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CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

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

Defendant.

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

ORDER

This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file and for good cause appearing hereby orders:

ORD

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company, Plaintiff, vs. HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	Case No: A-11-647850-C Dept: No. 13 ORDER

This matter came before the Court on March 7, 2012, in chambers, upon the Defendant's Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., filed briefs on behalf of the Plaintiff. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders and Patrick Reilly, Esq., of Holland and Hart filed briefs on behalf of the Defendant. The Honorable Court, having read the briefs on file and for good cause appearing hereby orders:

3/6/12

Pursuant to EDCR 2.23(c), Defendant's Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief is denied without hearing.

Further, the hearing on Defendant's Motion for Clarification or, in the Alternative, for Reconsideration of Order Granting Summary Judgment on Claim of Declaratory Relief shall be removed from the motion calendar currently set for March 12, 2012.

IT IS SO ORDERED.

DISTRICT COURT JUDGE 3/15/12 Date

Submitted by:

JAMES R. ADAMS, ESQ.
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Approved:

#12998 for

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company, Plaintiff(s), vs. HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, Defendant(s).	CASE NO. A647850-B DEPT. NO. XIII Date: March 12, 2012 Time: 9:00 a.m.

DECISION

THIS MATTER having come before the Court on March 12, 2012 for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment, and the Court having DENIED Plaintiff's Motion from the bench and then taken Defendant's Countermotion under advisement for further review, and the Court, having further considered the papers submitted in connection with such item(s) and the arguments made on behalf of the parties and being now fully advised in the premises;

NOW, THEREFORE, the Court decides the submitted issues as follows:

The Court agrees with Defendant that Plaintiff's causes of action beyond the ones for declaratory relief and injunctive relief are not sustainable under the undisputed factual scenario involved in this case which demonstrates that Plaintiff has not suffered actual damages recoverable under the First, Second,

33

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

Third, Fourth, and Fifth Causes of Action pleaded in Plaintiff's Complaint. In sum, this is not a case seeking attorneys' fees and costs for a slander of title, *Horgan v. Felton*, 123 Nev. 577, 583-586, 170 P.3d 982 (2007), and the Court does not consider that the theories pleaded by Plaintiff have been shown to involve genuine issues as to damages that are otherwise recoverable under those causes of action. Therefore, Defendant's Countermotion as to such additional causes of action is GRANTED. This ruling is without prejudice to Plaintiff's effort to seek attorneys' fees and costs based upon whatever statutory or contractual premise may be applicable.

Counsel for Defendant is directed to submit a proposed order consistent with the foregoing and which sets forth the factual and legal underpinnings of the same in accordance herewith and with counsel's briefing and argument.

This Decision sets forth the Court's intended disposition on the subject, but it anticipates further order of the Court to make such disposition effective as an order or judgment.

DATED this 28th day of March, 2012.

MARK R. DENTON
DISTRICT JUDGE

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

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.

BROWN, BROWN & PREMSRIRUT
Attn: Puoy K. Premsrirut, Esq.

HOLLAND & HART
Attn: Patrick J. Reilly, Esq.

ALVERSON, TAYLOR, MORTENSEN & SANDERS
Attn: Eric Hinckley, Esq.

LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

A-11-647850-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	March 28, 2012

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

March 28, 2012 4:08 PM Decision

HEARD BY: Denton, Mark R. COURTROOM: Chambers

COURT CLERK: Linda Denman

JOURNAL ENTRIES

- DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT

This matter came before the Court on the 12th of March, 2012. Counsel presented their arguments and submitted; Court took the matter under advisement.

DECISION:
After considering papers submitted and hearing arguments, Court issued its Decision this 28th day of March, 2012. COURT ORDERED **Countermotion for Summary Judgment is GRANTED.** (See Decision for full context.)

Plaintiff for defendant is directed to submit a proposed Order consistent with the foregoing and which sets forth the factual and legal underpinnings of same in accordance herewith and with counsel s briefing and argument.

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CLERK OF THE COURT

MSJD
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DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

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

Defendant.

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

Date of Hearing 4/30/2012
Time of Hearing 9:00 a.m.

MOTION FOR SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF

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

Dated this 30th day of March, 2012.

ADAMS LAW GROUP, LTD.

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Attorneys for Plaintiff

NOTICE OF MOTION

YOU AND EACH OF YOU will please take notice that Plaintiff's MOTION FOR SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF will be heard in the above entitled court on the 30 day of April, 2012 at hour of 9:00 or as soon thereafter as counsel can be heard.

Dated this 30th day of March, 2012.

ADAMS LAW GROUP, LTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

On December 12, 2011, this Court ruled upon Plaintiff's Motion for Partial Summary Judgment on Claim of Declaratory Relief regarding the meaning of NRS 116.3116 (the Super Priority Lien statute). In short, the Court ruled that NRS 116.3116 limited a homeowners' association's "Super Priority Lien" to a figure equaling 9 months of assessments (6 months prior to October, 2009), plus certain external repairs costs. On March 28th, 2012, this Court entered a decision granting Defendant's Counter Motion for Summary Judgment on the Plaintiff's first, second, third, fourth and fifth causes of action based upon the Court's determination that Plaintiff suffered no actual damages. The Court left the remaining claims for injunctive relief and declaratory relief intact.

There remains three claims for declaratory relief. Therefore, in the present Motion, Plaintiff requests the Court to declare the rights, status or other legal relations of the parties as follows:

1. Defendant, in contravention of Nevada Revised Statutes §116.3116, has unlawfully demanded from Plaintiff amounts in excess of the Super Priority Lien to which it has no legal entitlement.

2. Pursuant to Mortgagee Protection Provisions of the Defendant's CC&RS (Section 7.8 and 7.9), Defendant's assessment lien was junior to the first security interest of the Unit's first mortgage lender except for a certain, limited and specified portion of the lien as defined in the Mortgagee Protection Provisions of the Defendant's CC&RS (i.e., 6 months of assessments,) and

3. Defendant, in contravention of the Mortgagee Protection Provisions of the Defendant's CC&RS has improperly demanded monies from Plaintiff in order to satisfy Defendant's claimed liens or demands which exceeded a figure equaling 6 months of assessments, thereby violating the CC&RS. (See Complaint, ¶83(d) and 86).

In short, Plaintiff seeks a declaration from the Court that Defendant had no right under NRS 116.3116 to demand from Plaintiff nor lien the Unit for more than a figure equaling 9 months of assessments (plus external repair costs) and that Defendant had no right under Section 7.8 and 7.9 of the CC&RS to demand from Plaintiff nor lien the Unit for more than a figure equaling 6 months of assessments.

II

FACT SUMMARY

On 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"). On 6/28/2010, Scott M. Ludwig purchased APN 177-35-610-137 (the "Unit") at a foreclosure auction of the prior owner's first mortgage lender ("6/28/2010 Foreclosure Auction") (Ex. 2, "Trustee's Deed", Ex. 3, "First Deed of Trust"). The Unit is located with Defendant Association. On 7/14/2010 Scott M. Ludwig transferred the Unit by quit claim deed to Plaintiff (Ex. 4, "Ikon Deed"). On 9/30/2010 Defendant filed a Notice of Delinquent Assessment Lien against Plaintiff and the Unit for $6,050.14 (Ex. 5, "Notice of Delinquent Assessment Lien"). On 10/18/2010 Defendant sent Plaintiff a letter stating, "Per your request, the current balance for the above property is $6,287.94." (Ex. 6, the "10/18/10 Collection Letter"). Pursuant to the spreadsheet of fees and costs attached to the 10/18/10 Collection Letter, Defendant's monthly assessments were $190.00. There is no dispute that the Unit, being located within Defendant homeowners' association, is subject to NRS 116 (Common Interest Ownership Uniform Act) and the CC&RS.

This Court has already ruled that pursuant to NRS 116.3116, after October of 2009, the Super Priority Lien is limited to a figure equaling 9 months of assessments plus certain exterior repair costs. Therefore, the maximum amount Plaintiff could have owed to Defendant prior to the 6/28/2010 Foreclosure auction for the Super Priority Lien would have been 9 x $190.00 (or $1,710.00).

In addition, Pursuant to Section 7.8 and 7.9 of the CC&RS, the foreclosure of the first mortgage lender of the Unit extinguishes the Defendant's lien against the Unit but for an amount equal to 6 months of assessments. Regarding priority of homeowner association assessment liens, Section 7.8 and 7.9 of the CC&RS state the following:

> Section 7.8 Mortgagee 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).** The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.
>
> Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. **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 nonjudicial 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. (Ex. 1)

Thus, pursuant to the CC&RS, Defendant's lien is subordinate to the first mortgage holder and is extinguished by the foreclosure of the Unit but for an amount equal to 6 months of assessments. Again, at the time of foreclosure, Defendant's monthly assessments were $190.00. Thus, pursuant to the CC&RS, the maximum amount of Defendant's lien which could survive foreclosure was 6 times $190.00 (or $1,140.00) (see Section 7.9 of the CC&RS above).

However, the 10/18/2010 Collection Letter demanded $6,287.94 from Plaintiff. A portion of that amount for was assessments and fees accrued for the period of time after the 6/28/10 Foreclosure Auction and a portion of that amount was for assessments and fees accrued before the 6/28/10 Foreclosure Auction. Fortunately, the 10/18/10 Collection Letter was accompanied by a breakdown of fees and costs. A review of the breakdown of the fees and costs on Ex. 6 reveals that Defendant was demanding a total of $3,684.52 for a time period prior to the 6/28/10 Foreclosure Auction. An examination of the breakdown of fees was as follows:

1. $2,262.02 for amounts from "01/10-06/10"
2. $547.50 for amounts from "10/09 - 12/09"
3. $75.00 for amounts from "10/09 - 12/09"
4. $800.00 for association foreclosure costs.

See following Page and Ex. 6

AR

Prior to 6/28/2010 Foreclosure Auction

McIntosh, Ikon Holdings LLC — Horizons @ Seven Hills

950 Seven Hills #1411 — Account No: t0016551

TS# N 47664

Assessments, Late Fees, Interest, Attorneys Fees & Collection Costs *Dates of Delinquency: 06/28/2010-10/10*	Amount Present rate 07/10-Current	Amount Prior rate 01/10-06/10	Amount Prior rate 10/09-12/09	Amount Water 10/09-12/09	Amount Prior rate
Balance forward	0.00	0.00	0.00	0.00	0.00
No. of Months Subject to Interest	0	0	0	0	0
Interest due on Balance Forward	0.00	0.00	0.00	0.00	0.00
Monthly Assessment Amount	190.00	190.00	172.50	25.00	0.00
No. of Months Delinquent	4	6	3	3	0

AR

Prior to 6/28/2010 Foreclosure Auction

McIntosh, Ikon Holdings LLC — Horizons @ Seven Hills

950 Seven Hills #1411 — Account No: t0016551

TS# N 47664

Assessments, Late Fees, Interest, Attorneys Fees & Collection Costs *Dates of Delinquency: 06/28/2010-10/10*	Amount Present rate 07/10-Current	Amount Prior rate 01/10-06/10	Amount Prior rate 10/09-12/09	Amount Water 10/09-12/09	Amount Prior rate
Balance forward	0.00	0.00	0.00	0.00	0.00
No. of Months Subject to Interest	0	0	0	0	0
Interest due on Balance Forward	0.00	0.00	0.00	0.00	0.00
Monthly Assessment Amount	190.00	190.00	172.50	25.00	0.00
No. of Months Delinquent	4	6	3	3	0
No. of Months Subject to Interest	0	0	0	0	0
Total Monthly Assessments due	760.00	1,140.00	517.50	75.00	0.00
Late Fee	10.00	10.00	10.00	0.00	0.00
No. of Months Late Fees Incurred	4	6	3	0	0
Total Late Fees due	40.00	60.00	30.00	0.00	0.00
Interest Rate	0.12	0.12	0.12	0.12	0.12
Interest due	53.42	60.02	0.00	0.00	0.00
Special Assessment Due	0.00	0.00	0.00	0.00	0.00
Special Assessment Late Fee	0.00	0.00	0.00	0.00	0.00
Special Assessment Months Late	0	0	0	0	0
Legal Fees	235.00	0.00	0.00	0.00	0.00
Capital Contribution	380.00	0.00	0.00	0.00	0.00
Mgmt Co. Intent to Lien	75.00	0.00	0.00	0.00	0.00
Transfer Fee	300.00	300.00	0.00	0.00	0.00
Management Co. Fee	210.00	0.00	0.00	0.00	0.00
Demand Letter	135.00	135.00	0.00	0.00	0.00
Lien Fees	325.00	325.00	0.00	0.00	0.00
Prepare Lien Release	30.00	30.00	0.00	0.00	0.00
Certified Mailing	32.00	80.00	0.00	0.00	0.00
Recording Costs	28.00	57.00	0.00	0.00	0.00
Pre NOD Ltr	0.00	75.00	0.00	0.00	0.00
Payment Plan Fee	0.00	0.00	0.00	0.00	0.00
Breach letters	0.00	0.00	0.00	0.00	0.00
Personal check returns	0.00	0.00	0.00	0.00	0.00
Statutory Filing Fee	0.00	0.00	0.00	0.00	0.00
Collection Costs on Violations	0.00	0.00	0.00	0.00	0.00
Subtotals	$2,603.42	$2,262.02	$547.50	$75.00	$0.00

Credit	Date	
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
		(0.00)
NAS Fees & Cost		(0.00)

HOA TOTAL $6,287.94

COPY

Foreclosure Fees & Costs	Amount		Attorneys Cre	Date	
					(0.00)
Foreclosure Fees	400.00				(0.00)
Title Report	400.00		Collection Cre	Date	
Posting/Publication	0.00				(0.00)
Courier	0.00				(0.00)
Postponement of Sale	0.00				(0.00)
Conduct Sale	0.00				(0.00)
Prepare/Record Deed	0.00				(0.00)
(other)	0.00				(0.00)
(other)	0.00				(0.00)
(other)	0.00				(0.00)
					(0.00)
SUBTOTAL	$800.00				(0.00)
					(0.00)
					(0.00)
		$6,287.94			
FORECLOSURE TOTAL			Collection Credits SubTotal		$0.00

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Pursuant to Section 7.8 and 7.9 of the CC&RS, Plaintiff was only liable for 6 times Defendant's monthly assessment for the period of time prior to taking title at the foreclosure auction (or $1,140.00). Thus, for the time period prior to the 6/28/10 Foreclosure Auction, Defendant demanded from Plaintiff $2,544.52 more than Section 7.8 or 7.9 of the CC&RS allowed ($3,684.52 - $1,140.00). Therefore, Defendant failed to comply with Section 7.8 and 7.9 of the CC&RS by demanding, noticing and liening Plaintiff's Unit for more than $1,140.00 for the time period prior to the 6/28/10 Foreclosure Auction. Also, for the time period prior to the 6/28/10 Foreclosure Auction, Defendant demanded from Plaintiff $1,974.52 more than NRS 116.3116(2) allowed ($3684.52 - $1710.00). Therefore, Defendant failed to comply with NRS 116.3116(2).

III

ARGUMENT AT LAW

Declaratory Relief

NRS 30.040 (Questions of construction or validity of instruments, contracts and statutes) states as follows:

> 1. Any person interested under a deed, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Plaintiff and Defendant are both interested under a written contract (Section 7.9 of the CC&RS) and a statute (NRS 116.3116(2)). Plaintiff now seeks to have determined a question of construction arising under the written instrument and statute and hereby seeks a declaration of rights, status or other legal relations thereunder. Therefore, Plaintiff requests the Court to declare the rights, status or other legal relations of the parties as follows:

1. Defendant, in contravention of Nevada Revised Statutes §116.3116, has unlawfully demanded from Plaintiff amounts ($1,974.52) in excess of the Super Priority Lien to which it has no legal entitlement.

2. Pursuant to Mortgagee Protection Provisions of the Defendant's CC&RS (Section 7.8 and 7.9), Defendant's assessment lien was junior to the first security interest of the Unit's first mortgage lender except for a certain, limited and specified portion of the lien as defined in the Mortgagee Protection Provisions of the Defendant's CC&RS (i.e., 6 months of assessments,) and

3. Defendant, in contravention of the Mortgagee Protection Provisions of the Defendant's CC&RS has improperly demanded monies from Plaintiff ($2,544.52) in order to satisfy Defendant's claimed liens or demands which exceeded a figure equaling 6 months of assessments, thereby violating the CC&RS. (See Complaint, ¶83(d) and 86).

IV.

CONCLUSION

Therefore, for the reasons cited about, Plaintiff requests this Honorable Court grant Plaintiff's Motion for Summary Judgment on Declaratory Relief.

Dated this 30th day of March, 2012.

ADAMS LAW GROUP, LTD.

James R. Adams

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Attorneys for Plaintiff

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 ON ISSUES OF DECLARATORY RELIEF** upon all parties to this action by:

x	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;
	Hand Delivery
	Facsimile
	Email
	Certified Mail, Return Receipt Requested.

addressed as follows:

Patrick Reilly, Esq.
Holland & Hart
9555 Hillwood Dr., Second Floor
Las Vegas, NV 89134
Attorney for Defendant

Kurt Bonds, Esq.
Alverson Taylor Mortensen and Sanders
7401 W. Charleston Blvd.
Las Vegas, NV 89117-1401
Attorney for Defendant

Dated the 30th day of March, 2012.

Toni Hansen
An employee of Adams Law Group, Ltd.

Ex. 1

20050706-0003420

Fee: $111.00
N/C Fee: $0.00

07/06/2005 13:11:34
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Requestor:
WILBUR M ROADHOUSE

Frances Deane ADF
Clark County Recorder Pgs: 98

APN: 177-35-601-011

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
4760 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 7th 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 "Act" (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 designed 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 6.4 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 6.5 below.

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

Section 1.22 "Close of Escrow" shall maan 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 Area; entry area features, gates and monumentation; 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; hardscape and parking areas; waterscape 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, flues, 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 § 116.053, 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, entry way, parking areas, walls, perimeter walls, hardscape, curbs, gutters, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hardscape 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 chute, 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", "Mortgagee", "Mortgagor". "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, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the trustor 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 Mortgagee" 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 scapes, 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: lath, furring, wallboard, plasterboard, panelling, 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 9.14, 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(a) 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, nonexclusive 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 those Limited 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 the 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 any 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 settling 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), pro rata 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 therefor.

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 servicing 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 Units 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 handrails 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. Handrails 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 Avigation Easements. Declarant hereby reserves, for itself, and for the Association, the unilateral right to grant avigation 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 floors, 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 interior 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. Until 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 4.6, 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:

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

(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 Members 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 misfeasance 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 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 or a summary 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 appurtenant 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(b) 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 fines 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 wherever 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, of 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 contract(s), including contract(s) for materials and/or services, with any Person(s) 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 and subject 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.

(i) 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 this 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 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.

(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)(ii) 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:

(i) 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 ("Special 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 attorneys 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 §116.700, or duly exempted pursuant to NRS §116.700.6. 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.

(c) 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 as the result of Manager's error or omission shall be paid (or reimbursed to 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 Reserve Fund 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 Document 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 or state 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 seperate 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, waterscape, and Common Recreational Area) ("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 8.4 or 8.5 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 Asseessment 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 Assessments 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 6.6 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 pro-rated 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 than 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 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 notice 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 lien 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 §116.311635.

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 imminently 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 Mortgagee 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). The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. 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 exteriors 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 monumentation, 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, to enter 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 Units 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, siding 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 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 interior appearance and condition of his or her Garage. In addition to keeping the interior of his 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 of 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 nonresidential 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 of 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.

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 shutoff/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

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 9.12 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 of 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 installment 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 barbeque 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 of 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 surface 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 appurtenant, 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, 116.21183 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 upon 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) of 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 any 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,

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(a), 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,

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, Worker's 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 FNMA, 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, Worker's 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 coinsurance; (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 of 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
MORTGAGEE PROTECTION

Section 12.1 General. In order to induce FHA, VA, FHLMC, 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 Mortgages 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 §§ 111.450 and 111.460, of 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 6.8 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 on 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 § 116.2105.1(h), 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, and to relocate any models from time to time within any Unit(s) owned or leased 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, sales/management 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 FHA or VA approval is sought by Declarant, then the FHA 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 benefitting 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 an 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 ragard 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 channel(s) and/or washes (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 impair 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 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 gaming 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 gaming uses or issues. Each Purchaser is hereby advised that the master plan and zoning ordinances, and gaming 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 accepts 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 regarcless 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 116, 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 improvements) 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 THE 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 17.16 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 "constructional 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 constructional 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 constructional 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 (1) THE DISPOSITION OF ANY DEPOSITS, (2) BREACH OF CONTRACT, (3) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (4) NONDISCLOSURE, (5) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (6) 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 ON 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 40.600 TO 40.695 (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 UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES 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 A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE 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 ATTORNEYS' 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.

(d) 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 servitudes, 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 reasonability.

(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 attorneys' 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

(vi) 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 this 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 by 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 §116.31133 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 or 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 Documents 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 unequivocally 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 repainting, 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, wholesomeness 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 or 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 mechanic's 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 aggrieving 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(b) 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.

(c) 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

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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 hereof 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 set-back 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 Non-Liability 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. Mikles, Manager

1610

State of Nevada California
COUNTY OF CLARK) ss.
) San Diego

This instrument was acknowledged before me on this 7th day of June, 2005, by Todd A. Mikles, as Manager of TREETOPS MANAGEMENT, LLC, a Nevada limited liability company, as Manager of GOOSE DEVELOPMENT, LLC, a Nevada limited liability company.

NOTARY PUBLIC
(Seal)

TIFFANY M. PECK
Comm. #1803564
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Aug 17, 2008

EXHIBIT "A"

PROPERTIES

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

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).

6. 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 of 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

(wmr\GO.04\1.CONVCCRS.03.wpd)

Ex. 2

(5-1)

Inst #: 201007210001842
Fees: $17.00 N/C Fee: $0.00
RPTT: $186.15 Ex: #
07/21/2010 12:07:20 PM
Receipt #: 434089
Requestor:
SCOT LUDWIG
Recorded By: TAH Pgs: 5
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
And SEND TAX STATEMENT TO:

SCOT M. LUDWIG
900 S 4TH ST #207
LAS VEGAS, NV 89101

Trustee's Sale No: 07-FMB-74757

APN NO. 177-35-610-137

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

1. **The Grantee herein was not the foreclosing beneficiary.**
1. **The amount of the unpaid debt together with costs was $156,956.95.**
2. **The amount paid by the Grantee at the Trustee's Sale was $36,000.01.**
3. **The documentary transfer tax is:$186.15.**

THIS INDENTURE made June 28, 2010, between REGIONAL SERVICE CORPORATION, a California corporation, hereinafter called Trustee and SCOT M. LUDWIG, hereinafter called Grantee, **WITNESSETH:**

WHEREAS, HAWLEY MCINTOSH, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, by a Deed of Trust dated 9/8/2005, and recorded 9/15/2005, as Instrument No. 20050915-0004492, and rerecorded as Instrument No. 20090601-0007303, of Official Records in the office of the Recorder of CLARK County, NEVADA, did grant and convey to said Trustee, upon the trusts therein expressed, the property hereinafter described, among other uses and purposes to secure the payment of a certain promissory note and interest, according to the terms thereof, and other sums of money advanced, with interest thereon, to which reference is hereby made, and,

WHEREAS, breach and default was made under the terms of said Deed of Trust in the particulars set forth in the Notice of said Beach and Default, to which reference is hereby made; and,

WHEREAS, on 5/2/2009, the then Beneficiary, or holder of said note did execute and deliver to the Trustee written declaration of default and demand for sale and thereafter there was filed

for record on 6/3/2009, in the office of the County Recorder of CLARK County, NEVADA, a Notice of such breach and default and of election to cause the Trustee to sell said property to satisfy the obligation secured by said Deed of Trust, which Notice was recorded in Instrument No. 20090603-0001992, of Official Records of said County and,

WHEREAS, Trustee, in consequence of said election, declaration of default, and demand for sale, and in compliance with said Deed of Trust and with the Statutes in such cases made and provided, made and published for more than twenty (20) days before the date of sale therein fixed in a newspaper of general circulation printed and in each county in which the property or any part thereof is situated, Notice of Sale as required by law, containing a correct description of the property to be sold and stating that the Trustee would under the provisions of said Deed of Trust, sell the property therein and herein described at public auction to the highest bidder for cash in lawful money of the United States of America on June 28, 2010, at 10:00 AM, of said day, **THE FRONT ENTRANCE TO NEVADA LEGAL NEWS, 930 SOUTH FOURTH STREET, in the City of LAS VEGAS, County of CLARK, State of NEVADA,** and

WHEREAS, three true and correct copies of said Notice were posted in three of the most public places in the County of CLARK, State of NEVADA, in which said sale was noticed to take place, and where the property was to be sold for not less than twenty days before the date of sale therein fixed, and,

WHEREAS compliance having been made with all the statutory provisions of the State of NEVADA and with all of the provisions of said Deed of Trust as to the acts to be performed and notices to be given, and in particular, full compliance having been made with all requirements of law regarding the service of notices required by statute, and with the Soldiers' and Sailors' Relief Act of 1940, said Trustee, at the time and place aforesaid did then and there at public auction sell the property hereinafter described to the said Grantee for the sum of $36,000.01, said Grantee being the highest and best bidder therefore,

NOW, THEREFORE, Trustee, in consideration of the premises recited and the sum of the above mentioned bid paid by the Grantee, the receipt whereof is hereby acknowledged, and by virtue of these premises, does **GRANT AND CONVEY,** but without warranty or covenants, expressed or implied, unto the said Grantee, SCOT M. LUDWIG, all that certain property situate in the County of CLARK, State of NEVADA, described as follows:

ATTACHED HERETO AS EXHIBIT 'A' AND INCORPORATED HEREIN AS THOUGH FULLY SET FORTH.

Tax Parcel No: 177-35-610-137

IN WITNESS WHEREOF, the said REGIONAL SERVICE CORPORATION, as Trustee has this day caused it corporate name to be hereunto affixed by its AUTHORIZED AGENT thereunto duly authorized by resolution of its Board of Directors.

Dated: 7/6/2010

REGIONAL SERVICE CORPORATION,
Trustee

By _____
JEAN GREAGOR, AUTHORIZED AGENT

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On 7/6/2010, before me, the undersigned, a Notary Public in and for said state, duly commissioned and sworn, personally appeared JEAN GREAGOR, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument, as AUTHORIZED AGENT, on behalf of the corporation therein named and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____
NOTARY PUBLIC in and for the State of WA, residing at: Seattle
My commission expires: 01-20-14

MATTHEW J. NYCE
NOTARY PUBLIC
COMMISSION EXPIRES
01-20-14
STATE OF WASHINGTON

EXHIBIT FOR LEGAL DESCRIPTION

Trustee's Sale 07-FMB-74757

EXHIBIT 'A'

PARCEL I:

UNIT 1411 ("UNIT") IN BUILDING 14 ("BUILDING") AND GARAGE NO. G4 ("GARAGE") AND GARAGE BUILDING NO. G1 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.

STATE OF NEVADA
DECLARATION OF VALUE FORM

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
   ☐ Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property $ 36,000.01
   b. Deed in Lieu of Foreclosure Only (value of property) ( )
   c. Transfer Tax Value: $ 36,000.01
   d. Real Property Transfer Tax Due $ 186.15
4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section N/A
   b. Explain Reason for Exemption: N/A
5. Partial Interest: Percentage being transferred: 100.00 %

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 _____ Capacity Grantor

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Regional Services Corporation	Print Name: SCOT M. LUDWIG
Address: 616 1st Avenue #500	Address: 900 S 4TH ST #207
City: Seattle	City: LAS VEGAS
State: WA Zip: 98104	State: NV Zip: 89101

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

Print Name: Kennel Peterson Escrow #: _____
Address: 209 S Stephanie, Ste B123
City: Henderson State: NV Zip: 89012

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Ex. 3

20050915-0004492

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

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

(31)

Prepared By:

4910

~~Recording Requested By~~:
THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

[Space Above This Line For Recording Data]

DEED OF TRUST

LOAN NO.: 0508168214
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

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 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]:

[XX] Adjustable Rate Rider	[XX] Condominium Rider	[XX] 1-4 Family Rider
[ ] Graduated Payment Rider	[ ] Planned Unit Development Rider	[ ] Biweekly Payment Rider
[ ] Balloon Rider	[ ] Rate Improvement Rider	[ ] Second Home Rider
[XX] 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.

Initials: _____

(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

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
TRACEE A. ROMITO
Appt. No. 00-65737-1
My Appt. Expires Oct. 19, 2008

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

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: _____

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) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

CONDOMINIUM RIDER

MIN: 100141500000139326
LOAN NO.: 0508168244 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

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.

Initials: HM

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

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

IN THE SUPREME COURT OF THE STATE OF NEVADA

HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION,

Appellant,

v.

IKON HOLDINGS, LLC, a Nevada limited liability company,

Respondent.

Supreme Court No. 63178

District Court Case No. A-11-647850-B

APPELLANT'S APPENDIX

VOLUME 7 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-

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				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

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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

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	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

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	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

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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 8, 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 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 notice 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 lien 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 §116.311635.

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 imminently 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 Mortgagee 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). The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. 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

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 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 exteriors 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 monumentation, 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.

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, to enter 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 shall be promptly repaired by the Unit or Common Elements shall be a Common Expense, subject to a Specific Assessment therefor, and the Association shall have an easement over the Units 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, siding 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 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 interior appearance and condition of his or her Garage. In addition to keeping the interior of his 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 of 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 nonresidential 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 of 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.

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 shutoff/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

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, enywhere 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 9.12 Parking Areas. Parking areas, including, but not limited to Assigned Parking Spaces, shall be used exclusively for the normal and regular parking or 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 of 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 installment 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 barbeque 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 of 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 surface 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 appurtenant, 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, 116.21183 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 upon 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) of 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 any 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,

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(a), 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,

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, Worker's 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 FNMA, 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, Worker's 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 coinsurance; (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 of 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
MORTGAGEE PROTECTION

Section 12.1 General. In order to induce FHA, VA, FHLMC, 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 Mortgages 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 §§ 111.450 and 111.460, of 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 6.6 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 on 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 § 116.2105.1(h), 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, and to relocate any models from time to time within any Unit(s) owned or leased 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, sales/management 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 FHA or VA approval is sought by Declarant, then the FHA 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 benefitting 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 an 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 channel(s) and/or washes (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 impair 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 necesearily 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 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 meesures 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 gaming 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 gaming uses or issues. Each Purchaser is hereby advised that the master plan and zoning ordinances, and gaming 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 accepts 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 116, 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 Improvements) 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 THE 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 17.16 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 "constructional 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 constructional 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 constructional 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 (1) THE DISPOSITION OF ANY DEPOSITS, (2) BREACH OF CONTRACT, (3) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (4) NONDISCLOSURE, (5) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (6) 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 ON 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 40.600 TO 40.695 (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 UNCONSCIONABILITY, FRAUD IN THE INDUCEMENT, OR FRAUD IN THE EXECUTION, SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES 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 A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE 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 ATTORNEYS' 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.

(d) 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 servitudes, 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 reasonability.

(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 attorneys' 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

(vi) 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 this 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 by 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 §116.31133 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 or 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 6.8 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 unequivocally 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 repainting, 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, wholesomeness 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 or 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 mechanic's 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 aggrieving 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(b) 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.

(c) 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

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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 hereof 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 set-back 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 Non-Liability 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. Mikles, Manager

State of Nevada California)
COUNTY OF CLARK) ss. San Diego

This instrument was acknowledged before me on this 7th day of June, 2005, by Todd A. Mikles, as Manager of TREETOPS MANAGEMENT, LLC, a Nevada limited liability company, as Manager of GOOSE DEVELOPMENT, LLC, a Nevada limited liability company.

NOTARY PUBLIC
(Seal)

TIFFANY M. PECK
COMM. #1606564
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Aug 17, 2008

EXHIBIT "A"

PROPERTIES

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF CLARK, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

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).

6. 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 of 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

(wmr\GO.0411.CONVCCRS.03.wpd)

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

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

Defendant.

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

Date of Hearing: 3/12/2012
Time of Hearing: 9:00 a.m.

OPPOSITION TO MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT

COMES NOW the Plaintiff, IKON HOLDINGS, LLC, a Nevada limited liability company, by and through its counsel, James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut Esq., Inc., and file this OPPOSITION TO MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT. This Opposition is made based upon the following Points

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and Authorities and all other pleadings and papers on file herein.

Dated this 27th day of February, 2012.

ADAMS LAW GROUP, LTD.

/s/ James R. Adams
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Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Defendant Motion for "Clarification" is nothing more than a thinly veiled attempt to seek a rehearing of the summary judgment motion in which it disfavored the outcome. Per well established Nevada law, a motion for rehearing is only afforded in very rare circumstances in which substantially different evidence is introduced, or the decision is clearly erroneous. In its 27 page Motion, Horizon at Seven Hills raises no new evidence nor proffers any showing of clear error. Instead, Defendant lodges an identical outline of the same arguments previously provided to this Court by Alverson Taylor counsel, weaving in additional arguments predicated upon non-binding authority. Defendant merely seeks a new ruling by rehashing the same unavailing arguments, committing both procedural and substantive errors in doing so. Not only are new arguments based on the UCIOA unavailing, but they are impermissible as not having be raised initially. More importantly, styling the motion as one for

clarification insults the parties and this Court as nothing is unclear about the determination that NRS 116.3116 imposes a finite cap on the Super Priority Lien. To insinuate that the detailed Order is unclear and the decision is clearly erroneous, after lengthy briefing, extensive arguments which included a lengthy power point presentation, offends the judicial process and the underlying motion practice that has ensued.

The Court's decision was not clearly erroneous and was legally sound. 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, as previously stated *ad nauseam*, whether collection fees and costs can be included within the Super Priority Lien is not the issue before this Court. What was decided by this Court was that although the Super Priority Lien can include many things like assessments, fines, fees, and collection costs, there is a cap on the Super Priority Lien of an amount equal to 9 months of homeowners' association's assessments (i.e., the Super Priority Lien not completely limitless). In other words, to what extent does the Super Priority Lien exist (is there a cap)?

The Court unequivocally answered this question by holding that a homeowners' association's lien is only superior to the first mortgage holder "to the extent" of exterior unit repair costs and a figure equaling 9 months of association assessments based upon the periodic budget adopted by the association. In doing so, the Court recognized the sound public policy illustrated by the plain language of NRS 116.3116(2). If there is absolutely no limit on what a lender will have to pay to a homeowners' association for the Super Priority Lien, mortgage lenders and mortgage purchasers (like Fannie Mae, Freddie Mac and numerous private mortgage pooling trusts) will have no certainty as to the extent of their liability. Why would a bank make a loan in a state where the bank has no idea what its downside liability could be?

In short, the Super Priority Lien was intended to be a fixed amount, i.e., one that a lender could approximate prior to lending funds to a borrower who was purchasing within a common interest community. This was so that the lender could escrow, from the borrower funds, the predetermined Super Priority Lien amount in case the borrower failed to pay the assessments. As noted in the

comments section of the 1994 draft of the UCIOA:

> To ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens. Accordingly, subsection (b) provides that the association's lien takes priority over all other liens and encumbrances except those recorded prior to the recordation of the declaration, those imposed for real estate taxes or other governmental assessments or charges against the unit, and first security interests recorded before the date the assessment became delinquent. However, as to prior first security interests the association's lien does have priority for six months' assessments based on the periodic budget. A significant departure from existing practice, the six months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the six months' assessments demanded by the association rather than having the association foreclose on the unit. **If the lender wishes, an escrow for assessments can be required.** *(Plaintiff's Motion for Summary Judgment on Issue of Declaratory Relief, Ex. 12 Comments, UCIOA 1994, page 159-160.)*

Thus, since the lender would know what the assessments were prior to lending, and since the lender would know, pursuant to §3-116 of the UCIOA, that the Super Priority Lien amount was limited to 6 months of assessments, it could require the borrower to escrow, prior to closing, exactly that amount of funds for which the lender might be liable, i.e., the Super Priority Lien amount. The lender, therefore, had protection if it had to pay the Super Priority Lien, and the association was assured of payment of a maximum figure equal to 6 months of assessments if the borrower/homeowner defaulted on his obligations to his association. Thus, the "equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders" was accomplished.

II

ARGUMENT AT LAW

A. The Court's Order is Clear and Unambiguous and the Motion for Clarification is a Disguised Attempt at Rehearing

To seek reconsideration, Defendant must first obtain leave of court. EDCR 2.24(a). Defendant, by labeling its request for relief as one of "clarification," seeks to side step this necessary prudential hurdle to allow a "second bite at the apple." Defendant is unable cite any provision, language or phrase in the Order Granting Summary Judgment of Claim of Declaratory Relief that is ambiguous

which would necessitate calling upon this Honorable Court for clarification. Without any showing that the determination of the Super Priority Lien (as being limited to 9 times the monthly periodic budgeted assessments) is somehow confusing, or unclear, Defendant's request for clarification has no basis for being proffered to this Court.

B. Defendant's Motion for Reconsideration Revisits the Same Facts and Legal Arguments Previously Raised and Therefore Should Be Denied.

A district court may reconsider a previously decided issue only if substantially different evidence is subsequently introduced or the decision is clearly erroneous. *Masonry and Tile Contractors*, 113 Nev. At 71, 941 P.2d at 4987 (*citing Little Earth of United Tribes v. Dep't of Housing*, 807 F.2d 1422, 1441 (8th Cir. 1986). In the present case, Defendant does not seek to introduce new evidence in its Motion. Accordingly, only in rare instances in which new issues of fact or law are raised supporting a ruling to the contrary to the ruling already reached should a motion for rehearing be granted. *Moore v City of Las Vegas*, 92 Nev. 402, 405, 552 P.2d 244, 246 (1976). The granting of motions for reconsideration is rarely appropriate and Defendant's desire to have newly associated counsel[1] to champion a different outcome is no exception.

Federal jurisprudence upholds the same standard, that reconsideration of a prior ruling is only appropriate in very limited circumstances. *See e.f. Brown v. Gold*, 378 F. Supp.2d 1280, 1288 (D.Nev. 2005)("[r]econsideration of a prior ruling is appropriate only in limited circumstances, such as discovery of new evidence, an intervening change in controlling law, or where the initial decision was clearly erroneous or manifestly unjust"). Moreover, a motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court already has ruled." *Id.* Other jurisdictions discourage such motions because it seriously compromises the position of a litigant. *Gillett v. Price*, 135 P.3d 861, 863-64 (Utah 2006)(characterizing post-final-judgment motions to reconsider as the "cheatgrass of the litigation landscape) *Id.*

With such standard at bar, this Court should not consider any "substantive" arguments in Defendant's Motion because the requirements for reconsideration have not been met. Before this

[1] It must be noted that Patrick Reilly, Esq. also serves as counsel for three (3) prevalent collection agencies that conduct collection activities on behalf of HOAs (Nevada Association Services, RMI, and Anguis & Terry).

Court may open the door to reexamine the prior ruling, Defendant must first demonstrate and argue new issues of fact and/or law which it has crucially failed to do. Also, Defendants either rehash the same unavailing arguments as previously raised, or introduces additional argument not appropriate on reconsideration- as predicated upon the UCIOA. Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing. *Achrem v. Expressway Plaza Ltd. P'ship*, 112 Nev. 737, 742, 917 P.2d 447, 450 (1996); *see also Chowdry v. NLVH, Inc.*, 111 Nev. 560, 893 P.2d 385 (1995). (A party's failure to make arguments in previous proceedings constitutes a waiver of such arguments); *Trentacosta v. Frontier Pac. Aircraft Industries, Inc.*, 813 F.2d 1553, 1557 (9th Cir. 1987) (a party may not present evidence for the first time in motion for reconsideration when evidence was earlier available). As a result of the error and futility of Defendant's Motion, the Court should disregard the mis-characterization of "clarification" relief sought, and contemporaneously deny its request for leave for consideration without any consideration of the merits of Defendant's motion. There is simply nothing new before the Court.

1. Defendant Once Again Argues "Illogical Interpretation" Precludes a Super Priority Lien Cap.

Defendant's Motion for Reconsideration regurgitates the same prohibition against illogical interpretations of statutes. (Motion: 5; 11-28). Identically, in the prior motions' practice, Defendant asserted, "To promulgate the Associations right to recover these fees and costs, but then to exclude those as part o the Super Priority lien produces and unworkable and unjust result." (Opposition to Plaintiff's Partial Motion for Summary Judgment: 6; 24-28). The argument is identical and has been argued to this Court. As has been argued originally, there is simply nothing to "interpret" as the statute (NRS 116.3116) is clear on its face. The Super Priority Lien is limited "to the extent" of a figure equally 9 months of assessments plus certain statutory repair costs.

2. Defendant Once Again Argues Legislative Intent and Public Policy.

On reconsideration, Defendant discusses "important policy considerations" behind NRS 116.3116. (Motion:6; 7-11). Identically, the prior Opposition argues that a statutory formula is clearly not what the legislature intended when it promulgated NRS 116.3116. (Opposition: 7; 12-14). The legislative history was fully vetted in the prior round of argument. Indeed, Plaintiff spend a

considerable number of pages of its Motion on the history of NRS 116.3116 and the UCIOA.

3. Defendant Once Against Argues That Collection Fees and Costs That Accrue During the 9 Month Period Are Added On Top Of the Super Priority Lien.

Defendants identically argue that the Association is entitled to everything that could possible accrue during the 9 month "look back" period from the date of foreclosure. (Motion: 6; 8-20). It re-argues " Subsection (2) of NRS 116.3115 that said statute does not set a numerical cap on the super-priority lien based upon any particular HOA's assessments charged to homeowners. The only material proviso placed on the amount of the HOA's super-priority lien is that any assessment for common expenses "Based on the periodic budget adopted by the Association pursuant to NR 116.3115 be limited to a period of "9" months preceding institution of an action to enforce the lien." (Opposition: 7-8; 23-28; 1).

Identically, Defendant previously asserted that the super priority lien exists to the extent of assessments accrued during the 9 months preceding an action to enforce the lien. (Opposition; 4; 22-25). Whilst continuing to advocate only a "temporal" limitation (not numerical limitation) to the boundaries of HOA collection activities within the Super Priority Lien, it once again ignores the salient language of "periodic budget" and "adopted by the Board". Defendant's reconsideration attempt seeks to improve its position by trying to re-convince this Court that the Super Priority Lien can include not only the assessments charged by the Association for the past 9 months from foreclosure, but that also fees and costs unilaterally imposed by the HOA (and its collection agency) during that time are included- without any numerical limitation. Defendant, for a second time, erroneously argues that the Super Priority Lien includes all fees and costs as stated in NRS 116.3115.

But again, Defendant ignores the plain language of NRS 116.3116(2). NRS 116.3116 states that the super priority lien is limited, "... to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115." Firstly, it is the HOA's period budget that one looks to in determining what the assessments for common expenses are, not to NRS 116.3115. While the statutory authority for an HOA to pass a periodic budget is granted to an HOA by NRS 116.3115 ("assessments must be made at least annually, based on a budget adopted at least annually by the association in accordance with the requirements set forth in NRS 116.31151..."),

in calculating the Super Priority Lien amount, the plain language of NRS 116.3116 states that one looks to the "... assessments for common expenses based on the periodic budget..." and not to all common expenses listed in all of NRS 116.3115. Secondly, it is not the "common expenses" that one multiplies times a factor of 9 to determine the super priority lien, but the "... assessments for common expenses based on the periodic budget...." Pursuant to NRS 116.3116, the super priority lien is a figure equaling 9 months of "assessments" based upon the periodic budget, not 9 months of common expenses contained in NRS 116.3115.

Further, by re-advocating its erroneous position, Defendant's ignore this Court's 8 page Order that completely digests the facts and legal positions in making its legal determination. The Court declared Plaintiff's legal position as correct and defined the components of the Super Priority Lien as exclusively exterior repair costs and 9 months of regular assessments. (Order Granting Partial Summary Judgment; 2; 25-27). The Court expressly declared:

> Homeowners' associations, therefore, have a Super Priority Lien which has 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 that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.

(Order: 4: ¶ 5).

The Court then explained its sound rationale regarding how the base assessment figure is derived:

> The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... 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 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

(Order: 4: ¶ 6)

Unequivocally, the words "***to the extent of***" contained in NRS §116.3116(2) to mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded. (Order: 4: ¶ 7). Accordingly, while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien, **in no event** can the total amount of the Super Priority Lien exceed an amount equaling 9 times the homeowners' association's regular monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312. (Order: 4: ¶ 8)(emphasis added).

4. Once Again Plaintiff Must Re-Argue the Simple Super Priority Lien Formula

As argued before, each phrase contained in NRS 116.3116(2), (i.e., the Super Priority Lien formula) has significance. As clearly indicated in NRS 116.3116(1) an association has a general statutory lien on a unit for:

1. any construction penalty that is imposed against the unit's owner;
2. any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due
3. any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102.

Indeed, "If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due." NRS 116.3116(1). Thus, the full year's budgeted assessment against the homeowner is contained in the association's general statutory lien against the homeowner.

However, (as argued voluminously in the prior hearing on summary judgment) in a break with traditional lien priority law, NRS 116.3116(2) has given a limited priority over the association's general statutory lien. That limited priority amount is described in NRS 116.3116(2):

- "The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312

[exterior unit repair costs], and...

- **"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 9 months immediately preceding institution of an action to enforce the lien..."**

A dissection of the Super Priority Lien language follows:

i. **"To the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115"**

In calculating the Super Priority Lien, the Court looks to the Defendant's assessments for common expenses based on Defendant's periodic budget. This annual assessment figure is contained in the Defendant's periodic budget which the Defendant adopts pursuant to the enabling legislation contained NRS 116.3115 (the budget is passed, "pursuant to NRS 116.3115). The periodic budget is the key document which determines the annual assessment amount and the monthly installments which are calculated in the Super Priority Lien. For example, Section 1.17 of the Defendant's CC&RS state that:

> '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 6.4 below.

Section 6.4 of the Defendant's CC&RS state that:

> 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.

Thus, the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 are simply determined by looking at the Defendant's annual budget.

ii. **... Which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien...**

The Defendant adopts an "annual budget." But homeowners pay their annual assessments to Defendant not on an accelerated basis (i.e., the entire year's assessment in one payment), but generally

in monthly installments. As Section 6.7 of the Defendants' CC&RS state, "The first Annual Assessment for each Unit shall be prorated based on the number of months remaining in the Fiscal Year." Generally, only in the event that a homeowner defaults on his monthly installment payment of assessments will the entire remaining portion of the annual assessment be "accelerated." For example, Section 7.2 of the Defendant's CC&RS state regarding Notices of Delinquent Assessments, "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."

Therefore, when NRS 116.3116(2) states that the Defendant's general statutory lien is superior to the first mortgage only "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 9 months immediately preceding institution of an action to enforce the lien...**" it is the monthly (un-accelerated) installments of the annual assessment amount to which NRS 116.3116(2) refers. The phrase "in the absence of acceleration" simply means when calculating the Super Priority Lien amount, the monthly assessment installment figure is used. Thus, the statutory cap on the Super Priority Lien is calculated by adding together 9 of the monthly (un-accelerated) assessment installments.

Such a figure is easily calculated. For example, if the Defendant's annual budget is $120,000.00 and there are 100 homes in the association. The annual (accelerated) assessment obligation of every unit owner is $1,200.00. In the "absence of acceleration" of the annual amount is 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.

5. Defendant Once Against Manipulates the UCIOA In an Effort to Enlarge the Statutory Limitations of the Super Priority Lien.

Defendant for a second time advances the Uniform Common Interest Ownership Act to supplant this Court's correct ruling on the Super Priority Lien cap. It accentuates the differences

between Nevada law, and the UCIOA to try to supplant the Court's determination. Both repeat that UCIOA is "broader" than Nevada law, and that common expense language should be broadened based upon that account. (Motion: 8; 21-25; 9; 5-27); (Opposition: 8; 9-20). The reconsideration attempt conclusively fails to raise anything new grounded in the UCIOA (adopted many years ago and available for dissertation during the underlying motion for summary judgment hearing).

Indeed, regurgitating its original arguments, Defendant argues NRS 116 "differs significantly" from the UCIOA. As previously argue, 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.	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.

As argued in the prior hearing, the 1982 UCIOA and the 1991 version of NRS 116.3116 are virtually identical. In 2009, Nevada increased the 6 month Super Priority Lien cap to 9 months of assessments and added certain external repair costs. Other than those small modifications, the statute remained essentially the same. While assessments, collection costs, fines, fees and penalties can be included within the Super Priority Lien, in no event can the Super Priority Lien exceed a figure equaling 9 months of association assessments based upon the periodic budget, plus certain external unit repair costs.

6. Defendant Once Against Complains that the Inability to Gouge Purchasers at Foreclosure Creates an "Absurd Illogical Result".

For many pages, Defendant (now wearing a collection agency perspective hat) introduces hypothetical costs of collection and performing services to recover HOA debt to try to convince the Court that its ruling was incorrect. (Motion: 15; 2-6). It's underlying Opposition argued the same economic perspective, and how "the cost of retaining an attorney plus filing fees and costs would certainly exceed many times over the total of nine months of past due assessments." (Opposition: 9-10). Not only does Defendant absorb more of this Court's time with the same arguments, but it still does not accept that HOA collection economics and the desire to ingratiate HOA collection practices does supplant the law. Simply because it would not prove cost effective to hire counsel or to issue repeated demands and notices to an HOA debtor facing foreclosure does not translate into an evisceration of the Super Priority Lien statute and an allowance to collect against the First Mortgagees or successors at foreclosure, a host of costs and fees that far exceed the limitation promised at the time the purchase money mortgage was given.

7. The Legislative History Has Not Changed Since the Motion and Order Granting Partial Summary Judgment.

Defendant somehow prays this court to re-construe legislative history regarding the Super Priority statute and amendments that have been proposed. Defendant recites legislative excerpts once again in a vacuum to lump unauthorized fees and charges in excess of the Super Priority Lien limit. It rests its ability to do so on the notion that the Legislature in 2011 did not adopt any clarifying amendments. (Motion: 18; 11-28; 19; 1-13). Defendant's argument that the Legislature did not revise the language has no bearing on what the language currently is, and has always been (with exception

of increase to 9 month of assessment limitation in October 2009). The authority proffered by Defendant existed at the time of the Summary Judgment hearing, and well before. No additional research and investigation has been performed to warrant any reconsideration.

8. The CCIC Opinion was Introduced By Both Parties, Analyzed and Interpreted by This Court.

Reintroduction of the CCIC Opinion does not alter the standing Order or this Court's determination of the numerical limit of the Super Priority Lien. Already, Plaintiff has argued that the CCIC Opinion permits attorneys fees and costs of collection within the Super Priority Lien. What the Opinion crucially does not address, which this Court does, is whether there is a limit to the total amount of the Super Priority Lien (i.e., a cap).

As previously argued by Plaintiff, on December 8, 2010, the Nevada Real Estate Division's Common Interest Community Commission adopted an Advisory Opinion which was requested by RMI Management, a large association collection agency who happens to be a client of the Jones Vargas law firm whose partner, Michael Buckley, Esq., happens to be the Chairman of the CICC and the author of the Advisory Opinion. Coincidentally, the Advisory Opinion was published just 1 week after RMI hired Jones 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 Advisory Opinion asked the following question:

> May the association also recover, as part of the super priority lien, the costs and fees incurred by the association in collecting such assessments?

The Advisory Opinion answered the question by stating that an association may collect *as a part* of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Of course, those points are not disputed. There has been universal agreement that collection costs may be *part* of the Super Priority Lien amount. However, the question which was not directly addressed by the Advisory Opinion is the one that is before this Court, i.e., whether NRS 116.3116 limits the Super Priority Lien to the extent of an amount equaling 9 times the monthly assessments.

Nowhere in the CICC's Advisory Opinion does it conclude that the Super Priority Lien amount can exceed an amount equaling 9 months of assessment plus repair costs. Nowhere in the Advisory Opinion does it conclude that collection costs can be added "on top of" the Super Priority Lien amount. Nowhere in the Advisory Opinion is the Colorado case law supporting the cap rejected. In fact, the Advisory Opinion cites with approval the Colorado case law and Professor James Winnokur's law review article which state that the Super Priority Lien is capped at a figure equaling 9 times an association's monthly assessment.

The Advisory Opinion found "very helpful" the language of the Colorado courts and Winokur's law review article:

> The two Colorado cases that have considered this issue reached their conclusion, that the priority debt includes attorneys' fees and costs, based on statutory language similar to Nevada's. The language of the court in First Atlantic Mortgage, LLC v. Sunstone N. Homeowners Ass'n, 121 P.3d 254 (Colo. App 2005) **is very helpful**:
>
> > Within the meaning of Section 2(b), a "lien under this section" may include any of the expenses listed in subsection (I), including "fees, charges, late charges, attorney fees, fines, and interest." Thus, although ***the maximum amount of a super priority lien is defined solely by reference to monthly assessments***, the lien itself may comprise debts other than delinquent monthly assessments.[Emphasis added.]
>
> In support of its holding, the Sunstone court quoted the following language from James Winokur, Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Ownership Act, 27 Wake Forest L. Rev. 353, 367:
>
> > A careful reading of the . . . language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. **The reference in Section 3-1 16(b) to priority "to the extent of' assessments which would have been due "during the six months immediately preceding an action to enforce the lien" merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.** *(Ex. 9 of Defendant's Motion, CICC Advisory Opinion, pgs. 5-6)*

Thus, the CICC's Advisory Opinion supports Plaintiff's position that the super priority portion of the lien exists only to the extent of 9 times an association's monthly assessments. The Advisory Opinion

fully accepts the Colorado holdings and Winokur's commentary, finds them helpful, and concludes that Nevada's statutory language is the same as Colorado's (i.e., there is a definite cap on the super priority lien amount).

9. For a Second Time, Defendant Misconstrues the Holding in the Connecticut Case of *Hudson House*. There is no Case Law in Any State that Supports Defendant's Position

As its sole, published, common law precedent for the proposition that the super priority portion of an association's lien can consist of both 9 months of assessments plus collection costs, Defendant cites *Hudson House Condominium Association v. Brooks, 223 Conn. 610, 611 A.2d 862 (1992).* A case decided prior to Connecticut's unique statutory amendment to the UCIOA allowing for attorney's fees in addition to the 6 month assessment figure, Defendant claims that, "The Eighth Judicial District Court has adopted the reasoning of Hudson House...." and that "... attorney's fees and other costs must be included in the Super Priority Lien...."

However, Defendant fails to understand that the sole reason why that one, single case allowed 6 months of assessments plus attorney's fees is not because attorney's fees are allowed to be added as a matter of course pursuant to the super priority language of the statute, but only because the homeowner's association (Hudson House Condominium Association) in that particular case obtained a judgment against the homeowner (Michael Brooks) and the homeowner's first mortgage lender, Connecticut Housing Finance Authority ("CHFA"). The Connecticut Supreme Court held that pursuant to another provision of Connecticut law (Section 47-258(g)), when as association obtains a judgment, only then can an association obtain both 6 months of assessment plus fees and costs. Nowhere did the Connecticut Court hold that an association can obtain both collection costs and 6 months of assessments as a matter of course, without first obtaining a judgment. In fact, in applying the original UCIOA that Nevada adopted, no Supreme Court or Appellate Court anywhere has ever so held. The Connecticut Court specifically determined that:

> Section 47-258(g) provides that a "judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party." It is undisputed that HHCA, as the plaintiff and the party in whose favor the trial court rendered judgment, 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)*

Thus, Section 47-258(g) specifically states, "A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party." *Conn. Gen. Stat. Ann. § 47-258 (West).* In fact, Nevada has enacted the very same law in NRS 116.3116(7) which states, "A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party." There is simply no question that if an association obtains a judgment against the lender and the lender retakes the property through foreclosure, like in the *Hudson House* case, that attorney's fees and costs may be added to the 6 month assessment figure as against the foreclosing lender. Indeed, there is a specific statute that allows for it.

However, the obvious distinction between the case at bar and *Hudson House* is the fact that in *Hudson House*, the homeowner's association obtained a judgment allowing them to get attorney's fees and costs under Section 47-258(g), and in this case Defendant did not received any judgment whatsoever. Therefore, pursuant to both Connecticut's statute as originally adopted (before the amendment) and Nevada's current statute, if Defendant obtained no judgment against the lender or investor, then no fees and costs can be legally awarded against the lender or added to the 6 or 9 month cap. *(See NRS 116.3116(7)).*

Here, like in *Hudson House*, the opposing parties asserted that the statute which caps the Super Priority Lien (and which was duly passed by the legislature,) is inequitable and unfair and that it violates "public policy." However, the *Hudson House* Court had a response to such an argument that is most apropos and which should be appreciated by this Court:

> While the plaintiff 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)*

In short, the Connecticut Court, in applying the pre-amended version of its super priority statute[2] completely and unequivocally supports the fact that the Super Priority Lien is capped, and (consistent with NRS §116.3116), unless the Defendant had obtained a judgment against Plaintiff

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[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.

pursuant to NRS §116.3116(7) (or *Conn. Gen. Stat. Ann. § 47-258(g))* no attorney's fees, collection costs, or other such costs can be added to the 9 month assessment cap. Such fees may, of course, be included within the Super Priority Lien to the extent the Super Priority Lien does not exceed the cap of 9 times the monthly assessment amount. Any assessment or collection fee which exceeds the Super Priority Lien amount is still a lien against the homeowner's property, just a less prioritized lien which may be extinguished through the foreclosure of a first mortgage holder.

Ultimately, the Connecticut legislature changed its super priority statute to allow for both 6 months of assessments plus attorney's fees and costs. The *Hudson House* Court noted:

> No. 91-359 of the Public Acts of 1991 (Public Act 91-359), which repealed and replaced General Statutes § 47-258(b) and which took effect on July 5, 1991, after the judgment of strict foreclosure in this case, clarified that attorney's fees and costs are included in the priority debt. Public Act 91-359 provides that the "lien is also prior to all security interests described in subdivision (2) of this subsection to the 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)*

Of course, Nevada has not amended its Super Priority Lien statute to allow for both 9 months of assessments plus collection costs. Instead, on October 1, 2009, the Nevada legislature amended NRS 116.3116 to increase the Super Priority Lien amount from an amount equaling 6 times the monthly assessments to an amount equaling 9 times the monthly assessments. It also allowed unit repair costs to be added to the super priority lien amount.

C. Multiple Local and Out of State Authorities Recognize the Finite Nature of the Super Priority Lien

As argued before, NRS 116.3116 specifically tells the Court the extent to which the Super Priority Lien exists. The Super Priority Lien exists:

> ... to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 [external repair costs] and 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 9 months immediately preceding institution of an action to enforce the lien... NRS 116.3116(2)

Thus, the Super Priority Lien (that portion of the association's general lien against a homeowner which is superior to the first mortgage and which does not get extinguished by the first mortgage holder's foreclosure) exists to the extent of 9 months of assessments based on the association's periodic budget (plus certain external repair costs). This has been the holding of all local and out of state authorities.

- Judge Gonzalez:

> The words "to the extent of" contained in NRS 116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded. (*Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief at Ex. 14, "Judge Gonzalez Order"*).

- Commissioner George Burns of the Financial Institutions Division (as drafted by the Attorney General's Office)

> The amount of the lien which has priority over the first mortgage cannot exceed what the association would have regularly charged for common expenses for the unit in the nine (9) months prior to the institution of an action to enforce a lien.
>
> Any balance exceeding the nine (9) month limitation would be subordinate to the first mortgage holder's security interest. *(Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief at Ex. 15, Paragraphs 27-31, FID Order)*

- Real Estate Division Arbitrator Persi Mishel

> ... costs and fees related to unpaid assessments may be included to an HOA's super priority lien amount; however, they may not be added on top of the super priority lien amount. In other words, they may not be 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 for Summary Judgment on Claim of Declaratory Relief at Ex. 16, Arbitrator Mishel's Declaratory Relief Order, 9:20-25)*

- Real Estate Division Arbitrator Steve Morris

> The extent or amount of the super-priority lien that may be asserted against the Lots in this matter and which - by operation of statute - is granted a priority ahead of the Deed of Trust held by Wells Fargo is therefore equal to the sum total of six months[3] of the common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115. (*Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief at Ex. 18, "Arbitrator Morris Order"*)

[3] 6 month limit prior to 2009 amendment to NRS 116.3116(2)

- Two Colorado Court of Appeals Decisions

> A careful reading of the ... language reveals that the association's Prioritized Lien, like its Less-Prioritized Lien, may consist not merely of defaulted assessments, but also of fines and, where the statute so specifies, enforcement and attorney fees. The reference in section 3-116(b) to priority "to the extent of" assessments which would have been due "during the six months immediately preceding an action to enforce the lien" **merely limits the maximum amount of all fees or charges for common facilities use or for association services, late charges and fines, and interest which can come with the Prioritized Lien.** *First Atlantic Mortg., LLC v. Sunstone North Homeowners Ass'n 121 P.3d 254, 255 -256 (Colo.App.,2005).*
>
> * * *
>
> The association then has a super-priority lien over the lender's otherwise senior deed of trust in the event of a foreclosure commenced by the association or the lender, which lien is limited to delinquent 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, 451 (Colo.App.,2008)*

- Connecticut Supreme Court

> 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)*

All in all, Defendant's Motion for Reconsideration is nothing more that a rehash of its previous arguments. Nothing new is offered to this Court. All authorities examining this issue have uniformly ruled that the portion of an association's general lien against a homeowner is superior to the first mortgage holder only "to the extent" of exterior unit repair costs and a figure equaling 9 months of association assessments based upon the periodic budget adopted by the association (6 months in other states).

D. Defendant's Newly Lodged Allegations of Forum Shopping Are Spawned By Attorney Reilly's Improper Motive and Inability to Concede the Meaning of the Law

With newly associated counsel, Defendant has an added, tainted perspective of the procedural lay of the land as it relates to this HOA/Super Priority Lien litigations that have ensued. Understandably, and disingenuously, Defendant seeks to plagiarize the arguments asserted by Counsel Patrick Reilly, Esq., plastered in the pleadings of other cases in his role as counsel to certain collection agencies. In doing so, Attorney Reilly and the Defendant Horizon fail to report to this Court the true nature of the proceedings, the true genesis of the litigation status, and most importantly, Attorney Reilly's collection agency clients' sanctions for identical conduct in other departments.

It should first be noted that in numerous forums, Attorney Reilly has lodged a vicious smear campaign against counsel for Plaintiff and the Premsrirut family alleging "forum shopping" among other things. Unable to prevail on the merits of the legal argument, Attorney Reilly has often employed this strategy to prejudice the courts against the sound legal position of Plaintiff and other investors. Having already lost in Nevada Real Estate Division ADR 10-87 on the interpretation of NRS 116.3116(2), Mr. Reilly's debt collector clients assaulted the Premsriruts with the same false allegations when filing a frivolous law suit against Puoy K. Premsrirut, Esq., and her brother for the sole purpose of quashing the Premsrirut's constitutional right to seek redress from being defrauded by the debt collectors. These same misleading allegations as now appear in Defendant's Motion were summarily and ignominiously thrown out of Court by Judge Gloria Sturman (Ex. 1, Order of Dismissal). Mr. Reilly and the debt collectors tried the smear campaign again when filing a *de novo* complaint for declaratory relief on the interpretation on NRS 116.3116 (the "Super Priority Lien" statute) in Judge Bare's Court. The complaint was chocked full of the same "forum shopping" allegations as is now contained in Defendant's Motion. Upon the investor defendants' Motion for Rule 11 Sanctions against Patrick Reilly, Esq., and his debt collector clients (to strike the false and personal attacks on this Counsel and the Premsrirut family,) Senior Judge Ames compelled Mr. Reilly's clients to strike 7 defamatory pages from their complaint (Ex. 2, Order Granting Rule 11 Motion). Now, incredibly, in contravention to the admonishments of both Judge Sturman and Senior Judge Ames, Patrick Reilly, Esq., again launches the identical misleading, false and defamatory assault upon Counsel for Plaintiff.

The simple fact is that for years homeowners' associations and their debt collector clients (whom Mr. Reilly represents) have unlawfully pilfered millions of dollars in bogus collection fees from thousands of investors, banks, mortgage pooling trusts, government agencies and government sponsored entities such as Fannie Mae and Freddie Mac. The sheer boldness and scope of their fleecing of America has been breathtaking to behold. In an effort to halt these abuses, a variety of investors have filed Nevada Real Estate Division Arbitration No. 10-87 which is an action concerning debt collectors' violation of NRS 116.3116(2), the Super Priority Lien statute. Due to the request of the debt collectors (not of the Claimant investors), that arbitration has been stayed pending a Supreme Court Appeal of a tangential jurisdictional issue. ADR 11-90 was also filed with the Nevada Real Estate Division. ADR 11-90 involves numerous homeowners' association and is based upon similar legal theories as contained in ADR 10-87. However, ADR 11-90 is not stayed.

Counsel for Defendant now complains that his legal strategy of delay, delay, delay, has back fired. He argues that this Counsel has some master strategy of litigating only against homeowners' associations as opposed to collection agencies. However, nothing would delight the investors Claimants more than if the debt collectors would stipulate to lift their stay in ADR 10-87. In doing so, all matters involving Mr. Reilly's other clients could be litigated at once. However, no stipulation is likely. The last thing Mr. Reilly's debt collector clients want is to have to face a district court and explain why they have absconded with tens of millions of dollars of unlawfully gotten gain.

CONCLUSION

In conclusion Defendant's request for clarification is nothing more than a rouse to avoid compliance with procedural safeguards to rehearing of court rulings. Defendant rehashes identical arguments previously raised and makes absolutely no showing of "new law" or "clear error." Defendant does not advance any portion of the Order that requires "clarification" and instead only

agrees with the outcome. Based on the foregoing, Plaintiff respectfully requests the Court deny Defendant's Motion for Clarification or in the Alternative Reconsideration.

Dated this 27th day of February, 2012.

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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 **OPPOSITION TO MOTION FOR CLARIFICATION OR IN THE ALTERNATIVE RECONSIDERATION** upon all parties to this action by:

x	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;
	Hand Delivery
	Facsimile
x	Email
	Certified Mail, Return Receipt Requested.

addressed as follows:

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Dated the 27th day of February, 2012.

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

Ex. 1

CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA ASSOCIATION SERVICES, INC., a Nevada Corporation; RMI MANAGEMENT, LLC, a Nevada limited-liability company; ANGIUS & TERRY COLLECTIONS, LLC, a Nevada limited-liability company,

Plaintiffs,

vs.

RUTT PREMSRIRUT, an individual; PUOY PREMSRIRUT, an individual; RUTT PREMSRIRUT and PUOY PREMSRIRUT, TRUSTEES of THE PREM DEFERRED TRUST; PREM INVESTMENTS, LLC, a Nevada limited liability company; VINEY SINGAL, an individual; and DOES I through X and ROE ENTITIES I through X, inclusive,

Defendants.

Case No.: A-11-637300-C
Dept. No.: XXVI

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER DISMISSING PLAINTIFF'S COMPLAINT

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☐ Voluntary Dis ☐ Involuntary (stat) Dis ☐ Jdgmt on Arb Award ☐ Mtn to Dis (by deft)	☐ Stip Dis ☐ Stip Jdgmt ☐ Default Jdgmt ☐ Transferred	☒ Sum Jdgmt ☐ Non-Jury Trial ☐ Jury Trial	FINAL DISPOSITIONS ☐ Time Limit Expired ☐ Dismissed (with or without prejudice) ☐ Judgment Satisfied/Pmt ... Full

This matter having come for hearing before the above-captioned court on the 3rd day of June, 2011, Plaintiffs, Nevada Association Services, Inc., RMI Management, LLC, and Angius & Terry Collections, LLC ("Plaintiffs") appearing by and through their counsel, Elliot Blut, Esq. of Ecoff, Blut & Salomons, LLP and Jonathon G. Gabriel, Esq, and Defendants, Rutt Premsrirut, Puoy Premsrirut, Rutt Premsrirut and Puoy Premsrirut as trustees of the Prem Deferred Trust, Prem Investments, LLC and Viney Singal ("Defendants") appearing by and through their counsel, A. J. Kung, Esq. of the Law Offices of Kung & Brown, the Court having considered the pleadings and papers on file herein, the evidence presented, the arguments by Counsels, and being fully advised thereon, and good cause appearing therefor, hereby finds as follows:

FINDINGS OF FACT

1. Plaintiffs have filed a Complaint against Defendants wherein Plaintiffs alleged claims for relief against Defendants for: Abuse of Process; Tortious Interference With Contractual Relations (Against Rutt Premsrirut and the Prem Deferred Trust only); Intentional Interference With Prospective Economic Advantage (Against Rutt Premsrirut and the Prem Deferred Trust only); and Civil Conspiracy.

2. Defendants have alleged that Plaintiffs' Complaint is a Strategic Lawsuit Against Public Participation ("SLAPP"), that is without merit, and was brought for the sole purpose to censor, chill, intimidate and punish Defendants for their participation in the public, political, and legal processes.

3. In 1993, the Nevada Legislature enacted Anti-SLAPP legislation, as codified in NRS 41.635 et seq., which provides as follows:

> **NRS 41.637 "Good faith communication in furtherance of the right to petition" defined.** "Good faith communication in furtherance of the right to petition" means any:
>
> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;

...

...

2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity; or

3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or **judicial body**, or any other official proceeding authorized by law,

which is truthful or is made without knowledge of its falsehood. [Emphasis added.]

NRS 41.650 Limitation of liability. A person who engages in a good faith communication in furtherance of the right to petition is **immune** from civil liability for claims based upon the communication. [Emphasis added.]

NRS 41.660 Attorney General or chief legal officer of political subdivision may defend or provide support to person sued for engaging in right to petition; special counsel; filing special motion to dismiss; stay of discovery; adjudication upon merits.

1. If an action is brought against a person based upon a good faith communication in furtherance of the right to petition:

   (a) The person against whom the action is brought may file a special motion to dismiss; and

   (b) The Attorney General or the chief legal officer or attorney of a political subdivision of this State may defend or otherwise support the person against whom the action is brought. If the Attorney General or the chief legal officer or attorney of a political subdivision has a conflict of interest in, or is otherwise disqualified from, defending or otherwise supporting the person, the Attorney General or the chief legal officer or attorney of a political subdivision may employ special counsel to defend or otherwise support the person.

2. A special motion to dismiss must be filed within 60 days after service of the complaint, which period may be extended by the court for good cause shown.

3. If a special motion to dismiss is filed pursuant to subsection 2, the court shall:

(a) Treat the motion as a motion for summary judgment;

(b) Stay discovery pending:

(1) A ruling by the court on the motion; and

(2) The disposition of any appeal from the ruling on the motion; and

(c) Rule on the motion within 30 days after the motion is filed.

4. If the court dismisses the action pursuant to a special motion to dismiss filed pursuant to subsection 2, the dismissal operates as an adjudication upon the merits.

NRS 41.670 Award of reasonable costs and attorney's fees upon grant of special motion to dismiss; person sued for engaging in right to petition may bring separate action for damages. If the court grants a special motion to dismiss filed pursuant to NRS 41.660:

1. The court shall award reasonable costs and attorney's fees to the person against whom the action was brought, except that the court shall award reasonable costs and attorney's fees to this State or to the appropriate political subdivision of this State if the Attorney General, the chief legal officer or attorney of the political subdivision or special counsel provided the defense for the person pursuant to NRS 41.660.

2. The person against whom the action is brought may bring a separate action to recover:

(a) Compensatory damages;

(b) Punitive damages; and

(c) Attorney's fees and costs of bringing the separate action.

3. When a Special Motion to Dismiss (such as Defendants' Motion here) is filed pursuant to NRS 41.660, the District Court must treat the Motion as a Motion for Summary Judgment. NRS 41.660(3)(a).

4. The District Court may grant the Special Motion to Dismiss if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. John v. Douglas County School District, 219 P.3d 1276, 1281 (Nev. 2009).

5. The moving party bears the initial burden to show that the lawsuit is based upon good faith communications in furtherance of the right to petition. John v. Douglas County School District, 219 P.3d 1276, 1282 (Nev. 2009).

6. However, once the initial showing is made by the moving party, the burden shifts to the nonmoving party to demonstrate a genuine issue of material fact. Id.

7. Here, Defendants have made an initial showing that the one (1) State Court litigation filed by Defendants against Plaintiffs (District Court Case No. A-10-608122-C), three (3) Financial Institutions Division ("FID") Complaints, one (1) request for Advisory Opinion with the FID, were "good faith communications in furtherance of the right to petition" in that Defendants were seeking clarification of NRS 116.3116 with regards to the "Super Priority Lien amount" and as to whether or not the "9 months assessment cap" is numerical or temporal.

8. Though Plaintiffs argued that Defendants' State Court litigation was in bad faith because Defendant(s) did not own one or some of the properties at the time the litigation was filed; this Court was not persuaded by Plaintiffs' arguments, because Defendants had paid the Payoff Demands to Plaintiff(s) prior to Defendants' subsequent transfer of property; therefore, Plaintiffs had a legally enforceable right to seek a refund for overpayment at the time of the filing of the subject litigation;

9. As such, the burden shifted to Plaintiffs to demonstrate a genuine issue of material fact.

10. This Court finds that, for the reasons set forth in further detail herein, Plaintiffs failed to meet their burden, and failed to demonstrate that any genuine issues of material fact existed.

11. The elements of a claim for Abuse of Process are: (1) an ulterior purpose by the defendants other than resolving a legal dispute, and (2) a willful act in the use of the legal process not proper in the regular conduct of the proceeding. LaMantia v. Redisi, 118 Nev. 27, 38 P.3d 877, 879 (2002).

12. Plaintiffs failed to meet their burden to demonstrate that Defendants had any cognizable "ulterior purpose." Plaintiffs alleged that Defendants were misusing the litigation process to "put Plaintiffs out of business". Plaintiffs further alleged that because Defendants misstated in an affidavit in another case that they were owners of certain properties when in fact Defendants had sold the properties (after paying Plaintiffs' Super Priority Lien inclusive of substantial fees charged by Plaintiffs pursuant thereto), Defendants communications were not in "good faith."

13. This Court does not find that Plaintiffs allegations are credible, or supported by substantial evidence, and therefore, finds that Plaintiffs failed to meet their burden of establishing that Defendants had an "ulterior purpose" with regards to Defendants' use of the judicial and administrative systems.

14. The elements of a claim for Intentional Interference with Contractual Relations are: (1) a valid and existing contract; (2) Defendant knew of the contact; (3) Defendant committed intentional acts that were intended or designed to disrupt the contractual relationship; (4) Actual disruption of the contract; and (4) Damage. J.J. Industries, LLC v. Bennett, 119 Nev. 269, 274, 71 P.3d 1264, 1267 (2003).

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15. This Court finds that Defendants engaged in communications with certain Homeowner Associations for the purpose of seeking to reduce assessments and fees that Defendants believed to be excessive, arbitrary and capricious; but that Defendants were entitled to engage in such communications as owners of properties in said associations, and as such, were entitled to voice their opinions and dissatisfaction with the services of the collection agencies retained by said Homeowner Associations. This Court finds that Defendants' communications with said Homeowner Associations were not an act of intentional interference with contractual relations.

16. The elements of a claim for Intentional Interference with Prospective Economic Advantage are: (1) a prospective contractual relationship between the plaintiff and a third party; (2) Defendant knew of this prospective relationship; (3) Defendant intended to harm the plaintiff by preventing the relationship; (4) Absence of privilege or justification by the defendant; and (5) Actual harm to the plaintiff as a result of defendant's conduct. Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc. 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (1988).

17. This Court finds that Plaintiffs failed to establish the existence of the elements of a Intentional Interference with Prospective Economic Advantage claim.

18. This Court finds that Defendants, as real estate investors who purchased properties in the Common Interest Communities, are entitled to the same rights as other unit owners in the Common Interest Communities, to be concerned about how the Homeowner Associations are conducting business, and with whom the Homeowner Associations are conducting business; and to voice Defendants' concerns regarding the same;

19. This Court finds that Defendants had an economic interest in which Defendants' are entitled to pursue;

20. Under Nevada law, civil conspiracy is defined as: "Combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc. 114 Nev. 1304, 971 P.2d 1251 (1998).

21. This Court finds that Plaintiffs failed to establish the existence of any "unlawful objective" by Defendants, for the purpose of harming Plaintiffs, or the existence of any actual damage to Plaintiffs.

CONCLUSIONS OF LAW

22. When a Special Motion to Dismiss (such as Defendants' Motion here) is filed pursuant to NRS 41.660, the District Court must treat the Motion as a Motion for Summary Judgment. NRS 41.660(3)(a).

23. The District Court may grant the Special Motion to Dismiss if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. John v. Douglas County School District, 219 P.3d 1276, 1281 (Nev. 2009).

24. The moving party bears the initial burden to show that the lawsuit is based upon good faith communications in furtherance of the right to petition. John v. Douglas County School District, 219 P.3d 1276, 1282 (Nev. 2009). However, once the initial showing is made by the moving party, the burden shifts to the nonmoving party to demonstrate a genuine issue of material fact. Id.

25. Here, the Defendants have made an initial showing that the one (1) State Court litigation filed by Defendants against Plaintiffs (District Court Case No. A-10-608122-C), three (3) Financial Institutions Division ("FID") Complaints, one (1) request for Advisory Opinion with the FID, were "good faith communications in furtherance of the right to petition" in that Defendants were seeking clarification of NRS 116.3116 with regards to the "Super Priority Lien amount" and as to whether or not the "9 months assessment cap" is numerical or temporal.

26. Therefore, this Court concludes that Defendants' actions, as delineated above, were in good faith and the Plaintiffs' Complaint is directly aimed at precluding Defendants' from good faith communications in furtherance of the Defendants' right to petition.

27. As such, the burden shifted to Plaintiffs to demonstrate a genuine issue of material fact to defeat Defendants' Special Motion to Dismiss pursuant to NRS 41.660 et seq.

28. As set forth in the Findings of Fact above, this Court concludes that: (1) Plaintiffs failed to establish any genuine issues of material fact; (2) failed to demonstrate that their instant action is not a SLAPP litigation; and (3) failed to demonstrate why Defendants are not entitled to Dismissal/Summary Judgment as requested by Defendants in their Special Motion to Dismiss.

29. Therefore, this Court hereby concludes that Plaintiffs' instant action is a SLAPP litigation within the meaning of NRS 41.635 et seq, filed for the ulterior purpose of conducting a "fishing expedition" against Defendants; and for the purpose of chilling and deterring Defendants from participating in the public process; therefore, Dismissal/Summary Judgment of the Plaintiffs', with prejudice, is warranted and proper under NRS 41.660(3).

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ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Special Motion to Dismiss Pursuant to NRS 41.660 is hereby GRANTED.

DATED this 23 day of August, 2011.

THE HONORABLE GLORIA STURMAN

Respectfully Submitted By:

KUNG & BROWN

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Counsel for Plaintiffs

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DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA ASSOCIATION SERVICES, INC, a Nevada corporation; RMI MANAGEMENT, LLC., a Nevada limited liability company; ANGIUS & TERRY COLLECTIONS, LLC., a Nevada limited liability company, Plaintiffs, v. HIGHER GROUND, LLC, a Nevada limited liability company; RRR HOMES, LLC, a Nevada limited liability company; TRIPLE BRAIDED CORD, LLC, a Nevada limited liability company; EQUISOURCE, LLC, a Nevada limited liability company; EQUISOURCE HOLDINGS, LLC, a Nevada limited liability company; APPLETON PROPERTIES, LLC, a Nevada limited liability company; CBRIS, LLC, a Nevada limited liability company; MEGA, LLC, a Nevada limited liability company; SOUTHERN NEVADA ACQUISITIONS, LLC, a Nevada limited liability company,	Case No. A-11-638834-C Dept. No. XXXII **ORDER GRANTING IN PART MOTION FOR NRCP 11 SANCTIONS AND FOR DISMISSAL, OR ALTERNATIVELY, MOTION TO STRIKE IMMATERIAL AND IMPERTINENT ALLEGATIONS** Date of Hearing: September 23, 2011 Time of Hearing: 9:00 a.m.

VESTEDSPEC, INC., a Nevada corporation; CUSTOM ESTATES, LLC, a Nevada limited liability company; KINGFUTT'S PFM LLC, a Nevada limited liability company; THORNTON & ASSOCIATES, LLC, a Nevada limited liability company; WINGBROOK CAPITAL LLC, a Nevada limited liability company; ELSINORE, LLC, a Nevada limited liability company; KECJ, LLC a Nevada limited liability company; MONTESA, LLC, a Nevada limited liability company; EKNV, LLC, a Nevada limited liability company; on behalf of themselves and as representatives of the class herein defined,

Defendants,

This matter came before the Court at 9:00 a.m., on September 23, 2011, on Defendants' MOTION FOR NRCP 11 SANCTIONS AND FOR DISMISSAL, OR ALTERNATIVELY, MOTION TO STRIKE IMMATERIAL AND IMPERTINENT ALLEGATIONS, with Patrick Reilly, Esq., appearing on behalf of Plaintiffs and James Adams, Esq., and Puoy K. Premsrirut, Esq., appearing on behalf of Defendants. The Court has reviewed the Complaint on file and has considered said Motion, as well as Plaintiffs' Opposition thereto and Defendants' Reply in support thereof, and the oral arguments thereon. Upon reviewing said Motion, the Court having considered the pleadings and papers on file herein, and the oral argument of counsel, the Court hereby finds as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion is granted in part. The following paragraphs and portions of the Complaint are hereby stricken: 30, 31, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 110, and the first 3 words of 32.

IT IS FURTHER ORDERED that the following headings contained in the Complaint are hereby stricken: Sections B, C, D, E, F, G, H, and I.

IT IS FURTHER ORDERED that Defendants' request for attorneys fees is denied.

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IT IS FURTHER ORDERED that Plaintiff shall file an amended complaint in conformity wit this Order within 15 days of Notice of Entry of this Order.

No sanctions are imposed against counsel in this matter.

DATED this 18 day of October, 2011.

District Court Judge
ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Submitted by:

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

v.

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

Defendants.

CASE NO. A647850
DEPT NO. XIII

SCHEDULING ORDER
(Discovery/Dispositive Motions/Motions to Amend or Add Parties)

NATURE OF ACTION: **Breach of contract**

DATE OF FILING JOINT CASE CONFERENCE REPORT(S): **2/10/12**

TIME REQUIRED FOR TRIAL: **2 days**

DATES FOR SETTLEMENT CONFERENCE: **None Requested**

Counsel for Plaintiff:
James R. Adams, Esq., Adams Law Group AND Puoy K. Premsrirut, Esq. (co-counsel)

Counsel for Defendant:
Eric Hinckley, Esq., Alverson, Taylor, Mortensen & Sanders AND Patrick J. Reilly, Esq., Holland & Hart (co-counsel)

Counsel representing all parties have been heard and after consideration by the Discovery Commissioner,

IT IS HEREBY ORDERED:

. . .

DISCOVERY COMMISSIONER
EIGHTH JUDICIAL DISTRICT COURT

1. all parties shall complete discovery on or before 11/9/12.

2. all parties shall file motions to amend pleadings or add parties on or before 8/10/12.

3. all parties shall make initial expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 8/10/12.

4. all parties shall make rebuttal expert disclosures pursuant to N.R.C.P. 16.1(a)(2) on or before 9/7/12.

5. all parties shall file dispositive motions on or before 12/7/12.

Certain dates from your case conference report(s) may have been changed to bring them into compliance with N.R.C.P. 16.1.

Within 60 days from the date of this Scheduling Order, the Court shall notify counsel for the parties as to the date of trial, as well as any further pretrial requirements in addition to those set forth above.

Unless otherwise directed by the court, all pretrial disclosures pursuant to N.R.C.P. 16.1(a)(3) must be made at least 30 days before trial.

Motions for extensions of discovery shall be made to the Discovery Commissioner in strict accordance with E.D.C.R. 2.35. Discovery is completed on the day responses are due or the day a deposition begins.

. . .

Unless otherwise ordered, all discovery disputes (except disputes presented at a pre-trial conference or at trial) must first be heard by the Discovery Commissioner.

Dated this 27 day of February, 2012.

DISCOVERY COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I placed a copy of the foregoing DISCOVERY SCHEDULING ORDER in the folder(s) in the Clerk's office or mailed as follows:

James R. Adams, Esq.
Puoy K. Premsrirut, Esq.
Eric Hinckley, Esq.
Patrick J. Reilly, Esq.

Natalie Tennison

COMMISSIONER DESIGNEE

Left Side of File

TO: JUDGE MARK R. DENTON

FROM: BONNIE A. BULLA, DISCOVERY COMMISSIONER

SUBJECT: **Ikon Holdings, LLC v. Horizons at Seven Hills, et al., Case No. A647850**

DATE: February 27, 2012

SCHEDULING MEMO

1. A Joint Case Conference Report has been filed and approved.

2. A Scheduling Order has issued pursuant to N.R.C.P. 16(b).

3. Counsel for Plaintiff:
James R. Adams, Esq., Adams Law Group AND Puoy K. Premsrirut, Esq. (co-counsel)
Counsel for Defendant:
Eric Hinckley, Esq., Alverson, Taylor, Mortensen & Sanders AND Patrick J. Reilly, Esq., Holland & Hart (co-counsel)

4. Nature of action: Breach of contract.

5. Estimated time for trial: 2 days.

6. A discovery cut-off date has been set.

7. The case is ready to be set for trial on your earliest available date beginning 1/22/13.

8. Please notify counsel of their trial date no later than 60 days from the date of this memo.

NOTE: Final dates for filing motions to amend, motions to add parties and dispositive motions have been ordered pursuant to N.R.C.P. 16(b)(1)-(3) and 16.1(c), as set forth in the Scheduling Order. If your trial setting form includes any of these dates, please redact such information or be sure the dates match those set forth in the Scheduling order.

Thank you.

DISCOVERY COMMISSIONER

DISCOVERY COMMISSIONER

EIGHTH JUDICIAL DISTRICT COURT

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CLERK OF THE COURT

ALVERSON, TAYLOR,
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Attorney for Defendant Horizons At
Seven Hills Homeowners' Association

DISTRICT COURT

CLARK COUNTY, NEVADA

-*-

IKON HOLDINGS, LLC, a Nevada limited liability company, Plaintiff, vs. HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	Case No. A-11-647850-C Dept. No. XIII

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT

COMES NOW, Defendant Horizons at Seven Hills Homeowners' Association ("Defendant" or "Horizons"), by and through its counsel of record, Alverson, Taylor, Mortensen & Sanders, and hereby files its Reply to Plaintiff's Opposition to Defendant's Counter-Motion for Summary Judgment ("Opposition").

///

KB/19223

This Reply is made and based on the following Points and Authorities, the papers and pleadings on file herein and any oral argument the Court entertains at the time of hearing on the Motion.

DATED this 6 day of March, 2012.

ALVERSON, TAYLOR,
MORTENSEN & SANDERS

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As Plaintiff admits in the Opposition, this litigation is brought by a real estate speculator who purchased a home with the intent of selling or "flipping" the property for a quick profit. *See* Opposition, pg. 11. While the property was already subject to past due fees assessed by Horizons pursuant to the covenants, conditions, and restrictions ("CC&Rs") when Plaintiff obtained title to the property, Plaintiff did not make ***any*** payments to Horizons for accruing assessments for over a year. Attached to Horizons' Opposition and Counter-Motion as **Exhibit "1A"** is a true and correct copy of the HOA Payments. It is undisputed that Plaintiff did not make ***any*** payments on the past assessments, which Plaintiff claims is at issue, and Plaintiff did not make ***any*** payment on the assessments that were accruing monthly, which was never at issue. *See* Opposition.

///

Horizons still has not paid ***any*** portion of the delinquent assessments that accrued from July 2010, when it took title, until May 2011. Id. In addition, Horizons still has not paid ***any*** portion of the super-priority lien, not even the amount it does not dispute. Id. Yet, despite not making ***any*** payments towards the super-priority lien or making ***any*** payments for past due assessments, Plaintiff claims it has somehow been damaged by Horizons. However, without ***any*** damages, all claims against Horizons, with the exception of declaratory relief and injunctive relief, must be dismissed.

I.

LEGAL AUTHORITY

A. BECAUSE PLAINTIFF FAILS TO ESTABLISH DAMAGES, EACH CAUSE OF ACTION FAILS WITH THE EXCEPTION OF DECLARATORY RELIEF AND INJUNCTIVE RELIEF

Very simply, Plaintiff has not been damaged and Plaintiff's sole argument that damages exist based upon a statutory lien being filed against the property is without merit. Plaintiff has asserted the following causes of actions against Horizons: (i) breach of contract; (ii) breach of the implied covenant of good faith and fair dealing; (iii) violation of NRS 116; (iv) negligent misrepresentation; (v) breach of fiduciary duty; (vi) injunctive relief; and (vii) declaratory relief. With the exception of declaratory relief and injunctive relief, each cause of action requires a prima facie showing of damages. See, e.g., Calloway v. City of Reno, 116 Nev. 250, 993 P.2d 1259 (2000)(Plaintiff must sustain damages as a result of the breach of contract.); Great American Ins. Company v. General Builders, Inc., 113 Nev. 346, 934 P.2d 257 (1997)(Plaintiff must suffer damages as a result of the breach of the implied covenant of good faith.); Shoen v. SAC Holding Corp., 122 Nev. 621, 137 P.3d 1171 (2006) (Breach of the fiduciary duty also requires damages to be suffered by the breach.); Barmettler v. Reno Air, Inc., 114 Nev. 41, 956 P.2d 1382 (1998)(A claim for negligent misrepresentation also demands that a Plaintiff suffer damages.). Indeed, because Plaintiff has suffered ***no damages***, the causes of action for breach of contract, breach of the implied covenant of good faith and fair dealing, violation of NRS 116, negligent misrepresentation, and breach of fiduciary duty must be dismissed.

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First, Plaintiff claims that the lien against the Property constitutes damages because it has reduced the equity in the home. However, the Nevada Supreme Court has held that this argument lacks merit. For instance, in Hamm v. Arrowcreek Homeowner's Association, when finding that a filing of a lien, in and of itself, does not effect an immediate threat of irreparable harm, the Court stated that "a lien is merely a preliminary step to foreclosure and does not itself instantly implicate the loss of unique real property." Hamm v. Arrowcreek Homeowners' Ass'n, 124 Nev. 290, 296, 183 P.3d 895, 901 (Nev. 2008)(Finding that filing of a lien, in and of itself, does not effect an immediate threat of irreparable harm). The Court stated that a lien is just a security device that binds property to a debt and puts a party on notice that someone besides the owner of the property has an interest in that property. Id. Importantly, the Court stated that an irreparable harm must be apart from just the existence of the liens themselves because liens may be removed by paying money or posting security, "***which would result in harm only to the extent of a temporary loss of any amount that is ultimately not owed***." Id. (emphasis added). Following the Court's reasoning, Plaintiff would only be damaged if Horizons foreclosed or if Plaintiff paid money that is ultimately not owed. Here, it is undisputed that neither occurred, Horizons has not foreclosed and Plaintiff has made ***no payment*** to remove the lien. As such, Plaintiff has not been damaged and the causes of actions must be dismissed.

Plaintiff then makes an argument that it has been damaged because it has accrued attorney fees to remove a cloud of title and is therefore entitled to special damages. *See* Opposition, pg. 8. First, the Nevada Supreme Court unequivocally held "that attorney fees are only available as special damages in slander of title actions and ***not simply when a litigant seeks to remove a cloud upon title***." Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (Nev. 2007)(emphasis added). Here, a slander of title claim has not even been asserted and, thus, Plaintiff's argument fails. Second, the Supreme Court unequivocally held that litigation expenses alone cannot be considered damages. Sandy Valley Assocs. v. Sky Ranch Estates, 117 Nev. 948, 957, 35 P.3d 964, 970 (2001) ("[T]he mere fact that a party was forced to file or defend a lawsuit is insufficient to support an award of attorney fees as damages"), receded from

on other grounds by Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (2007). For instance, if attorney's fees, not specifically provided for by contract or statute, qualified as damages, all parties represented by counsel would automatically satisfy the damages element of any cause of action which requires the plaintiff to suffer damages. Under Plaintiff's premise, just the act of hiring counsel would allow a party to be able to satisfy the damages element. However, the parties that cannot afford to hire counsel and proceed in proper person would not be afforded the same protection. This is nonsensical and the Nevada Supreme Court has unequivocally ruled against Plaintiff's proposition. See, e.g., Horgan v. Felton, 123 Nev. 577, 170 P.3d 982 (Nev. 2007).

As such, because both of Plaintiff's arguments for damages have been rejected by the Nevada Supreme Court, these causes of actions must be dismissed for failing to meet the prima facie requirements.

B. EVEN UNDER PLAINTIFF'S ARGUMENT, NRS 116 DOES NOT PROVIDE FOR A PRIVATE CAUSE OF ACTION UNLESS THERE ARE ACTUAL DAMAGES

Plaintiff cites to NRS 116.4117 to argue that a private cause of action exists. However, NRS 116.4117 is limited to violations of NRS 116.4101 through 116.412, which is the Protection of Purchasers. Still, even if it did apply, which it does not, it requires that there be actual damages. NRS 116.4117. NRS 116.4117 states that "[s]ubject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of 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." (emphasis added). Here, as discussed above, Plaintiff has not suffered actual damages. As such, Plaintiff may not maintain a claim against Horizons based upon an alleged violation of Chapter 116 of NRS.

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C. PLAINTIFF CANNOT MAINTAIN ITS CAUSE OF ACTION FOR NEGLIGENT MISREPRESENTATION

a. Providing Information on Past Due Assessments Does Not Constitute a Business Transaction

Plaintiff alleges that because it is in the business of flipping real estate for a quick profit that Horizons must have guided Plaintiff in its business transaction when it provided the lien payoff. See Opposition, pg. 11. However, Horizons informs all purchasers, business entities and individuals, of its obligations under the HOA's super-priority lien. While providing payoff amounts, Horizons provides no guidance on how to proceed. The purchasers, including Plaintiff, are free to pay off the super-priority lien or not. Because Plaintiff's allegations contradict common sense and would result in an absurd result, this cause of action must be dismissed.

The Nevada Supreme Court has adopted the Restatement (Second) of Torts § 552 definition of the tort of negligent misrepresentation, which states:

> (1) One who, in the course of his business, profession or employment, or in any other action in which he has a pecuniary interest, supplies false information ***for the guidance of others in their business transactions***, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information.

Restatement (Second) of Torts § 552 (emphasis added); see, e.g., Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nevada, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978); Barmettler v. Reno Air, Inc., 114 Nev. 441, 956 P.2d 1382 (Nev. 1998). In doing so, the Nevada Supreme Court determined that an action based upon a negligent misrepresentation only applies to "business transactions." Id. Here, because the negligent misrepresentation claim is no way associated with Horizons providing guidance in a business transaction, this claim fails as a matter of law.

Plaintiff egregiously cites to Barmettler v. Reno Air to support a contention that somehow the purchase and sale of real property by an investment company "fits squarely within

a business or commercial transactions." See Opposition, pg. 11. However, this is not at all what Barmettler holds and this clearly fabricated citation is alarming. Barmettler, 114 Nev. at 448-49. Indeed, Bartmettler actually states that this tort only applies to business transactions and that because an employer's drug and alcohol policy "does not fit squarely within a business of commercial transaction," there was no viable claim for this tort. Id. Just like in Barmettler, as a threshold matter, Horizons providing the amounts that were due and owing for past assessments cannot be Horizons supplying information in the guidance of a business transaction. As such, this action fails as a matter of law.

b. Plaintiff's Cause of Action For Negligent Misrepresentation Is Barred By The Economic Loss Doctrine

In addition, Plaintiff's claim for negligent misrepresentation is barred by the economic loss doctrine as Plaintiff seeks recovery of purely economic loss. The Nevada Supreme Court has explained that, "[t]he economic loss doctrine marks the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others." Terracon Consultants Western, Inc. v. Mandalay Resort Group, 206 P3d 81, 85-86 (2009) (citing Calloway v. City of Reno, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000), overruled on other grounds by Olson v. Richard, 120 Nev. 240, 241-44, 89 P.3d 31, 31-33 (2004). The Nevada Supreme Court concluded that the economic loss doctrine bars unintentional tort actions when the plaintiff seeks to recover "purely economic losses." Id. (citing Local Joint Exec. Bd. v. Stern, 98 Nev. 409, 411, 651 P.2d 637, 638 (1982)). "[U]nless there is personal injury or property damage, a plaintiff may not recover in negligence for economic losses. Id. at 87 (citing Local Joint Exec. Bd. v. Stern, 98 Nev. 409, 410-411, 651 P.2d 637, 638 (1982)).

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In this case, although Plaintiff did not allege any specific damages in its Complaint, Plaintiff now alleges that its damages include the decrease in the amount of equity in its property and it has incurred attorney's fees to litigate the validity of Horizons' lien. *See* Opposition, pg. 8. These are clearly alleged economic losses. Any monetary damages allegedly incurred, if any, are purely economic losses and Plaintiff's claim of negligent misrepresentation is barred pursuant to the economic loss doctrine. Therefore, this Court must grant summary judgment in Horizons' favor as to Plaintiff's cause of action for negligent misrepresentation.

III.

CONCLUSION

Based on the foregoing, Horizons respectfully requests that this Court grant Defendant's Counter-Motion for Summary Judgment.

DATED this 6 day of March, 2012.

ALVERSON, TAYLOR,
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Attorney for Defendant Horizons At
Seven Hills Homeowners' Association

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 16 day of March, 2012, service of the foregoing REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S COUNTER-MOTION FOR SUMMARY JUDGMENT was made this date by depositing a true copy of the same for mailing, first class mail at Las Vegas, Nevada, addressed as follows:

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An Employee of ALVERSON, TAYLOR, MORTENSEN & SANDERS

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CLERK OF THE COURT

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Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION; and DOES 1 through 10; and ROE ENTITIES 1 through 10 inclusive,

Defendants.

Case No. : A-11-647850-B
Dept. No.: XIII

REPLY IN SUPPORT OF MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

Hearing Date: March 12, 2012

Hearing Time: 9:00 am

Holland & Hart LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

Defendant Horizons At Seven Hills Homeowners Association ("Horizons"), by and through their attorneys of record Holland & Hart LLP, hereby submit its Reply in Support of the Motion for Reconsideration of the Order Granting Summary Judgment on Claim of Declaratory Relief entered January 20, 2012 ("Order").

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This Reply is made and based upon the attached memorandum of points and authorities, the pleadings and papers on file herein, and any oral argument this Court may choose to hear.

DATED this 6th day of March, 2012.

HOLLAND & HART LLP

By _____
Patrick J. Reilly, Esq.
Nicole E. Lovelock, Esq.
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Horizons At Seven Hills Homeowners Association

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO PLAINTIFF'S OPPOSITION OF DEFENDANT'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

I.

INTRODUCTION

Horizons requests that the Court clarify or, in the alternative, reconsider part of its decision concerning the scope of the so-called "super-priority lien" under NRS 116.3116, as set forth in the Order attached hereto as **Exhibit "A"**. Specifically, the conclusion that the super-priority lien contains a numerical maximum contradicts the broad language of the Nevada super-priority lien, particularly as related to NRS 116.3115, and would create absurd results, including granting an HOA a lien with absolutely no practical means of enforcement. In the Order, this Court concluded that "penalties, fees, charges, late charges, fines and interest are not 'assessments'" and a super-priority lien is limited to nine (9) times the unit's un-accelerated, "monthly" assessment amount. ***See*** Exhibit A. Unfortunately, while this determination ***seemingly*** makes it very simple to determine the amount of a super-priority lien, this approach ignores the fact that the extent of the assessments for common expenses based on the periodic budget in a nine month period ***is not*** equivalent to nine times a fictitious "monthly assessment."

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II.

STANDARD OF REVIEW

A. *The Motion for Clarification or, Alternatively, for Reconsideration Was Timely, Appropriate, and Necessary.*

It is without question that this Court has inherent authority to reconsider prior orders. ***Trail v. Faretto***, 91 Nev. 401, 536 P.2d 1026 (1975) ("[A] court may, for sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on motion in the progress of the cause or proceeding." Importantly, "unless and until an order is appealed the district court retains jurisdiction to reconsider the matter." ***See*** NRCP 56; ***Harvey's Wagon Wheel v. MacSween***, 96 Nev. 215, 606 P.2d 1095 (1980) (district judge did not abuse his discretion by rehearing the motions for summary judgment); ***Gibbs v. Giles***, 96 Nev. 243, 246–47, 607 P.2d 118, 120 (1980)(overruled on other grounds). Not only does a district court have authority, but a district court has great discretion on the question of rehearing. ***See, e.g., Harvey's Wagon Wheel***, 96 Nev. at 217-18, 606 P.2d 1095 at 1097 (1980); ***Masonry & Tile Contractors v. Jolley, Urga & Wirth***, 113 Nev. 737, 941 P.2d 486 (1997) (reconsideration is appropriate if substantially different evidence is subsequently introduced or the decision is clearly erroneous); ***Moore v. City of Las Vegas***, 92 Nev. 402, 405, 551 P.2d 244 (1976) (reconsideration appropriate where "new issues of fact or law are raised supporting a ruling contrary to the ruling already reached.").

Here, Horizons' Motion is appropriate because Plaintiff did not inform the Court of the history of the extensive litigation surrounding an interpretation of the super-priority lien and shielded this Court from pertinent facts and legal authority that have been at issue for years. For this reason alone, this Court should grant Horizons' Motion.

Still, other than bringing new facts and law to the attention of this Court, Horizons seeks clarification of the Order. Due to the complicated nature of the statutory interpretation of the super-priority lien under NRS 116.3116(2), additional issues arise due to the interpretation of the statute in the Order. For example, the Order states that the super-priority lien is limited to a "maximum figure equaling 9 times the associations regular, monthly (not annual) assessment."

See Exhibit A, Order, pg 4, ln. 21-22. The Order also states that "in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 times the homeowners' association's regular monthly assessment amount to unit owners for common expenses based on the periodic budget..." *Id.* at pg. 5, ln. 2-4. However, this conclusion is based upon the faulty premise that a liquidated "monthly assessment" exists. As discussed below, for a variety of reasons, there is no such thing as a set prototypical monthly assessment. These are not new issues but, instead, new issues arising from the Order. Thus, due to this ambiguity, it became necessary for Horizons to request clarification regarding this issue.

Because of the nature of this statutory interpretation, Horizons is seeking clarification as to important parts of the Order, and certainly has not waived any argument that might shed additional light on this issue. In effect, Horizons seek a clear, complete interpretation of the super-priority lien under NRS Chapter 116. Clarification and reconsideration is particularly appropriate in this case, which is likely to be appealed to the Nevada Supreme Court, in that public policy directs that matters be heard on the merits whenever possible, and with a complete record before the court. ***See, e.g., Schulman v. Bongberg-Whitney Elec., Inc.***, 98 Nev. 226, 228, 645 P.2d 434, 435 (1982). Accordingly, the request for clarification or reconsideration is appropriate and indeed necessary.

B. "Monthly Assessments" is a Misnomer.

Plaintiff's entire case is based on the premise that the super-priority lien of NRS 116.3116 may not exceed "nine times monthly assessments." However, NRS 116.3116 does not say "nine times monthly assessments." Rather, the pertinent part of Section 116.3116 states as follows:

> The lien is also prior . . . to the extent of the assessments for common expenses based upon the periodic budget which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien....

Needless to say, if the super-priority lien were limited to "nine times monthly assessments," it would have been ***much*** easier for the Legislature to have simply said that in the statute. It did not. In reality, calculating the super-priority lien amount is more complex than Plaintiff

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suggests.

NRS 116.3116 is essentially a "look back" provision. Start at the date of foreclosure, and work backward by nine months to determine what assessments accrued during that period. As referenced *supra*, these assessments include collection fees and out of pocket costs that accrued during that nine month time period. ***See*** NRS 116.3116(a) ("any penalties, fees, charges, late charges, fines and interest . . . are enforceable as assessments under this section") and NRS 116.3115(6) (relating to common expenses caused by misconduct of a unit owner). Assessments that accrued more than nine months prior to foreclosure are not part of the super-priority lien and are not secured by a lien on the underlying property.

The fundamental problem with Plaintiff's analysis is that most HOAs assess homeowners on an annual basis. Others may assess quarterly. How do these HOAs fit into the "nine times monthly assessments" formula proposed by Plaintiff? The simple answer is—they do not.

A HOA is required, at least annually, to make assessments based upon a budget adopted annually in accordance with the requirements set forth in NRS 116.31151. NRS 116.3115. While HOAs are required to make annual assessments under NRS 116.3115, unit owners are able to pay annually or quarterly, regardless of how they are billed. In many cases, HOAs provide coupon books to unit owners so that they can make payments monthly or quarterly out of convenience.[1] This method of payment is akin to a Special Improvement District or other assessment based on an annual budget. These types of assessments in particular do not fit into the "nine times monthly assessments" package wrapped by Plaintiff.

HOAs may collect such annual assessments any way they choose, whether it be monthly, quarterly, annually, or ***by some other means***. Importantly, assessments based upon an annual budget do not require that there be some prototypical assessment amount that is charged to each homeowner.

"Nine times monthly assessments" simply cannot be the super-priority lien formula when, in many cases, a unit owner's own "monthly assessment" will be ***completely different*** from month to month. For example, in high rises and condominium complexes, a HOA will pay

[1] Indeed, many people could not afford to make their annual assessment in one single payment.

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one all-encompassing bill to a utility company for the total amount owed to that utility company, but then will charge the homeowner assessments based upon their specific usage of the said utility for that month. That utility usage is not an extra charge—rather, per NRS 116.3115(4), it is part of the actual assessment. This scenario alone precludes any suggestion that "nine times monthly assessments" is the way to calculate the super-priority lien.

It is therefore not surprising that the super-priority lien statute does not use or define the term "monthly assessment." Indeed, such a term contradicts the very language and spirit of NRS 116.3115, which requires an HOA to make assessments at least ***annually***, based on a budget adopted at least ***annually***. Nevertheless, Plaintiff assumes a "monthly assessment amount is determined simply by dividing the annual amount by 12" and then multiplies that number by nine to reach the super-priority lien amount. ***See*** Opposition. However, there is absolutely no discussion of "monthly" assessments in NRS Chapter 116, nor any requirement that a HOA divide its annual budget by 12 months when determining assessments. While certain HOAs might choose to collect assessments on a monthly basis, HOAs can, and often do, impose assessments annually based upon an annual budget.

Importantly, the "assessments" Plaintiff seeks are fully described in NRS 116.3115, i.e., ***all of NRS 116.3115***. The super-priority lien includes "assessments for common expenses." Plaintiff agrees, "common expenses" include all of those "expenditures made by, or financial liabilities of, the association, together with any allocations to reserves." NRS 116.019. Moreover, for purposes of the super-priority lien, the relevant "assessments for common expenses" are those that are "based on the periodic budget adopted by the association pursuant to NRS 116.3115." NRS 116.3115(2) states the HOA has "assessments under subsections 4 to 7." Included in those subsections, among several other assessments, is "any common expense [that] is caused by the misconduct of any unit's owner." NRS 116.3115(6). Plaintiff does not dispute that a unit owner's failure to pay assessments is "misconduct." Thus, common expenses, which include all financial liabilities of the HOA—including collection costs caused by this misconduct—constitute assessments for common expenses based on the periodic budget adopted under all of NRS 116.3115. Because the super-priority lien exists "to the extent of the

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assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115," the super-priority lien must, as a matter of law, include those assessments for common expenses explicitly set forth in NRS 116.3115.

C. The Order States that Costs Are Not Assessments.

Horizons seeks clarification of the statement in the Order that "penalties, fees, charges, late charges, fines and interest are not actual 'assessments.'" *See* Order, ¶4. However, according to NRS 116.3116, unless the declaration states otherwise "any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section." NRS 116.3116. As such, based upon this express language in subsection 1, penalties, fees, charges, late charges, fines, and interest must be considered as part of the term "assessments" for purposes of NRS 116.3116.

It is well-established that the Court must give a clear and unambiguous statute its plain meaning, unless doing so violates the spirit of the act. ***D.R. Horton, Inc. v. Eighth Judicial Dist. Court ex rel. County of Clark***, 123 Nev. 468, 476, 168 P.3d. 731, 737 (2007). In Nevada, the words in a statute, "should be given their plain meaning unless this violates the spirit of the act." ***State Dep't of Ins. v. Humana Health, Ins.***, 112 Nev. 356, 360 (1999) (*quoting* ***McKay v. Bd. Of Supervisors***, 102 Nev. 644, 648 (1986)). When interpreting the plain language of a statute, Nevada courts "presume that the Legislature intended to use words in their usual and natural meaning." ***McGrath v. Dep't of Public Safety***, 123 Nev. 120, 123, 159 P.3d 239, 241 (2007). As such, here, pursuant to the plain language of NRS 116.3115, this Court must clarify its order to determine that penalties, fees, charges, late charges, fines, and interest are part of the term "assessments" for purposes of NRS 116.3116.

D. A Numerical Cap Causes Absurd Results.

One ground for seeking clarification and/or reconsideration is that the Order fails to address any of the public policy arguments that a numerical cap "violates the spirit of the act or produces absurd or unreasonable results." ***See Las Vegas Police Protective Ass'n Metro, Inc. v. District Ct.***, 122 Nev. 230, 242, 130 P.3d 182, 191 (2006) (footnote and quotation omitted). Because a failure to account for absurd results violates Nevada law, clarification or

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reconsideration is necessary and just. Thus, Horizons request the Court take the next step and consider whether the Court's interpretation of the super-priority lien creates unreasonable or absurd results.

Plaintiff does not dispute that the purpose of a super-priority lien is to compensate HOAs for unpaid assessments. Indeed, Plaintiff quotes substantial parts of the Uniform Common Interest Ownership Act, which states that "[t]o ensure prompt and efficient enforcement of the association's lien for unpaid assessments, such liens should enjoy statutory priority over most other liens." ***See*** Opposition. Notwithstanding the dubious concerns Plaintiff (a real estate speculator) now expresses for lenders and their ability to foreclose on properties, Plaintiff forgets that even lenders, such as Freddie Mac, agree the ***Korbel*** case, notably with no numerical cap, controls the super-priority lien analysis. It is undisputed that first position lenders have a lien with priority over other liens, other than the HOA's relatively small super-priority lien, and thus have the ability to recover their investment through foreclosure. Indeed, it is Plaintiff who is reaping the benefits of such foreclosures by purchasing and "flipping" these properties for thousands of dollars of profits.

Notably, Plaintiff ignores the fact that a homeowner in foreclosure is, almost always, also in default on his or her HOA obligations, and the resultant effect is unpaid assessments and neglected properties. ***See*** Exhibit B to Motion, Kluska Declaration. Plaintiff also ignores the burden such defaults place on the HOAs, the homeowners who pay their bills and, indeed, even lenders. ***Id.*** Unpaid assessments affect an HOA's ability to maintain a neighborhood. ***Id.*** Unpaid assessments simultaneously affect those "good" homeowners who pay their bills, in terms of higher costs and/or lower property values due to increased blight in a neighborhood with foreclosure properties. ***Id.*** These same factors affect the banks, whose investment in a property also will see a significant decline due to increased blight in a neighborhood.

Moreover, the Order does not consider the policy implications of its holding, most important of which is the problem of the bow with no arrows as described by ***Hudson House***. Not only does a numerical cap favor HOAs with larger assessments over HOAs with smaller assessments, it provides no practical means for an HOA to collect. Using a $20 per month

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assessment example, an HOA will recover at most $180. While that $180 is of the utmost importance to an HOA's ability to maintain common areas and decrease the burden on other homeowners, it does not also cover the cost of collecting the $180. With a numerical cap, all or the assessments collected will simply go to cover the costs of collection. ***As a result, collection becomes cost prohibitive.*** If an HOA does not have the means to recover collection costs, it will simply not have the means to collect defaulted assessments. It is precisely the bow with no string or arrows discussed in ***Hudson House.***

Horizons therefore requests clarification or reconsideration of the Order, and that the Court make specific findings with regard to the practical implications raised by setting a numerical maximum to the super-priority lien. Because the numerical maximum creates absurd results, i.e., a bow with no string or arrows, reasonable collection costs must be included in the super-priority lien.

E. The Language of NRS 116.3115 Must Be Considered When Interpreting the Super-Priority Lien

The Order goes so far as to consider the language "to the extent of" in NRS 116.3116 in its interpretation of the statute. However, it did not consider that language in the context of the entire statutory scheme, especially in context with NRS 116.3115. A failure to consider a statute in its entire context constitutes clear error and is contrary to Nevada law. ***See Karcher Firestopping v. Meadow Valley Contractors, Inc.***, --- Nev. ---, 204 P.3d 1262, 1263 (2009) ("Plain meaning may be ascertained by examining the context and language of the statute as a whole."). As such, reconsideration and/or clarification therefore is necessary.

The super-priority lien exists "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 . . . ." Under Nevada law, statutes must be construed so "that no part of the statute is rendered nugatory or turned to mere surplusage." ***Albios v. Horizon Cmtys., Inc.***, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006); ***see also Great Basin Water Network v. State Eng'r***, --- Nev. ---, 234 P.3d 912, 918 (2010) ("This court avoids statutory interpretation that renders language meaningless or superfluous." (quotation omitted)).

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The reference to NRS 116.3115 is therefore an important part of the super-priority lien. Plaintiff, however, conveniently ignores the reference to NRS 116.3115 when it reads the super-priority lien, focusing only on the language "assessments for common expenses based on the periodic budget." ***See*** Opposition. Such a reading renders the reference to NRS 116.3115 mere surplusage, in direct contrast to Nevada law. Instead, ***all*** of the super-priority lien must be considered, including "assessments for common expenses based on the periodic budget adopted by the ***association pursuant to NRS 116.3115.***"

In the Order, the Court does not acknowledge the difference between the 2008 UCIOA and the Nevada statutes as significant in the statutory interpretation of the super-priority lien. ***See,*** Exhibit 1, Order. As such, the Order did not consider an important difference between the UCIOA and the Nevada Act, namely, the difference between the UCIOA's reference to Section 3-115 and Nevada's reference to NRS 116.3115. Plaintiff does not dispute that the super-priority liens in the UCIOA and NRS 116.3116 contain a difference, i.e., that the UCIOA limits its reference to Section 3115***(a)*** of the UCIOA, while the Nevada version includes ***all of NRS 116.3115***. Thus, as opposed to the UCIOA, Nevada's super-priority lien contains ***all of NRS 116.3115***, not merely NRS 116.3115(1). Plaintiff, rather confusingly, claim that only "monthly assessments," as opposed to "assessments for common expenses," are part of the super-priority lien calculation. ***See*** Opposition.

Contrary to Plaintiff's belief, the super-priority lien in Nevada is not limited to the term "budget" as it is used only in NRS 116.3115(1) because Nevada's statute, unlike the UCIOA, is extended to ***all common expenses for assessments defined in all of NRS 116.3115.*** This Court's Order does not account for differences in the UCIOA and Nevada's act and the significant difference made by the Nevada Legislature in deleting the reference to subsection (1) of NRS 116.3115. The Order does not acknowledge that Nevada's super-priority lien therefore exists "to the extent" of all assessments for common expenses included in NRS 116.3115. Because the broad range of assessments described in NRS 116.3115 includes charges incurred due to a unit owner's misconduct, those assessments, including collection costs, are included in the super-priority lien. Because a failure to consider all of NRS 116.3115 renders the super-

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priority lien's reference to all of NRS 116.3115 superfluous, Horizons requests clarification and/or reconsideration of the Order to consider the importance of NRS 116.3115.

F. Deference Must Be Given to the Commission's Adopted Advisory Opinion.

The Order directly contradicts the Commission for Common Interest Communities And Condominium Hotels ("CCIC") Advisory Opinion on this issue. ***See*** Motion, Exhibit E. This opinion, made by an arm of the Nevada Real Estate Division, concludes that collection costs ***are*** included in the super-priority lien, notably with no mention of a numerical cap. Plaintiff agrees the opinion does not set a numerical cap. ***See*** Opposition. The Nevada Supreme Court has made it clear, deference must be given to administrative interpretations. ***Thomas v. City of N. Las Vegas***, 122 Nev. 82, 101, 127 P.3d 1057, 1070 (2006).

The Court cannot simply disregard an agency interpretation of the statute at issue here, particularly the agency regulating this very subject matter. Further, the agency that interpreted the statute, pursuant to Plaintiff's counsel's request, did not find that any numerical cap existed in the super-priority lien. Reconsideration of this opinion is therefore necessary to give proper deference to an agency interpretation of the super-priority lien.

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IV.

CONCLUSION

For these reasons, Horizons requests the Court reconsider that holding and, instead, rule that the super-priority lien, based on its plain language and public policy, must include costs of collection with no numerical limit. Or, in the alternative, Horizons requests the Court clarify the Order to address the problems associated with using a monthly assessment as part of the calculation to limit the super-priority.

DATED this 6th day of March, 2012.

HOLLAND & HART LLP

By _____

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 6th day of March, 2012, I served a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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EXHIBIT "A"

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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

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

Defendant.

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 1st day, January2012, the attached Order was entered in the above referenced matter.

Dated this 20th day of January, 2012.

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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 **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

X	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;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.
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Mortensen and Sanders
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Dated the 20th day of January, 2012.

An employee of Adams Law Group, Ltd.

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DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company, Plaintiff, vs. HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, and DOES 1 through 10 and ROE ENTITIES 1 through 10 inclusive, Defendant.	Case No: A-11-647850-C Dept: No. 13 ORDER

This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group, Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the Plaintiff. Eric Hinckley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and for good cause appearing hereby rules:

WHEREAS, the Court has determined that a justiciable controversy exists in this matter as Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute) against Defendant and Defendant has an interest in contesting said claim, the present controversy is between persons or entities whose interests are adverse, both parties seeking declaratory relief have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the parties. *Kress v. Corey 65 Nev. 1, 189 P.2d 352 (1948);* and

WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and hold different views regarding the meaning and applicability of NRS §116.3116 (including whether Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS §116.3116); and

WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which had been demanded by Defendant and it was Plaintiff's property that had been the subject of a homeowners' association statutory lien by Defendant; and

WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is ripe for determination in this case as the present controversy is real, it exists now, and it affects the parties hereto; and

WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and controversy giving rise to the present proceeding; and

WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights, status or other legal relations are affected by NRS §116.3116 and they may, therefore, have determined by this Court any question of construction or validity arising under NRS §116.3116 and obtain a declaration of rights, status or other legal relations thereunder; and

WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the components of the Super Priority 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 a homeowners' association's entitlement to the Super Priority Lien.

THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as follows:

1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted in part.

2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners' associations a general statutory lien against a homeowner's unit for (a) any construction penalty that is imposed against the unit's owner pursuant to NRS §116.310305, (b) any assessment levied against that unit , and (c) any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due (the "General Statutory Lien"). The homeowners' associations' General 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.

3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory Lien 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 Interest") except for a portion of the homeowners' association's General Statutory Lien which remains superior to the First Security Interest (the "Super Priority Lien").

4. Unless an association's declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n), inclusive, are enforceable in the same manner as assessments are enforceable under NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and interest are not actual "assessments," they may be enforced in the same manner as

assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit.

5. Homeowners' associations, therefore, have a Super Priority Lien which has 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 that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.

6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... 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 9 months immediately preceding institution of an action to enforce the lien..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien, in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 times the homeowners' association's regular monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312.

9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be used in the calculation of the Super Priority Lien, except that notwithstanding the provisions of the regulations, that shorter period used in the calculation of the Super Priority Lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.

10. Moreover, ~~the Super Priority Lien can exist only if an "action" is instituted by the association to enforce its General Statutory Lien. The term "action" as used in NRS §116.3116(2) (as opposed the term "action" as contained in NRS §116.3116(7)), does not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e., "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with the court).~~ the need for the institution of an actual civil action to enforce the Super Priority Lien can be obviated if the issue is otherwise properly raised in the Court, as is the situation here where foreclosure in effect constitute an action within the meaning of NRS 116.3116(2)(c).

IT IS SO ORDERED.

1/12/12

DISTRICT COURT JUDGE Date

Submitted by:

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC,

Plaintiff(s),

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION,

Defendant(s).

CASE NO. A647850-B
DEPT. NO. XIII

ORDER SETTING CIVIL NON-JURY TRIAL AND CALENDAR CALL

IT IS HEREBY ORDERED THAT:

A **non-jury trial** of the above-entitled case is set on a three week stack to begin Tuesday, **February 26, 2013 at 9:00 a.m.**, with a calendar call on Tuesday, **February 19, 2013 at 2:00 p.m.**

All parties (attorneys and parties in proper person) **MUST** comply with **ALL REQUIREMENTS OF E.D.C.R. 2.67**, except that the date for filing the Pre-Trial Memorandum will be established at the calendar call. As to the Pre-trial Memorandum, counsel should be particularly attentive to their exhibit lists and objections to exhibits, as exhibits not listed or objections not made will not be admitted/allowed over objection based on non-compliance with the Rule's requirements. (Also, it is helpful to the Court when counsel list pertinent pre-trial motions and orders pertaining thereto if it is likely that they will be focused on during trial.)

All discovery deadlines, deadlines for filing dispositive motions and motions to amend the pleadings or add parties are controlled by the previously issued Scheduling

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MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

Order and/or any amendments or subsequent orders.

Counsel are also directed to abide by EDCR 2.47 concerning the time for filing and noticing motions *in limine*. Except upon a showing of unforeseen extraordinary circumstances, the Court will not shorten time for the hearing of any such motions.

Failure of the designated trial attorney or any party appearing in proper person to appear for any court appearances or to comply with this Order will result in any of the following: (1) dismissal of the action; (2) default judgment; (3) monetary sanctions; (4) vacation of trial date; and/or any other appropriate remedy or sanction.

Counsel are directed to advise the Court promptly when the case settles or is otherwise resolved prior to trial.

DATED this 2d day of March, 2012.

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.

BROWN, BROWN & PREMSRIRUT
Attn: Puoy K. Premsrirut, Esq.

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

ALVERSON, TAYLOR, MORTENSEN & SANDERS
Attn: Eric Hinckley, Esq.

HOLLAND & HART
Attn: Patrick J. Reilly, Esq.

Lorraine Tashiro

LORRAINE TASHIRO
Judicial Executive Assistant
Dept. No. XIII

MARK R. DENTON
DISTRICT JUDGE
DEPARTMENT THIRTEEN
LAS VEGAS, NV 89155

A-11-647850-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	March 07, 2012

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

March 07, 2012 3:00 AM Minute Order

HEARD BY: Denton, Mark R. COURTROOM: Chambers

COURT CLERK: Linda Denman

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR CLARIFICATION OR, IN THE ALTERNATIVE, FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

Pursuant to EDCR 2.23(c), the Court **DENIES** Defendant s Motion For Clarification Or, In The Alternative, For Reconsideration Of Order Granting Summary Judgment On Claim Of Declaratory Relief, without oral argument. The Court ORDERS such motion removed from its Civil Law and Motion Calendar of March 12, 2012.

Plaintiffs' counsel to submit a proposed order consistent with the foregoing.

IT IS SO ORDERED.
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A-11-647850-B

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC,

Plaintiff,

vs.

HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION, et al,

Defendants.

CASE NO.: A647850

DEPT. XIII

BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE

MONDAY, MARCH 12, 2012

***RECORDER'S TRANSCRIPT OF PROCEEDINGS
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT/DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNERS ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT***

APPEARANCES:

For the Plaintiff: JAMES R. ADAMS, ESQ.
PUOY K. PREMSRIRUT, ESQ.

For the Defendants: ERIC HINCKLEY, ESQ.
PATRICK J. REILLY, ESQ.

RECORDED BY: PATRICIA SLATTERY, COURT RECORDER

LAS VEGAS, NEVADA, MONDAY, MARCH 12, 2012 at 9:03 A. M.

THE COURT: Ikon Holdings LLC versus Horizon at Seven Hills Homeowners Association; good morning.

MR. REILLY: Good morning, Your Honor, Pat Reilly of Holland & Hart and Eric Hinckley of Alverson Taylor on behalf of the defendant.

MR. JAMES: And, Your Honor, James Adams on behalf of plaintiff Ikon Holdings.

THE COURT: All right; plaintiff's motion for summary judgment and defendants Horizon at Seven Hills Homeowners Association's opposition and countermotion. I disposed of a motion for reconsideration by way of minute order. My understanding is is that the plaintiff is seeking summary judgment on the remaining claims. You've already, in effect, obtained summary judgment on a declaratory relief claim; right?

MR. JAMES: Yes, Your Honor.

THE COURT: And you've got these other claims; right?

MR. JAMES: It's basically at the practical application of the order on declaratory relief. The order on declaratory relief stated what the super-priority lien was –

THE COURT: All right.

MR. JAMES: -- nine times the assessments. So this motion is to determine whether or not Horizons exceeded the super-priority lien by liening and demanding more than this – the –

THE COURT: Well, they have the right to lien; right? It's a question of whether it's a super priority.

MR. JAMES: They absolutely –

THE COURT: Right?

MR. JAMES: -- have a right to lien, yes.

THE COURT: All right.

MR. JAMES: They have a right to lien -- against an original homeowner they have a right to lien for all sorts of things. Once the foreclosure happened, as it did in this case, the lien becomes extinguished but for the nine months of assessments. So, post foreclosure what Horizons did was once again lien the property for the original amount, the amount that well exceeded the nine months. I think the nine months at $190 a month would equal $1,710, so that would be the appropriate super-priority lien. But post foreclosure, they liened the property again for over $6,000. They made demand upon the – post foreclosure owner for $6,200 or $6,300 and then subsequently filed a notice of default against my client for about $7,200, and in every respect each one of those demands well exceeded the legally permitted amount.

Now once foreclosure occurs and my client takes title, from the date of foreclosure onward obviously he's liable for assessments, fines, fees and penalties and that's not disputed. The only thing that is disputed is the amounts that Horizons is requesting from the point in time of the foreclosure prior because that amount would be limited by the super-priority lien cap – only the – that – the amount of the general lien -- that is super priority to the first mortgage, and that's nine months of assessments pursuant to the Court's order and pursuant to the statute.

And there's also another wrinkle is that the – CC&R's have a provision that permit –

THE COURT: Six months –

MR. JAMES: -- six months –

THE COURT: -- as opposed to nine months.

MR. JAMES: Right.

So, really the only question before the Court is did Horizons lien and demand more than either -- $1,710 equaling the nine months or – what's the other amount -- $1,140 which equals the six months? And there's no dispute that they, in fact, did lien and demand more than those amounts.

We produced for the Court a spreadsheet from their collection agent which took the foreclosure date and for all the times prior to the foreclosure, it requested about $3,300. So, the question is is $3,300 more than $1,710 or $1,140, and it is.

THE COURT: So, what are the remaining claims again?

MR. JAMES: Let's see, the remaining claims are violate –

THE COURT: I know there's a negligent, what?

MR. JAMES: There's a – negligent misrepresentation claim that's not – well actually, it is before the Court in their countermotion.

THE COURT: Right, I'm -- yeah.

MR. JAMES: There is –

THE COURT: Well, you're seeking summary judgment on all of your remaining claims; right?

MR. JAMES: No, no, only two.

THE COURT: Oh. Which are the two?

MR. JAMES: The two are violation of NRS 116.3116 and that's the super-priority lien statute and the other claim we're moving for summary judgment is for violation of the CC&R's, that's section 7.9 of the CC&R's; that's the six month

provision.

THE COURT: All right.

Does any portion of your action – let's see here, does any portion of this action, I should say, relate to assessments that were made following the foreclosure? I – think as –

MR. JAMES: Other –

THE COURT: -- I recall reading your – brief – you make the point that, well, even after the new owner acquired the property – actually the defense makes the point that – even –

MR. JAMES: Yeah.

THE COURT: -- after the new owner acquired the property, assessments were made and not paid. I mean is any –

MR. JAMES: Correct.

THE COURT: -- portion of that involved in this action?

MR. JAMES: Well not in my motion. We're – more –

THE COURT: Not in the motion but I mean in the action?

MR. JAMES: In – actually no, there's been no counterclaims for those amounts –

THE COURT: Okay.

MR. JAMES: -- but we don't dispute those amounts are owed. In fact, we're more than happy to write them a check today for all the amounts that, you know, are post foreclosure. It's just that pre-foreclosure time period where they're requesting more money – actually demanding and liening for more money that either the statute allows or the CC&R's allow.

THE COURT: Okay, so violation of the statute and violation of the CC&R's,

that's what you're –

MR. JAMES: Correct. That's –

THE COURT: -- basically –

MR. JAMES: -- really –

THE COURT: -- contending on this motion –

MR. JAMES: On this motion.

THE COURT: -- today? Okay.

MR. JAMES: And an argument has been made in the opposition that, well, there are no damages. And the response to that, of course, is -- because we haven't actually paid them the – lien yet, we were disputing the amount of the lien so it hasn't been paid, but because the lien has been placed on the property and because there's a notice of default been placed on the property, the damages are directly calculable by the decrease in the equity of my client's property. The decrease in equity is exactly that amount which is in excess of either the statutory amount or the CC&R amount for the super-priority lien. So those are -- in fact, we've got less equity in the property because they're asking for more than either the CC&R's or the law allows.

THE COURT: Okay.

MR. JAMES: And we also have a claim for special damages as well which is – what is the definition? Special damages is not the necessary but the natural consequence –

THE COURT: Doesn't the resolution of the dec relief claim, in effect, make everybody aware of the fact that –

MR. JAMES: It –

THE COURT: -- the lien isn't –

MR. JAMES: What the --

THE COURT: -- supportable?

MR. JAMES: What the dec relief order did was determine what the – law of the case was gonna be, I mean in my opinion. What – was not included in the dec relief order – and – I suppose we could make another motion for dec relief for this, but there's nothing that says – and this is why we're here today, there's nothing from the Court that says: Okay, so we know what the law is but did they violate the law by demanding and liening more than the law allows? It's the numbers crunching before –

THE COURT: Well, it's a pretty –

MR. JAMES: -- the Court.

THE COURT: -- confusing area. I mean you're going to fault somebody for claiming a lien that arguably has – merit. I mean I disagreed with the – defense but that doesn't mean that they don't have the right to contend that the statute and the CC&R's mean what they think it may mean.

MR. JAMES: Correct.

THE COURT: And – having resolved the dec relief claim in your favor, it seems to me once the determination of the Court is recorded people would know dealing with the property, well, they haven't been damaged because the lien is –

MR. JAMES: The – problem is –

THE COURT: -- not –

MR. JAMES: -- that –

THE COURT: -- super priority.

MR. JAMES: -- the pure interpretation of the law needs to have application. It needs to be placed in a context and the context is before the Court today. The

Court would not know unless we brought it up and we –

THE COURT: Right.

MR. JAMES: -- showed undisputed evidence whether the law was violated or not. We know what the law is but we don't know whether it was violated or not. That's the function of today's hearing.

THE COURT: Yeah, but what I'm trying to get at is this idea of the equity of damages. I mean recordation of the Court's order, it seems to me, would put everybody on notice that the claim super-priority lien does not have the extent that is claimed and therefore – you know, just because its of record doesn't mean that its –

MR. JAMES: Well, I –

THE COURT: -- damaging anybody.

MR. JAMES: I agree that's what the dec relief order –

THE COURT: Okay.

MR. JAMES: -- should – that's how it should be applied. We've got to apply it today. All – that – all the dec relief order was was an interpretation by the Court of what the law is.

THE COURT: But your other causes of actions are seeking damages, not just – right? And it seems to me that the equity hasn't been – there's been no loss of equity because the record is clear, or should be clear, that the super-priority lien claimed does not have the effect that is contended. That's all I'm –

MR. JAMES: And –

THE COURT: -- getting at.

MR. JAMES: As – I'm – I understand the Court's position. I – think, as a matter of law and practice, it – needs to go one step further. We need to apply what the Court's decision was to the actual facts of the case now. And – without doing

that all we have is a – an interpretation of the law. Whether – in this case, the facts indicate that the law was violated or not, that's a decision that I think needs to occur because that's the only way we're going to know what size of a check we need to write to the other side. Yes, I – you know, I think I can figure it out. I think we can all figure it out, but there's no order of the Court saying: Well, NRS 116 was violated because you liened the property for more than the law allows or the CC&R's were violated, section 7.9, because you liened the property for more than the CC&R's allow. And that's the order we're – requesting from the Court. Once that occurs, I believe the case can be concluded. We can write a check for a smaller amount which is the proper amount and, you know, ruling can be entered that, in this particular case with these particular facts, the super-priority lien equals $1,710 or $1,140 depending on whether you're following the law or the CC&R's.

THE COURT: All right.

MR. JAMES: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Reilly?

MR. REILLY: Good morning, Your Honor.

THE COURT: And I don't need an argument relative to the matter on which I've already ruled. I –

MR. REILLY: I know.

[Laughter]

MR. REILLY: Although I –

THE COURT: -- which consumes much of the opposition and countermotion.

MR. REILLY: I -- understand that but I do want to incorporate, by reference, those arguments.

THE COURT: All right.

MR. REILLY: You know, I – and I know you've ruled on that. I – I am having trouble with the fact that the CCIC issued an advisory opinion on this and I believe the Court needs to give due deference to it, but – I understand your ruling, so.

First off, and I think you hit the nail on the head, there are no damages. The super-priority lien amount, even the amount that – plaintiff agrees, just hasn't been paid. And so, when you go through all of these tort claims, breach of fiduciary duty, negligent misrepresentation, the private right of – the alleged private right of action under NRS Chapter 116, you have to have damages for that. There is – you know, with negligent misrepresentation, you have to have reliance. Well, there's no reliance if you haven't paid. Breach of fiduciary duty, again, reliance is an essential element and I don't understand how – my client, an HOA, would owe a fiduciary duty to a unit owner. And then again, with regard to the private right of action, there must be a violation of the CC&R's and you also must have damages. Again, I think you hit the nail on the head. We have a disagreement over the interpretation of NRS Chapter 116. NRS 116.3116 is not exactly a model of clarity. I think we will all agree on that and there's a lot of authority going both ways on this. Mr. Adams has his authorities; I have the *Korbel* opinion from Jackie Glass. There's also the CCIC advisory opinion. There's also one other district court opinion that's ruled in our favor and then there's also the Cooper Castle firm representing, I forget whether it was Fannie Mae or Freddie Mac, which – took the – same position as *Korbel*. So, I mean it's not like my client is, you know, just out in the wilderness without any legal authority supporting this proposition. We have a legitimate disagreement over what the scope of the super-priority lien is.

With regard to attorneys' fees as damages, I think that the law is very

clear from the Supreme Court. Special damages are – only – well, slander of title cases only allow attorneys' fees and – only when someone seeks to remove a clouded title. Again, *Hamm v. Arrow Creek Homeowners Association* says that the recording a lien is just that, it's the recording of a lien. I don't know that there's any – support in the law. There's certainly no support in the record that the recording of a statutory lien somehow brings down the value of a home. And by the way, my client's still entitled to have this lien recorded because not only is the super-priority lien amount not been paid but the amount after the foreclosure hasn't been paid, so my clients entitled to a lien on the property. And in fact, my client's entitled to the collection fees and costs that arose after the foreclosure. And I think actually a lot of – the activity in this place took place after the foreclosure because remember, even under this Court's ruling with the declaratory relief, my client's entitled to collection fees and costs after the foreclosure under the statute and I want the Court to make that clear – in its order.

THE COURT: There's no counterclaim for that, is there, in – this case?

MR. REILLY: We've – not asserted – an answer or counterclaim yet. I – think if the –

THE COURT: Oh, that's – okay.

MR. REILLY: -- Court were to rule – we've – talked about this. This case is moving awfully fast and, as you know, I just got involved in it so – we haven't really had a chance to breath but, you know, if this Court's declaratory relief order from, you know, previously and reinforced by last week's minute order stands, that's the declaratory relief and my client's still entitled to a lien and we'll deal with the collection issues at a later date and if they really don't want to pay I guess we – do actually go to judicial foreclosure. I doubt that we'll ever get to that though.

So, unless the Court has any additional questions, I – oh, by the way, I heard – there were two different arguments made. One apparently is that only $1,140 is owed because it's a six month super-priority lien and then an argument that its nine months because its $1,710. I think this Court should – this Court may already be aware that the super-priority lien statute was amended I think in the --

THE COURT: Right.

MR. REILLY: -- I want to say the 2009 legislature which bumped the six months up to the nine months, so we think that the nine months is appropriate and the CC&R's are subject to that amendment of law.

THE COURT: Now, your countermotion is directed at all the remaining –

MR. REILLY: All the remaining –

THE COURT: -- causes of action; right?

MR. REILLY: Correct; all the remaining causes of action. The only thing -- based on this Court's ruling, the only thing that the plaintiff is entitled to is the declaratory relief that this Court has already granted.

THE COURT: Okay.

MR. REILLY: And essentially, our countermotion for summary judgment should resolve the – rest of the case.

THE COURT: So in other words, this idea of collection for the – that would be a separate proceeding apparently?

MR. REILLY: Well, my client – I don't think it's a compulsory counterclaim because my client doesn't have to –

THE COURT: No, no, I understand.

MR. REILLY: We don't have to seek a judicial foreclosure –

THE COURT: Right.

MR. REILLY: -- here. We can – do it –

THE COURT: You would do that subject to other proceedings. You weren't saying that that would be coming up in this case?

MR. REILLY: Correct.

THE COURT: Unless –

MR. REILLY: Correct.

THE COURT: -- I didn't dismiss it; then it might.

MR. REILLY: Correct, and if this Court – kept this case open I guess we would consider it, but again, it's not a compulsory –

THE COURT: Okay.

MR. REILLY: -- counterclaim. And – I'd like that the Court make that clear in whatever order it – makes –

THE COURT: Okay.

MR. REILLY: -- as a result of this motion.

Thank you.

THE COURT: Thank you.

MR. JAMES: Your Honor, we're sort of at a interesting position in this case because I brought a check with me today and if we were to pay – I mean if – the theory is correct that there's no damages even though there is an existing loss of equity due to the lien and the notice of default that has been filed because the lien is for an amount in excess of the super-priority lien, at least about $2,500 of it is --

THE COURT: You're talking about the lien that was re-recorded after the foreclosure?

MR. JAMES: My client took ownership, yes. Yeah, if that's not a measure of damages, compensatory damages, is it – does it make sense that I hand a check

over to the other side for the full amount, including the wrongful amounts? Are there damages then? I mean what really is – is that the event that causes economic damages or are damages a decrease in loss of equity because of a wrongful lien? And that's an interesting question. I – we can't sell the property unless we pay the wrongful amount. We can't refinance the property unless we pay the wrongful amount. There is a diminishment of equity in the property due to the wrongful filing of the lien, at least the wrongful amount of the lien, and that amount is directly equal to the excess they're asking for in the super-priority lien –

THE COURT: Right.

MR. JAMES: -- and the – amount pursuant to the CC&R's.

So, just leaving the case the way it is, just having a declaration on the law is not gonna resolve the dispute in this case. That declaration of the law needs to be applied to the facts of this case. And we need direction from a court, an order from the court that the amount of the lien was in excess of that which is permitted by law and that which is permitted by the CC&R's.

Now, there is no statute on the books that says a homeowners association can not request a lower amount for the super-priority lien. There's a statute that says, well, where the CC&R's violate –

THE COURT: What's your position relative to the nine months versus the six months?

MR. JAMES: My position is that in this case it's the CC&R's that control. It's a – its like – a speed limit. The nine months is the 55 mile an hour speed limit which you can not exceed but you can always drive slower than 55 and not be violating the law. So, the six months is the operative amount. That's the contractual amount between the parties.

THE COURT: But in the prior determination, wasn't that – wasn't there some discussion of nine months? I'm trying to remember.

MR. JAMES: Yeah, in the – the prior determination was solely focused on a declaration of the meaning of the law –

THE COURT: Right, but wasn't the –

MR. JAMES: -- not of the CC&R's.

THE COURT: Right, but what did it say about the – what did the – I don't have it right in front of me. I have to –

MR. JAMES: Oh, I – if you need the – order, I think I –

THE COURT: I want to access it here.

[Colloquy between counsel]

MR. HINCKLEY: Your Honor, it's my understanding the order does say nine months.

THE COURT: That's what I thought.

MR. HINCKLEY: I understand it's subject to the – its interpretation of 116.

MR. JAMES: It – says – it – right, it's the interpretation of the statute and the statute does say –

THE COURT: So, I declared previously that a – you had up to – that it was up to nine months; right?

MR. JAMES: Pursuant to the statute.

THE COURT: Pursuant to the statute. So that's already been determined; right?

MR. JAMES: You determined that the statute meant that the super-priority lien equals nine months of assessments –

THE COURT: Okay.

MR. JAMES: -- plus external repair costs.

THE COURT: So – but I didn't determine that the statute was applicable as opposed to the CC&R's. Is that what you're saying?

MR. JAMES: Oh, I don't think you made that determination. I don't think I requested that either.

THE COURT: I remember there was some – there was a little quirk, as I recall, regarding the – when the time started to run because there hadn't been a –

MR. JAMES: Yes.

THE COURT: -- notice of –

MR. JAMES: You're right.

THE COURT: -- default or something like that.

MR. JAMES: You're right.

THE COURT: I don't remember.

MR. JAMES: The – that argument was: Well, we thought it was a civil action. Its – the –

THE COURT: Right.

MR. JAMES: Yeah, and our – definition of action was the filing of a lawsuit. The other side said: Well, no it's not the filing of a lawsuit, and I think the Court decided that it –

THE COURT: That's why I think there was some reference –

[Colloquy between counsel]

THE COURT: -- to the nine months.

MR. JAMES: The foreclosure date.

THE COURT: Okay.

MR. JAMES: Regardless, its – you know I think agrees that the –

assessments that are the operative amount, its $190. So, again –

THE COURT: Whether it's – times nine or times six; right?

MR. JAMES: Well, its – it – you know its – it's actually both because if you're – suing on a breach of the CC&R's its six. If you're suing on a breach of 116, it's nine.

THE COURT: But your contention would be, wouldn't it, that –

MR. JAMES: Well, it violated both.

THE COURT: -- six months is, like you say: It could be up to nine, but no, the CC&R's say six. So they're limited to six, right? Isn't that what you're saying?

MR. JAMES: I – I'm saying that their lien and their demand violated both the law and the CC&R's. I think six months is the proper amount because that's the amount contractually agreed to between the parties.

THE COURT: I think both sides want to sort of take this up; right?

MR. REILLY: Yes.

MR. JAMES: Well, I'm not sure we do but – they do.

MR. REILLY: That's why I'm here.

[Laughter]

THE COURT: All right.

MR. JAMES: So, there is one remaining cause of action left that – I don't think has been counter moved upon and that's injunctive relief. And – just to – inform the Court, I – don't think their countermotion retires all of the causes of action.

Regarding negligent misrepresentation, there's – a case specifically in the state of Nevada that says in a business transaction when one party imparts information to another party, they're under a duty, a negligence duty, to impart

correct information. And to the extent that they were under the duty and they imparted incorrect information, they would have been amenable to a claim for negligent misrepresentation.

If the Court has any other questions or if my co-counsel has any comments –

THE COURT: Well, I'd like to hear what counsel might have to say regarding this – pending injunctive relief claim assuming the dust settles and – everything else is –

MR. REILLY: There's no such thing as an injunctive relief claim. It's a remedy, not an independent right of –

THE COURT: Right.

MR. REILLY: -- action and its derivative of all the other claims.

So I had heard in the previous argument that they have a check for us. You know I have no idea what that amounts for. I have no idea what their – whether that's the correct amount because again, remember collection fees and costs have accrued post foreclosure that my client's entitled to and I just – I can't be put on the spot to know if that's – correct or not. I suppose that if – you know that if we couldn't come to an agreement and the plaintiff wanted to try to remove a lien through injunctive relief, that would be the way to do it. But that's not what they're trying to do right now. They just want injunctive relief on the scope of the super-priority lien and they haven't filed a motion for an injunction. Again, it's not an independent right of action. It's a remedy. So, we're seeking to move for summary judgment on all the remaining claims.

THE COURT: But its probably, even though it is a remedy, it probably is stated in a separate cause of action –

MR. JAMES: It is.

THE COURT: -- or claim for relief; right?

MR. REILLY: I'm sure –

THE COURT: I mean in the –

MR. REILLY: -- it is but that doesn't mean that its –

THE COURT: -- in the complaint; right?

MR. REILLY: -- an independent cause of action. Everybody does that in this jurisdiction and it's – you know we do it to cover ourselves and not commit mal –

THE COURT: Right.

MR. REILLY: -- practice but its wrong. Really all you – need to do is ask for injunctive relief in the prayer for relief at the end of a pleading.

MR. JAMES: And, Your Honor, this – the narrowness, of at least our motion, is simple. Did they ask for more than they were legally allowed to? Did they lien for more than they were legally allowed to pursuant to the super-priority lien and the CC&R's? That's the violation of the statute and the violation of the CC&R's. And it is uncontradicted and I don't think either one of these two gentlemen will say that – their lien for pre foreclosure amounts exceeded either $1,710 or $1,140. It's very clear from the spreadsheet from Nevada Association Services that it was about $3,600 that they were specifically requesting for amounts prior to the foreclosure auction; $3,600 exceeds either $1,710 or $1,140 and that's what we are here today to get a ruling on.

THE COURT: All right, well here's what I'm going to do. I'm not satisfied that the plaintiff has -- is entitled to summary judgment, so the plaintiff's motion for summary judgment is denied; all right?

Relative to the countermotion for summary judgment, the only question

I have is this idea of the – whether or not the re-recordation of the super-priority lien following the foreclosure caused damage to the plaintiff in the equity sense that's being argued here. I just haven't made up my mind on that. I got to think about that some more. But as far as all the other causes of actions are concerned, I think the countermotion has merit.

I'm – going to take under advisement this issue of the damages, you know. the violation of the CC&R's and – the statute because I've got to think about that some more. My thinking is that the dec relief – I mean, as I indicated to you previously, my initial thinking has been that the dec relief order basically makes everybody aware that the lien was being claimed for more than it could and – there's no damage by reason of that. You know people record liens and – then – the determinations be made and if you're entitled to seek costs and fees or whatever under NRS 18.010 or whatever, or under a – the contract, the CC&R's or something like that, that might be one thing but – this idea of damages, I'm just not sure that there's really a genuine issue there.

MR. JAMES: So, Your Honor, is that why – I'm trying to wrap my head around why the motion was denied because I'd like to make sure it specifically recorded in your –

THE COURT: Well, I see some –

MR. JAMES: -- order.

THE COURT: -- issues right there. I mean that's what I've –

MR. JAMES: Damages.

THE COURT: -- just said.

MR. JAMES: Okay.

THE COURT: I mean – I see that, at least from the plaintiff's standpoint, you

haven't persuaded me that there are no genuine issues. From the defense standpoint on their countermotion, I'm thinking there may very well not be any genuine issues from – you know in other words, favorable to their side.

MR. JAMES: Again, Your Honor, I – come back to the fact that if the – issue is damages, it –

THE COURT: I'm just denying your – motion. I'm not saying you don't -- I might decide there should be a trial on it, but you haven't persuaded me that – there are no issues such that you should get summary judgment; that's the point.

MR. JAMES: And – the issues of material – this is what I'm trying – I want to make sure I don't make the same mistake when I come back because the – issues of material fact that are in dispute are – are what?

THE COURT: Well, its not just issue of material fact. Its – you also have to show that you're entitled to judgment as a matter of law and I'm not – you know you're telling me that there's this equity that it can be just looked at from the standpoint of equity. That would be the factual issue I guess. But we also have the legal issue, don't we, as to whether or not you're entitled to judgment as a matter of law on a motion for summary judgment?

MR. JAMES: Well, yeah, under the – the Court has already declared what the super-priority lien –

THE COURT: Right.

MR. JAMES: -- is. It's nine times –

THE COURT: Right.

MR. JAMES: -- the monthly assessments and there is a document before Your Honor which is the spreadsheet which is the demand –

THE COURT: Right.

MR. JAMES: -- which claims an amount in excess of that.

THE COURT: Right. But – again, I think my order accomplishes the negation of any – damage. That's – what I was saying at the beginning.

MR. JAMES: Okay. I – I'll go with that. I don't know how the – how there has been an actual practical application of your order on –

THE COURT: Well, I assume –

MR. JAMES: -- declaratory relief –

THE COURT: -- you take the order –

MR. JAMES: -- in this action.

THE COURT: -- and you record it; right? You record the order so everybody whose dealing with the property knows that the super-priority lien claimed does not have the effect contended; right?

MR. JAMES: I –

THE COURT: So – how – where's the damage? That's what I'm – you may –

MR. JAMES: The damages –

THE COURT: You may be in entitled to seek costs and fees for having come – having to had to come to court –

MR. JAMES: Okay.

THE COURT: -- to prove your point, and I'm not deciding that and – but I'm – I agree I think with counsel as to attorneys' fees as damages. That's -- you know I'm looking more at would you be entitled to seek attorneys' fees under the CC&R's as prevailing party on the point, have you obtained a judgment less than $20,000, are you entitled to your costs as prevailing party; that's a separate thing that I'm not deciding today.

MR. JAMES: Okay, so –

THE COURT: I – I'm pretty much – I don't know that there have been any attorneys' fees as damages that have been sustained. You know I – but –

MR. REILLY: And – just one final point, you made a comment about the possible loss in equity as a damage. There's nothing in the record to support that. That's purely an argument of counsel and this is a summary judgment motion –

THE COURT: Right.

MR. REILLY: -- that you're considering and you have to –

THE COURT: You're right.

MR. REILLY: -- consider whether that's in the record or not and it just isn't.

THE COURT: Okay. Well you know what, as I've indicated to you, my main -- hesitation here is this contention about your – claim for damages, whether or not the – whether or not the defendant is entitled to summary judgment – entitled to summary judgment on that. I ruled that you're not, but in so ruling, I'm not saying you don't have a claim. I'm just saying it can't be summarily determined in your favor. So, what I have now holding me up here is whether or not the defense is entitled to a summary judgment in their favor that you're not entitled to damages; you see? That's what I'm struggling with.

But as far as fiduciary duty, negligent misrepresentation, all of that I don't see any basis – I mean I don't see any genuine issues and I think the defense is entitled to judgment as a matter of law on all those causes of action.

MR. JAMES: Thank you, Your Honor.

THE COURT: I'm saying – yeah, the main issue here – let's face it, the main issue is this, is the interpretation of the statute, the super-priority lien. It's going to go up and the Supreme Court is going to tell me whether I'm right or wrong. As far

as I'm concerned, all right, and I'm not going to reopen the issue --

MR. JAMES: Right.

THE COURT: -- but the statute promotes – predictability in terms of the -- a time period and -- in terms of the time period and what can be looked at for purposes of a super-priority lien and – the defense position I think would negate that predictability; all right?

MR. JAMES: Thank you, Your Honor. I'm – I think I'll contemplate a check that I'm going to write to – opposing counsel –

THE COURT: You both have done a great job. Both sides have done a great job on this very interesting issue and I'll –

MR. JAMES: Thank you, Your Honor, we appreciate your time.

THE COURT: I'll come up with this – my ruling on this as quickly as I can; okay?

MR. JAMES: It's always a brain twister when –

THE COURT: Right.

MR. JAMES: Oh, Your Honor –

THE COURT: All right, thank you very much.

MR. JAMES: -- I do have the -- order which my co-counsel brought to me from your – in chambers ruling.

THE COURT: Okay.

MR. REILLY: I – haven't had a chance to look at it. I'll try –

THE COURT: All right.

MR. REILLY: -- and take a look at it right –

MR. JAMES: Okay.

MR. REILLY: -- now after the hearing –

THE COURT: Yeah, okay.

MR. REILLY: -- and –

MR. JAMES: We'll just drop it off in your box.

THE COURT: Okay, thank you.

MR. REILLY: Thank you.

MR. JAMES: Thank you, Your Honor.

[Proceedings concluded at 10:37 a. m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.

Cynthia Georgilas

CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XIII
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A-11-647850-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	March 12, 2012

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

March 12, 2012 9:00 AM All Pending Motions

HEARD BY: Denton, Mark R. COURTROOM: RJC Courtroom 12A

COURT CLERK: Linda Denman

RECORDER: Patti Slattery

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

JOURNAL ENTRIES

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT... DEFENDANT HORIZONS AT SEVEN HILLS HOMEOWNER ASSOCIATION'S OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Adams argued that Plaintiff's Motion for Summary Judgment was brought in order to take the Court's previous Decision and Order one step further. While the Court's decision confirmed a HOA's super-priority lien in a foreclosure, it also limited such lien to nine (9) times the monthly assessments. In this case, Defendant's have filed liens in excess of their limited assessment and, in doing so, have damaged Plaintiff in the amount of that difference. He concluded that the Court's Order states what the law is with respect to assessments and now the Court needs to state that Defendant is in violation of the law by filing a lien against the property exceeding the allowed assessment.

Mr. Reilly incorporated all arguments raised in his Counter-motion by reference and added that Plaintiff has paid no assessments, either pre or post foreclosure, and therefore has suffered no damages. He argued there is no standing for Plaintiff's claim that the filing of the lien has in any way reduced the equity in the property. Upon inquiry of the Court, he advised that the granting of Defendant's Counter-motion would remove all remaining claims.

Mr. Adams rebutted by stating that Plaintiff cannot sell or refinance unless it first pays the Defendant's lien so until the amount of the lien is resolved by the Court, the case cannot be resolved.

A-11-647850-B

Court stated its findings and ORDERED **Plaintiff's Motion for Summary Judgment** DENIED; Court FURTHER ORDERED **Defendant's Counter-Motion** UNDER ADVISEMENT on the question of whether the re-recording of the super priority lien following foreclosure caused damages to the Plaintiff as to equity.

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

IKON HOLDINGS, LLC, a Nevada limited liability company,

Plaintiff,

vs.

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

Defendant.

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

NOTICE OF ENTRY ORDER

PLEASE TAKE NOTICE that on the 16th day of March 2012, the attached

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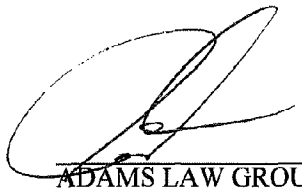
Notice of Entry of Order to was entered in the above referenced matter.

Dated this 20 day of March, 2012.



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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 **NOTICE OF ENTRY OF ORDER** upon all parties to this action by:

X	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;
	Hand Delivery
	Facsimile
	Overnight Delivery
	Certified Mail, Return Receipt Requested.

addressed as follows:

Eric Hinckley, Esq.
Alverson Taylor
Mortensen and Sanders
7401 W Charleston Blvd.
Las Vegas, NV 89117-1401

Dated the 20 day of March 2012.

An employee of Adams Law Group, Ltd.

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