
9 from that credit for the repair, replacement or restoration of park
10 facilities and related improvements if:

11 (a) The park facilities and related improvements are identified as
12 major components of the common elements of the association; and

13 (b) The association is obligated to repair, replace or restore the
14 park facilities and related improvements in accordance with the
15 study of the reserves required by subsection 1.

16 Sec. 22. NRS 116.3116 is hereby amended to read as follows:

17 116.3116 1. The association has a lien on a unit for any
18 construction penalty that is imposed against the unit's owner
19 pursuant to NRS 116.310305, any assessment levied against that
20 unit or any fines imposed against the unit's owner from the time the
21 construction penalty, assessment or fine becomes due. Unless the
22 declaration otherwise provides, any penalties, fees, charges, late
23 charges, fines and interest charged pursuant to paragraphs (j) to (n),
24 inclusive, of subsection 1 of NRS 116.3102 are enforceable as
25 assessments under this section. If an assessment is payable in
26 installments, the full amount of the assessment is a lien from the
27 time the first installment thereof becomes due.

28 2. A lien under this section is prior to all other liens and
29 encumbrances on a unit except:

30 (a) Liens and encumbrances recorded before the recordation of
31 the declaration and, in a cooperative, liens and encumbrances which
32 the association creates, assumes or takes subject to;

33 (b) A first security interest on the unit recorded before the date
34 on which the assessment sought to be enforced became delinquent
35 or, in a cooperative, the first security interest encumbering only the
36 unit's owner's interest and perfected before the date on which the
37 assessment sought to be enforced became delinquent; and

38 (c) Liens for real estate taxes and other governmental
39 assessments or charges against the unit or cooperative.

40 The lien is also prior to all security interests described in
41 paragraph (b) ~~{to the extent of any}~~ *but only in an amount not to*
42 *exceed* charges incurred by the association on a unit pursuant to
43 NRS 116.310312 ~~{and to the extent of}~~ *plus an amount not to*
44 *exceed nine times* the ~~{assessments}~~ *monthly assessment* for
45 common expenses based on the periodic budget adopted by the



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1 association pursuant to NRS 116.3115 which ~~two would have become~~
 2 ~~due in the absence of acceleration during the 9 months immediately~~
 3 ~~preceding institution of an~~ *is in effect at the time of the*
 4 *commencement of a civil* action to enforce the association's lien,
 5 unless federal regulations adopted by the Federal Home Loan
 6 Mortgage Corporation or the Federal National Mortgage
 7 Association require a ~~shorter period of~~ *lesser amount for the*
 8 *amount of the* priority for ~~the lien~~ *assessments*. If federal
 9 regulations adopted by the Federal Home Loan Mortgage
 10 Corporation or the Federal National Mortgage Association require a
 11 ~~shorter period of~~ *lesser amount for the amount of the* priority for
 12 ~~the lien~~ *assessment*, the ~~period during which the lien is prior to~~
 13 ~~all security interests described in paragraph (b)~~ *amount of*
 14 *assessments to be given priority pursuant to this subsection* must
 15 be determined in accordance with those federal regulations, except
 16 that notwithstanding the provisions of the federal regulations, the
 17 ~~period of~~ *amount of assessments to be given priority* ~~for the lien~~
 18 must not be less than ~~the 6 months immediately preceding~~
 19 ~~institution of an~~ *six times the monthly assessment for common*
 20 *expenses based on the periodic budget adopted by the association*
 21 *pursuant to NRS 116.3115 which is in effect at the time of the*
 22 *commencement of a civil* action to enforce the association's lien.
 23 This subsection does not affect the priority of mechanics' or
 24 materialmen's liens, or the priority of liens for other assessments
 25 made by the association.

26 3. Unless the declaration otherwise provides, if two or more
 27 associations have liens for assessments created at any time on the
 28 same property, those liens have equal priority.

29 4. Recording of the declaration constitutes record notice and
 30 perfection of the lien. No further recordation of any claim of lien for
 31 assessment under this section is required.

32 5. A lien for unpaid assessments is extinguished unless
 33 proceedings to enforce the lien are instituted within 3 years after the
 34 full amount of the assessments becomes due.

35 6. This section does not prohibit actions to recover sums for
 36 which subsection 1 creates a lien or prohibit an association from
 37 taking a deed in lieu of foreclosure.

38 7. A judgment or decree in any action brought under this
 39 section must include costs and reasonable attorney's fees for the
 40 prevailing party.

41 8. The association, upon written request, shall furnish to a
 42 unit's owner a statement setting forth the amount of unpaid
 43 assessments against the unit. If the interest of the unit's owner is real
 44 estate or if a lien for the unpaid assessments may be foreclosed
 45 under NRS 116.31162 to 116.31168, inclusive, the statement must



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1 be in recordable form. The statement must be furnished within 10
2 business days after receipt of the request and is binding on the
3 association, the executive board and every unit's owner.

4 9. In a cooperative, upon nonpayment of an assessment on a
5 unit, the unit's owner may be evicted in the same manner as
6 provided by law in the case of an unlawful holdover by a
7 commercial tenant, and:

8 (a) In a cooperative where the owner's interest in a unit is real
9 estate under NRS 116.1105, the association's lien may be foreclosed
10 under NRS 116.31162 to 116.31168, inclusive.

11 (b) In a cooperative where the owner's interest in a unit is
12 personal property under NRS 116.1105, the association's lien:

13 (1) May be foreclosed as a security interest under NRS
14 104.9101 to 104.9709, inclusive; or

15 (2) If the declaration so provides, may be foreclosed under
16 NRS 116.31162 to 116.31168, inclusive.

17 Sec. 23. NRS 116.31164 is hereby amended to read as
18 follows:

19 116.31164 1. The sale must be conducted in the county in
20 which the common-interest community or part of it is situated, and
21 may be conducted by the association, its agent or attorney, or a title
22 insurance company or escrow agent licensed to do business in this
23 State, except that the sale may be made at the office of the
24 association if the notice of the sale so provided, whether the unit is
25 located within the same county as the office of the association or
26 not. The association or other person conducting the sale may from
27 time to time postpone the sale by such advertisement and notice as it
28 considers reasonable or, without further advertisement or notice, by
29 proclamation made to the persons assembled at the time and place
30 previously set and advertised for the sale.

31 2. *If the sale does not occur within 120 days after the date on*
32 *which a copy of the notice of default and election to sell was*
33 *mailed to the unit's owner or his or her successor in interest in the*
34 *manner required by paragraph (b) of subsection 3 of NRS*
35 *116.31162, the association and any person acting on behalf of the*
36 *association may not:*

37 (a) *Foreclose the association's lien by sale pursuant to NRS*
38 *116.31162 to 116.31168, inclusive; or*

39 (b) *File a civil action to obtain a judgment against the unit's*
40 *owner for the amount due,*

41 *unless, within the period set forth in this subsection, the*
42 *association, the unit's owner and any other person with a lien on*
43 *the unit execute and record in the office of the county recorder of*
44 *the county in which the unit is located a written agreement*
45 *extending the period. The written agreement must be*



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1 *acknowledged as required by law for the acknowledgment of*
 2 *deeds. If the sale does not occur within the time provided in the*
 3 *written agreement, the association and any person acting on*
 4 *behalf of the association may not foreclose the association's lien*
 5 *by sale pursuant to NRS 116.31162 to 116.31168, inclusive, or file*
 6 *a civil action to obtain a judgment against the unit's owner for the*
 7 *amount due.*

8 3. On the day of sale originally advertised or to which the sale
 9 is postponed, at the time and place specified in the notice or
 10 postponement, the person conducting the sale may sell the unit at
 11 public auction to the highest cash bidder. Unless otherwise provided
 12 in the declaration or by agreement, the association may purchase the
 13 unit and hold, lease, mortgage or convey it. The association may
 14 purchase by a credit bid up to the amount of the unpaid assessments
 15 and any permitted costs, fees and expenses incident to the
 16 enforcement of its lien.

17 ~~{3-}~~ 4. After the sale, the person conducting the sale shall:

18 (a) Make, execute and, after payment is made, deliver to the
 19 purchaser, or his or her successor or assign, a deed without warranty
 20 which conveys to the grantee all title of the unit's owner to the unit;

21 (b) Deliver a copy of the deed to the Ombudsman within 30
 22 days after the deed is delivered to the purchaser, or his or her
 23 successor or assign; and

24 (c) Apply the proceeds of the sale for the following purposes in
 25 the following order:

26 (1) The reasonable expenses of sale;

27 (2) The reasonable expenses of securing possession before
 28 sale, holding, maintaining, and preparing the unit for sale, including
 29 payment of taxes and other governmental charges, premiums on
 30 hazard and liability insurance, and, to the extent provided for by the
 31 declaration, reasonable attorney's fees and other legal expenses
 32 incurred by the association;

33 (3) Satisfaction of the association's lien;

34 (4) Satisfaction in the order of priority of any subordinate
 35 claim of record; and

36 (5) Remittance of any excess to the unit's owner.

37 Sec. 24. NRS 116.31175 is hereby amended to read as
 38 follows:

39 116.31175 1. Except as otherwise provided in this
 40 subsection, the executive board of an association shall, upon the
 41 written request of a unit's owner, make available the books, records
 42 and other papers of the association, *including, without limitation,*
 43 *the budget, the reserve study, contracts to which the association is*
 44 *a party, records filed with a court relating to civil or criminal*
 45 *action to which the association is a party, minutes of meetings of*



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1 the units' owners and of the executive board, attorney opinions
 2 which do not relate to current litigation involving the association,
 3 any architectural plan or specification submitted by a unit's
 4 owner, agendas of meetings of the units' owners and of the
 5 executive board, records of violations of the governing documents
 6 excluding names and addresses, records relating to the
 7 investments of the association, bank statements, cancelled checks,
 8 insurance policies and any permits, even if the book, record or
 9 paper is in draft form or is unapproved or in the process of being
 10 developed, for review at the business office of the association or a
 11 designated business location not to exceed 60 miles from the
 12 physical location of the common-interest community and during the
 13 regular working hours of the association. ~~{, including, without~~
 14 ~~limitation, all contracts to which the association is a party and all~~
 15 ~~records filed with a court relating to a civil or criminal action to~~
 16 ~~which the association is a party.}~~ The provisions of this subsection
 17 do not apply to:

18 (a) The personnel records of the employees of the association,
 19 except for those records relating to the number of hours worked and
 20 the salaries and benefits of those employees;

21 (b) The records of the association relating to another unit's
 22 owner ~~{, including, without limitation, any architectural plan or~~
 23 ~~specification submitted by a unit's owner to the association during~~
 24 ~~an approval process required by the governing documents, except~~
 25 ~~for those records described in subsection 2; and~~

26 ~~(c) Any document, including, without limitation, minutes of an~~
 27 ~~executive board meeting, a reserve study and a budget, if the~~
 28 ~~document:~~

29 ~~----- (1) Is in the process of being developed for final~~
 30 ~~consideration by the executive board; and~~

31 ~~----- (2) Has not been placed on an agenda for final approval by~~
 32 ~~the executive board.} other than records specifically mentioned in~~
 33 ~~this subsection.~~

34 2. The executive board of an association shall maintain a
 35 general record concerning each violation of the governing
 36 documents, other than a violation involving a failure to pay an
 37 assessment, for which the executive board has imposed a fine, a
 38 construction penalty or any other sanction. The general record:

39 (a) Must contain a general description of the nature of the
 40 violation and the type of the sanction imposed. If the sanction
 41 imposed was a fine or construction penalty, the general record must
 42 specify the amount of the fine or construction penalty.

43 (b) Must not contain the name or address of the person against
 44 whom the sanction was imposed or any other personal information



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1 which may be used to identify the person or the location of the unit,
2 if any, that is associated with the violation.

3 (c) Must be maintained in an organized and convenient filing
4 system or data system that allows a unit's owner to search and
5 review the general records concerning violations of the governing
6 documents.

7 3. If the executive board refuses to allow a unit's owner to
8 review the books, records or other papers of the association, the
9 Ombudsman may:

10 (a) On behalf of the unit's owner and upon written request,
11 review the books, records or other papers of the association during
12 the regular working hours of the association; and

13 (b) If the Ombudsman is denied access to the books, records or
14 other papers, request the Commission, or any member thereof acting
15 on behalf of the Commission, to issue a subpoena for their
16 production.

17 4. The books, records and other papers of an association must
18 be maintained for at least 10 years. The provisions of this subsection
19 do not apply to:

20 (a) The minutes of a meeting of the units' owners which must be
21 maintained in accordance with NRS 116.3108; or

22 (b) The minutes of a meeting of the executive board which must
23 be maintained in accordance with NRS 116.31083.

24 5. The executive board shall not require a unit's owner to pay
25 an amount in excess of \$10 per hour to review any books, records,
26 contracts or other papers of the association pursuant to the
27 provisions of this section.

28 6. If an official publication contains or will contain any
29 mention of a candidate or ballot question, the official publication
30 must, upon request and without charge, provide equal space to the
31 candidate or a representative of an organization which supports the
32 passage or defeat of the ballot question.

33 7. If an official publication contains or will contain the views
34 or opinions of the association, the executive board, a community
35 manager or an officer, employee or agent of an association
36 concerning an issue of official interest, the official publication must,
37 upon request and without charge, provide equal space to opposing
38 views and opinions of a unit's owner, tenant or resident of the
39 common-interest community. *If the views or opinions of the*
40 *association, the executive board, a community manager or an*
41 *officer, employee or agent of an association are published in an*
42 *official newsletter or other similar publication that is circulated to*
43 *each unit's owner, in addition to any other manner of official*
44 *publication for the opposing views or opinions of a unit's owner,*
45 *tenant or resident, those opposing views or opinions may be*



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1 published in the same such newsletter or publication or in the next
 2 such newsletter or publication but the opposing views or opinions
 3 must be published in an official newsletter or similar publication
 4 within 45 days after publication of the views or opinions of the
 5 association, the executive board, community manager or officer,
 6 employee or agent of the association. If the views or opinions of
 7 the association, the executive board, a community manager or an
 8 officer, employee or agent of an association are published on an
 9 official website or on an official bulletin board that is available to
 10 each unit's owner, in addition to any other manner of official
 11 publication for the opposing views or opinions, the opposing views
 12 or opinions of a unit's owner, tenant or resident must be published
 13 in the next official newsletter or other similar publication that is
 14 circulated to each unit's owner or in an official newsletter or
 15 similar publication published within 45 days after publication of
 16 the views or opinions of the association, executive board,
 17 community manager or officer, employee or agent of the
 18 association, whichever is earlier.

19 8. The association and its officers, employees and agents are
 20 immune from criminal or civil liability for any act or omission
 21 which arises out of the publication or disclosure of any information
 22 related to any person and which occurs in the course of carrying out
 23 any duties required pursuant to subsection 6 or 7.

24 9. As used in this section:

25 (a) "Issue of official interest" includes, without limitation:

26 (1) Any issue on which the executive board or the units'
 27 owners will be voting, including, without limitation, the election of
 28 members of the executive board; and

29 (2) The enactment or adoption of rules or regulations that
 30 will affect a common-interest community.

31 (b) "Official publication" means:

32 (1) An official website;

33 (2) An official newsletter or other similar publication that is
 34 circulated to each unit's owner; or

35 (3) An official bulletin board that is available to each unit's
 36 owner,

37 which is published or maintained at the cost of an association and
 38 by an association, an executive board, a member of an executive
 39 board, a community manager or an officer, employee or agent of an
 40 association.

41 Sec. 25. NRS 116.31183 is hereby amended to read as
 42 follows:

43 116.31183 1. An executive board, a member of an executive
 44 board, a community manager or an officer, employee or agent of an
 45 association shall not take, or direct or encourage another person to



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1 take, any retaliatory action against a unit's owner , *including,*
 2 *without limitation, demanding money from a unit's owner,*
 3 *prohibitting the use of the common elements by the unit's owner,*
 4 *restricting the access of friends, relatives or any invitee of a unit's*
 5 *owner, filing against the unit's owner a false or fraudulent*
 6 *affidavit with the Division pursuant to NRS 116.760, filing against*
 7 *the unit's owner a false or fraudulent claim with the Division*
 8 *pursuant to NRS 38.320, or filing a frivolous civil action for the*
 9 *purpose of harassing the unit's owner, because the unit's owner*
 10 *has:*

11 (a) Complained in good faith about any alleged violation of any
 12 provision of this chapter , ~~{or}~~ the governing documents of the
 13 association ~~{or}~~ *or any federal, state, county or municipal law,*
 14 *ordinance or code;*

15 (b) Recommended the selection or replacement of an attorney,
 16 community manager or vendor; or

17 (c) Requested in good faith to review the books, records or other
 18 papers of the association.

19 2. In addition to any other remedy provided by law, upon a
 20 violation of this section, a unit's owner may bring a separate action
 21 to recover:

22 (a) Compensatory damages; and

23 (b) Attorney's fees and costs of bringing the separate action.

24 **Sec. 26.** NRS 116.330 is hereby amended to read as follows:

25 116.330 1. The executive board shall not and the governing
 26 documents must not prohibit a unit's owner from installing or
 27 maintaining drought tolerant landscaping within such physical
 28 portion of the common-interest community as that owner has a right
 29 to occupy and use exclusively, including, without limitation, the
 30 front yard or back yard of the unit's owner, except that:

31 (a) Before installing drought tolerant landscaping, the unit's
 32 owner must submit a detailed description or plans for the drought
 33 tolerant landscaping for architectural review and approval in
 34 accordance with the procedures, if any, set forth in the governing
 35 documents of the association; and

36 (b) The drought tolerant landscaping must be selected or
 37 designed to the maximum extent practicable to be compatible with
 38 the style of the common-interest community.

39 ↪ The provisions of this subsection must be construed liberally in
 40 favor of effectuating the purpose of encouraging the use of drought
 41 tolerant landscaping, and the executive board shall not and the
 42 governing documents must not unreasonably deny or withhold
 43 approval for the installation of drought tolerant landscaping or
 44 unreasonably determine that the drought tolerant landscaping is not
 45 compatible with the style of the common-interest community.



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1 2. *The association may not charge a fee to a unit's owner*
2 *who is seeking approval to install drought tolerant landscaping*
3 *pursuant to this section.*

4 3. Installation of drought tolerant landscaping within any
5 common element or conversion of traditional landscaping or
6 cultivated vegetation, such as turf grass, to drought tolerant
7 landscaping within any common element shall not be deemed to be
8 a change of use of the common element unless:

9 (a) The common element has been designated as a park, open
10 play space or golf course on a recorded plat map; or

11 (b) The traditional landscaping or cultivated vegetation is
12 required by a governing body under the terms of any applicable
13 zoning ordinance, permit or approval or as a condition of approval
14 of any final subdivision map.

15 ~~{3.}~~ 4. As used in this section, "drought tolerant landscaping"
16 means landscaping which conserves water, protects the environment
17 and is adaptable to local conditions. The term includes, without
18 limitation, the use of mulches such as decorative rock and artificial
19 turf.

20 Sec. 27. NRS 116.335 is hereby amended to read as follows:

21 116.335 1. Unless, at the time a unit's owner purchased his
22 or her unit, the declaration prohibited the unit's owner from renting
23 or leasing his or her unit, the association may not prohibit the unit's
24 owner from renting or leasing his or her unit.

25 2. Unless, at the time a unit's owner purchased his or her unit,
26 the declaration required the unit's owner to secure or obtain any
27 approval from the association in order to rent or lease his or her unit,
28 an association may not require the unit's owner to secure or obtain
29 any approval from the association in order to rent or lease his or her
30 unit.

31 3. If a declaration contains a provision establishing a maximum
32 number or percentage of units in the common-interest community
33 which may be rented or leased, that provision of the declaration may
34 not be amended to decrease that maximum number or percentage of
35 units in the common-interest community which may be rented or
36 leased.

37 4. The provisions of this section do not prohibit an association
38 from enforcing any provisions which govern the renting or leasing
39 of units and which are contained in this chapter or in any other
40 applicable federal, state or local laws or regulations.

41 5. Notwithstanding any other provision of law or the
42 declaration to the contrary:

43 (a) If a unit's owner is prohibited from renting or leasing a unit
44 because the maximum number or percentage of units which may be
45 rented or leased in the common-interest community have already



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1 been rented or leased, the unit's owner may seek a waiver of the
 2 prohibition from the executive board based upon a showing of
 3 economic hardship, and the executive board ~~may~~ *shall* grant such
 4 a waiver *upon proof of economic hardship* and approve the renting
 5 or leasing of the unit.

6 (b) If the declaration contains a provision establishing a
 7 maximum number or percentage of units in the common-interest
 8 community which may be rented or leased, in determining the
 9 maximum number or percentage of units in the common-interest
 10 community which may be rented or leased, the number of units
 11 owned by the declarant must not be counted or considered.

12 Sec. 28. NRS 116.350 is hereby amended to read as follows:

13 116.350 1. In a common-interest community which is not
 14 gated or enclosed and the access to which is not restricted or
 15 controlled by a person or device, the executive board shall not and
 16 the governing documents must not ~~provide~~ :

17 (a) *Provide* for the regulation of any road, street, alley or other
 18 thoroughfare the right-of-way of which is accepted by the State or a
 19 local government for dedication as a road, street, alley or other
 20 thoroughfare for public use.

21 (b) *Except as otherwise provided in paragraph (s) of NRS*
 22 *116.3102, interfere with the parking of any automobile, privately*
 23 *owned standard pickup truck, motorcycle or any other vehicle not*
 24 *specifically described in subsection 2.*

25 2. Except as otherwise provided in subsection 3, the provisions
 26 of subsection 1 do not preclude an association from adopting, and
 27 do not preclude the governing documents of an association from
 28 setting forth, rules that reasonably restrict the parking or storage of
 29 recreational vehicles, watercraft, trailers or commercial vehicles in
 30 the common-interest community to the extent authorized by law.

31 3. In any common-interest community, the executive board
 32 shall not and the governing documents must not prohibit a person
 33 from:

34 (a) Parking a utility service vehicle that has a gross vehicle
 35 weight rating of 20,000 pounds or less:

36 (1) In an area designated for parking for visitors, in a
 37 designated parking area or common parking area, or on the
 38 driveway of the unit of a subscriber or consumer, while the person is
 39 engaged in any activity relating to the delivery of public utility
 40 services to subscribers or consumers; or

41 (2) In an area designated for parking for visitors, in a
 42 designated parking area or common parking area, or on the
 43 driveway of his or her unit, if the person is:

44 (I) A unit's owner or a tenant of a unit's owner; and



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1 (II) Bringing the vehicle to his or her unit pursuant to his
2 or her employment with the entity which owns the vehicle for the
3 purpose of responding to emergency requests for public utility
4 services; or

5 (b) Parking a law enforcement vehicle or emergency services
6 vehicle:

7 (1) In an area designated for parking for visitors, in a
8 designated parking area or common parking area, or on the
9 driveway of the unit of a person to whom law enforcement or
10 emergency services are being provided, while the person is engaged
11 in his or her official duties; or

12 (2) In an area designated for parking for visitors, in a
13 designated parking area or common parking area, or on the
14 driveway of his or her unit, if the person is:

15 (I) A unit's owner or a tenant of a unit's owner; and

16 (II) Bringing the vehicle to his or her unit pursuant to his
17 or her employment with the entity which owns the vehicle for the
18 purpose of responding to requests for law enforcement services or
19 emergency services.

20 4. An association may require that a person parking a utility
21 service vehicle, law enforcement vehicle or emergency services
22 vehicle as set forth in subsection 3 provide written confirmation
23 from his or her employer that the person is qualified to park his or
24 her vehicle in the manner set forth in subsection 3.

25 5. *In a common-interest community which is not gated or*
26 *enclosed and the access to which is not restricted or controlled by*
27 *a person or device, the association shall display a sign in plain*
28 *view on or near any property on which parking is prohibited or*
29 *restricted in a certain manner.*

30 6. As used in this section:

31 (a) "Emergency services vehicle" means a vehicle:

32 (1) Owned by any governmental agency or political
33 subdivision of this State; and

34 (2) Identified by the entity which owns the vehicle as a
35 vehicle used to provide emergency services.

36 (b) "Law enforcement vehicle" means a vehicle:

37 (1) Owned by any governmental agency or political
38 subdivision of this State; and

39 (2) Identified by the entity which owns the vehicle as a
40 vehicle used to provide law enforcement services.

41 (c) "Utility service vehicle" means any motor vehicle:

42 (1) Used in the furtherance of repairing, maintaining or
43 operating any structure or any other physical facility necessary for
44 the delivery of public utility services, including, without limitation,



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1 the furnishing of electricity, gas, water, sanitary sewer, telephone,
2 cable or community antenna service; and

3 (2) Except for any emergency use, operated primarily within
4 the service area of a utility's subscribers or consumers, without
5 regard to whether the motor vehicle is owned, leased or rented by
6 the utility.

7 **Sec. 29.** NRS 116.4117 is hereby amended to read as follows:

8 116.4117 1. Subject to the requirements set forth in
9 subsection 2, if a declarant, community manager or any other person
10 subject to this chapter fails to comply with any of its provisions or
11 any provision of the declaration or bylaws, any person or class of
12 persons suffering actual damages from the failure to comply may
13 bring a civil action for damages or other appropriate relief.

14 2. ~~{Subject to the requirements set forth in NRS 38.310 and~~
15 ~~except}~~ *Except* as otherwise provided in NRS 116.3111, a civil
16 action for damages or other appropriate relief for a failure or refusal
17 to comply with any provision of this chapter or the governing
18 documents of an association may be brought:

19 (a) By the association against:

- 20 (1) A declarant;
21 (2) A community manager; or
22 (3) A unit's owner.

23 (b) By a unit's owner *or a tenant or an invitee of a unit's*
24 *owner or a tenant* against:

- 25 (1) The association;
26 (2) A declarant; or
27 (3) Another unit's owner of the association.

28 (c) By a class of units' owners constituting at least 10 percent of
29 the total number of voting members of the association against a
30 community manager.

31 3. Except as otherwise provided in NRS 116.31036, punitive
32 damages may be awarded for a willful and material failure to
33 comply with any provision of this chapter if the failure is established
34 by clear and convincing evidence.

35 4. The court may award reasonable attorney's fees to the
36 prevailing party.

37 5. The civil remedy provided by this section is in addition to,
38 and not exclusive of, any other available remedy or penalty.

39 **Sec. 30.** NRS 116.745 is hereby amended to read as follows:

40 116.745 As used in NRS 116.745 to 116.795, inclusive, *and*
41 *section 1 of this act*, unless the context otherwise requires,
42 "violation" means a violation of any provision of this chapter, any
43 regulation adopted pursuant thereto or any order of the Commission
44 or a hearing panel.



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1 **Sec. 31.** NRS 116.757 is hereby amended to read as follows:

2 116.757 1. Except as otherwise provided in this section and
3 NRS 239.0115, a written affidavit filed with the Division pursuant
4 to NRS 116.760, all documents and other information filed with the
5 written affidavit and all documents and other information compiled
6 as a result of an investigation conducted to determine whether to file
7 a formal complaint with the Commission are confidential. ~~{The}~~
8 *Except as otherwise provided in this subsection, the* Division shall
9 not disclose any *findings or other* information that is confidential
10 pursuant to this subsection, in whole or in part, to any person,
11 ~~{including, without limitation, a person who is the subject of an~~
12 ~~investigation or complaint,}~~ unless and until a formal complaint is
13 filed pursuant to subsection 2 and the disclosure is required pursuant
14 to subsection 2. *The Division shall provide to each party to the*
15 *dispute for which the written affidavit was filed a copy of the*
16 *documents and other information submitted by the other party.*

17 2. A formal complaint filed by the Administrator with the
18 Commission and all documents and other information considered by
19 the Commission or a hearing panel when determining whether to
20 impose discipline or take other administrative action pursuant to
21 NRS 116.745 to 116.795, inclusive, *and section 1 of this act* are
22 public records.

23 **Sec. 32.** NRS 116.765 is hereby amended to read as follows:

24 116.765 1. Upon receipt of an affidavit that complies with
25 the provisions of NRS 116.760, the Division shall refer the affidavit
26 to the Ombudsman.

27 2. The Ombudsman shall give such guidance to the parties as
28 the Ombudsman deems necessary to assist the parties to resolve the
29 alleged violation. *The Ombudsman shall provide each party an*
30 *opportunity to respond to any allegations or statements made by*
31 *the other party or the Division.*

32 3. If the parties are unable to resolve the alleged violation with
33 the assistance of the Ombudsman, the Ombudsman shall provide to
34 the Division a report concerning the alleged violation and any
35 information collected by the Ombudsman during his or her efforts to
36 assist the parties to resolve the alleged violation.

37 4. Upon receipt of the report from the Ombudsman, the
38 Division shall conduct an investigation to determine whether good
39 cause exists to proceed with a hearing on the alleged violation.

40 5. If, after investigating the alleged violation, the Division
41 determines that the allegations in the affidavit are not frivolous,
42 false or fraudulent and that good cause exists to proceed with a
43 hearing on the alleged violation, the Administrator shall file a
44 formal complaint with the Commission and schedule a hearing on
45 the complaint before the Commission or a hearing panel.



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1 Sec. 33. NRS 38.310 is hereby amended to read as follows:

2 38.310 1. ~~{No}~~ *Except as otherwise provided in subsections*
3 *2 and 3, no civil action based upon a claim relating to:*

4 (a) The interpretation, application or enforcement of any
5 covenants, conditions or restrictions applicable to residential
6 property or any bylaws, rules or regulations adopted by an
7 association; or

8 (b) The procedures used for increasing, decreasing or imposing
9 additional assessments upon residential property,

10 ↪ may be commenced in any court in this State unless the action
11 has been submitted to mediation or arbitration pursuant to the
12 provisions of NRS 38.300 to 38.360, inclusive, and, if the civil
13 action concerns real estate within a planned community subject to
14 the provisions of chapter 116 of NRS or real estate within a
15 condominium hotel subject to the provisions of chapter 116B of
16 NRS, all administrative procedures specified in any covenants,
17 conditions or restrictions applicable to the property or in any
18 bylaws, rules and regulations of an association have been exhausted.

19 2. *If:*

20 (a) *A civil action described in subsection 1 concerns real estate*
21 *within a planned community subject to the provisions of chapter*
22 *116 of NRS and relates to a citation of a unit's owner or a tenant*
23 *of a unit's owner for a violation of any covenants, conditions or*
24 *restrictions applicable to residential property or any bylaws, rules*
25 *or regulations adopted by an association; and*

26 (b) *All administrative procedures specified in any covenants,*
27 *conditions or restrictions applicable to the property or in any*
28 *bylaws, rules and regulations of an association have been*
29 *exhausted,*

30 ↪ *the unit's owner or tenant may submit the civil action to*
31 *mediation or arbitration pursuant to the provisions of NRS 38.300*
32 *to 38.360, inclusive, or commence the civil action in a court of*
33 *competent jurisdiction without complying with the provisions of*
34 *NRS 38.300 to 38.360, inclusive.*

35 3. *If a civil action described in subsection 1 concerns real*
36 *estate within a planned community subject to the provisions of*
37 *chapter 116 of NRS and is brought by an invitee of a unit's owner*
38 *or a tenant of a unit's owner, the invitee may submit the civil*
39 *action to mediation or arbitration pursuant to the provisions of*
40 *NRS 38.300 to 38.360, inclusive, or commence the civil action in a*
41 *court of competent jurisdiction without complying with the*
42 *provisions of NRS 38.300 to 38.360, inclusive.*

43 4. A court shall dismiss any civil action which is commenced
44 in violation of the provisions of ~~{subsection 1-}~~ *this section.*



1 Sec. 34. NRS 38.330 is hereby amended to read as follows:

2 38.330 1. If all parties named in a written claim filed
3 pursuant to NRS 38.320 agree to have the claim submitted for
4 mediation, the parties shall reduce the agreement to writing and
5 shall select a mediator from the list of mediators maintained by the
6 Division pursuant to NRS 38.340. Any mediator selected must be
7 available within the geographic area. If the parties fail to agree upon
8 a mediator, the Division shall appoint a mediator from the list of
9 mediators maintained by the Division. Any mediator appointed must
10 be available within the geographic area. Unless otherwise provided
11 by an agreement of the parties, mediation must be completed within
12 60 days after the parties agree to mediation. Any agreement
13 obtained through mediation conducted pursuant to this section must,
14 within 20 days after the conclusion of mediation, be reduced to
15 writing by the mediator and a copy thereof provided to each party.
16 The agreement may be enforced as any other written agreement. *If a*
17 *party commences a civil action based upon any claim which was*
18 *the subject of mediation, the findings of the mediator are not*
19 *admissible in that action.* Except as otherwise provided in this
20 section, the parties are responsible for all costs of mediation
21 conducted pursuant to this section.

22 2. If all the parties named in the claim do not agree to
23 mediation, the parties shall select an arbitrator from the list of
24 arbitrators maintained by the Division pursuant to NRS 38.340. Any
25 arbitrator selected must be available within the geographic area. If
26 the parties fail to agree upon an arbitrator, the Division shall appoint
27 an arbitrator from the list maintained by the Division. Any arbitrator
28 appointed must be available within the geographic area. Upon
29 appointing an arbitrator, the Division shall provide the name of the
30 arbitrator to each party. An arbitrator shall, not later than 5 days
31 after the arbitrator's selection or appointment pursuant to this
32 subsection, provide to the parties an informational statement relating
33 to the arbitration of a claim pursuant to this section. The written
34 informational statement:

35 (a) Must be written in plain English;

36 (b) Must explain the procedures and applicable law relating to
37 the arbitration of a claim conducted pursuant to this section,
38 including, without limitation, the procedures, timelines and
39 applicable law relating to confirmation of an award pursuant to NRS
40 38.239, vacation of an award pursuant to NRS 38.241, judgment on
41 an award pursuant to NRS 38.243, and any applicable statute or
42 court rule governing the award of attorney's fees or costs to any
43 party; and

44 (c) Must be accompanied by a separate form acknowledging that
45 the party has received and read the informational statement, which



* A B 4 4 8 *

1 must be returned to the arbitrator by the party not later than 10 days
2 after receipt of the informational statement.

3 3. The Division may provide for the payment of the fees for a
4 mediator or an arbitrator selected or appointed pursuant to this
5 section from the Account for Common-Interest Communities and
6 Condominium Hotels created by NRS 116.630, to the extent that:

7 (a) The Commission for Common-Interest Communities and
8 Condominium Hotels approves the payment; and

9 (b) There is money available in the Account for this purpose.

10 4. *The fees for a mediator or an arbitrator selected or*
11 *appointed pursuant to this section must not exceed \$750 and,*
12 *except as otherwise provided in subsection 3, each party to the*
13 *mediation or arbitration must pay an equal percentage of the fees*
14 *for the mediator or arbitrator.*

15 5. *A party to a mediation or an arbitration conducted*
16 *pursuant to this section is not liable for the costs or attorney's fees*
17 *incurred by another party during the mediation or arbitration.*

18 6. *If a party to a mediation or an arbitration conducted*
19 *pursuant to this section submits a written statement to the Division*
20 *alleging that the mediator or arbitrator has a conflict of interest or*
21 *is biased against that party and submits with the written statement*
22 *evidence to substantiate the allegation, the Division shall remove*
23 *the mediator or arbitrator and appoint a mediator or arbitrator*
24 *from the list maintained by the Division pursuant to NRS 38.340*
25 *who is acceptable to each party. A mediator or arbitrator who has*
26 *been removed by the Division pursuant to this subsection shall*
27 *refund to the parties any payments made by the parties for the fees*
28 *of the mediator or arbitrator.*

29 7. Except as otherwise provided in this section and except
30 where inconsistent with the provisions of NRS 38.300 to 38.360,
31 inclusive, the arbitration of a claim pursuant to this section must be
32 conducted in accordance with the provisions of NRS 38.231,
33 38.232, 38.233, 38.236 to 38.239, inclusive, 38.242 and 38.243. At
34 any time during the arbitration of a claim relating to the
35 interpretation, application or enforcement of any covenants,
36 conditions or restrictions applicable to residential property or any
37 bylaws, rules or regulations adopted by an association, the arbitrator
38 may issue an order prohibiting the action upon which the claim is
39 based. An award must be made within 30 days after the conclusion
40 of arbitration, unless a shorter period is agreed upon by the parties to
41 the arbitration.

42 {5-} 8. If all the parties have agreed to nonbinding arbitration,
43 any party to the nonbinding arbitration may, within 30 days after a
44 decision and award have been served upon the parties, commence a
45 civil action in the proper court concerning the claim which was



- 59 -

1 submitted for arbitration. Any complaint filed in such an action must
 2 contain a sworn statement indicating that the issues addressed in the
 3 complaint have been arbitrated pursuant to the provisions of NRS
 4 38.300 to 38.360, inclusive. *If an action is commenced within that*
 5 *period, the findings of the arbitrator are not admissible in that*
 6 *action.* If such an action is not commenced within that period, any
 7 party to the arbitration may, within 1 year after the service of the
 8 award, apply to the proper court for a confirmation of the award
 9 pursuant to NRS 38.239.

10 ~~{6-}~~ 9. If all the parties agree in writing to binding arbitration,
 11 the arbitration must be conducted in accordance with the provisions
 12 of this chapter. An award procured pursuant to such binding
 13 arbitration may be vacated and a rehearing granted upon application
 14 of a party pursuant to the provisions of NRS 38.241.

15 ~~{7-}~~ 10. If, after the conclusion of binding arbitration, a party:

16 (a) Applies to have an award vacated and a rehearing granted
 17 pursuant to NRS 38.241; or

18 (b) Commences a civil action based upon any claim which was
 19 the subject of arbitration,

20 the party shall, if the party fails to obtain a more favorable award
 21 or judgment than that which was obtained in the initial binding
 22 arbitration, pay all costs and reasonable attorney's fees incurred by
 23 the opposing party after the application for a rehearing was made or
 24 after the complaint in the civil action was filed.

25 ~~{8-}~~ *If a party commences a civil action based upon any claim*
 26 *which was the subject of arbitration, the findings of the arbitrator*
 27 *are not admissible in that action.*

28 11. Upon request by a party, the Division shall provide a
 29 statement to the party indicating the amount of the fees for a
 30 mediator or an arbitrator selected or appointed pursuant to this
 31 section.

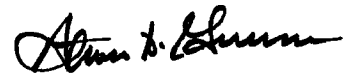
32 ~~{9-}~~ 12. As used in this section, "geographic area" means an
 33 area within 150 miles from any residential property or association
 34 which is the subject of a written claim submitted pursuant to
 35 NRS 38.320.

36 Sec. 35. The provisions of NRS 116.31164, as amended by
 37 section 23 of this act, apply only if a notice of default and election to
 38 sell is recorded pursuant to NRS 116.31162 on or after July 1, 2011.

39 Sec. 36. This act becomes effective on July 1, 2011.

50





CLERK OF THE COURT

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13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 IKON HOLDINGS, LLC, a Nevada limited liability
16 company,

17 Plaintiff,

18 vs.

18 HORIZONS AT SEVEN HILLS HOMEOWNERS
19 ASSOCIATION, and DOES 1 through 10 and ROE
20 ENTITIES 1 through 10 inclusive,

21 Defendant.

Case No: A-11-647850-C
Dept: No. 13

Date of Hearing: 12/12/2011
Time of Hearing: 9:00 a.m.

21 **REPLY TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT**
22 **ON ISSUE OF DECLARATORY RELIEF & OPPOSITION TO COUNTER MOTION**
23 **FOR SUMMARY JUDGMENT**

23 COMES NOW the Plaintiff, IKON HOLDINGS, LLC, a Nevada limited liability company,
24 by and through its counsel, James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K.
25 Premsrirut, Esq., of Puoy K. Premsrirut Esq., Inc., and file this REPLY TO OPPOSITION TO
26 MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF &
27 OPPOSITION TO COUNTER MOTION OR SUMMARY JUDGMENT. This Reply and Opposition
28

1 is made based upon the following Points and Authorities and all other pleadings and papers on file
2 herein.

3 Dated this 7th day of December, 2011.

4 ADAMS LAW GROUP, LTD.

5
6 /s/ James R. Adams
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25 MEMORANDUM OF POINTS AND AUTHORITIES

26 I.

27 INTRODUCTION

28 It must be first recognized that Plaintiff and Defendant agree on one fundamental issue. Assessments, fines, fees, penalties, collection costs, etc., may be included within the Super Priority Lien amount. Such a position is supported by the Nevada Common Interest Ownership Commission's ("CICC") Advisory Opinion, the Colorado appellate courts and by arguments of Plaintiff's and Defendant's counsel. However, that is not the issue before this Court. The issue before this Court is that even though the Super Priority Lien can include many things like assessments, fines, fees, and collection costs, is there a cap on the Super Priority Lien, or is Super Priority Lien completely limitless. In other words, to what extent does the Super Priority Lien exist (is there a cap)?

1 Fortunately, NRS 116.3116 tells the Court the extent to which the Super Priority Lien exists.

2 The Super Priority Lien exists:

3 ... to the extent of any charges incurred by the association on a unit
4 pursuant to NRS 116.310312 [external repair costs] and to the extent
5 of the assessments for common expenses based on the periodic budget
6 adopted by the association pursuant to NRS 116.3115 which would
have become due in the absence of acceleration during the 9 months
immediately preceding institution of an action to enforce the lien...
NRS 116.3116(2)

7 Thus, the Super Priority Lien (that portion of the association's general lien against a homeowner which
8 is superior to the first mortgage and which does not get extinguished by the first mortgage holder's
9 foreclosure) exists to the extent of 9 months of assessments based on the association's periodic budget
10 (plus certain external repair costs). This has been the holding of all local and out of state authorities.

11 • Judge Gonzalez:

12 The words "to the extent of" contained in NRS 116.3116(2) mean "no
13 more than," which clearly indicates a maximum figure or a cap on the
14 Super Priority Lien which cannot be exceeded. (*Plaintiff's Motion at
Ex. 14, "Judge Gonzalez Order"*).

15 • Commissioner George Burns of the Financial Institutions Division (as drafted by the Attorney
General's Office)

16 The amount of the lien which has priority over the first mortgage
17 cannot exceed what the association would have regularly charged for
18 common expenses for the unit in the nine (9) months prior to the
institution of an action to enforce a lien.

19 Any balance exceeding the nine (9) month limitation would be
subordinate to the first mortgage holder's security interest. (*Plaintiff's
Motion at Ex. 15, Paragraphs 27-31, FID Order*)

20 • Real Estate Division Arbitrator Persi Mishel

21 ... costs and fees related to unpaid assessments may be included to an
22 HOA's super priority lien amount; however, they may not be added on
23 top of the super priority lien amount. In other words, they may not be
24 added to super priority lien amount to exceed the limit on the super
priority lien amount (i.e., the limit of 9 times the monthly assessment
amount). (*Plaintiff's Motion at Ex. 16, Arbitrator Mishel's Declaratory
Relief Order, 9:20-25*)

25 • Real Estate Division Arbitrator Steve Morris

26 The extent or amount of the super-priority lien that may be asserted
27 against the Lots in this matter and which - by operation of statute - is
28 granted a priority ahead of the Deed of Trust held by Wells Fargo is

1 therefore equal to the sum total of six months¹ of the common expenses
2 based on the periodic budget adopted by the association pursuant to
3 NRS 116.3115. (*Plaintiff's Motion at Ex. 18, "Arbitrator Morris*
4 *Order"*)

5 Two Colorado Court of Appeals Decisions

6 A careful reading of the ... language reveals that the association's
7 Prioritized Lien, like its Less-Prioritized Lien, may consist not merely
8 of defaulted assessments, but also of fines and, where the statute so
9 specifies, enforcement and attorney fees. The reference in section
10 3-116(b) to priority "to the extent of" assessments which would have
11 been due "during the six months immediately preceding an action to
12 enforce the lien" merely limits the maximum amount of all fees or
13 charges for common facilities use or for association services, late
14 charges and fines, and interest which can come with the Prioritized
15 Lien. *First Atlantic Mortg., LLC v. Sunstone North Homeowners Ass'n*
16 *121 P.3d 254, 255 -256 (Colo.App.,2005).*

17 * * *

18 The association then has a super-priority lien over the lender's
19 otherwise senior deed of trust in the event of a foreclosure commenced
20 by the association or the lender, which lien is limited to delinquent
21 assessments accruing within six months of the initiation of foreclosure
22 proceedings. § 38-33.3-316(2)(b)(I). Further, the association's
23 super-priority lien includes interest, charges, late charges, fines, and
24 attorney fees **so long as the total does not exceed the limit.** *BA*
25 *Mortg., LLC v. Quail Creek Condominium Ass'n, Inc.* 192 P.3d 447,
26 451 (*Colo.App.,2008*)

27 Connecticut Supreme Court

28 While the Defendant may disagree with the equities of limiting the §
47-258(b) priority to six months of common expense assessments, this
is a matter not for the judiciary, but rather for the legislature that
enacted the statute. We conclude that the trial court correctly
determined that HHCA's priority debt was limited to the common
expense assessments that accrued in the six months immediately
preceding the commencement of the foreclosure. *Hudson House Condo.*
Ass'n, Inc. v. Brooks, 223 Conn. 610, 616, 611 A.2d 862, 865 (1992)

U.S. District Court - Massachusetts

Accordingly, the institution of an action by a condominium association
is a condition precedent to achieving "super-priority" status for the
condominium lien. However, even when the association files such an
action, the condominium lien is given a "super-priority" status only to
the extent of unpaid condominium fees for the preceding six months.
Trustees of MacIntosh Condominium Ass'n v. F.D.I.C. 908 F.Supp. 58,
63 (*D.Mass.,1995*)

¹ 6 month limit prior to 2009 amendment to NRS 116.3116(2)

1 In this Reply and Opposition, the Super Priority Lien formula will be clearly dissected giving the Court
2 the reasoning why all authorities examining this issue have uniformly ruled that the portion of an
3 association's general lien against a homeowner is superior to the first mortgage holder only "to the
4 extent" of exterior unit repair costs and a figure equaling 9 months of association assessments based
5 upon the periodic budget adopted by the association.

6 II

7 ARGUMENT AT LAW

8 A. The Super Priority Lien Formula

9 Each phrase contained in NRS 116.3116(2), (i.e., the Super Priority Lien formula) has
10 significance. As clearly indicated in NRS 116.3116(1) an association has a general statutory lien on
11 a unit for:

- 12 1. any construction penalty that is imposed against the unit's owner;
- 13 2. any assessment levied against that unit or any fines imposed against the unit's owner
14 from the time the construction penalty, assessment or fine becomes due
- 15 3. any penalties, fees, charges, late charges, fines and interest charged pursuant to
16 paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102.

17 Indeed, "If an assessment is payable in installments, the full amount of the assessment is a lien from
18 the time the first installment thereof becomes due." NRS 116.3116(1). Thus, the full year's budgeted
19 assessment against the homeowner is contained in the association's general statutory lien against the
20 homeowner.

21 However, pursuant to NRS 116.3116(2)(b) once a first mortgage lender forecloses on the
22 homeowner, the association's general statutory lien is extinguished.

23 2. A lien under this section is prior to all other liens and encumbrances
24 on a unit except...

25 (b) A first security interest on the unit recorded before the date on
which the assessment sought to be enforced became delinquent...

26 Thus far in the Super Priority Lien analysis, traditional lien priority law applies to NRS 116.3116. ("A
27 lien that is first in time generally has priority and is entitled to prior satisfaction of the property it
28 binds." *Federal Nat. Mortg. Ass'n v. Kuipers* 314 Ill.App.3d 631, 634, 732 N.E.2d 723, 726, 247

1 Ill.Dec. 668, 671 (Ill.App. 2 Dist.,2000)).

2 However, in a break with traditional lien priority law, NRS 116.3116(2) has given a limited
3 priority over the association's general statutory lien. That limited priority amount is described in NRS
4 116.3116(2):

- 5 • "The lien is also prior to all security interests described in paragraph (b) to the extent
6 of any charges incurred by the association on a unit pursuant to NRS 116.310312
7 [exterior unit repair costs], and...
- 8 • "to the extent of
- 9 • the assessments for common expenses based on the periodic budget adopted by
10 the association pursuant to NRS 116.3115
- 11 • which would have become due in the absence of acceleration during the 9 months
12 immediately preceding institution of an action to enforce the lien..."

12 A dissection of the Super Priority Lien language follows:

- 13 i. "To the extent of the assessments for common expenses based on the periodic
14 budget adopted by the association pursuant to NRS 116.3115"

15 In calculating the Super Priority Lien, the Court looks to the Defendant's assessments for
16 common expenses based on Defendant's periodic budget. This annual assessment figure is contained
17 in the Defendant's periodic budget which the Defendant adopts pursuant to the enabling legislation
18 contained NRS 116.3115 (the budget is passed, "pursuant to NRS 116.3115). The periodic budget is
19 the key document which determines the annual assessment amount and the monthly installments
20 which are calculated in the Super Priority Lien. For example, Section 1.17 of the Defendant's CC&RS
21 (*Ex. 1 of Plaintiff's Motion*) state that:

22 'Budget' shall mean a written, itemized estimate of the expenses to be
23 incurred by the Association in performing its functions under this
24 Declaration, prepared, approved, and ratified pursuant to the provisions
of this Declaration, including, but not limited to, Section 6.4 below.

25 Section 6.4 of the Defendant's CC&RS state that:

26 The Board shall adopt a proposed annual Budget (which shall include
27 a Reserve Budget) at least thirty (30) days prior to the first Annual
28 Assessment period for each Fiscal Year. Within thirty (30) days after
adoption of any proposed Budget, the Board shall provide to all Owners
a summary of the Budget, and shall set a date for a meeting of the
Owners to consider ratification of the Budget.

1
2 Thus, the assessments for common expenses based on the periodic budget adopted by the association
3 pursuant to NRS 116.3115 are simply determined by looking at the Defendant's annual budget.

4 ii. **... Which would have become due in the absence of acceleration during the 9**
5 **months immediately preceding institution of an action to enforce the lien...**

6 The Defendant adopts an "annual budget." But homeowners pay their annual assessments to
7 Defendant not on an accelerated basis (i.e., the entire year's assessment in one payment), but generally
8 in monthly installments. As Section 6.7 of the Defendants' CC&RS state, "The first Annual
9 Assessment for each Unit shall be prorated based on the number of months remaining in the Fiscal
10 Year." Generally, only in the event that a homeowner defaults on his monthly installment payment
11 of assessments will the entire remaining portion of the annual assessment be "accelerated." For
12 example, Section 7.2 of the Defendant's CC&RS state regarding Notices of Delinquent Assessments,
13 "that failure to cure the default on or before the date specified in the notice may result in acceleration
14 of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the
15 Unit."

16 Therefore, when NRS 116.3116(2) states that the Defendant's general statutory lien is superior
17 to the first mortgage only "to the extent of the assessments for common expenses based on the periodic
18 budget adopted by the association pursuant to NRS 116.3115 **which would have become due in the**
19 **absence of acceleration during the 9 months immediately preceding institution of an action to**
20 **enforce the lien...**" it is the monthly (un-accelerated) installments of the annual assessment amount
21 to which NRS 116.3116(2) refers. The phrase "in the absence of acceleration" simply means when
22 calculating the Super Priority Lien amount, the monthly assessment installment figure is used. Thus,
23 the statutory cap on the Super Priority Lien is calculated by adding together 9 of the monthly (un-
24 accelerated) assessment installments.

25 Such a figure is easily calculated. For example, if the Defendant's annual budget is
26 \$120,000.00 and there are 100 homes in the association. The annual (accelerated) assessment
27 obligation of every unit owner is \$1,200.00. In the "absence of acceleration" of the annual amount is
28 the monthly installment amount (i.e., \$1,200.00 divided by 12 months = \$100.00 monthly assessment

installment). Therefore, in this example, the association's Super Priority Lien would equal \$900.00 plus external unit repair costs, if any. This is the simple analysis accepted by all local and out of state authorities.

B. The Uniform Common Interest Ownership Act and the Original NRS 116.3116 Passed in Nevada in 1991 Are Virtually Identical

Defendant argues NRS 116 "differs significantly" from the UCIOA. This is an inaccurate statement. The Uniform Common Interest Ownership Act ("UCIOA") was originally promulgated in 1982 by the National Conference of Commissioners on Uniform State Laws. In 1991, Nevada passed the UCIOA which is embodied in Nevada Revised Statutes §116. A comparison of the 1982 UCIOA and the 1991 version of NRS 116 reveals that they are virtually identical:

1982 UCIOA	Nevada's 1991 NRS 116.3116
(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. <i>(Plaintiff's Motion at Ex. 11 at pg. 1)</i>	2. A lien under this section is prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to; (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in paragraph (b) to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

1 The 1982 UCIOA and the 1991 version of NRS 116.3116 are identical. Therefore, Defendant's
2 assertion that "Nevada did not adopt the UCIOA as written, rather Nevada's scheme provides for a
3 much broader super priority lien than the UCIOA" (Opposition at 8:10-12) is an erroneous statement.
4 In 2009, Nevada increased the 6 month Super Priority Lien cap to 9 months of assessments and added
5 certain external repair costs. Other than those small modifications, the statute remained essentially the
6 same. While assessments, collection costs, fines, fees and penalties can be included within the Super
7 Priority Lien, in no event can the Super Priority Lien exceed a figure equaling 9 months of association
8 assessments plus certain external unit repair costs.

9 **C. Judge Gonzalez' Wingbrook Order is Directly on Point and Answers the Exact Same**
10 **Declaratory Relief Questions as is Before this Court.**

11 Defendant's argue that, "... the moving papers presented by the homeowners' association raise
12 no similar arguments raised by the Association in the instant matter." (Opposition, 9:11-12). Of
13 course, the main question is not what did Defendant's argued, but what issue did Judge Gonzalez
14 decide? Judge Gonzalez ruled upon the same declaratory relief issues in the *Wingbrook* case as are
15 now before this Court. While having no effect of precedent, Judge Gonzalez' reasoning may certainly
16 be considered by this Court in answering the declaratory relief questions raised in Plaintiff's Motion.
17 Therefore, it is important to note that Judge Gonzalez was presented with the identical declaratory
18 relief questions. Both Motions request the following declaratory order.

19 Wingbrook Motion for Declaratory Relief	Ikon Motion for Declaratory Relief
20 • <i>After the foreclosure by a first mortgage</i> 21 <i>lender of a unit located within a homeowners'</i> 22 <i>association, pursuant to NRS 116.3116 the monetary</i> 23 <i>limit of a homeowners' association's super priority</i> 24 <i>lien, i.e., that amount of its statutory lien on said unit</i> 25 <i>which can survive extinguishment by a foreclosing</i> 26 <i>first mortgage holder is limited to a maximum amount</i> 27 <i>equaling 9 times the monthly assessment amount (plus</i> 28 <i>repair costs pursuant to NRS §116.310312); and</i> • <i>That pursuant to NRS 116.3116, a "super</i> <i>priority lien" does not exist in the absence of a</i> <i>homeowners' association's having first filed a</i> <i>complaint with the court to enforce the lien, i.e., the</i> <i>institution of a civil action as defined by Nevada Rules</i> <i>of Civil Procedure 2 and 3.</i>	• <i>After the foreclosure by a first mortgage</i> <i>lender of a unit located within a homeowners'</i> <i>association, pursuant to NRS 116.3116 the monetary</i> <i>limit of a homeowners' association's super priority</i> <i>lien, i.e., that amount of its statutory lien on said unit</i> <i>which can survive extinguishment by a foreclosing</i> <i>first mortgage holder is limited to an amount equaling</i> <i>9 times the monthly association's assessment amount</i> <i>plus certain repair costs pursuant to NRS §116.310312</i> <i>(just 6 times the association's monthly assessment</i> <i>prior to October 1, 2009); and</i> • <i>That pursuant to NRS 116.3116, a "super</i> <i>priority lien" does not exist in the absence of a</i> <i>homeowners' association's having first filed a</i> <i>complaint with the court to enforce the lien, i.e., the</i> <i>institution of a civil action as defined by Nevada Rules</i> <i>of Civil Procedure 2 and 3.</i>

1 As the Court can see, the exact same request for declaratory relief was raised in both Departments.
2 Judge Gonzalez was specific in her findings of fact and conclusions of law regarding the cap on the
3 Super Priority Lien. Judge Gonzalez held:

- 4 1. NRS 116.3116 is a statute which creates for the benefit of Nevada
5 homeowners' associations a lien against a homeowner's unit for any
6 construction penalty that is imposed against the unit's owner pursuant to NRS
7 116.310305, any assessment levied against that unit or any fines imposed
8 against the unit's owner from the time the construction penalty, assessment or
fine becomes due (the "Statutory Lien"). The homeowners' associations'
Statutory Lien is noticed and perfected by the recording of the associations'
declaration and, pursuant to NRS 116.3116(4), no further recordation of any
claim of lien for assessment is required.
- 9 2. Pursuant to NRS 116.3116(2), the homeowners' association's Statutory Lien
10 is junior to a first security interest on the unit recorded before the date on which
the assessment sought to be enforced became delinquent ("First Security
11 Interest") except for a portion of the homeowners' association's Statutory Lien
which remains prior to the First Security Interest (the "Super Priority Lien").
- 12 3. Homeowners' associations, therefore, have a Super Priority Lien which has
13 priority over the First Security Interest on a homeowners' unit. However, the
Super Priority Lien amount is not without limits and NRS 116.3116 is clear
14 that the amount of the Super Priority Lien (i.e., that amount of a homeowners'
associations' Statutory Lien which retains priority status over the First Security
15 Interest) is limited "to the extent" of those assessments for common expenses
based upon the associations' periodic budget that would have become due in
16 the 9 month period immediately preceding an associations' institution of an
action to enforce its Statutory Lien and "to the extent of" external repair costs
17 pursuant to NRS 116.310312.
- 18 4. The words "to the extent of" contained in NRS 116.3116(2) mean "no more
19 than," which clearly indicates a maximum figure or a cap on the Super Priority
Lien which cannot be exceeded.
- 20 5. Therefore, after the foreclosure by a First Security Interest holder of a unit
located within a homeowners' association, pursuant to NRS 116.3116 the
monetary limit of a homeowners' association's Super Priority Lien is limited to
21 a maximum amount equaling 9 times the homeowners' association's monthly
assessment amount to unit owners for common expenses based on the periodic
22 budget which would have become due immediately preceding the association's
institution of an action to enforce the lien (the "Assessment Cap Figure") plus
23 external repair costs pursuant to NRS 116.310312.
- 24 6. While assessments, penalties, fees, charges, late charges, fines and interest may
25 be included within the Assessment Cap Figure, in no event can the total amount
of the Assessment Cap Figure exceed an amount equaling 9 times the
26 homeowners' association's monthly assessment amount to unit owners for
common expenses based on the periodic budget which would have become due
27 immediately preceding the association's institution of an action to enforce the
lien. (*Plaintiff's Motion, Ex. 14, "Judge Gonzalez Order"*).

1 Thus, Judge Gonzalez ruled that NRS 116.3116 called for a cap on the Super Priority Lien of
2 9 times a homeowners' association's monthly assessments. As Judge Gonzalez ruled, "The words 'to
3 the extent of' contained in NRS 116.3116(2) mean "no more than" which clearly indicates a maximum
4 figure or a cap on the Super Priority Lien which cannot be exceeded."

5 **D. The Advisory Opinion from the Nevada Financial Institutions Division (Drafted by the**
6 **Attorney General's Office) is a Clear Indication that the State of Nevada's Position is**
7 **that the Super Priority Lien is Capped**

8 Defendant pointed out that Judge Susan Johnson granted a preliminary injunction on behalf
9 of three collection agencies that the Financial Institutions Division had no jurisdiction to interpret NRS
10 116 in regulating the behavior of its own licensees. This decision is under review by the Nevada
11 Supreme Court. Indeed, Plaintiff, in its Motion for Partial Summary Judgment on Declaratory Relief
12 pointed out this very case. Thus, Judge Johnson prohibited the FID from enforcing the Declaratory
13 Order. However, it should be noted that Judge Johnson did not dispute the substance of the
14 Declaratory Order (i.e., that there is a cap of a figure equaling 9 months of assessments on the Super
15 Priority Lien), just that the FID did not have jurisdiction to interpret NRS 116. To date, the FID and
16 the Nevada Attorney General's Office agrees with Judge Gonzalez' ruling. The FID, the Attorney
17 General's Office (who drafted the FID Declaratory Order) and Judge Gonzalez are all consistent on
18 the single most important issue, i.e., the Super Priority Lien is capped at 9 months of assessments plus
19 external unit repair costs.

20 **E. Contrary to Defendant's Argument, the Nevada Real Estate Division's Common Interest**
21 **Community Commission's Advisory Opinion Supports the Position Taken by Plaintiff**
22 **in this Case**

23 On December 8, 2010, the Nevada Real Estate Division's Common Interest Community
24 Commission adopted an Advisory Opinion which was requested by RMI Management, a large
25 association collection agency who happens to be a client of the Jones Vargas law firm whose partner,
26 Michael Buckley, Esq., happens to be the Chairman of the CICC and the author of the Advisory
27 Opinion. Coincidentally, the Advisory Opinion was published just 1 week after RMI hired Jones
28 Vargas as a lobbyist to change NRS 116 to permit collection costs to be added on top of the Super
Priority Lien (a legislative proposal that failed). While this conflict of interest is most poignant, the
CICC's advisory opinion did not directly address the question which is before this Court. The

1 Advisory Opinion asked the following question:

2 May the association also recover, as part of the super priority lien, the
3 costs and fees incurred by the association in collecting such
4 assessments? (*Ex. 4 of Plaintiff's Opposition, CICC Advisory Opinion,*
5 *pg. 1*).

6 The Advisory Opinion answered the question by stating that an association may collect *as a part of*
7 the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by
8 the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of
9 collecting" authorized by NRS 116.310313. (*Ex. 4 of Plaintiff's Opposition, CICC Advisory Opinion,*
10 *pg. 1*).

11 Of course, those points are not disputed. There has been universal agreement that collection
12 costs may be *part* of the Super Priority Lien amount. However, the question which was not directly
13 addressed by the Advisory Opinion is the one that is before this Court, i.e., whether NRS 116.3116
14 limits the Super Priority Lien to the extent of an amount equaling 9 times the monthly assessments.
15 Nowhere in the CICC's Advisory Opinion does it conclude that the Super Priority Lien amount can
16 exceed an amount equaling 9 months of assessment plus repair costs. Nowhere in the Advisory
17 Opinion does it conclude that collection costs can be added "on top of" the Super Priority Lien amount.
18 Nowhere in the Advisory Opinion is the Colorado case law supporting the cap rejected. In fact, the
19 Advisory Opinion cites with approval the Colorado case law and Professor James Winnokur's law
20 review article which state that the Super Priority Lien is capped at a figure equaling 9 times an
21 association's monthly assessment.

22 The Advisory Opinion favorably cites the Colorado case law and James Winokur's law review
23 article and states that the Nevada statutory language is consistent with Colorado's law and Winokur's
24 commentary, i.e., the Super Priority Lien in Nevada and Colorado is limited to the extent of an amount
25 equaling 9 times (6 times in Colorado) the association's monthly assessments. As part of this limited
26 amount, collection costs may be included.

27 The Advisory Opinion found "very helpful" the language of the Colorado courts and Winokur's
28 law review article:

 The two Colorado cases that have considered this issue reached their
 conclusion, that the priority debt includes attorneys' fees and costs,

1 based on statutory language similar to Nevada's. The language of the
2 court in First Atlantic Mortgage, LLC v. Sunstone N. Homeowners
Ass'n, 121 P.3d 254 (Colo. App 2005) **is very helpful:**

3 Within the meaning of Section 2(b), a "lien under this
4 section" may include any of the expenses listed in
subsection (l), including "fees, charges, late charges,
5 attorney fees, fines, and interest." Thus, although the
maximum amount of a super priority lien is defined
6 solely by reference to monthly assessments, the lien
itself may comprise debts other than delinquent monthly
7 assessments.[Emphasis added.]

8 In support of its holding, the Sunstone court quoted the following
language from James Winokur, Meaner Lienor Community
9 Associations: The "Super Priority" Lien and Related Reforms Under the
Uniform Common Ownership Act, 27 Wake Forest L. Rev. 353, 367:

10 A careful reading of the . . . language reveals that the
11 association's Prioritized Lien, like its Less-Prioritized
Lien, may consist not merely of defaulted assessments,
12 but also of fines and, where the statute so specifies,
enforcement and attorney fees. The reference in
13 Section 3-1 16(b) to priority "to the extent of
assessments which would have been due "during the
14 six months immediately preceding an action to
enforce the lien" merely limits the maximum amount
15 of all fees or charges for common facilities use or for
association services, late charges and fines, and
16 interest which can come with the Prioritized Lien.
(Ex. 4 of Plaintiff's Opposition, CICC Advisory
17 Opinion, pgs. 5-6)

18 Thus, the CICC's Advisory Opinion supports Plaintiff's position that the super priority portion of the
19 lien exists only to the extent of 9 times an association's monthly assessments. The Advisory Opinion
20 fully accepts the Colorado holdings and Winokur's commentary, finds them helpful, and concludes
21 that Nevada's statutory language is the same as Colorado's (i.e., there is a definite cap on the super
priority lien amount).

22 **F. Defendant Misconstrues the Holding in the Connecticut Case of *Hudson House*. There**
23 **is no Case Law in Any State that Supports Defendant's Position**

24 As its sole, published, common law precedent for the proposition that the super priority portion
25 of an association's lien can consist of both 9 months of assessments plus collection costs, Defendant
26 cites *Hudson House Condominium Association v. Brooks*, 223 Conn. 610, 611 A.2d 862 (1992). A
27 case decided prior to Connecticut's unique statutory amendment to the UCIOA allowing for attorney's
28 fees in addition to the 6 month assessment figure, Defendant claims that, "The Eighth Judicial District

1 Court has adopted the reasoning of Hudson House....” and that “... attorney’s fees and other costs must
2 be included in the Super Priority Lien....”

3 However, Defendant fails to understand that the sole reason why that one, single case allowed
4 6 months of assessments plus attorney’s fees is not because attorney’s fees are allowed to be added as
5 a matter of course pursuant to the super priority language of the statute, but only because the
6 homeowner’s association (Hudson House Condominium Association) in that particular case obtained
7 a judgment against the homeowner (Michael Brooks) and the homeowner’s first mortgage lender,
8 Connecticut Housing Finance Authority (“CHFA”). The Connecticut Supreme Court held that pursuant
9 to another provision of Connecticut law (Section 47-258(g)), when an association obtains a judgment,
10 only then can an association obtain both 6 months of assessment plus fees and costs. Nowhere did the
11 Connecticut Court hold that an association can obtain both collection costs and 6 months of
12 assessments as a matter of course, without first obtaining a judgment. In fact, in applying the original
13 UCIOA that Nevada adopted, no Supreme Court or Appellate Court anywhere has ever so held. The
14 Connecticut Court specifically determined that:

15 Section 47-258(g) provides that a “judgment or decree in any action
16 brought under this section shall include costs and reasonable attorney’s
17 fees for the prevailing party.” It is undisputed that HHCA, as the
18 plaintiff and the party in whose favor the trial court rendered judgment,
19 is the prevailing party in this, its own foreclosure action. CHFA does
not dispute that § 47-258(g) authorizes the inclusion of these costs and
fees as part of HHCA’s judgment.... Hudson House Condo. Ass’n, Inc.
v. Brooks, 223 Conn. 610, 616, 611 A.2d 862, 866 (1992)

20 Thus, Section 47-258(g) specifically states, “A judgment or decree in any action brought under this
21 section shall include costs and reasonable attorney’s fees for the prevailing party.” *Conn. Gen. Stat.*
22 *Ann. § 47-258 (West)*. In fact, Nevada has enacted the very same law in NRS 116.3116(7) which
23 states, “A judgment or decree in any action brought under this section must include costs and
24 reasonable attorney’s fees for the prevailing party.” There is simply no question that if an association
25 obtains a judgment against the lender and the lender retakes the property through foreclosure, like in
26 the *Hudson House* case, that attorney’s fees and costs may be added to the 6 month assessment figure
27 as against the foreclosing lender. Indeed, there is a specific statute that allows for it.

1 However, the obvious distinction between the case at bar and *Hudson House* is the fact that in
2 *Hudson House*, the homeowner's association obtained a judgment allowing them to get attorney's fees
3 and costs under Section 47-258(g), and in this case Defendant did not received any judgment
4 whatsoever. Therefore, pursuant to both Connecticut's statute as originally adopted (before the
5 amendment) and Nevada's current statute, if Defendant obtained no judgment against the lender or
6 investor, then no fees and costs can be legally awarded against the lender or added to the 6 or 9 month
7 cap. (See NRS 116.3116(7)).

8 Here, like in *Hudson House*, the opposing parties asserted that the statute which caps the Super
9 Priority Lien (and which was duly passed by the legislature,) is inequitable and unfair and that it
10 violates "public policy." However, the *Hudson House* Court had a response to such an argument that
11 is most apropos and which should be appreciated by this Court:

12 While the plaintiff may disagree with the equities of limiting the §
13 47-258(b) priority to six months of common expense assessments, this
14 is a matter not for the judiciary, but rather for the legislature that
15 enacted the statute. We conclude that the trial court correctly
16 determined that HHCA's priority debt was limited to the common
17 expense assessments that accrued in the six months immediately
18 preceding the commencement of the foreclosure. *Hudson House Condo.*
19 *Ass'n, Inc. v. Brooks*, 223 Conn. 610, 616, 611 A.2d 862, 865 (1992)

20 In short, the Connecticut Court, in applying the pre-amended version of its super priority
21 statute² completely and unequivocally supports the fact that the Super Priority Lien is capped, and
22 (consistent with NRS §116.3116), unless the Defendant had obtained a judgment against Plaintiff
23 pursuant to NRS §116.3116(7) (or *Conn. Gen. Stat. Ann. § 47-258(g)*) no attorney's fees, collection
24 costs, or other such costs can be added to the 9 month assessment cap. Such fees may, of course, be
25 included within the Super Priority Lien to the extent the Super Priority Lien does not exceed the cap
26 of 9 times the monthly assessment amount. Any assessment or collection fee which exceeds the Super
27 Priority Lien amount is still a lien against the homeowner's property, just a less prioritized lien which
28 may be extinguished through the foreclosure of a first mortgage holder.

2 ² In 1991, Connecticut's Legislature amended its Super Priority Lien statute to permit attorney's
fees and collection costs to be added on top of the Super Priority Lien.

1 Ultimately, the Connecticut legislature changed its super priority statute to allow for both 6
2 months of assessments plus attorney's fees and costs. The *Hudson House* Court noted:

3 No. 91-359 of the Public Acts of 1991 (Public Act 91-359), which
4 repealed and replaced General Statutes § 47-258(b) and which took
5 effect on July 5, 1991, after the judgment of strict foreclosure in this
6 case, clarified that attorney's fees and costs are included in the priority
7 debt. Public Act 91-359 provides that the "lien is also prior to all
8 security interests described in subdivision (2) of this subsection to the
9 extent of (A) an amount equal to the common expense assessments ...
which would have become due in the absence of acceleration during the
six months immediately preceding institution of an action to enforce
either the association's lien or a security interest described in
subdivision (2) of this subsection and (B) the association's costs and
attorney's fees in enforcing its lien" *Hudson House Condo. Ass'n, Inc.*
v. Brooks, 223 Conn. 610, 617, 611 A.2d 862, 866 (1992)

10 Of course, Nevada has not amended its Super Priority Lien statute to allow for both 9 months of
11 assessments plus collection costs. Instead, on October 1, 2009, the Nevada legislature amended NRS
12 116.3116 to increase the Super Priority Lien amount from an amount equaling 6 times the monthly
13 assessments to an amount equaling 9 times the monthly assessments. It also allowed unit repair costs
14 to be added to the super priority lien amount.

15 **G. In Her 2006 District Court Ruling of Korbel, Judge Glass Erred as She Did Not Have the**
16 **Benefit of These Comprehensive Briefs, Exhibits, Legislative Histories, Scholarly**
Articles, and Analysis

17 Defendant cites an erroneous, non-precedential, lower court ruling in support of its position
18 that the super priority portion of an association's lien can exceed 6 or 9 times the association's monthly
19 assessment amount. As there are no intermediate appellate or supreme court rulings in any state that
20 supports Defendant's position, it must cite the erroneous rulings of a trial court. Notwithstanding the
21 fact that Judge Glass' ruling contains no clear Conclusions of Law (as Judge Gonzalez' Wingbrook
22 Order does) and is not binding on this Court, and that Judge Glass did not have the benefit of most of
23 the arguments, legislative history, scholarly articles, exhibits and case law analysis contained in these
24 papers, the very ruling Defendant's cite, *Korbel Family Living Trust v. Spring Mountain Ranch Master*
25 *Association*, relies upon the Connecticut *Hudson House* decision which supports the plain language
26 of the statute that the Defendant's lien is superior to the first mortgage only to the extent of a figure
27 equaling 9 months (6 in Connecticut) of Defendant's monthly assessments, i.e., collection costs cannot
28 be added on top of the Super Priority portion of a homeowners' association's lien. While collection

1 costs may be included within the super priority portion of the lien, the lien cannot exceed the 9 month
2 cap.

3 Quite simply, Judge Glass misinterpreted the *Hudson House* case and adopted the same flawed
4 legal reasoning used by Defendant. As fully explained above, the *Hudson House* court only awarded
5 attorney's fees together with 6 months of assessments because the association had obtained a
6 "judgment" against the lender. Only after obtaining a judgment against the lender, pursuant to Section
7 47-258(g) of the Connecticut law, could the association receive attorney's fees above 6 months of
8 assessments. Indeed, Nevada has the same law in NRS 116.3116(7). However, in this case (unlike
9 *Hudson House*) Defendant has not received a judgment with respect to the collection file in dispute.
10 Therefore, pursuant to both Connecticut's statute as originally adopted (before its unique 1991
11 amendment) and Nevada's current statute (NRS 116.3116(7)), only in the case where associations
12 obtain a judgment, can fees and costs be legally awarded against the foreclosing lender or investor. It
13 is hoped, despite their volume, that this Court has benefitted by these extensive briefings. The briefs
14 brought before Judge Glass were not as comprehensive (likely due to the small amount of damages
15 sought). In rendering its decision on this legal matter, this Court (like Judge Gonzalez) has more
16 information, more legal precedent, more legislative histories, more secondary materials, and more
17 analysis than Judge Glass had before her. Without question, this Court will review the breadth of
18 information before it and employ its own, independent intellectual analysis in deciding these matters.

19 **H. Defendant's Cited Cases of Elkhorn and JP Mortgage are Misplaced**

20 NRS 116.3116(2) clearly states that a Super Priority Lien only exists "to the extent of" a figure
21 equaling 9 months of assessments based upon an association's periodic budget. However, in the case
22 where an association files a lawsuit to collect its unpaid assessments, or in the case where a judicial
23 (versus non-judicial) foreclosure occurs, NRS 116.3116(7) provides as follows, "A judgment or decree
24 in any action brought under this section must include costs and reasonable attorney's fees for the
25 prevailing party." Thus, completely unlike the situation in this case where costs in excess of the Super
26 Priority Lien were charged by Defendant absent a judicial foreclosure or the filing of a lawsuit (i.e.,
27 absent a judgment or decree), in the cases cited by Defenant, a lawsuit or judicial foreclosure was filed
28 (i.e., a judgment obtained). Thus, unlike in this case, in the *Elkhorn* and *JP Morgan* cases cited by

1 Defendant, there was a specific statute which authorized the addition of costs to the Super Priority
2 Lien.

3 In the *Elkhorn* case (A607051), Judge Vega answered two declaratory relief questions:

4 1. “Does the Association have the right to bring a judicial foreclosure action before a
5 court of proper jurisdiction in Nevada to satisfy the Association’s special priority
6 portion of a lien for assessments authorised by NRS 116.3116 (“SPL”)?” and

7 2. “If the Association has the right to bring a judicial foreclosure action to satisfy is SPL
8 in Nevada, are the non-attorney fees and costs of collection accrued by the Association
9 to bring the judicial foreclosure action considered a component part of the
10 Association’s SPL?”

11 Judge Vega answered both questions in the affirmative. This was the correct ruling because NRS
12 116.3116(7) provides that in the case where a lawsuit is filed and a judgment obtained, fees and costs
13 must be awarded. Such was the case in *Elkhorn*. Such is not the case here. In every collection activity
14 related to this case, no lawsuit or judicial foreclosure action had been filed by Plaintiff or the
15 associations. Therefore, since no judgment or decree has been issued, NRS 116.3116(7) does not
16 come into play and costs and fees cannot be obtained in excess of the Super Priority Lien cap of 9
17 times an association’s monthly assessment.

18 In the *JP Morgan Chase* case cited by Plaintiff (A562687), it must first be noted that the Order
19 and Judgment repeatedly states that a collection agency (Nevada Association Services (“NAS”)) had
20 a lien over the subject property. Indeed, the Court made a variety of rulings based upon NAS’ alleged
21 “lien”. However, no statute in the State of Nevada grants a collection agency a lien over an
22 individual’s property. NRS 116.3116 grants only to a homeowners’ association a statutory lien, not
23 to a collection agency. Thus, the ruling in *JP Morgan* should be immediately discounted because the
24 Court failed to understand that collection agencies do not have “super priority” liens, only
25 homeowners’ associations do. Further, like the *Elkhorn* case, in the *JP Morgan* case a lawsuit was filed
26 and judgment obtained. Due to a lawsuit having been filed and a judgment obtained, the Court utilized
27 the *Brunzell* factors in awarding fees and costs to NAS. The Court noted:

28

1 NAS's documented attorney's fees in the amount of \$47,700.00 meet
2 the Brunzell v Golden Gate National Bank, 85 Nev. 345, 349 (1969)
3 factors. That based on the qualities of the advocate, the character of the
4 work to be done, the work actually performed by the lawyer, and the
result obtained, the amount of attorney's fees and costs to be included
as part of NAS' collection costs relating to its "super priority" lien
amount are reasonable and necessary.

5 Further, as in the *Elkhorn* case, because a judgment was rendered, the Court utilized NRS 116.3116(7)
6 in awarding fees and costs. For example, the Court ruled:

7 The Court further found that NAS properly supported its claim for
8 \$49,035.28 in attorney's fees and costs through August 27, 2010
9 comprised of \$1,635.28 in costs and \$47,400.00 in attorney's fees in
defending and protecting its statutory right to an assessment lien,
pursuant to NRS 116.3116(7).

10 Again, because NRS 116.3116(7) provides that in the case where a lawsuit is filed and a
11 judgment obtained, fees and costs must be awarded, the *JP Morgan* case and the *Elkhorn* case are
12 misplaced in the analysis before this Court. In this case, no lawsuit or judicial foreclosure action had
13 been filed by Plaintiff or the associations. Therefore, since no judgment or decree has been issued,
14 NRS 116.3116(7) does not come into play and costs and fees cannot be obtained in excess of the Super
15 Priority Lien cap of 9 times an association's monthly assessment.

16 **I. Fannie Mae and Freddie Mac Do Not Follow the Korbel Decision but do Agree that the**
17 **Super Priority Lien is Capped**

18 Contrary to Defendant's argument that "Freddie Mac's attorney" (the Cooper Castle Law Firm)
19 follows the errant *Korbel* decision, the lead General Counsel for the Federal Housing Finance Agency
20 has specifically stated to Lucas Foletta, counsel for Governor Sandoval, that Fannie Mae and Freddie
21 Mac do not believe collection costs can be added on top of the Super Priority Lien. Alfred M. Pollard,
General Counsel to the FHFA wrote to the Governor's Office:

22 I would note Fannie Mae and Freddie Mac have provided for
23 reimbursement of six months of regular common expense unpaid
24 assessments. They do not reimburse for collection costs or attorney's
25 fees. (*Plaintiff's Motion, Ex. 24, Letter from Alfred Pollard to Lucas*
Folleta).

26 Indeed, the correspondence referred to in Defendant's Opposition (at Opposition 15:18-21) was not
27 authored by "Freddie Mac's attorney," but was authored by a "Closing Specialist" who is not a
28 licensed attorney. Thus, Defendant's attempt to attribute to one of the nation's largest purchasers of

1 mortgages the view that Freddie Mac believes the Super Priority Lien is completely limitless with no
2 statutory cap is a stretch beyond imagination. The very law firm whom Defendant cites in its
3 Opposition as agreeing with the *Korbel* decision clarified the comments of its "Closing Specialist" as
4 follows:

5 In summary, neither The Cooper Castle Law Firm, LLP nor Federal
6 Home Loan Mortgage Corporation concur with Judge Glass' opinion....
(*Plaintiff Motion, Ex. 16, Cooper Castle Letter*)

7 Therefore, contrary to Defendant's argument that Freddie Mac believes collection costs can be added
8 on top of the Super Priority Lien, Freddie Mac, Fannie Mae and the FHFA hold no such position.
9 Indeed, the U.S. Government's position is just the opposite, "... Fannie Mae and Freddie Mac have
10 provided for reimbursement of six months of regular common expense unpaid assessments. They do
11 not reimburse for collection costs or attorney's fees."

12 **J. Professor James Winokur is Cited by the Colorado Court of Appeals and Directly**
13 **Supports the Super Priority Lien Cap**

14 It should be noted that Defendant is unable to cite any opposing published case law which
15 contradicts the Colorado Court of Appeals which relies upon Professor Winokur's law review articles.
16 As noted by the Colorado Courts, while assessments, fees and collection costs may be included in the
17 Super Priority Lien, the maximum amount of the super priority lien is capped:

18 A careful reading of the ... language reveals that the association's
19 Prioritized Lien, like its Less-Prioritized Lien, may consist not merely
20 of defaulted assessments, but also of fines and, where the statute so
21 specifies, enforcement and attorney fees. The reference in section
22 3-116(b) to priority "to the extent of" assessments which would have
23 been due "during the six months immediately preceding an action to
24 enforce the lien" merely limits the maximum amount of all fees or
25 charges for common facilities use or for association services, late
26 charges and fines, and interest which can come with the Prioritized
27 Lien. *First Atlantic Mortg., LLC v. Sunstone North Homeowners Ass'n*
28 *121 P.3d 254, 255 -256 (Colo.App.,2005).*

* * *

25 The association then has a super-priority lien over the lender's
26 otherwise senior deed of trust in the event of a foreclosure commenced
27 by the association or the lender, which lien is limited to delinquent
28 assessments accruing within six months of the initiation of foreclosure
proceedings. § 38-33.3-316(2)(b)(I). Further, the association's
super-priority lien includes interest, charges, late charges, fines, and
attorney fees so long as the total does not exceed the limit. *BA*
Mortg., LLC v. Quail Creek Condominium Ass'n, Inc. 192 P.3d 447,

2 Therefore, so long as the total of all assessments, fees, costs and other charges do not exceed the limit
3 of an amount equal to 9 times (6 times in other states) of monthly assessments, the Super Priority Lien
4 includes interest, charges, late charges, etc.

5 Both Colorado decisions borrow from Professor Winokur who has written:

6 The reference in section 3-116(b) to priority "to the extent of"
7 assessments which would have been due "during the six months
8 immediately preceding an action to enforce the lien" merely limits the
9 maximum amount of all fees or charges for common facilities use or for
10 association services, late charges and fines, and interest which can
11 come within the Prioritized Lien. (Plaintiff's Motion, Ex. 19 at pg. 5).

12 Professor Winokur authored another article in 1998 wherein he affirmed the clear language of the
13 Super Priority Lien statutes as mandating "limited" liens. He wrote, "The special priority accorded
14 by UCIOA to a portion of association assessment liens is limited to the extent it is based on such a
15 [periodic] budget." *Critical Assessment: The Financial Role of Community Associations*, James L.
16 Winokur, 38 Santa Clara L. Rev. 1135, 1151 (1998). "These "super priority" lien provisions provide
17 a limited first priority for up to six months of unpaid assessments over almost all other liens, including
18 "a first security interest on the unit recorded before the date on which the assessment sought to be
19 enforced became delinquent." Id., 1157. While the policy considerations behind such Super Priority
20 Lien laws can be debated ad infinitum, the fact remains that NRS 116.3116, as written, conclusively
21 provides that the Super Priority Lien equals a figure of 9 months of assessments based upon
22 Defendant's periodic budget plus certain exterior unit repair costs.

23 **K. Necessity for the Institution of an Action**

24 The issue of Defendant's filing of an "action to enforce the lien..." as a condition precedent to
25 the establishment of a Super Priority Lien has been exhaustively covered in Plaintiff's Motion for
26 Partial Summary Judgment. Notably, the word "action" is defined in the very statute which is the
27 subject of this Motion. NRS 116.3116(7) states, "A judgment or decree in any action brought under
28 this section must include costs and reasonable attorney's fees for the prevailing party." Of course, the
only type of action wherein a judgment can be handed down is a civil action in a court of law (per
NRCF 2 and 3). Thus, when NRS 116.3116 states that the Super Priority Lien is limited, "to the extent

1 of the assessments for common expenses based on the periodic budget adopted by the association
2 pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the
3 9 months immediately preceding institution of an action to enforce the lien.” The “action” to enforce
4 the lien is the type of civil action as noted in NRS 116.3116(7), i.e., a civil action which can only result
5 in the issuing of a judgment or decree. If the triggering event of Defendant’s filing of a civil action
6 in a court of law to enforce the lien has not occurred, there can be no Super Priority Lien.

7 III.

8 CONCLUSION

9 For the reasons cited above, Plaintiff respectfully requests this Court deny Defendant’s Counter
10 Motion for Summary Judgment and enter an order consistent with Plaintiff’s Motion for Summary
11 Judgment on Declaratory Relief.

12 Therefore, Plaintiff respectfully requests this Court to the hold the following:

- 13 • That it grant Plaintiff Motion for Summary Judgment on Declaratory Relief and rule
14 that after the foreclosure by a first mortgage lender of a unit located within a
15 homeowners’ association, pursuant to NRS 116.3116 the monetary limit of a
16 homeowners’ association’s statutory lien on said unit which can survive
17 extinguishment by the foreclosure auction is limited to only 9 times the monthly
18 assessment amount plus external unit repair costs. In other words, the “super priority
19 lien amount” is capped at a maximum amount equal to 9 times the monthly
20 assessments (6 times prior to October 1, 2009) plus exterior unit repair costs; and
- 21 • That it grant Plaintiff’s Motion for Summary Judgment and rule that pursuant to NRS
22 116.3116 a “super priority lien” does not exist in the absence of a homeowners’

23 ///

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28

1 association's having filed a complaint with the court to enforce the lien,
2 i.e., the institution of a civil action as defined by Nevada Rules of Civil
3 Procedure 2 and 3.

4
5 Dated this 7th day of December, 2011.

6
7 ADAMS LAW GROUP, LTD.

8 /s/ James R. Adams
9 JAMES R. ADAMS, ESQ.
10 Nevada Bar No. 6874
11 ASSLY SAYYAR, ESQ.
12 Nevada Bar No. 9178
13 8330 W. Sahara Ave., Suite 290
14 Las Vegas, Nevada 89117
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22 Las Vegas, NV 89101
23 (702) 384-5563
24 (702)-385-1752 Fax
25 ppremsrirut@brownlawlv.com
26 Attorneys for Plaintiff
27
28

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **REPLY TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF & OPPOSITION TO COUNTER MOTION FOR SUMMARY JUDGMENT** upon all parties to this action by:

<input checked="" type="checkbox"/>	<u>Placing an original or true copy thereof in a sealed enveloped place for collection and mailing in the United States Mail, at Las Vegas, Nevada, postage paid, following the ordinary business practices;</u>
<input type="checkbox"/>	<u>Hand Delivery</u>
<input type="checkbox"/>	<u>Facsimile</u>
<input checked="" type="checkbox"/>	<u>Email</u>
<input type="checkbox"/>	<u>Certified Mail, Return Receipt Requested.</u>

addressed as follows:

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Office: 702.384.7000
Fax: 702.385.7000
Kbonds@AlversonTaylor.com

Dated the 7th day of December, 2011.

/s/ James R. Adams
An employee of Adams Law Group, Ltd.

Allen B. Lamm
CLERK OF THE COURT

1 0290

2 DISTRICT COURT

3 CLARK COUNTY, NEVADA

4 IKON HOLDINGS, LLC,)

5)
6 Plaintiff(s),)

7 vs.)

8 HORIZONS AT SEVEN HILLS)
9 HOMEOWNERS ASSOCIATION,)

10 Defendant(s).)
11 _____)

CASE NO. A647850-B

DEPT. NO. XIII

12 **BUSINESS COURT ORDER**

13 This BUSINESS COURT ORDER ("Order") is entered to reduce the costs of litigation,
14 to assist the parties in resolving their disputes if possible, and, if not, to reduce the costs and
15 difficulties of discovery and trial. This Order may be amended or modified by the Court upon
16 good cause shown, and is made subject to any Orders that have heretofore been entered herein.

17 IT IS HEREBY ORDERED:

18 **I. MANDATORY RULE 16 CONFERENCE**

19
20 A. A mandatory Rule 16 conference with the Court and counsel/parties in proper
21 person will be held on January 9, 2012 at 2:45 p.m.

22 B. The purpose of this conference is to expedite settlement or other appropriate
23 disposition of the case. Counsel/parties in proper person must be prepared to discuss the
24 following:

25 (1) status of 16.1 settlement discussions and a review of possible court
26 assistance;
27
28

CLERK OF THE COURT

DEC 08 2011

RECEIVED

MARK R. DENTON
DISTRICT JUDGE

DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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- (2) alternative dispute resolution appropriate to this case;
- (3) simplification of issues;
- (4) a summary of discovery conducted to date and the nature and timing of all remaining discovery;
- (5) an estimate of the volume of documents and/or electronic information likely to be the subject of discovery in the case from parties and nonparties and whether there are technological means, including, but not limited to, production of electronic images rather than paper documents and any associated protocol, that may render document discovery more manageable at an acceptable cost;
- (6) identification of any and all document retention/destruction policies including electronic data;
- (7) whether the appointment of a special master or receiver is necessary and/or may aid in the prompt disposition of this action;
- (8) any special case management procedures appropriate to this case;
- (9) trial setting; and
- (10) other matters as may aid in the prompt disposition of this action.

C. Trial or lead counsel for all parties are required to attend the conference unless excused by the Court.

D. Parties desiring a settlement conference shall so notify the court at the setting.

E. **The Plaintiff is responsible for serving a copy of this Order upon counsel for all parties who have not formally appeared in this case as of the date of the filing of this order.**

1
2 II. PRETRIAL MOTIONS

3 A. Any requests for injunctive relief must be made with notice to the opposing
4 party unless extraordinary circumstances exist. Any agreement to consolidate the trial on the
5 merits with the preliminary injunction hearing pursuant to NRCP 65(a)(2) shall be reflected in a
6 stipulation submitted to the Court for its consideration or spread on the minutes and approved
7 by the Court at the outset of the hearing.
8

9 B. With the exception of motions in limine (see below), any motions which should
10 be addressed prior to trial – including, without limitation, motions for summary judgment –
11 shall be served, filed and scheduled for hearing as set forth in the applicable Scheduling Order
12 or other Order. Except upon a showing of unforeseen extraordinary circumstances, the Court
13 will not shorten time for the hearing of any such motions.
14

15 C. Motions in limine shall be served, filed and scheduled as set forth in the Trial
16 Order or other applicable order. Except upon a showing of unforeseen extraordinary
17 circumstances, the Court will not shorten time for the hearing of any such motions.
18

19 III. DISCOVERY

20 A. Discovery disputes in this matter will be handled by the District Court Judge
21 rather than the Discovery Commissioner.

22 B. A continuance of trial does not extend the deadline for completing discovery. A
23 request for an extension of the discovery deadline, if needed, must be separately addressed
24 either by stipulation submitted to the Court for its consideration or motion.

25 C. A party objecting to a written discovery request must, in the original objection.
26 specifically detail the reasons that support the objection, and include affidavits or other
27

1 evidence for any factual assertions upon which an objection is based.

2
3 D. Documents produced in compliance with NRCP 16.1 or in a response to a
4 written discovery request, must be consecutively Bates stamped or numbered and accompanied
5 by an index with a reasonably specific description of the documents.

6 E. Any party, whether in compliance with NRCP 16.1 or in a response to a written
7 discovery request not producing all documents in its possession, custody or control, shall:

8 (1) identify any documents withheld with sufficient particularity to support a
9 Motion to Compel; and

10 (2) state the basis for refusing to produce the documents(s).

11 F. If photographs are produced in compliance with NRCP 16.1 or in a response to a
12 written discovery request, the parties are instructed to include one (1) set of color prints (Color
13 laser copies of sufficient clarity are acceptable), accompanied by a front page index, location
14 depicted in the photograph (with reasonable specificity) and the date the photograph was taken.

15 If color laser copies are deposited, any party wishing to view the original photographs shall
16 make a request to do so with the other party.

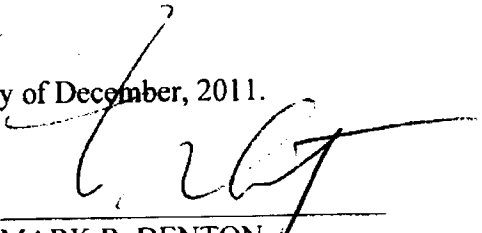
17 When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of record
18 shall notify the District Court Judge within twenty-four (24) hours of the settlement and shall
19 advise the Court of the identity of the party or parties who will prepare and present the judgment,
20 dismissal, or stipulation of dismissal, which shall be presented within twenty (20) days of the
21 notification of settlement.

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Failure to comply with any provision of this Order may result in the imposition of sanctions.

DATED this 7th day of December, 2011.

MARK R. DENTON
DISTRICT JUDGE


CERTIFICATE

I hereby certify that on or about the date filed, this document was e-served or a copy of this document was placed in the attorney's folder in the Clerk's Office or mailed to:

ADAMS LAW GROUP
Attn: James R. Adams, Esq.

PUOY K. PREMSRIRUT, ESQ.

ALVERSON, TAYLOR, MORTENSEN & SANDERS
Attn: Kurt R. Bonds, Esq.


LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

ORIGINAL

Ann L. Quinn

CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IKON HOLDINGS LLC,

Plaintiff,

vs.

HORIZON AT SEVEN HILLS
HOMEOWNERS ASSOCIATION,

Defendant.

CASE NO. A647850-B
DEPT NO. XIII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

MOTIONS

MONDAY, DECEMBER 12, 2011

APPEARANCES:

FOR THE PLAINTIFFS: JAMES R. ADAMS, ESQ.
PUONYARAT K. PREMSRIRUT, ESQ.

FOR THE DEFENDANTS: ERIC W. HINCKLEY, ESQ.

RECORDED BY CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

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APR 19 2012

CLERK OF THE COURT

1 LAS VEGAS, NEVADA, MONDAY, DECEMBER 12, 2011, 9:23 A.M.

2 * * * * *

3 THE COURT: The next one I'm going to call now is
4 Ikon Holdings, LLC, vs. Horizon at Seven Hills Homeowners
5 Association.

6 MR. ADAMS: Good morning, Your Honor. James Adams
7 appearing on behalf of the plaintiff.

8 MS. PREMSRIRUT: Good morning, Your Honor. Puon
9 Premsrirut on behalf of the plaintiff.

10 MR. HINCKLEY: Eric Hinckley on behalf of defendant,
11 Horizon at Seven Hills.

12 MR. ADAMS: Your Honor, I know this is a relatively
13 small case, but it has rather large implications to it. I
14 have prepared a PowerPoint presentation and I didn't want to
15 take up a lot of time, you know, with the -- with the folks
16 waiting behind me. I volunteer to take to the back of the
17 line if the Court so requests.

18 THE COURT: How long do you think it's going to take
19 to present this?

20 MR. ADAMS: Twelve to 15 -- well, 15 minutes.

21 THE COURT: Well, let me go through a couple of
22 other things, then I'll get back to it. Because I've got a
23 couple of other things that are also long.

24 MR. ADAMS: Yeah.

25 THE COURT: And yours isn't necessarily going to be

1 any longer than one or two of these others. But let me get
2 through some of these other things that I think will be
3 shorter and then I'll get back to you.

4 MR. ADAMS: Thank you, Your Honor.

5 MS. PREMSRIRUT: Thank you, Your Honor.

6 THE COURT: All right. Page 2 -- I appreciate that,
7 counsel.

8 (Court recessed from 9:24; until 11:08 a.m.)

9 THE COURT: All right. You may be seated. The
10 Court calls Ikon Holdings, LLC, vs. Horizon at Seven Hills
11 Homeowners Association. Please state appearances of counsel.

12 MR. ADAMS: Your Honor, James Adams and Puon
13 Premsrirut appearing on behalf of Plaintiff Ikon.

14 MS. PREMSRIRUT: Good morning, Your Honor.

15 MR. HINCKLEY: Eric Hinckley on behalf of defendant
16 Horizons at Seven Hills HOA.

17 THE COURT: Thank you. I appreciate your patience.
18 This case should have been given one of those so-called
19 special times, and it wasn't. And when you got up, Mr. Adams,
20 and indicated that you had a PowerPoint, I thought you
21 probably would be the longest or among the longest of the
22 cases. And one of those I thought would be handled that I had
23 before you I thought would -- wouldn't take as much time as it
24 did, so I apologize.

25 MR. ADAMS: It's no problem, Your Honor. And I'm

1 actually -- now I can not have to feel guilty about only
2 wasting Your Honor's time and no one else's.

3 THE COURT: No, okay. All right. Go ahead.

4 MR. ADAMS: Your Honor, essentially, the facts of
5 this case mirror the facts of -- of many other cases that are
6 -- that are currently going on. When a -- when a homeowner
7 buys a property in a homeowners association, recently there's
8 been many mortgage defaults. And when the homeowner defaults
9 on his mortgage, oftentimes -- oftentimes the homeowner doesn't
10 pay his homeowners association dues. And for an extended
11 period of time, that amount, those assessments and fines,
12 fees, and penalties will accrue and accrue and accrue until
13 you get a very, very large lien that the association has
14 against the homeowner's property. Lien is pursuant to NRS
15 116.3116.

16 Now, the nature of this particular hearing is asking
17 the Court for declaration of the meaning of the law, and
18 that's NRS 116.3116, the superpriority lien law. And we're
19 asking the Court to state that that portion of a homeowners
20 association's lien gets superior status over a first mortgage
21 lender, is limited to a specific amount pursuant to the
22 statute.

23 Now, the homeowners association has every right to
24 pursue the homeowner for the less prioritized lien. Really,
25 if you look at it, the lien is almost two different liens.

1 There's the superpriority lien, and then there's the -- the
2 less prioritized lien that doesn't fit within the definition
3 of the superpriority lien.

4 So what happens at the foreclosure, and this will
5 probably be the first slide, in Nevada we have a traditional
6 lien priority law, a lien that is first in time generally as
7 priority and it binds -- and is entitled to prior satisfaction
8 of the property it binds. And it's basically whoever files
9 the lien first gets priority. And the case in Nevada is the
10 Walter B. Schrade [phonetic] case, "Upon foreclosure sale of
11 an owner's interest in land, if the proceeds would be
12 insufficient to satisfy all liens, priorities of lienholders
13 would be established as of the date of recordation."

14 So Nevada has adopted the traditional first in time,
15 first in right lien law. Now, Uniform Common Interest
16 Ownership Act breaks with that tradition to a certain degree.
17 And there's some comments in the 1994 version of the -- of the
18 Uniform Common Interest Ownership Act when the Uniform
19 commissioners got together, and they were saying that this
20 superpriority lien is a -- is a -- really, it's a departure
21 from the existing practice. And it's -- back then it was six
22 months. Nevada adopted, really, in -- in whole the Uniform
23 Common Interest Ownership Act in -- in 1991. It was passed by
24 the Uniform commissioners back in '82. So back in those days
25 it was a six-month priority.

1 So the comment section says, "The six months of
2 priority for the assessment lien strikes an equitable balance
3 between the need to enforce collection of unpaid assessments
4 for homeowners associations, and the obvious necessity for
5 protecting the priority of security interests of lenders."

6 So what it really was supposed to do is be like an
7 equitable balance. We're going to give the HOA something, but
8 we really have to protect the lenders, because if we don't
9 protect the lenders, if this is an limitless infinite lien,
10 lenders aren't going to want to undertake that risk in lending
11 money in states where there's a limitless priority lien. Not
12 only would lenders either not want to lend or have interest
13 rates at 22 percent, but entities like Fannie Mae and Freddie
14 Mac would also not want to buy loans from lenders who loan
15 money in a state where there's a limitless superpriority lien.

16 As a practical matter, it goes on to say -- goes on
17 to say, "Secured lenders will most likely pay the six months
18 of assessments demanded by the association, rather than having
19 the association foreclose on the unit. If the lender wishes,
20 an escrow for assessments can be required." So in the
21 comments, there's a couple of things to note.

22 Number one, the comments acknowledge it's a six-month
23 superpriority lien, six months of assessments. And number
24 two, we know it's a finite amount, because if a lender wants
25 to say to a borrower, I want you to escrow six months of

1 assessments just in case you don't pay the homeowners
2 association, the lender's going to be protected. His downside
3 liability will be basically negated, because he can ask the
4 borrower to escrow six months of assessments.

5 Now, before the Court are two questions for the
6 declaratory relief cause of action. I think all the parties
7 agree that under the superpriority lien, a homeowners
8 association has a lien for any assessment levied against that
9 unit or any fines imposed against the unit. There's a -- a
10 whole lot of things, as we'll see, that a homeowners
11 association has a lien against in the original homeowner's
12 property for.

13 Now, what we're asking here, is that pursuant to NRS
14 116.3116, what portion of that general homeowners association
15 statutory lien against the homeowner, if any, is superior to
16 the unit's first mortgage lender when the foreclosure occurs.
17 And then the second question for declaratory relief is, does
18 the superpriority lien even exist in the absence of a
19 homeowners association's failure to file a complaint with the
20 court.

21 Basically, what is the definition of the word civil
22 action. As we get along further, we'll see how the statute
23 says that the superpriority lien basically is calculated from
24 the date of an action to enforce the lien. So what does the
25 word action mean in that -- in that statute.

1 The reason for the PowerPoint presentation is because
2 we're talking about a statute here, it's kind of a lengthy
3 statute, and I really wanted to focus the Court on what the
4 actual words of the statute mean and say. Because it's --
5 it's so easy to lose sight of the words of the statute in
6 between arguments of counsel and -- and what they think it
7 means. So I want to put the exact words before the Court.

8 So the association has a lien on a unit -- and these
9 -- these are the exact words of the statute -- "for any
10 construction penalty that is imposed against the unit's
11 owner." For example, if you buy a lot in a homeowners
12 association and you don't build your house on time, the
13 penalties for that are going to constitute a lien against your
14 property. We've got any assessment levied against that unit.
15 So we've got the -- the lien is composed of construction
16 penalties and assessments, or any fines imposed against the
17 unit -- unit's owner, if the grass isn't mowed, whatever the
18 fine might be for, from the time the construction penalty,
19 assessment, or fine becomes due. So the general lien is going
20 to consist of construction penalties, assessments, fines,
21 starting from the date that they're due.

22 There's more to the general lien than that. And NRS
23 116 goes on to say that "unless the declaration provides --
24 provides otherwise, any penalties fees, charges, late charges,
25 fines, interest charged pursuant to another section of NRS

1 116, are enforceable as assessments under this section." Now,
2 it doesn't say that all of these different things are
3 assessments. But it says they're enforceable as assessments.

4 Now, how are assessments enforceable? Well, we know
5 they're enforceable from the previous section that said
6 assessments are a lien on the property. So it's our position
7 and the position of basically every other court that's taken a
8 look at this issue, that -- Colorado courts, Connecticut
9 courts, Massachusetts courts -- that all of these different
10 things here constitute a lien against the homeowner's
11 property.

12 Now, if an assessment is payable in installments, the
13 full amount of the assessment is a lien from the time the
14 first installment thereof becomes due. Now, this is really
15 important because most homeowners associations permit their
16 homeowners to pay in monthly installments or quarterly
17 installments. But the law says that the entire year's worth
18 of assessments is actually part of the general lien against
19 the homeowner's property, even though the homeowner may have
20 the right under the CC&Rs to pay in monthly installments. And
21 this will be important later on.

22 So that Nevada Revised Statute, that 116.3102, just
23 lists all different things that are going to constitute
24 penalties, fees, and charges. We've got, you know, fees for
25 the use of common elements, we've got late payment of

1 assessments, construction penalties, fines for violation of
2 the CC&Rs, and charges for any amendments or preparation of
3 statements of unpaid assessments. So basically the general
4 lien is composed of a whole lot of stuff. And I don't think
5 there's any dispute as to that part of NRS 116. The dispute
6 comes later.

7 Now, MRS 116.3116, paragraph 2, enforces the
8 traditional lien priority law that we have in Nevada. Because
9 this part of the statute says, "A lien under this section is
10 prior to all other liens and encumbrances on the unit, except
11 liens and encumbrances recorded before the CC&Rs were
12 recorded, a first security interest that was recorded before
13 the date on which the assessment sought to be enforced became
14 delinquent." Okay. So, so far we've got the HOA's general
15 lien is prior to all liens except liens that are recorded
16 before the CC&Rs were recorded, and except the first mortgage.
17 And liens for real estate taxes.

18 So HOA's general lien is prior to all liens except
19 for liens recorded before CC&Rs were recorded, first mortgage,
20 as long as the first mortgage was recorded before the date the
21 assessment became delinquent, and tax liens. So in that
22 sense, it is a traditional lien. It gets wiped out. The
23 general super -- the general association lien gets wiped out
24 so far if the first mortgage holder forecloses. Just like
25 every other lien does.

1 Now, here's where the exception comes in. NRS
2 116.2116(2) goes on to say, "The lien is also" -- that is, the
3 general homeowners association lien -- "is also prior to all
4 security interests described in paragraph B." Now, if you'll
5 remember, paragraph B was the first mortgage. So the lien is
6 prior to all security interests described in paragraph B, the
7 first mortgage, "to the extent of." So we're breaking with
8 traditional lien law.

9 Now we're saying, Okay, here's the stuff out of the
10 big pot of whatever constitutes the general statutory
11 homeowner lien, we're going to take some -- some stuff out of
12 that pot and we're going to stick it above the first mortgage.
13 So we have to figure out what that is. And fortunately the
14 law is very clear as to exactly what that is.

15 "In Nevada, the superpriority lien is superior to the
16 first mortgage to the extent of any charges incurred by the
17 association on a unit pursuant to NRS 116.310312." What that
18 is are external repair costs. Now, in 2009, this law was
19 changed. It used to say that the superpriority lien was only
20 six months of assessments. And there was concern because of a
21 downturn in the housing market and all of the foreclosures,
22 that -- that really wasn't enough. So at that time, as we'll
23 see later, there were attempts made to change this law to
24 include all sorts of other things on top of this superpriority
25 lien or within the superpriority lien.

1 But in 2009, the legislature thought, well, you know,
2 we're going to do a compromise here. We're going to say it's
3 going to be X number of months of assessments -- they chose
4 nine, as we'll see in a minute -- and if the homeowners
5 association needs to go in and -- and plant grass or fix up
6 the exterior of a unit, we're going to include that in the
7 superpriority lien. So that's what to the extent of any
8 charges incurred by the association on a unit pursuant to this
9 particular NRS section is, is exterior repair costs are now
10 going to be senior or super to the first mortgage.

11 "And to the extent of" -- and this is the fun part of
12 the language, because this is where, basically, all the meat
13 is -- "and to the extent of the assessments for common
14 expenses based on the periodic budget adopted by the
15 association pursuant to NRS 116.3115." Now --

16 THE COURT: Are those latter two part of the second
17 one, or are they separate? The way you have it on the
18 PowerPoint, it looks like they're separate categories.

19 MR. ADAMS: Oh, this -- it's all one -- I -- I'm
20 just doing this to -- here, let me put them all up.

21 THE COURT: Well, I mean, to the extent of the
22 assessments for common expenses based on the periodic budget
23 without the --

24 MR. ADAMS: Yeah, it's all one sentence.

25 THE COURT: Okay. Because they have those little