EXHIBIT "A"

Slip Copy, 2012 WL 1923974 (Nev.)
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 2012 WL 1923974 (Nev.))

Supreme Court of Nevada.
The STATE of Nevada DEPARTMENT OF BUSINESS AND INDUSTRY, FINANCIAL INSTITUTIONS DIVISION; and George E. Burns, Individually and in his Official Capacity as Commissioner of the State of Nevada, Department of Business and Industry, Financial Institutions Division, Appellants,
v.
NEVADA ASSOCIATION SERVICES, INC.; RMI Management, LLC; and Angius & Terry Collections, Inc., Respondents.

No. 57470.
May 23, 2012.

Attorney General/Las Vegas

Holland & Hart LLP/Las Vegas

ORDER OF AFFIRMANCE

*1 This is an appeal from a district court order granting a preliminary injunction prohibiting appellants State of Nevada Department of Business and Industry, the Financial Institutions Division, and its Commissioner, George E. Burns, (collectively, the Department) from regulating the collection activities of respondents Nevada Association Services, Inc.; RMI Management, LLC; and Angius & Terry Collections, Inc. (collectively, NAS). Eighth Judicial District Court, Clark County; Susan Johnson, Judge.

The Department is responsible for regulating the collection practices of collection agencies in the state of Nevada. The statutes pertaining to the regulation of collection agencies are found in NRS Chapter 649. Under NRS 233B.120, the Department has the authority to issue advisory opinions "as to the applicability of any statutory provision." Here, after the Department issued one such opinion, NAS filed its complaint requesting declaratory relief. NAS's primary contention was that the Department lacked jurisdiction to issue an advisory opinion interpreting statutory language found in NRS Chapter 116, which deals with common-interest communities.

Common-interest communities often employ collection agencies to assist them with collecting assessments owed by homeowners. Because collection agencies are generally regulated by the Department, the advisory opinion not only interpreted the Department's own regulations, NRS Chapter 649, but also interpreted the Real Estate Division's chapter, NRS Chapter 116. The opinion limits the amount of assessments that a collection agency can collect pursuant to a lien with priority status [FN1] to an amount equal to nine months of assessments. The nine month cap also included any fees or charges associated with the lien. In issuing its advisory opinion, the Department also stated that it would immediately enforce the declaratory order contained in the advisory opinion by taking disciplinary action against any community manager assessing fees in amounts in excess of nine months of assessments. Fearing potential litigation, NAS filed a motion for preliminary injunction, which is the subject of the instant litigation. The district court granted a temporary restraining order and, after holding a hearing, issued a preliminary injunction enjoining the Department from enforcing its advisory opinion. The Department now appeals.

FN1. Priority status over almost any other type of encumbrances is granted to liens against units for delinquent assessments. *See* NRS 116.3116(2).

We affirm the district court's order granting a preliminary injunction. As the parties are familiar

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with the facts, we do not recount them further except as necessary to our disposition.

The district court did not abuse its discretion when it granted NAS a preliminary injunction

The Department contends that the district court abused its discretion in enjoining it from enforcing its advisory opinion. We disagree.

A preliminary injunction is proper when the moving party can demonstrate that it has a reasonable likelihood of success on the merits and that it will suffer irreparable harm for which compensatory damages would not suffice. *See* NRS 33.010; *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004). We review a district court's grant of a preliminary injunction for an abuse of discretion and will reverse only when the district court's decision was based "on an erroneous legal standard or on clearly erroneous findings of fact." *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 125 Nev. 397, 403, 215 P.3d 27, 31 (2009) (internal quotations omitted). However, when the underlying issues in the motion for preliminary injunction "involve [ ] questions of statutory construction, including the meaning and scope of a statute," we review those questions of law de novo. *Nevadans for Prop. Rights v. Sec'y of State*, 122 Nev. 894, 901, 141 P.3d 1235, 1240 (2006).

The district court properly determined that NAS had a likelihood of success on the merits

*2 The Department's primary contention on appeal is that NAS failed to show that it had a likelihood of success on the merits because the Department had jurisdiction to issue an advisory opinion regarding NRS Chapter 116.

NRS Chapter 649 regulates the licensing and activities of collection agencies; whereas, NRS Chapter 116 deals with all aspects of common-interest communities. Believing that it had jurisdiction to issue an advisory opinion regarding NRS Chapter 116, because certain sections reference collection agencies, the Department issued an advisory opinion regarding the maximum amount that a collection agency could assess in a priority lien. In order for us to determine whether the Department had jurisdiction to issue such an advisory opinion, we must review several sections from NRS chapters 649 and 116.

NRS Chapter 649

The commissioner of the Department administers and enforces the provisions of NRS Chapter 649, NRS 649.051, and may adopt "such regulations as may be necessary to carry out the provisions of this chapter." NRS 649.053. The commissioner is also responsible for the issuance of licenses allowing collection agencies to operate within the state. NRS 649.075(1). NRS 649.375 describes what collection agency practices are prohibited. As such practices pertain to this case, collection agencies may not "[c]ollect or attempt to collect any interest, charge, fee or expense incidental to the principal obligation unless" such sums are authorized by law or have been agreed to by the parties. NRS 649.375(2)(a)-(b). And, if such violations occur, the Department may impose fines or, in more severe cases, suspend or revoke the license of a collection agency. NRS 649.395(1)-(3). Finally, as defined in NRS 649.020(3)(a), a collection agency may include a community manager [FN2] if "the community manager, or any employee, agent or affiliate of the community manager, performs or offers to perform any act associated with the foreclosure of a lien pursuant to NRS 116.31162 to 116.31168, inclusive, or 116B.635 to 116B.660, inclusive."

> FN2. A community manager is "a person who provides for or otherwise engages in the management of a common-interest community or the management of an association of a condominium hotel." NRS 116.023.

NRS Chapter 116

Article 3 of Chapter 116 contains the regulations for the management of common-interest communities. Unit owners' associations "[m]ay hire and

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discharge managing agents and other employees, agents and independent contractors" and may also "make contracts and incur liabilities." NRS 116.3102(1)(c), (e). NRS 116 .310313(1) also allows "[a]n association [to] charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation." That same section provides that " *[t]he Commission* [for Common–Interest Communities and Condominium Hotels] shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section." *Id.* (emphasis added). Additionally,

> [t]he provisions of [the] section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, ... a community manager or a collection agency.

*3 NRS 116.310313(2). The language of the two sections is clear in that the Commission for Common–Interest Communities and Condominium Hotels (CCICCH) is solely responsible for determining the type and amount of fees that may be collected by associations.

In its order granting the preliminary injunction, the district court pointed to additional statutes in NRS Chapter 116, which it believed supported a finding that only the Real Estate Division could adopt regulations to supplement, as well as interpret, the statutory provisions of the chapter. NRS 116.615 provides, in pertinent part, for the administration and regulation of the chapter as follows:

> 1. The provisions of this chapter *must* be administered by the [Real Estate] Division, subject to the administrative supervision of the Director of the Department of Business and Industry.
>
> 2. [The CCICCH] and the [Real Estate] Division may do all things necessary and convenient to carry out the provisions of this chapter, including, without limitation, prescribing such forms and adopting such procedures as are necessary to carry out the provisions of this chapter.
>
> 3. [The CCICCH], or the [Real Estate] Administrator with the approval of the [CCICCH], may adopt such regulations as are necessary to carry out the provisions of this chapter.

(Emphasis added.) The language of this provision is clear that the CCICCH and the Real Estate Division are responsible for regulating and administering the chapter. There is no provision granting any other commission or Department the authority to regulate or interpret the language of the chapter. NRS Chapter 116 also addresses the issuance of advisory opinions, stating that "[t]he [Real Estate] Division shall provide by regulation for the filing and prompt disposition of petitions for declaratory orders and advisory opinions as to the applicability or interpretation of: (a) [a]ny provision of this chapter or chapter 116A or 116B of NRS." NRS 116.623 (1)(a).

The language of NRS 116.615 and NRS 116.623 is clear and unambiguous. Thus, we apply a plain reading. *See Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). We will also read NRS Chapter 116 and NRS Chapter 649 in a way that harmonizes them as a whole. *Southern Nev. Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). Based on a plain reading of the statutes, the responsibility of determining which fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests with the Real Estate Division and the CCICCH. *See* NRS 116.615 ; NRS 116.623. Because the Real Estate Division is charged with adopting appropriate regulations concerning NRS Chapter 116, the regulations regarding the fees chargeable by community managers would then become "authorized by law" as required by NRS 649.375(2)(a).[FN3] *See* NRS 116.615; NRS 116.623. Allowing the Real Estate Division to adopt regulations concerning the amount collectable by community managers and allowing the Department to enforce those regulations, if the community

managers act in derogation of those regulations, harmonizes the chapters in a way to give each its full effect. *See Southern Nev. Homebuilders,* 121 Nev. at 449, 117 P.3d at 173. Furthermore, the Department's enforcement of the regulations adopted by the Real Estate Division avoids the absurd result of having a regulation without someone with authority to enforce it. *See id.* We therefore, determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116. Consequently, the Department lacked jurisdiction to issue an advisory opinion interpreting NRS Chapter 116. Therefore, the district court did not abuse its discretion in determining that NAS had a likelihood of success on the merits.

> FN3. The Department also argues that it had the implied authority to examine NRS Chapter 116. Although it is true that "wherever a power is conferred by statute, everything necessary to carry out the power and make it effectual and complete will be implied," *Checker, Inc. v. Public Serv. Comm'n,* 84 Nev. 623, 629–30, 446 P.2d 981, 985 (1968), this rule of statutory construction is inapplicable in this situation because the Department can rely on the interpretations and regulations of the Real Estate Division concerning NRS Chapter 116. The Department would not need to act on its own to properly effectuate its statutory powers.

The district court properly determined that NAS would suffer irreparable harm

*4 The district court found that not only would the instigation of disciplinary action against NAS by the Department be a harm in and of itself, but also that any such disciplinary action would have the added harm of being a matter of public record. It also found that even a temporary revocation of NAS's collection license could lead to irreparable harm because it would be unable to conduct its business.

We have determined that "acts committed without just cause which unreasonably interfere with a business or destroy its credit or profits, may do an irreparable injury." *Sobol v. Capital Management,* 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); *see also Com. v. Yameen,* 516 N.E.2d 1149, 1151 (Mass.1987) ("A licensee whose license has been revoked or suspended immediately suffers the irreparable penalty of loss of [license] for which there is no practical compensation." (alteration in original) (internal quotations omitted)).

Here, the district court found that the mere act of filing a disciplinary action against NAS would cause irreparable harm. In its findings, the district court explained that it was possible for the Department to revoke NAS's license without a hearing under its powers pursuant to NRS 649.395(2)(a), which allows it to revoke a collection license "without notice and hearing if ... necessary for the immediate protection of the public," and "the licensee is afforded a hearing to contest the suspension or revocation within 20 days" thereafter. NRS 649.395(2)(b). Thus, if such an instance occurred, NAS would be unable to conduct any business during that time, not just on those liens which may contain unauthorized fees. The district court properly determined that the inability to conduct any business would have caused irreparable harm. *Sobol,* 102 Nev. at 446, 726 P.2d at 337. It was within the district court's discretion to find that NAS would suffer irreparable harm because it was threatened with the prospect of losing its license to conduct business. [FN4] For the forgoing reasons, we

> FN4. We have reviewed all of the Department's remaining contentions and conclude that they are without merit.

ORDER the judgment of the district court AFFIRMED.

Nev.,2012.
State, Dept. of Business and Industry, Financial Institutions Div. v. Nevada Ass'n Services, Inc.

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EXHIBIT "B"

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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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JAMES R. ADAMS, ESQ.
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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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Dated the 20th day of January, 2012.

Lori D Adams
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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(1)), 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).~~

IT IS SO ORDERED.

DISTRICT COURT JUDGE Date

Submitted by:

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EXHIBIT "C"

ADOPTED DECEMBER 8, 2010

COMMISSION FOR COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS
ADVISORY OPINION NO. 2010-01

Subject: Inclusion of Fees and Costs as an Element of the Super Priority Lien

QUESTION

Under NRS 116.3116, the super priority of an assessment lien includes "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 or 9 month super priority period. May the association also recover, as part of the super priority lien, the costs and fees incurred by the association in collecting such assessments?

ANSWER

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.

ANALYSIS

Statutory Super Priority. NRS Chapter 116 provides for a "super priority" lien for certain association assessments. NRS 116.3116 provides, in pertinent part, as follows:

> **NRS 116.3116 Liens against units for assessments.**
>
> 1. The association has a lien on a unit for . . . any assessment levied against that unit . . . from the time the . . . assessment . . . becomes due. . . .
>
> 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 any charges incurred by the association on a unit pursuant to NRS 116.310312[1] 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, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. . .

NRS 116.3116 further provides that "Unless the declaration otherwise provides, 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."

UCIOA. The "super priority" provisions of NRS Chapter 116, like the rest of the chapter, are based on the 1982 version of the Uniform Common Interest Ownership Act (UCIOA) adopted by the National Conference of Commissioners

[1] NRS 116.310312, enacted in 2009, provides for the recovery by the association of certain costs incurred by an association with respect to a foreclosed or abandoned unit, including costs incurred to "Maintain the exterior of the unit in accordance with the standards set forth in the governing documents" or "Remove or abate a public nuisance on the exterior of the unit...."

of Uniform State Laws (NCCUSL). A comparison of the statutory language in UCIOA[2] and NRS reveals few material changes:

UCIOA 3-116. (1994)	**NRS 116.3116 Liens against units for assessments.**(2009)
(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12) are enforceable as assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.	1. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, 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. 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.
(b) A lien under this section is prior to all other liens and encumbrances on a unit except	2. 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,	(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;
(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	(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

[2] The 1982 version of UCIOA was superseded by a 1994 version, which is used here, and a 2008 version, discussed below.

(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 six months immediately preceding institution of an action to enforce the lien.	(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 any charges incurred by the association on a unit pursuant to NRS 116.310312 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, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien.

Reported Cases. There are no reported Nevada cases addressing the issue of whether the super priority lien may include amounts other than just the 6 or 9 months of assessments. Because NRS Chapter 116 is based on a Uniform

Act, however, decisions in other states that have adopted UCIOA can be helpful. Colorado and Connecticut are both UCIOA states; reported cases in both these states have addressed the question presented in this opinion.

In *Hudson House Condominium Association, Inc. v. Brooks*, 611 A.2d 862 (Conn., 1992), the Connecticut Supreme Court rejected an argument by the holder of the first mortgage that "because [the statute] does not specifically include 'costs and attorney's fees' as part of the language creating [the association's] priority lien, those expenses are properly includable only as part of the nonpriority lien that is subordinate to [the first mortgagee's] interest." In reaching its conclusion, however, the court relied on a non-uniform statute dealing with the judicial enforcement of the association lien.[3] In a footnote the court also noted that the super priority language of the Connecticut version of UCIOA 3-116 had since been amended to expressly include attorney's fees and costs in the priority debt.

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 Atl. 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 (1), 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.]

[3] C.G.S.A. Section 47-258(g)

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 3-116(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.

The decision of the court in Sunstone was followed in *BA Mortgage, LLC v. Quail Creek Condominium Association, Inc.*, 192 P.2d 447 (Colo. App, 2008).

A comparison of the language of the Colorado statute and the language of the Nevada statute reveals that the two are virtually identical:

CRS 38-33.3-316 Lien for assessments. (2008)	**NRS 116.3116 Liens against units for assessments**. (2009)
(1) The association . . . has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, **fees, charges, late charges, attorney fees, fines, and interest** charged pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as assessments under this article. The amount of the lien shall include all those items set forth in this section from the time such items become due. . . .	. The association has a lien on a unit for . . . any assessment levied against that unit or any fines imposed against the unit's owner from the time the . . . assessment or fine becomes due. Unless the declaration otherwise provides, any . . . **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. . . .

(2) (a) A lien under this section is prior to all other liens and encumbrances on a unit except: * * * (b) Subject to paragraph (d) of this subsection (2), a lien under this section is also prior to the security interests described in subparagraph (II) of paragraph (a) of this subsection (2) to the extent of: (I) **An amount equal to the common expense assessments based on a periodic budget adopted by the association under section 38-33.3-315 (1) which would have become due, in the absence of any acceleration, during the six months immediately preceding** institution by either the association or any party holding a lien senior to any part of the association lien created under this section of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien. [Emphasis added.]	2. A lien under this section is prior to all other liens and encumbrances on a unit except: * * * 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 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, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than 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. [Emphasis added.]

2008 UCIOA. In 2008 NCCUSL proposed the following amendment to 3-116 of UCIOA[4]:

> SECTION 3-116. LIEN FOR ~~ASSESSMENTS;~~ SUMS DUE ASSOCIATION; ENFORCEMENT.
>
> (a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit . . .. Unless the declaration otherwise provides, **reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest** charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act] or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.
>
> (b) A lien under this section is prior to all other liens and encumbrances on a unit except:
>
> ~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to~~,~~;
>
> ~~(ii)~~(2) except as otherwise provided in subsection (c), 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)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
>
> (c) A ~~The~~ lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of **both** 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 six months immediately preceding institution of an action to enforce the lien **and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien**.. . . [Emphasis added.]

[4] The changes noted are to 1994 UCIOA.

New Comment No. 8 to 3-116 states as follows:

> 8. Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:
>
> **First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien'** – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b).[5] The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state. [Emphasis added.]

Discussion. The Colorado Court of Appeals and the author of the Wake Forest Law Review article quoted by the court in the *Sunstone* case both concluded that although the assessment portion of the super priority lien is limited to a finite number of months, because the assessment lien itself includes "fees, charges, late charges, attorney fees, fines, and interest," these charges may be included as part of the super priority lien amount. This language is the same as NRS 116.3116, which states that "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." As the *Sunstone* court noted "although the maximum amount of the super priority lien is defined solely by reference to monthly assessments, the lien itself may comprise debts other than delinquent monthly assessments."

[5] The statutory change noted by the Connecticut Supreme Court in the Hudson House case referred to above.

The referenced statute, NRS 116.3102, provides that an association has the power to:

> (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.
>
> (k) Impose charges for late payment of assessments pursuant to NRS 116.3115.
>
> (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
>
> (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
>
> (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

It is immediately apparent that the charges authorized by NRS 116.3102(1)(j) through (n) cover a wide variety of circumstances. The fact that "fees, charges, late charges, fines and interest" that may be included as part of the assessment lien under NRS 116.3116 include amounts unrelated to monthly assessments does not mean, however, that such amounts should not be included in the super lien if they do relate to the applicable super priority monthly assessments. It appears that only those association charges authorized under NRS 116.3102(1) Subsections (k) and a portion of (n) apply to the collection of unpaid assessments, i.e., Subsection (k)'s charges for late payment of

assessments and Subsection (n)'s charges for preparing any statements of unpaid assessments. Subsection (j)'s charges for use of common elements or providing association services, Subsection (l)'s construction penalties and Subsection (n)'s amendments to the declaration and providing resale information clearly do not relate to the collection of monthly assessments.

The inclusion of the word "fines" authorized by NRS 116.3102(1)(m) as part of the assessment lien presents an additional problem in Nevada. The "fines" referred to in NRS 116.3116/NRS 116.3102(1)(m) are fines authorized by NRS 116.31031. While fines may be imposed for "violations of the governing documents," which, of course, could include non-payment of assessments required by the governing documents, the hearing procedure mandated by NRS 116.31031 prior to the imposition of "fines" refers to an inquiry involving conduct or behavior that violates the governing documents, not the failure to pay assessments. Because "fines" involve conduct or behavior, enforcement of fines are given special treatment under NRS 116.31162:

> 4. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:
>
> (a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or
>
> (b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.

Thus, to use the words of the *Sunstone* court, the "plain language" of NRS 116.3116, when read in conjunction with NRS 116.3102(1) (j) through (n), supports the conclusion that the only additional amounts that can be included as part of the super priority lien in Nevada are "charges for late payment of

assessments pursuant to NRS 116.3115" and "reasonable charges for the preparation and recordation of . . . any statements of unpaid assessments." NRS 116.3102(1)(k),(n). Note that the reference in Subsection (k) to NRS 116.3115 appears to be solely for the purpose of identifying what is meant by the word "assessment," though NRS 116.3115(3) provides for the payment of interest on "Any assessment for common expenses or installment thereof that is 60 days or more past due...."

Conclusion. The super priority language contained in UCIOA 3-116 reflected a change in the traditional common law principle that granted first priority to a mortgage lien recorded prior to the date a common expense assessment became delinquent. The six month priority rule contained in UCIOA 3-116 established a compromise between the interests of the common interest community and the lending community. The argument has been advanced that limiting the super priority to a finite amount, i.e., UCIOA's six months of budgeted common expense assessments, is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. The state of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders"[6] have all concluded otherwise.

Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and the policy determinations of commentators, the state of Connecticut and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien. We reach a similar conclusion in finding that Nevada law

[6] See New Comment No. 8 to UCIOA 3-116(2008) quoted above.

authorizes the collection of "charges for late payment of assessments" as a portion of the super lien amount.

In 2009, Nevada enacted NRS 116.310313, which provides as follows:

> **NRS 116.310313 Collection of past due obligation; charge of reasonable fee to collect.**
>
> 1. An association may charge a unit's owner reasonable fees to cover the costs of collecting any past due obligation. The Commission shall adopt regulations establishing the amount of the fees that an association may charge pursuant to this section.
>
> 2. The provisions of this section apply to any costs of collecting a past due obligation charged to a unit's owner, regardless of whether the past due obligation is collected by the association itself or by any person acting on behalf of the association, including, without limitation, an officer or employee of the association, a community manager or a collection agency.
>
> 3. As used in this section:
>
> (a) "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court.
>
> (b) "Obligation" means any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner pursuant to any provision of this chapter or the governing documents.

Since Nevada law specifically authorizes an association to recover the "costs of collecting" a past due obligation and, further, limits those amounts, we conclude that a reasonable interpretation of the kinds of "charges" an association

may collect as a part of the super priority lien include the "costs of collecting" authorized by NRS 116.310313. Accordingly, the following amounts may be included as part of the super priority lien amount, to the extent the same relate to the unpaid 6 or 9 months of super priority assessments: (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration in accordance with NRS 116.3102(1)(k), (c) charges for preparing any statements of unpaid assessments pursuant to NRS 116.3102(1)(n) and (d) the "costs of collecting" authorized by NRS 116.310313.

EXHIBIT "D"

11cv535

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, *ex. rel.*,

Plaintiff,

JAMES R. ADAMS and PUOY K. PREMSRIRUT,

Relators,

vs.

AMERICAN HOME MORTGAGE SERVICING INC; AURORA LOAN SERVICES LLC; BAC HOME LOANS SERVICING LP; BANK OF AMERICA NA; CENLAR FSB; CENTRAL MORTGAGE COMPANY; CHASE HOME FINANCE LLC; CITIMORTGAGE INC; COUNTRYWIDE HOME LOANS SERVICING LP; COUNTRYWIDE HOME LOANS INC.; EMC MORTGAGE CORPORATION; EVERBANK; EVERHOME MORTGAGE COMPANY; FIRST HORIZON HOME LOAN CORPORATION; FIRST MAGNUS FINANCIAL CORPORATION; FLAGSTAR BANCORP, INC.; GMAC MORTGAGE CORPORATION; GREENPOINT MORTGAGE FUNDING INC; JPMORGAN CHASE BANK NA; LEHMAN BROTHERS BANK FSB; METLIFE BANK, NA; METLIFE HOME LOANS; MIDFIRST BANK; NATIONSTAR MORTGAGE LLC; ONEWEST BANK FSB; PHH MORTGAGE CORP; SUNTRUST MORTGAGE INC; TAYLOR

Case No.: 2:11-cv-00535-RLH-RJJ

FIRST AMENDED COMPLAINT

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TWILIGHT HOMEOWNERS ASSOCIATION; ARROWHEAD POINTE OWNERS ASSOCIATION, INC.; ARROYO GRANDE LANDSCAPE MAINTENANCE ASSOCIATION, INC.; ARROYO MESA TOWNHOMES HOMEOWNERS ASSOCIATION; ASHFORD PARK HOMEOWNERS ASSOCIATION; ASHLEY RIDGE HOMEOWNERS ASSOCIATION; ASPEN HILLS II ASSOCIATION; ASPEN MEADOWS HOMEOWNERS ASSOCIATION; ASPEN PEAK HOMEOWNERS' ASSOCIATION INC.; ASSOCIATION OF HOMEOWNERS OF TIBURON ESTATES - 3; ASTORIA TRAILS NORTH HOMEOWNERS ASSOCIATION; ATRIUM GARDENS HOME OWNERS ASSOCIATION; AUBURN AND BRADFORD AT PROVIDENCE HOMEOWNERS' ASSOCIATION; AUGUSTA BELFORD AND ELLINGWOOD HOMEOWNERS ASSOCIATION; AURORA ASSOCIATION; AURORA GLEN HOMEOWNERS ASSOCIATION; AUTUMN RIDGE HOMEOWNERS ASSOCIATION; AUTUMN RIDGE III HOMEOWNERS' ASSOCIATION; AVADA HOMEOWNERS ASSOCIATION; AVALON CONDOMINIUMS AT SEVEN HILLS HOMEOWNERS' ASSOCIATION; AVELLINO ESTATES HOMEOWNERS ASSOCIATION; AVELLLINO ESTATES HOMEOWNERS ASSOCIATION; AVENDALE HOMEOWNERS ASSOCIATION; AVENTINE-TRAMONTI HOMEOWNERS ASSOCIATION; AVERY COURT ASSOCIATION; AVIANO HOMEOWNERS' ASSOCIATION; AVIARA HOMEOWNERS ASSOCIATION; AVILA COURT ASSOCIATION; AVILA PARK HOMEOWNERS ASSOCIATION; AZURE ESTATES OWNERS ASSOCIATION, INC.; AZURE MANOR/RANCHO DE PAZ HOMEOWNERS ASSOCIATION; BACARA RIDGE ASSOCIATION; BAR ARBOR GLEN AT PROVIDENCE HOMEOWNERS ASSOCIATION; BAYCLIFF CREEKS HOMEOWNERS ASSOCIATION; BEACON HILL HOMEOWNERS ASSOCIATION; BEAUMONT HOMEOWNERS ASSOCIATION; BEL AIRE VILLAGE, INC.; BELCREST HOMEOWNERS ASSOCIATION; BELLA LAGO HOMEOWNERS ASSOCIATION; BELLA VICENZA HOMEOWNERS ASSOCIATION; BELLA VISTA ASSOCIATION; BELLA VISTA CONDOMINIUM UNIT- OWNERS' ASSOCIATION, INC.; BELLA VITA HOMEOWNERS ASSOCIATION; BELLE CREST II HOMEOWNERS ASSOCIATION; BELLE ESPRIT HOMEOWNERS ASSOCIATION; BELMONT PARK COMMUNITY ASSOCIATION; BENTON HOMEOWNERS ASSOCIATION; BERKSHIRE ESTATES HOMEOWNERS ASSOCIATION; BERKSHIRE ESTATES II HOMEOWNERS ASSOCIATION; BERKSHIRE HOMEOWNERS ASSOCIATION; BIGHORN AT BLACK MOUNTAIN HOMEOWNERS ASSOCIATION; BILBRAY RANCH

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SUNRISE HIGHLANDS COMMUNITY ASSOCIATION; SUNRISE RIDGE HOMEOWNERS ASSOCIATION; SUNRISE VALLEY ESTATES ASSOCIATION; SUNRISE VILLAS HOMEOWNERS' ASSOCIATION, INC.; SUNRISE VILLAS IX HOMEOWNERS' ASSOCIATION; SUNRISE VILLAS V HOMEOWNERS' ASSOCIATION; SUNRISE VILLAS VI HOMEOWNERS' ASSOCIATION; SUNRISE VILLAS VIII HOMEOWNERS' ASSOCIATION; SUNSET CLIFFS HOMEOWNERS' ASSOCIATION; SUNSET PASS HOMEOWNERS ASSOCIATION; SUNSET PINES LANDSCAPE MAINTENANCE ASSOCIATION, INC.; SUNSET PINES NORTH LIMITED HOMEOWNERS ASSOCIATION; SUNSET RIDGE LIMITED HOMEOWNERS ASSOCIATION; SUNSET TRAILS HOMEOWNERS' ASSOCIATION; SUTTON PLACE HOMEOWNERS ASSOCIATION; SWEETBRIAR HOMEOWNERS ASSOCIATION; SWEETWATER CANYON HOMEOWNERS ASSOCIATION; SYMPHONY HOMEOWNERS' ASSOCIATION; TAHOE PROPERTY HOMEOWNERS ASSOCIATION; TALASERA AND VICANTO HOMEOWNERS' ASSOCIATION; TAMARAC HOMEOWNERS' ASSOCIATION; TANGLEWOOD CONDOMINIUM ASSOCIATION; TANGLEWOOD HOMEOWNERS ASSOCIATION; TANTARA UNIT OWNERS' ASSOCIATION; TAPESTRY AT TOWN CENTER HOMEOWNERS ASSOCIATION; TARA VILLAS HOMEOWNERS ASSOCIATION; TARRY TOWNE HOMEOWNERS ASSOCIATION; TEMPO HOMEOWNERS ASSOCIATION, INC.; TENAYA CREEK HOMEOWNERS ASSOCIATION; TENAYA CROSSING HOMEOWNERS ASSOCIATION; TENNISTATES HOMEOWNERS ASSOCIATION; TERA HOMEOWNERS ASSOCIATION; TERRA LINDA TOWNHOUSE HOMEOWNERS ASSOCIATION; TERRA VILLA HOMEOWNERS' ASSOCIATION; TERRACES AT ROSE LAKE HOMEOWNERS ASSOCIATION; TERRACINA/ TERRASOL HOMEOWNERS' ASSOCIATION; TERRASANO HOMEOWNER'S ASSOCIATION, INC.; TERRASANTA CONDOMINIUM OWNERS ASSOCIATION, INC.; TERRASINI UNIT OWNERS' ASSOCIATION; TESORO HOMEOWNER'S ASSOCIATION; THE ARBORS OWNERS' ASSOCIATION, INC.; THE BLUFFS DUPLEXES-ENCORE ADDITION HOMEOWNERS ASSOCIATION; THE CARMELS AT SPANISH TRAIL ASSOCIATION; THE CHARLESTON HEIGHTS 44-E TOWNHOUSE OWNERS ASSOCIATION, INC.; THE CLIFFS @ LONE MOUNTAIN HOMEOWNERS ASSOCIATION; THE COLONY; THE COTTAGES AT CENTENNIAL RANCH HOMEOWNERS ASSOCIATION; THE COURTYARDS HOMEOWNERS ASSOCIATION; THE COVES HOMEOWNERS ASSOCIATION; THE CROSSINGS HOMEOWNERS

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ASSOCIATION; THE ENCLAVE CONDOMINIUM UNIT-OWNERS & ASSOCIATION, INC.; THE ENCLAVE HOMEOWNERS ASSOCIATION; THE FALLS AT RHODES RANCH CONDOMINIUM OWNERS ASSOCIATION, INC.; THE FALLS CONDOMINIUMS ASSOCIATION; THE GABLES CONDOMINIUM OWNERS ASSOCIATION, INC.; THE GRANADA PALOMAR COMMUNITY ASSOCIATION; THE GREENBRIAR TOWNHOUSE OWNER'S ASSOCIATION, INC.; THE GREENS HOME OWNERS ASSOCIATION, INC.;THE GROVE HOMEOWNERS ASSOCIATION; THE HEATHERS HOMEOWNERS ASSOCIATION; THE HIGHLAND FAIRWAYS COMMUNITY ASSOCIATION, INC.; THE HILLS HOMEOWNERS' ASSOCIATION; THE ISLANDS AT SPANISH TRAIL ASSOCIATION; THE KEYS ASSOCIATION; THE KEYS CONDOMINIUM ASSOCIATION; THE LAKES ASSOCIATION; THE LINKS AT SPANISH TRAIL ASSOCIATION; THE MESA TOWNHOMES HOMEOWNERS ASSOCIATION; THE PACIFIC HARBORS-STONEGATE OWNERS ASSOCIATION; THE PARKS HOMEOWNERS ASSOCIATION; THE PEAKS HOMEOWNERS' ASSOCIATION; THE PLATINUM UNIT-OWNERS' ASSOCIATION; THE RANCHES HOMEOWNERS ASSOCIATION; THE RANCHO ALTA MIRA OWNERS ASSOCIATION; THE REGENT AT TOWN CENTRE HOMEOWNERS' ASSOCIATION; THE RESIDENCE AT MGM GROUND - TOWER C UNIT OWNERS' ASSOCIATION; THE RESIDENCES AT CANYON GATE HOMEOWNERS ASSOCIATION, INC.; THE RESIDENCES AT MGM GRAND-TOWER C UNIT OWNER'S ASSOCIATION; THE SEASONS HOMEOWNERS ASSOCIATION; THE SECTION SEVEN COMMUNITY ASSOCIATION; THE SPRINGS AT SPANISH TRAIL ASSOCIATION; THE SPRINGS HOMEOWNERS' ASSOCIATION; THE STONEGATE HOMEOWNERS ASSOCIATION; THE SUMMIT AT MOUNTAINS EDGE HOMEOWNERS ASSOCIATION; THE SUNRISE MOUNTAIN TOWN HOMES HOMEOWNERS ASSOCIATION, INC.; THE TERRACES COMMUNITY ASSOCIATION; THE TERRACES HOMEOWNERS ASSOCIATION; THE VILLAGE GREEN HOMEOWNERS ASSOCIATION, INC.; THE VILLAGE OF SILVER SPRINGS COMMUNITY ASSOCIATION; THE VILLAGES HOMEOWNER'S ASSOCIATION; THE VILLAS COMMUNITY ASSOCIATION; THE VININGS HOMEOWNERS ASSOCIATION; THE WHITNEY RANCH OWNERS ASSOCIATION; THE WILLOWS HOMEOWNERS' ASSOCIATION; TIARA SUMMIT HOMEOWNER'S ASSOCIATION; TIBURON ESTATES HOMEOWNERS ASSOCIATION, INC.; TIBURON II HOME OWNERS ASSOCIATION, INC.; TIBURON II HOMEOWNERS

ASSOCIATION, INC.; TIDES I HOMEOWNERS ASSOCIATION; TIDES II HOMEOWNERS ASSOCIATION; TIERRA BELLA HOMEOWNERS' ASSOCIATION; TIERRA DE LAS PALMAS OWNERS ASSOCIATION; TIERRA LINDA II LIMITED HOMEOWNERS ASSOCIATION; TIERRA LINDA LANDSCAPE MAINTENANCE ASSOCIATION, INC.; TIMBERLAKE STREET AND LANDSCAPE MAINTENANCE ASSOCIATION; TIMBERLINE HOMEOWNERS ASSOCIATION; TORREY PINES ESTATES HOMEOWNERS ASSOCIATION; TORREY PINES HOMEOWNERS ASSOCIATION; TRACCIA COMMUNITY ASSOCIATION; TRADITIONS HOMEOWNERS ASSOCIATION; TRAIL RIDGE COMMUNITY ASSOCIATION; TRAILSIDE POINT PROPERTY OWNERS ASSOCIATION; TRAILSIDE SUBDIVISION HOMEOWNERS ASSOCIATION; TRAILWOOD HOMEOWNERS ASSOCIATION; TRAMONTO VILLAGGIO HOMEOWNERS ASSOCIATION; TRAVATA AND MONTAGE AT SUMMERLIN CENTRE HOMEOWNERS' ASSOCIATION; TRAVERSE POINT CONDOMINIUM UNIT OWNERS' ASSOCIATION; TRAVERSE POINT LANDSCAPE MAINTENANCE ASSOCIATION, INC.; TREASURES LANDSCAPE MAINTENANCE ASSOCIATION; TREO NORTH AND SOUTH HOMEOWNERS' ASSOCIATION; TREVISO HOMEOWNERS' ASSOCIATION; TRIANA HOMEOWNERS ASSOCIATION; TRIPOLY AT KING'S HILL HOMEOWNERS ASSOCIATION; TRIPOLY AT STEPHANIE HOMEOWNERS ASSOCIATION; TRIPOLY AT TOWN CENTER HOMEOWNERS ASSOCIATION; TRIPOLY AT WARM SPRINGS NORTH HOMEOWNERS ASSOCIATION; TRIPOLY AT WARM SPRINGS SOUTH HOMEOWNERS ASSOCIATION; TROPICAL BREEZE V OWNERS ASSOCIATION; TROPICAL MEADOWS HOMEOWNERS ASSOCIATION, INC.; TROPICAL VILLAS EAST HOMEOWNERS ASSOCIATION; TROPICANA SQUARE HOMES ASSOCIATION; TROPICANA VILLAS HOMES ASSOCIATION; TROVARE HOMEOWNERS ASSOCIATION; TURNBERRY TOWERS COMMUNITY ASSOCIATION; TURNBERRY TOWERS EAST UNIT-OWNERS' ASSOCIATION; TURNBERRY TOWERS WEST UNIT-OWNERS' ASSOCIATION; TURNING POINT COMMUNITY ASSOCIATION, INC.; TURTLE ROCK HOMEOWNERS ASSOCIATION; TUSCALANTE HOMEOWNERS ASSOCIATION; TUSCAN VILLAS HOMEOWNERS ASSOCIATION; TUSCANO HOMEOWNERS ASSOCIATION; TUSCANY MASTER ASSOCIATION; TUSCANY VILLAGE NORTHSHORES HOMEOWNERS ASSOCIATION; TWAIN CONDOMINIUMS HOMEOWNERS' ASSOCIATION; TWILIGHT AT OLD VEGAS RANCH HOMEOWNERS ASSOCIATION; TWILIGHT NORTH

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CONDOMINIUM OWNERS ASSOCIATION, INC.; VIZCAYA AT THE TRAILS CONDOMINIUM UNIT OWNERS ASSOCIATION; WAKEFIELD HOMEOWNERS ASSOCIATION; WALNUT GLEN LANDSCAPE MAINTENANCE ASSOCIATION, INC.; WARM SPRINGS RESERVE OWNERS ASSOCIATION; WASHBURN CREEK ASSOCIATION, INC.; WATERFALL HOMEOWNERS ASSOCIATION; WATERMARKE HOMEOWNERS ASSOCIATION; WELLINGTON PARK HOMEOWNERS ASSOCIATION; WELLINGTON PLACE HOMEOWNERS ASSOCIATION; WEST PARK VILLAS/COURTYARDS HOMEOWNERS ASSOCIATION; WEST SAHARA COMMUNITY ASSOCIATION; WEST WELLINGTON ESTATES HOMEOWNERS ASSOCIATION; WESTCHESTER HILLS HOMEOWNERS' ASSOCIATION; WESTCHESTER MANOR HOME OWNERS ASSOCIATION; WESTON HILLS HOMEOWNERS' ASSOCIATION; WESTTROP ASSOCIATION; WESTWIND HOMEOWNERS' ASSOCIATION; WESTWIND LIMITED HOMEOWNERS ASSOCIATION; WESTWIND NORTH LIMITED HOMEOWNERS ASSOCIATION; WEXFORD VILLAGE HOMEOWNERS ASSOCIATION, INC.; WEXFORD VILLAGE PHASE II HOMEOWNERS ASSOCIATION; WHISPER ROCK ASSOCIATION; WHISPERING TIMBERS HOMEOWNERS ASSOCIATION; WHITNEY HEIGHTS ASSOCIATION; WHITNEY PLACE HOMEOWNER'S ASSOCIATION, INC.; WIGWAM RANCH EAST TWILIGHT HOMEOWNERS ASSOCIATION; WIGWAM RANCH MASTER HOMEOWNERS ASSOCIATION; WIGWAM RANCH SQUARE HOMEOWNERS ASSOCIATION; WIGWAM RANCH TWILIGHT HOMEOWNERS ASSOCIATION; WILLOW TRACE ASSOCIATION; WILLOWTREE HOMEOWNERS ASSOCIATION; WINCHESTER MAINTENANCE CORPORATION; WINDBROOKE LANDSCAPE MAINTENANCE CORPORATION; WINDIMERE AT PROVIDENCE HOMEOWNERS ASSOCIATION; WINDMILL CROSSING HOMEOWNER'S ASSOCIATION; WINDMILL HEIGHTS HOMEOWNERS ASSOCIATION, INC.; WINDMILL PARK HOMEOWNERS ASSOCIATION; WINE RIDGE ESTATES HOMEOWNER'S ASSOCIATION; WINE RIDGE PLACE HOMEOWNERS ASSOCIATION; WINTERWOOD VILLAGE UNIT NO. 1, HOMEOWNERS ASSOCIATION; WOODCREST HOMEOWNERS ASSOCIATION; WOODLAND RIDGE COMMUNITY ASSOCIATION INC; X-IT HOMEOWNERS ASSOCIATION; YELLOWSTONE HOMEOWNERS ASSOCIATION; YORK VILLAGE COMMUNITY ASSOCIATION; DOES 1 through 5000; and ROE ENTITIES 1 through 5000, inclusive.

Defendants.

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The United States of America, by and through qui tam relators Puoy K. Premsrirut, Esq., and James R. Adams, Esq., ("Relators"), brings this action under 31 U.S.C § 3729, et seq., as amended (False Claims Act) to recover all damages, penalties and other remedies established by the False Claims Act on behalf of the United States.

JURISDICTION & VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and 31 U.S.C. § 3730, the latter of which specifically confers jurisdiction on this Court for actions brought pursuant to 31 U.S.C. §§ 3729 (the "**False Claims Act**").

2. This action is not based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation, or from the news media. Morever, Relators have direct and independent knowledge of the information on which the allegations of fraud and false claims are herein based and they have voluntarily investigated, researched, developed the information and have provided the information to the Plaintiff. Thus, there have been no public disclosures of the allegations or transactions contained herein that bar jurisdiction under 31 U.S.C. § 3730(e).

3. This Court has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a) because multiple Defendants can be found, reside and transact business in the State of Nevada and the acts engaged in by multiple Defendants, which are proscribed by 31 U.S.C. § 3729, occurred in the State of Nevada and other states and territories of the United States.

4. Venue is proper in this District under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred, or a substantial part of property that is the subject of the action is situated in the State of Nevada and one or more of the Defendants may be found in the State of Nevada. In addition, for purposes of venue, Defendants are corporations and, as such, are deemed to reside in this judicial district because they are subject to personal jurisdiction in the State of Nevada.

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THE PARTIES

5. Relators James R. Adams and Puoy K. Premsrirut are practicing attorneys in the State of Nevada and, over the last 21 months, have discovered and have actively investigated a years long scheme by Defendants to defraud the United States government ("**Plaintiff**") including the Federal National Mortgage Association ("**Fannie Mae**"), Federal Home Loan Mortgage Corporation ("**Freddie Mac**"), and the Departments of Housing and Urban Development ("**HUD**") and Federal Housing Administration ("**FHA**"). Defendants have made false, improper, inaccurate and excessive claims upon Plaintiff for homeowners' association liens, assessments, collection fees and costs which Defendants had no right to claim, any such right having been either extinguished by law, extinguished by the recorded covenants, conditions and restrictions of the Defendants homeowners' associations ("**CC&RS**") or improper under 24 CFR § 203.402 and agreements executed by certain of the Defendants referred to as "Seller/Servicers" pursuant to Mortgage Selling and Servicing Contracts, Seller Guides, Servicer Guides and documents and agreements incorporated therein executed by and between Fannie Mae and the Seller/Servicers and Freddie Mac and the Seller/Servicers. Relators are the original source of the information described herein as they have independently uncovered and voluntarily disclosed to the Government the information on which allegations or transactions in this action are based, or have knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, if any, and have voluntarily provided the information to the Government before the filing of this action.

6. At all times material hereto, Defendants are set forth as follows:

(A) **Insured Lenders**: BAC HOME LOANS SERVICING, LP; BANK OF AMERICA NA; CHASE HOME FINANCE LLC; CITIMORTGAGE INC; COUNTRYWIDE HOME LOANS INC.; FIRST HORIZON HOME LOAN CORPORATION; FLAGSTAR BANCORP, INC.; GMAC MORTGAGE CORPORATION; METLIFE BANK, NA; METLIFE HOME LOANS; MIDFIRST BANK; SUNTRUST MORTGAGE INC; TAYLOR BEAN & WHITAKER MORTGAGE CORP; US BANK NA; WELLS FARGO BANK NA; were mortgage lenders or holders of mortgage notes doing business in the State of Nevada ("**Insured Lenders**").

(B) **Debt Collectors**: At all times material hereto, Defendants NEVADA ASSOCIATION SERVICES, INC; RMI MANAGEMENT, LLC., dba RED ROCK FINANCIAL SERVICES; HOMEOWNER ASSOCIATION SERVICES, INC.; ALESSI & KOENIG, LLC; HAMPTON & HAMPTON; ANGIUS & TERRY COLLECTIONS, LLC; and SILVER STATE TRUSTEE SERVICES, LLC, were debt collection agencies or law firms doing business in the State of Nevada ("**Debt Collectors**").

(C) **Seller/Servicers**. Upon information and belief, AMERICAN HOME MORTGAGE SERVICING INC; AURORA LOAN SERVICES LLC; BAC HOME LOANS SERVICING LP; BANK OF AMERICA NA; CENLAR FSB; CENTRAL MORTGAGE COMPANY; CHASE HOME FINANCE LLC; CITIMORTGAGE INC; COUNTRYWIDE HOME LOANS SERVICING LP; COUNTRYWIDE HOME LOANS INC.; EMC MORTGAGE CORPORATION; EVERBANK; EVERHOME MORTGAGE COMPANY; FIRST HORIZON HOME LOAN CORPORATION; FIRST MAGNUS FINANCIAL; CORPORATION; FLAGSTAR BANCORP, INC.; GMAC MORTGAGE CORPORATION; GREENPOINT MORTGAGE FUNDING INC; JPMORGAN CHASE BANK NA; LEHMAN BROTHERS BANK FSB; METLIFE BANK, NA; MIDFIRST BANK; NATIONSTAR MORTGAGE LLC; ONEWEST BANK FSB; PHH MORTGAGE CORP; SUNTRUST MORTGAGE INC; TAYLOR BEAN & WHITAKER MORTGAGE CORP; US BANK NA; WELLS FARGO BANK NA ("**Seller/Servicers**") were under privity of contract with Freddie Mac or Fannie Mae through Mortgage Selling and Servicing Agreements, Seller Guides, Servicer Guides and documents and agreements incorporated therein and made representations as warranties as described below.

(D) **Homeowner Associations**. The remaining Defendants are Nevada common interest community associations and unit owners' associations as defined in NRS §116.011, also commonly known as a homeowners' associations (generally, "**HOAS**" or "**Defendant HOAS**").

7. Defendant HOAS and Debt Collectors are entities organized and existing under the laws of the State of Nevada and transact business in the State of Nevada.

8. The Insured Lenders transact business in the State of Nevada and in all states and territories of the United States.

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9. The Seller/Servicers transact business in the State of Nevada and in all states and territories of the United States.

APPLICABLE AUTHORITY

10. Defendants HOAS are bound by the provisions of NRS §116, are bound by their recorded CC&RS, and are bound by the provisions of that chapter of the Nevada Revised Statutes under which they are incorporated.

11. The Insured Lenders are bound by the provisions of 24 CFR § 203, et.seq12.e The Seller/Servicers are bound by the provisions of the Fannie Mae/Freddie Mac Mortgage Selling and Servicing Agreements, Seller Guides, Servicer Guides and documents and agreements incorporated therein as described below.

12. Pursuant to NRS §116.31034 each member of the executive board of Defendant HOAS has certified in writing that the member has read and understands their CC&RS and the provisions of NRS 116. Further, pursuant to mandated underwriting guidelines, each Insured Lender and Seller/Servicer obtained a copy of Defendant HOAS' CC&RS in the process of making loans on properties which are the subject of this Complaint and were periodically informed of all amounts allegedly due and owing under the HOAS' CC&RS and pursuant to state law.

13. The true names and capacities, whether individual, corporate, or otherwise, of Defendants herein designated as DOES 1 through 5,000 and ROE ENTITIES 1 through 5,000 inclusive, are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that each of said Defendants are responsible in some manner for the events and happenings alleged herein and proximately caused the injuries and damages herein alleged. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities as they are ascertained.

FACTUAL ALLEGATIONS

I

Fannie Mae and Freddie Mac and FHFA Conservatorship

14. Fannie Mae is a government sponsored enterprise ("GSE") founded in 1938, the purpose of which is to expand the secondary mortgage market by purchasing mortgage loans from

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participating lenders and securitizing the mortgages in the form of mortgage-backed securities. This allows mortgage lenders to reinvest their assets into more lending.

15. Freddie Mac is also a GSE. Freddie Mac was created in 1970 to expand the secondary market for mortgages in the United States.

16. In 2008, Fannie Mae and Freddie Mac had purchased about 80% of all new home mortgages in the United States. Their combined investment portfolios held mortgage assets (loans and mortgage backed securities) valued at $1.5 trillion (as of June 30, 2008).

17. The Housing and Economic Recovery Act of 2008, enacted July 30, 2008, provided the authority for the United States government's takeover of Fannie Mae and Freddie Mac.

18. The act created a new GSE regulator, the Federal Housing Finance Agency ("**FHFA**"), with the authority to take control of either Fannie Mae and Freddie Mac to restore them to sound financial conditions.

19. FHFA is a federal agency.

20. Fannie Mae and Freddie Mac have been under FHFA conservatorship since September 6, 2008.

21. As conservator, FHFA succeeded to all rights, titles, powers and privileges of Fannie Mae and Freddie Mac and of any shareholder, officer or director of the Fannie Mae and Freddie Mac with respect to the Fannie Mae and Freddie Mac and their assets.

A. Mortgage Backed Securities

22. Both Fannie Mae and Freddie Mac buy home mortgages from the originating lenders and repackage them into mortgage pools known as mortgage-backed securities ("**MBS(s)**").

23. In doing so, the originating lenders (or assignees of the originating lenders,) that sell these loans (collectively referred to as "**Seller/Servicers**") then enter into Selling and Servicing Contracts with Fannie Mae and Freddie Mac.

24. In the Selling and Servicing Contracts, the Seller/Servicers make certain crucial representations, warranties and promises to Fannie Mae and Freddie Mac described below.

25. After purchase of the mortgage loans from the Seller/Servicers, Fannie Mae and Freddie Mac will either (a) sell the MBSs, or (b) hold them in their own investment portfolios.25.The

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Fannie Mae and Freddie Mac MBSs that are sold to investors ("**Certificate Holders**") are sold via certificates with each certificate representing a pro rata undivided beneficial ownership interest in the MBS.

26. Fannie Mae and Freddie Mac holds the MBSs in a trust on behalf of the Certificate Holders (the "**MBS Trusts**").

27. As a Fannie Mae or Freddie Mac MBS investor, each Certificate Holder is entitled to and receives a pro rata share of the scheduled principal and interest from mortgagors on the loans backing the MBS.

28. Interest is paid to the Certificate Holder at a specific interest rate and the Certificate Holder also receives any unscheduled payments of principal.

29. Fannie Mae and Freddie Mac guarantee to the MBS Trusts that on each distribution date Fannie Mae and Freddie Mac will supplement amounts received by the MBS Trusts as required to permit payments on the certificates in an amount equal to:

- the aggregate amounts of scheduled and unscheduled principal payments of the mortgage loans, and
- an amount equal to one month's interest on the certificates.

30. In addition, Fannie Mae and Freddie Mac guarantee to the MBS Trusts that Fannie Mae and Freddie Mac will supplement amounts received by the MBS Trusts as required to make the full and final payment of the total unpaid principal balance of the certificates.

31. Thus, Fannie Mae and Freddie Mac fully guaranty the payment to the MBS Trusts of all principal amounts of the underlying mortgage loans comprising the MBS.

B. Real Estate Owned Property- Short Sales and Foreclosures

32. In addition to their guaranty responsibilities, under the MBS Trust agreements, Fannie Mae and Freddie Mac are required in some instances (and have the option in other instances) to purchase a mortgage loan or real estate acquired as a result of a default (**"real estate owned property"** or **"REO property"**) from the MBS Trusts.

33 After U.S. house sales prices peaked in mid-2006 and began their steep decline, adjustable-rate mortgages began to reset at higher interest rates and mortgage delinquencies and

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foreclosures soared.

34. As a result, in recent years, many states have experienced significant increases in mortgage foreclosures.

35. Depending on a particular troubled borrower's circumstances, as part of Fannie Mae's and Freddie Mac's loss mitigation efforts, Fannie Mae and Freddie Mac may accept a "short payoff" of the mortgage loan or foreclose on the mortgaged property.

36. With a short payoff, the full principal amount of the loan becomes due, but Fannie Mae and Freddie Mac accepts less than the outstanding unpaid principal balance of the mortgage loan from sale or refinancing proceeds received by the borrower.

37. Although Fannie Mae or Freddie Mac accepts a short payoff by the borrower, Fannie Mae and Freddie Mac still pays the full stated principal balance of the mortgage loan through to the Certificate Holders (even if the stated principal balance is more than the payoff proceeds received by Fannie Mae and Freddie Mac).

38. In cases where Fannie Mae and Freddie Mac cause the foreclosure of a mortgaged property, the REO property typically is purchased by Fannie Mae and Freddie Mac from the related MBS Trust within sixty (60) days after the date of that the foreclosure sale is completed.

39. Fannie Mae and Freddie Mac also pays the full stated principal balance of the mortgage loan through to the Certificate Holders after Fannie Mac's and Freddie Mac's purchase of the REO property from the MBS Trust.

40. Thus, in cases of both short sales and foreclosures, the following options are exercised by Fannie Mae and Freddie Mac:

a. Fannie Mae and Freddie Mac will purchase a defaulted loan from an MBS Trust for 100% of the principal amount of the loan and then proceed to either a short sale or to foreclose on the secured property;

b. In the case of a short sale of a loan owned by an MBS Trust, pay to the MBS Trust the proceeds from the short sale plus any deficiency such that the MBS Trust receives 100% of the principal amount of the loan; or

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c. In the case of a foreclosure of an MBS Trust property, purchase the REO property from the MBS Trust and pay to the MBS Trust 100% of the principal amount of the loan.

41. In each of the above instances, and in cases where Fannie Mae and Freddie Mac own an MBS mortgage pool in their own portfolio, it is Fannie Mae and Freddie Mac that will have caused to have paid all Servicing Advances (defined below) and shortages on all distressed properties such that the MBS Trusts are guaranteed to receive 100% of the principal amount of all loans within the MBS Trust.

42. Thus, as the master servicer, in all cases where Fannie Mae or Freddie Mac is a guarantor of a loan in an MBS Trust, an owner of a mortgage loan or mortgage pool, or an owner of a property located within a homeowners' association, Fannie Mae and Freddie Mac will either cause to have paid to the Defendant HOAS and Debt Collectors (and other homeowners associations and collection agencies throughout the United States) all amounts demanded for assessments, fines, fees, penalties, collection costs or attorney's fees by each such homeowners' association for each such foreclosed property, or in the alternative, will reimburse an MBS Trust for any amounts paid by the MBS Trust to Defendant HOAS and Debt Collectors (and other homeowners associations and collection agencies throughout the United States).

II

Seller/Servicers, the Payment of Servicing Advances & the Seller/Servicers' False Claims

43. Although While Fannie Mae and Freddie Mac are the master servicers of their own loans and of the MBSs, Fannie Mae and Freddie Mac generally further contract with mortgage lenders (**"Seller/Servicers"**) to perform loan direct servicing functions (**"Selling and Servicer Contracts"**) on behalf of subject to Fannie Mae, and Freddie Mac and the MBSs oversight.

44. Fannie Mae and Freddie Mac's master servicing functions include entering into contracts with Seller/Servicers to service the mortgage loans.

45. Contractually obligated duties required under the Selling and Servicer Contracts to be performed by the Seller/Servicers include general loan servicing responsibilities, collection and

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remittance of payments on the mortgage loans, administration of mortgage escrow accounts, collection of insurance claims, paying Servicing Advances, and foreclosing on defaulted mortgages, if necessary.

46. **"Servicing Advances"** are amounts of money paid (or required to be paid) by a Seller/Servicer under the Mortgage Selling and Servicing Contracts, Seller Guides, Servicer Guides or paid directly by Fannie Mae and Freddie Mac to maintain the mortgaged property.

47. Servicing Advances include payments of taxes, assessments by special assessment districts, mortgage insurance premiums, hazard (or property), flood, earthquake or other insurance premiums, property repairs, and most notably and pertinent to this action, condominium, planned unit development or homeowners' association assessments, fees and costs.

48. Pursuant to the Mortgage Selling and Servicing Contracts and in accordance with Servicing Guidelines, Seller/Servicers are "prohibited from engaging in business practices that have the apparent intent of avoiding Seller/Servicers' obligations", such as avoiding the payment of Servicing Advances.

49. Further, in the Mortgage Selling and Servicing Contracts, the Seller/Servicers also promise to indemnify Fannie Mae and Freddie Mac against any losses that Fannie Mae and Freddie Mac may incur as a result of the Seller/Servicers' breach of their obligations, representations and warranties under the Mortgage Selling and Servicing Contracts.

50. In the case of a foreclosure or "short sale" of the mortgage property, and pursuant to the Mortgage Selling and Servicing Contracts, the Seller/Servicer is entitled to reimbursement of Servicing Advances made by it from proceeds received from the sale of the mortgaged property, including up to a maximum of six months of regular, common homeowners' association assessments (**"HOA Assessments"**) in the case of properties located in a condominium complex, homeowners' association or a planned unit developments (**"PUD(s)"**).

A. Servicing Advances of HOA Assessments Not to Exceed 6 Months of Assessments

51. However, pursuant to the Mortgage Selling and Servicing Contracts, and the incorporated Selling Guides, Servicing Guides and related updates, it is the obligation of the Seller/Servicers to pay all amounts in excess of six months of HOA Assessments, plus all penalties, late fees, collection costs, interest and attorney's fees related thereto.

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52. More specifically, if the condominium or PUD project is located in a jurisdiction that has enacted the Uniform Condo Act (UCA), the Uniform Common Interest Ownership Act (UCIOA), or other similar statutes (that provide for regular, common HOA Assessments to have priority over first mortgage liens,) then Fannie Mae and Freddie Mac allows up to six months of HOA Assessments for a condominium or PUD unit to have limited priority over Fannie Mae or Freddie Mac's mortgage lien.

53. Pursuant to the Mortgage Selling and Servicing Contracts, if Fannie Mae and Freddie Mac subsequently acquire title to the unit by foreclosure, then Fannie Mae and Freddie Mac will not be liable for any fees or charges related to the collection of the six months of unpaid HOA Assessments that accrued before acquisition of title to the unit.

54. If the condominium or PUD project is located in a jurisdiction that allows for more than six months of HOA Assessments to have priority over Fannie Mae or Freddie Mac's lien, Fannie Mae and Freddie Mac will not purchase a mortgage loan secured by a unit in the project located within the ineligible jurisdiction.

B. Seller/Servicers' Violations

55. Seller/Servicers represent, warrant and promise to Fannie Mae and Freddie Mac pursuant to the Mortgage Selling and Servicing Contract the following:

a. to pay all amounts of HOA Assessments accruing prior to Fannie Mae's and Freddie Mac's acquisition of the unit which exceed six months of HOA Assessments;

b. to pay all late fees, fines, penalties, collection costs and attorney's fees related to the HOA Assessments;

c. to not sell a loan to Fannie Mae or Freddie Mac that originates in jurisdictions that permit a homeowners' association to have an assessment lien against a unit superior to the first mortgage which exceeds six months of HOA Assessments.

56. However, even though Fannie Mae and Freddie Mac are not liable for more than six months of HOA Assessments and it is the Seller/Servicers' contractual responsibility to pay all such costs and fees in excess of six months of HOA Assessments under the Mortgage Seller and Servicing Contracts, the Seller/Servicers routinely and intentionally avoid paying such fees and costs and cause Fannie Mae and Freddie Mac to pay such excessive fees and costs.

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C. Seller/Servicers Deceive Fannie Mae and Freddie Mac Via False Claims for Servicing Advances and Loan Purchase Eligibility

57. Despite Seller/Servicers' actual knowledge that homeowners' associations and collection agencies around the United States (including Nevada Defendant HOAS and Defendant Debt Collectors) are demanding, charging and collecting from Fannie Mae and Freddie Mac much more than 6 months of HOA Assessments, and that it is the Seller/Servicers' responsibility to pay such costs, the Seller/Servicers fail to pay such costs and in turn, deceive Fannie Mae and Freddie Mac into paying such costs. The Sellers/Servicers accomplish this in the following ways:

a. After acquisition by Fannie Mae and Freddie Mac of a foreclosed property in a condominium complex, homeowners' association or PUD, the Seller/Services knowingly fail and refuse to pay the HOA Assessments, late fees, fines, interest, penalties, collection costs and attorney's fees related to the HOA Assessments and wait until the property is sold to a third party buyer. Then, instead of the Seller/Servicer paying all such costs as it is obligated to do pursuant to the Mortgage Selling and Servicing Contract, and despite the fact that it has direct and actual knowledge that all such fees exceed six months of HOA Assessments, the Seller/Servicer will use, or cause to be used, a false escrow closing settlement statement which indicates that it is Fannie Mae and Freddie Mac who must pay all such fees from their sale proceeds. In doing so, the Seller/Servicers intentionally avoid having to pay their contractually obligated excess HOA Assessments and related costs and fees and intentionally cause Fannie Mae and Freddie Mac to pay such fees instead. The Seller/Servicers knowingly make, use or cause to be made or used a false document to conceal, avoid, or decrease an obligation which they are contractually obligated to pay, and instead, cause Fannie Mae and Freddie Mac to pay such obligation; and in another scheme,

b. If the Seller/Services do pay the excess HOA Assessments and costs, the Seller/Servicers, after paying to the homeowners associations and collection agencies around the United States amounts well in excess of six months of assessments, will file false reimbursement claims with Fannie Mae and Freddie Mac claiming HOA

Assessments, fines, fees, collection costs, penalties, interest or attorney's fees which exceed six months of HOA Assessments.

58. Moreover, even though the Seller/Servicers are precluded from selling mortgage loans to Fannie Mae and Freddie Mac in jurisdictions that permit homeowners' associations to have super priority liens for past due assessments in excess of six months of HOA Assessments, the Seller/Servicers routinely sell to Fannie Mae and Freddie Mac loans originating from such jurisdictions, falsely representing that these loans are eligible. Specifically, the Seller/Servicers falsely represent and certify to Fannie Mae and Freddie Mac that their loans comply with the Fannie Mae and Freddie Mac Selling Guides and underwriting guidelines, when, in fact, they do not.

59. These false representations and certifications result in Fannie Mae and Freddie Mac (and the MBSs) owning mortgage loans in jurisdictions which blatantly violate underwriting guidelines in that the mortgage loans are subject to homeowners' association super priority liens in excess of six months of HOA Assessments.

60. The result of the Seller/Servicers' false representations is that after foreclosure, whereby Fannie Mae and Freddie Mac acquire the foreclosed unit, Fannie Mae and Freddie Mac have been duped into paying to homeowners' associations and collection agencies around the United States more than what it is required pursuant to pursuant to the Mortgage Selling and Servicing Contract (and applicable laws).

61. Through the Seller/Servicer's false representations, certifications, and usage of false escrow documents or reimbursement forms, Fannie Mae and Freddie Mac unwittingly pay to the homeowners associations and collection agencies more than that is required of them pursuant to the Mortgage Seller and Servicing Contract. The Seller/Servicers undertake these deceptive actions for the sole purpose to avoid their financial obligations, and to pass those obligations onto Fannie Mae and Freddie Mac. Such actions violate the False Claims Act.

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III.

The Federal Housing Administration & the Department of Housing & Urban Development & the Insured Lenders' False Claims

62. The FHA provides mortgage insurance on loans made by FHA-approved lenders throughout the United States and its territories. In 1965, the FHA became part of HUD, a government agency.

63. HUD, acting through the FHA, runs a home-ownership program called the single-family mortgage insurance program (the "**Insurance Program**") which insures lenders against the risk of loss for loans on single-family homes.

64. Following the subprime mortgage crisis, FHA, along with Fannie Mae and Freddie Mac, became the source of much of the United States' mortgage financing.

65. Many of the foreclosures occurring in the State of Nevada, as well as other states and territories of the United States, are due to borrower delinquencies on FHA insured loans.

66. When loaning funds to home buyers for the purchase of homes located within homeowners' associations, such as Defendant HOAS, lending institutions and other holders of mortgages (including the Insured Lenders) enter into insurance agreements with the FHA, as the mortgage insurer, to insure against losses the Insured Lenders may take if the borrowers do not pay their mortgage obligations.

67. When borrowers default on their loans, the Insured Lenders often acquire the mortgaged property by foreclosure, or by deed-in-lieu of foreclosure.

68. After default and foreclosure, the Insured Lenders then convey the property to HUD, file a claim to HUD for benefits through the FHA, and are then reimbursed for their insured losses.

69. The Insured Lender's insured losses include, but are not limited to unpaid principal, interest and certain "advances" made by Insured Lenders like property taxes, hazard insurance, foreclosure costs, attorneys fees, property maintenance fees and, most notably, the homeowners' associations' assessments, fees and costs.

70. Specifically, the insurance benefits paid by HUD to the Insured Lenders in connection with foreclosed properties include charges for the maintenance and repair of mortgaged properties,

These charges are paid by the Insured Lenders to the homeowners' associations for the purpose of discharging obligations arising out of the homeowners' associations' CC&RS (the **"HOA Cost Claim"**).

71. Thus, in making the HOA Cost Claim to HUD, the Insured Lenders may only make a claim for homeowners' association assessments, fees and costs in an amount for which the Insured Lender is obligated pursuant to the recorded CC&RS of the homeowners' associations.

72. Further, in no event may the Insured Lenders make an insurance claim for reimbursement for any penalties, interest and/or late fees charged by homeowners' associations or collection agencies which the Insured Lenders incurred after the date of the foreclosure sale.

73. However, for each mortgaged property foreclosed upon by the Insured Lenders and transferred to HUD pursuant to the Insurance Program (an example of such properties is listed on the attached spreadsheet, Ex. 1, **"HUD REO Property Spreadsheet"**) the Insured Lenders made false insurance claims to HUD (through the HOA Cost Claim) for amounts which exceed that which is permitted pursuant to 24 CFR § 203.402 (j).

74. For each such false insurance claim made for each such property (such as those identified on the HUD REO Property Spreadsheet,) the false insurance claim was made on HUD Form 27011.

75. In submitting the false insurance claim through the HOA Cost Claim listed on HUD Form 27011 and in receiving the insurance proceeds from HUD, the Insured Lenders violated the False Claims Act.

IV.

The Non-Incurred Collection Charge Claims & the Defendant HOAS, Debt Collectors' and Insured Lenders' False Claims

76. Upon their foreclosure of properties located within Defendant HOAS, Plaintiff (through Fannie Mae and Freddie Mac,) and the MBS Trusts become "unit owners" as defined by NRS §116.095 and are therefore protected by the provisions of NRS §116 and provisions of Defendant HOAS' CC&RS.

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77. Also in cases where foreclosed properties are , upon the deeding of post foreclosure, HUD becomes a "unit owner" as defined by NRS §116.095 and is therefore protected by the provisions of NRS §116 and provisions of Defendant HOAS' CC&RS. Fannie Mae, Freddie Mac, and HUD are sometimes referred to herein as **"Government Owners"**.

78. Pursuant to NRS §116 and provisions of Defendants' CC&RS, once they take title to property located within Defendant HOAS, the Government Owners become liable to the Defendant HOAS for the payment of certain assessments, fees and costs relating to ownership of properties located within the Defendant HOAS.

79. Further, provisions of NRS 116.3102 and provisions of the CC&RS under which the Government Owners and the Defendant HOAS are bound permit Defendant HOAS to impose charges incurred by them against the Government Owners.

80. Upon information and belief, Defendant HOAS entered into agreements with Defendant third party collection agencies (**"Debt Collectors"**) to provide collection services to Defendant HOAS (the **"Collection Agreements"**) for the collection of past due assessment obligations of the Government Owners.

81. The Debt Collectors are the authorized agents for Defendant HOAS and perform debt collection services at the direction of Defendant HOAS.

82. However, pursuant to the Collection Agreements, Debt Collectors do not charge, bill, or collect from the Defendant HOAS any collection fees and costs, but instead bill to and collect from the Government Owners all such collection fees and costs.

83. Defendant HOAS never actually incur any collection fees and costs for the Debt Collectors' collection services because such fees and costs are not the obligation of Defendant HOAS under the Collection Agreements and past practices between the Defendant HOAS and the Debt Collectors.

84. As a matter of law and contract, Defendant HOAS may not charge to a unit owner, such as the Government Owners, collection fees and costs which have not been actually incurred by Defendant HOAS.

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85. Despite this prohibition, Defendant HOAS have permitted the Debt Collectors, acting on their behalf, to add these non-incurred collection fees and costs onto the principal amount of the alleged debt claimed to be owed by the Government Owners to Defendant HOAS.

86. Contrary to Defendant HOAS' practices, relevant state law (Nevada Revised Statutes §116.3102(k)) permits only Defendant HOAS (not Debt Collectors) to impose charges for late payment of assessments against the Government Owners.

87. Further, Nevada Revised Statutes §116.310313(1) permits only Defendant HOAS (not Debt Collectors) to charge the Government Owners reasonable fees to cover the costs of collecting any past due obligation.

88. Nevada Revised Statutes §116.310313(3)(a) defines "costs of collecting" as any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that Defendant HOAS charge a unit owner for the enforcement or collection of a past due obligation.

89. There is no provision at law which permits Defendant HOAS to authorize third party Debt Collectors to unilaterally assess and charge to the Government Owners any and all fees and costs that the Debt Collectors wish to charge in the collection of past due obligations.

90. Irrespective of the fact that Defendant HOAS never actually incurred any collection fees or costs, Defendant HOAS and the Debt Collectors have sent, and continue to send to the Government Owners thousands of false collection demands, notices, claims and other communications wherein Defendant HOAS and the Debt Collectors falsely represent that Defendant HOAS have incurred (and that, therefore, the Government Owners owe to Defendant HOAS) collection fees, interest, filing fees, recording fees, fees related to the preparation, recording or delivery of a lien or lien rescissions, title search fees, bankruptcy search fees, referral fees, fees for postage or delivery, and other fees or costs for the investigation, enforcement or collection of past due assessments or other obligations (the "**Non-Incurred Collection Charges**").

91. In pursuit of the Non-Incurred Collection Charges, Defendant HOAS and the Debt Collectors have maintained thousands of alleged "liens" (called "**Notice of Delinquent Assessment**

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Lien" or "Lien for Delinquent Assessments" or other such titles, hereinafter **"Fraudulent Liens"**) and Notices of Default and Notices of Trustee Sales (**"False Notices"**) against the units of the Government Owners based in whole or in part upon these Non-Incurred Collection Charges.

92. The Fraudulent Liens and False Notices are, in fact, false claims made by Defendant HOAS and the Debt Collectors to the Government Owners.

93. All such false claims, such as the Fraudulent Liens and False Notices, made by Defendant HOAS and the Debt Collectors to the Government Owners which demand the Non-Incurred Collection Charges misrepresent the true fact that no such collection costs are permitted or have been incurred by the Defendant HOAS nor were chargeable to the Government Owners.

94. Attached hereto is a sample spreadsheet indicating the Fraudulent Lien and False Notice claims, the names of each Defendant HOA which made the false claim, the name of the Government Owner entity upon whom such false claim was made, the time and date the false claim was made and recorded, the County Recorder's book and instrument number evidencing the actual false claim, and the assessor's parcel number of the unit which was encumbered as a result of the false claim (Ex. 2 **"False Claim Spreadsheet"**). On each such Fraudulent Lien and False Notice, the name of the Debt Collector is evident.

95. For each such Fraudulent Lien, False Notice and false claim submitted to the Government Owners by the Defendant HOAS and the Debt Collectors, the Government Owners have paid to Defendant HOAS and the Debt Collectors the Non-Incurred Collection Charges.

96. More specifically, on each such occasion wherein Fannie Mae or Freddie Mac either foreclosed or authorized a short sale upon a home secured by a loan within their own portfolio (for example, a property listed on the False Claim Spreadsheet) or guaranteed a mortgage loan within an MBS Trust which was the subject of foreclosure or short sale (for example, a property listed on False Claim Spreadsheet) the Plaintiff, through Fannie Mae and Freddie Mac, relying upon the Fraudulent Liens, False Notices and false claims and demands of the Defendant HOAS and Debt Collectors, paid out to the Defendant HOAS and Debt Collectors, or reimbursed to the MBS Trusts funds which included the Non-Incurred Collection Charges.

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97. Thus, for each such Fraudulent Lien and False Notice, Plaintiff has been the victim of Defendant HOAS' and Debt Collectors' false claims in the following ways:

a. Fannie Mae and Freddie Mac have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Non-Incurred Collection Charges as a result of Defendant HOAS' false claims;

b. Fannie Mae and Freddie Mac, as master servicers of the mortgage loans in the MBS Trusts, have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Non-Incurred Collection Charges as a result of Defendant HOAS' false claims;

c. Fannie Mae and Freddie Mac, as guarantor of the mortgage loans in the MBS Trusts, have reimbursed the MBS Trusts for all payments made by the MBS Trusts to Defendant HOAS or their agents, the Debt Collectors, for the Non-Incurred Collection Charges as a result of Defendant HOAS' false claims.

98. Moreover, on each such occasion wherein HUD owned a property located within Defendant HOAS (for example, those listed on the False Claim Spreadsheet,) the Plaintiff, relying upon the Fraudulent Liens, False Notices and false claims and demands of the Defendant HOAS and Debt Collectors, paid out to the Defendant HOAS and Debt Collectors funds which included the Non-Incurred Collection Charges.

99. Additionally, for each such property located within Defendant HOAS (for example, those listed on the HUD REO Property Spreadsheet,) HUD paid insurance proceeds to an Insured Lender based upon an HOA Cost Claim submitted to HUD by an Insured Lender which included the Non-Incurred Collection Charges.

100. The Insured Lenders submitted the false insurance claims to HUD on HUD Form 27011.

101. Because the Insured Lenders required and retained copies of the Defendant HOAS' CC&RS during the loan underwriting process and because the Insured Lenders are charged with knowledge of the law, the Insured Lenders knew or should have known that provisions of the CC&RS and the Nevada Revised Statutes do not permit the collection of the Non-Incurred Collection Charges.

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102. Thus, Plaintiff has been the victim of Defendant HOAS' and the Debt Collectors' false claims and the false insurance claims of the Insured Lenders, and has paid money to Defendant HOAS and Debt Collectors and the Insured Lenders as a result of the false claims.

V.

The Fraudulent Lien Cost Claims & the Defendant HOAS, Debt Collectors' and Insured Lenders' False Claims

103. Not only are Non-Incurred Collection Charges not a legal obligation of the Defendant HOAS and, therefore not chargeable to Plaintiff, but the circumstances under which the Non-Incurred Collection Charges accumulated is both a procedural and substantive sham.

104. Defendant HOAS and the Debt Collectors have recorded against the Government Owners fugitive documents commonly referred to as Notice of Delinquent Assessment Lien or Lien for Delinquent Assessments, or such similar titles (defined above as the "Fraudulent Liens") (for example, see Ex. 2, False Claim Spreadsheet).

105. In each instance where the Defendant HOAS and Debt Collectors have recorded the Fraudulent Lien against the units of the Government Owners (in those Defendant HOAS in which the CC&RS do not authorize the public recordation of the Fraudulent Lien), Defendant HOAS and Debt Collectors have submitted a claim to the Government Owners of several hundred dollars for the preparation and recordation of the Fraudulent Lien (**"Fraudulent Lien Cost"**).

106. This is a false claim.

107. There is no provision at law which recognizes the existence of such a document as a Notice of Delinquent Assessment Lien or Lien for Delinquent Assessments, nor is there any provision at law which permits the public recording or publishing of such a document, nor did the Government Owners ever authorize such recording.

108. Instead, pursuant to NRS 116.3116, Defendant HOAS have an automatic, statutory lien on every unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, 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 (the **"Statutory Lien"**).

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109. Further, pursuant to NRS 116.3116(4), "Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required."

110. Thus, what Defendant HOAS and the Debt Collectors represented as a "lien" (i.e.,the Fraudulent Lien for which they impose the Fraudulent Lien Cost) was, in fact, not a lien, but merely a notice pursuant to NRS 116.31162 which simply authorizes the mailing of a "notice" of delinquent assessment to the Government Owners.

111. However, in order to churn more fees and costs, Defendant HOAS and the Debt Collectors misrepresented the fact that the Fraudulent Lien was a legal lien, misrepresented the fact that the Nevada Revised Statutes authorized the recording of such a document, and misrepresented the fact the they were entitled to record such a document, all in order to coerce the Government Owners into paying the Fraudulent Lien Cost.

112. Moreover, even though there is no provision at law which authorizes the drafting and recording of the Fraudulent Liens, and even though the Government Owners never authorized the recording of such a document, Defendant HOAS and the Debt Collectors improperly made claim upon the Government Owners for money to "release" the Fraudulent Lien (**"Fraudulent Lien Release Cost"**).

113. In addition, on each such occasion wherein Fannie Mae or Freddie Mac either foreclosed or authorized a short sale upon a home secured by a loan within their own portfolio (for example, those properties listed on the False Claim Spreadsheet) or guaranteed a mortgage loan within an MBS Trust which was the subject of foreclosure or short sale (for example, those properties listed on False Claim Spreadsheet) the Plaintiff, through Fannie Mae and Freddie Mac, relying upon the false claims and demands of the Defendant HOAS and Debt Collectors for the Fraudulent Liens Cost and Fraudulent Lien Release Cost, paid out to the Defendant HOAS and Debt Collectors, or reimbursed to the MBS Trusts funds which included the Fraudulent Liens Cost and Fraudulent Lien Release Cost.

114. Thus, for each such Fraudulent Lien, Plaintiff has been the victim of Defendant HOAS' and the Debt Collectors' false claims in the following ways:

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a. Fannie Mae and Freddie Mac have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Fraudulent Liens Cost and Fraudulent Lien Release Cost as a result of Defendant HOAS' false claims;

b. Fannie Mae and Freddie Mac, as master servicers of the mortgage loans in the MBS Trusts, have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Fraudulent Liens Cost and Fraudulent Lien Release Cost as a result of Defendant HOAS' false claims;

c. Fannie Mae and Freddie Mac, as guarantor of the mortgage loans in the MBS Trusts, have reimbursed the MBS Trusts for all payments made by the MBS Trusts to Defendant HOAS or their agents, the Debt Collectors, for the Fraudulent Liens Cost and Fraudulent Lien Release Cost as a result of Defendant HOAS' false claims.

115. Moreover, on each such occasion wherein HUD owned a property located within Defendant HOAS, such as those listed on the False Claim Spreadsheet, the Plaintiff, relying upon the false claims and demands of the Defendant HOAS and Debt Collectors for the Fraudulent Liens Cost and Fraudulent Lien Release Cost, paid out to the Defendant HOAS and Debt Collectors funds which included the Fraudulent Liens Cost and Fraudulent Lien Release Cost.

116. Additionally, for each such property (for example, those listed on the HUD REO Property Spreadsheet,) HUD paid insurance proceeds to an Insured Lender based upon an HOA Cost Claim submitted to HUD by an Insured Lender which included the Fraudulent Liens Cost and Fraudulent Lien Release Cost.

117. The Insured Lenders submitted the false insurance claims to HUD on HUD Form 27011.

118. Because the Insured Lenders required and retained copies of the Defendant HOAS' CC&RS during the loan underwriting process and because the Insured Lenders are charged with knowledge of the law, the Insured Lenders knew or should have known that provisions of the CC&RS and the Nevada Revised Statutes do not permit the collection of the Fraudulent Liens Cost and Fraudulent Lien Release Cost.

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119. Thus, Plaintiff has been the victim of Defendant HOAS' and Debt Collectors' false claims and the false insurance claims of the Insured Lenders, and has paid money to Defendant HOAS and Debt Collectors and the Insured Lenders as a result of the false claims.

VI.

The Excessive Super Priority Lien Claims & the Defendant HOAS, Debt Collectors' and Insured Lenders' False Claims

120. Further, Nevada Revised Statutes §116.3116 governs liens against property located within Defendant HOAS and generally states as follows:

a. Defendant HOAS have a statutory lien on any unit of real property located within their HOAS for any assessment imposed against a unit or fine imposed against the Government Owners from the time the assessment or fine became due;

b. However, Defendant HOAS' lien is 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 Nevada Revised Statutes §116.3116 which remains senior to the first security interest of the unit's first mortgage lender, provided that Defendant HOAS had instituted an "action" to enforce their liens (the **"Super Priority Lien"**).

121. On and after October 1, 2009, the statutory formula for calculating the Super Priority Lien was as follows: the lien is prior to the first security interest on the unit to the extent of any charges incurred by the HOAS on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the HOAS 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 unless federal regulations adopted by Fannie Mae or Freddie Mac require a shorter period of priority for the lien (in which case the 9 month period is reduced to a 6 month period).

122. Before October 1, 2009, the 9 month time frame cited above, was limited to only 6 months in every instance.

123. Further, pursuant to the Federal Home Loan Mortgage Corporation Act (12 U.S.C.A. § 1455), Freddie Mac may by regulation or by writing establish prohibitions or restrictions upon the

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creation of the indebtedness or obligations of Freddie Mac, including liens or charges upon property of Freddie Mac.

124. Both Fannie Mae and Freddie Mac have adopted underwriting guidelines which limit Defendants' Super Priority Lien to an amount not exceeding 6 months of assessments.

125. After the date upon which the Government Owners became the legal owners of the units (i.e., the date of the trustee's sale of first mortgage lender) on each of thousands of instances over the last several years (for example, as more particularly evidenced of the False Claim Spreadsheet), Defendant HOAS and the Debt Collectors have improperly claimed, demanded and obtained monies from the Government Owners in the following manner:

a. Homeowners, owning a unit of real property within the Defendants become delinquent ("**Delinquent Homeowners**") in the payment of their association assessments and other fees and charges ("**Homeowners' Past Due Obligations**") and also default on their first mortgages;

b. The Homeowners' Past Due Obligations constitute a Statutory Lien on the Delinquent Homeowners' unit pursuant to NRS §116.3116;

c. Due to the Delinquent Homeowners' inability to pay their first mortgages, the Delinquent Homeowners' first mortgage lenders or purchasers of the lenders' loan (i.e., Fannie Mae, Freddie Mac or the MBS Trusts) foreclose on the Delinquent Homeowners' unit;

d. At the foreclosure auction, Fannie Mae, Freddie Mac, the MBS Trusts or the Insured Lenders take title to the subject units via a trustee's sale deed;

e. At the moment the foreclosure auction concludes on a subject unit, pursuant to NRS §116.3116, the Defendant HOAS' Statutory Lien against the unit for the Homeowners' Past Due Obligations becomes extinguished, but for the Super Priority Lien, if any;

f. Instead of informing the Government Owners (who either obtain title at the foreclosure auctions, or are deeded properties that the Insured Lenders obtain at the foreclosure auctions) that Defendant HOAS' Statutory Lien has been extinguished due to the foreclosure auction, and that only the Super Priority Lien was due (if any), Defendant

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HOAS and the Debt Collectors issue false and inaccurate demands and claims to the Government Owners for hundreds or thousands of dollars in excess of any amount permitted under NRS 116.3116 and the CC&RS, often including all those amounts owed by the original Delinquent Homeowner (the **"Excessive Super Priority Lien Amounts"**);

g. Defendant HOAS and the Debt Collectors make false claims to the Government Owners (for example, more particularly evidenced in the False Claim Spreadsheet) which include that the Defendant HOAS and Debt Collectors have the legal right to collect and receive from the Government Owners the Excessive Super Priority Lien Amounts when, as a matter of law, they do not;

h. Such demands, claims and representations are inaccurate because the Government Owners do not owe the Excessive Super Priority Lien Amounts. The Statutory Liens which comprised the Homeowners' Past Due Obligations were extinguished as against the Government Owners and the units as a matter of law (NRS §116.3116) as a result of the Government Owners' and Insured Lenders' foreclosure auctions, leaving only the limited Super Priority Liens, if any;

i. Defendant HOAS and the Debt Collectors fail and refuse to correct their false representations, demands and claims and encumber the Government Owners' units with the Fraudulent Liens;

j. Under unlawful threat of the continuing clouds on their title and issuance of false claims and demands by Defendant HOAS and the Debt Collectors, the Government Owners are forced to pay the Excessive Super Priority Lien Amounts.

126. By repeatedly employing this very scheme thousands of times over the last several years, Defendant HOAS and the Debt Collectors have made false claims to the Government Owners for monies that were not owed and to which Defendant HOAS and the Debt Collectors had no legal entitlement.

127. Further, pursuant to NRS §116.3116, before any amounts comprising the Super Priority Lien may become due, Defendant HOAS are required to file a civil action to enforce collection of their

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Statutory Lien. However, in many or all instances above described, the Super Priority Lien did not exist because Defendant HOAS failed to file a civil action to enforce their lien.

128. Nonetheless, on thousands of separate occasions (for example, as evidenced by the False Claim Spreadsheet), Defendant HOAS and Debt Collectors improperly claimed, demanded and received from the Government Owners monies falsely claimed as a Super Priority Lien Amount to which neither Defendant HOAS nor the Debt Collectors were entitled.

129. In addition, on each such occasion wherein Fannie Mae or Freddie Mac either foreclosed or authorized a short sale upon a home secured by a loan within their own portfolio (for a property listed on the False Claim Spreadsheet) or guaranteed a mortgage loan within an MBS Trust which was the subject of foreclosure or short sale (for example, those properties listed on False Claim Spreadsheet) the Plaintiff, through Fannie Mae and Freddie Mac, relying upon the false claims and demands of the Defendant HOAS for the Excessive Super Priority Lien Amounts, paid out to the Defendant HOAS or reimbursed to the MBS Trusts funds which included the Excessive Super Priority Lien Amounts.

130. Thus, for each such Fraudulent Lien and False Notice (for example, those as listed on the False Claim Spreadsheet,) Plaintiff has been the victim of Defendant HOAS' and Debt Collectors' false claims in the following ways:

a. Fannie Mae and Freddie Mac have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Excessive Super Priority Lien Amounts as a result of Defendant HOAS' false claims;

b. Fannie Mae and Freddie Mac, as master servicers of the mortgage loans in the MBS Trusts, have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Excessive Super Priority Lien Amounts as a result of Defendant HOAS' false claims;

c. Fannie Mae and Freddie Mac, as guarantor of the mortgage loans in the MBS Trusts, have reimbursed the MBS Trusts for all payments made by the MBS Trusts to Defendant HOAS or their agents, the Debt Collectors, for the Excessive Super Priority Lien Amounts as a result of Defendant HOAS' false claims.

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131. Moreover, on each such occasion wherein HUD owned a property located within Defendants HOAS (for example, those listed on the False Claim Spreadsheet,) the Plaintiff, relying upon the false claims and demands of the Defendant HOAS and the Debt Collectors for the Excessive Super Priority Lien Amounts paid out to the Defendant HOAS and Debt Collectors funds which included the Excessive Super Priority Lien Amounts.

132. Additionally, for each such property located with Defendant HOAS (for example, those listed on the HUD REO Property Spreadsheet,) HUD paid insurance proceeds to an Insured Lender based upon an HOA Cost Claim submitted to HUD by an Insured Lender which included the Excessive Super Priority Lien Amounts.

133. The Insured Lenders submitted the false insurance claims to HUD on HUD Form 27011.

134. Because the Insured Lenders required and retained copies of the Defendant HOAS' CC&RS during the loan underwriting process and because the Insured Lenders are charged with knowledge of the law, the Insured Lenders knew or should have known that provisions of the CC&RS and the Nevada Revised Statutes do not permit the collection of the Excessive Super Priority Lien Amounts.

135. Thus, Plaintiff has been the victim of Defendant HOAS' and the Debt Collectors' false claims and the false insurance claims of the Insured Lenders, and has paid money to Defendant HOAS and the Insured Lenders as a result of the false claims.

VII.

The Excessive CC&R Amount Claims & the Defendant HOAS, Debt Collectors' and Insured Lenders' False Claims

136. Defendant HOAS' CC&RS contain provisions (**"Mortgagee Protection Provisions"**)whereby the Defendant HOAS' assessment liens are subordinate to the Government Owners' and the Insured Lenders' first mortgage loan and are extinguished by the foreclosure of a first mortgage loan but for a limited number of monthly assessments, if any.

137. However, Defendant HOAS and the Debt Collectors claim, demand and collect monies from the Government Owners that, pursuant to the Mortgagee Protection Provisions, have been

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extinguished by the trustee's sale of the Government Owners and the Insured Lenders (**"Excessive CC&R Amounts").**

138. These are false claims.

139. For example, as more specifically detailed in the False Claim Spreadsheet, after transfer to the Government Owners or the Insured Lenders of the residential units at foreclosure, Defendant HOAS and the Debt Collectors have, on each of thousands of instances over the last several years, improperly demanded and obtained monies from the Government Owners by demanding and collecting the Excessive CC&R Amounts.

140. Instead of informing the Government Owners that only a limited number of monthly assessments were due, if any, pursuant to the Mortgage Protection Provisions of the CC&RS, Defendant HOAS and the Debt Collectors issued false claims and demands to the Government Owners for hundreds or thousands of dollars in excess of any amount permitted under the CC&RS.

141. For example, as more particularly evidenced on the False Claim Spreadsheet, Defendant HOAS and the Debt Collectors misrepresented to the Government Owners that Defendants have the legal right to demand, collect and receive from the Government Owners the Excessive CC&R Amounts when, pursuant to the Mortgagee Protection Provisions of the CC&RS, they did not.

142. The Excessive CC&R Amounts were extinguished as against the Government Owners and the Insured Lenders pursuant to the Mortgagee Protection Provisions of the CC&RS at foreclosure and were not due and owing from Government Owners.

143. Under unlawful threats of the continuing clouds on their title and issuance of false claims and demands such as the Fraudulent Liens and False Notices, the Government Owners have been forced to pay the Excessive CC&R Amounts to the Defendant HOAS and the Debt Collectors.

144. By repeatedly employing this very scheme thousands of times over the last several years, Defendant HOAS and the Debt Collectors have obtained monies comprising the Excessive CC&R Amounts which the Government Owners did not owe, and to which Defendant HOAS and the Debt Collectors were not legally entitled.

145. Thus, Defendant HOAS' and the Debt Collectors' false demand, claim and collection of Excessive CC&R Amounts violated the False Claims Act.

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146. In addition, on each such occasion wherein Fannie Mae or Freddie Mac either foreclosed or authorized a short sale upon a home secured by a loan within their own portfolio (for example, for a property listed on the False Claim Spreadsheet) or guaranteed a mortgage loan within an MBS Trust which was the subject of foreclosure or short sale (for example, for a property listed on False Claim Spreadsheet) the Plaintiff, through Fannie Mae and Freddie Mac, relying upon the false claims and demands of the Defendant HOAS and the Debt Collectors for the Excessive CC&R Amounts, paid out to the Defendant HOAS and the Debt Collectors, or reimbursed to the MBS Trusts funds which included the Excessive CC&R Amounts.

147. Thus, for example, for each such Fraudulent Lien and False Notice as listed on the False Claim Spreadsheet, Plaintiff has been the victim of Defendant HOAS' and the Debt Collectors' false claims in the following ways:

a. Fannie Mae and Freddie Mac have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Excessive CC&R Amounts as a result of Defendant HOAS' false claims;

b. Fannie Mae and Freddie Mac, as master servicers of the mortgage loans in the MBS Trusts, have paid directly to Defendant HOAS or their agents, the Debt Collectors, the Excessive CC&R Amounts as a result of Defendant HOAS' false claims;

c. Fannie Mae and Freddie Mac, as guarantor of the mortgage loans in the MBS Trusts, have reimbursed the MBS Trusts for all payments made by the MBS Trusts to Defendant HOAS or their agents, the Debt Collectors, for the Excessive CC&R Amounts as a result of Defendant HOAS' false claims.

148. Moreover, on each such occasion wherein HUD owned a property located with Defendant HOAS (for example, those listed on the False Claim Spreadsheet,) the Plaintiff, relying upon the false claims and demands of the Defendant HOAS and the Debt Collectors for the Excessive CC&R Amounts paid out to the Defendant HOAS and the Debt Collectors funds which included the Excessive CC&R Amounts.

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149. Additionally, for each such property located with Defendant HOAS (for example, those listed on the HUD REO Property Spreadsheet,) HUD paid insurance proceeds to an Insured Lender based upon an HOA Cost Claim submitted to HUD by an Insured Lender which included the Excessive CC&R Amounts.

150. The Insured Lenders submitted the false insurance claims to HUD on HUD Form 27011.

151. Because the Insured Lenders required and retained copies of the Defendant HOAS' CC&RS during the loan underwriting process and because the Insured Lenders are charged with knowledge of the law, the Insured Lenders knew or should have known that provisions of the CC&RS and the Nevada Revised Statutes do not permit the collection of the Excessive CC&R Amounts.

152. Thus, Plaintiff has been the victim of Defendant HOAS' and the Debt Collectors' false claims and the false insurance claims of the Insured Lenders, and has paid money to Defendant HOAS, the Debt Collectors and the Insured Lenders as a result of the false claims.

COUNT I: VIOLATIONS OF 31 U.S.C. § 3729

(False Claims of the Seller/Servicers)

153. Relators incorporate each and every paragraph of this complaint as though fully set forth herein.

154. Relators seek a recovery on behalf of the United States, for all false claims submitted by the Seller/Servicers to Fannie Mae and Freddie Mac (as principals and as master servicer and guarantor of the mortgage loans of the MBS Trusts,) on a national basis for all amounts that the Seller/Servicers avoided, failed to pay, or caused Fannie Mae and Freddie Mac to pay to collection agencies and homeowners' associations/PUDs which Fannie Mae and Freddie Mac had no obligation to pay pursuant to the terms of the Mortgages Seller and Servicing Contract (and all related documents incorporated therein). Such payments include, but are not limited to super priority HOA Assessment liens which exceeded six months of assessments, and all late fees, fines, interest, penalties, collection costs and attorney's fees related to the HOA Assessments.

155. In violation of 31 U.S.C. §3729(a)(7), the Seller/Servicers knowingly made, used or caused to be made or used false escrow closing documents to conceal, avoid, or decrease an obligation

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which they were contractually obligated to pay, and instead, caused Fannie Mae and Freddie Mac to pay such obligation.

156. Further, Relators seek a recovery on behalf of the United States, for all false claims on a national basis, in the form of false and inaccurate reimbursement requests submitted by the Seller/Servicers to Fannie Mae and Freddie Mac (as principals and as master servicer and guarantor of the mortgage loans of the MBS Trusts,) for all amounts reimbursed to the Seller/Servicers in excess of six months of HOA Assessments. These were false reimbursement claims made to Fannie Mae and Freddie Mac by the Seller/Servicers who claimed HOA Assessments, fines, fees, collection costs, penalties, interest or attorney's fees which exceeded six months of Assessments in contravention to the Mortgage Seller and Servicing Contract. 156. 157. Further, whereas the Seller/Servicers certified and represented that they will not sell mortgage loans to Fannie Mae and Freddie Mac (as principals and as master servicer and guarantor of the mortgage loans of the MBS Trusts,) which originate in jurisdictions that permit homeowners' associations to have assessment liens in excess of six months of HOA Assessments which are superior to the first mortgage, and whereas the Seller/Servicers routinely sold to Fannie Mae and Freddie Mac loans originating from such jurisdictions resulting in Fannie Mae and Freddie Mac paying in excess of six months of HOA Assessments to collection agencies and homeowners' associations/PUDs, Relators seek a recovery on behalf of the United States, for damages to Fannie Mae and Freddie Mac resulting from all such false representations, certifications and claims on a national basis.

158. The Seller/Servicers falsely represented and certified to Fannie Mae and Freddie Mac that such loans complied with the Fannie Mae and Freddie Mac Selling Guides and underwriting guidelines, when, in fact, they did not. These false representations and certifications resulted in Fannie Mae and Freddie Mac (and the MBSs) owning mortgage loans in jurisdictions which violate underwriting guidelines in that the mortgage loans are subject to homeowners' associations' super priority liens in excess of six months of HOA Assessments.

159. The result of the Seller/Servicers' false representations was that after foreclosure wherein Fannie Mae and Freddie Mac acquired the unit, Fannie Mae and Freddie Mac paid to homeowners' associations and collection agencies around the United States more than that was

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required pursuant to the Mortgage Selling and Servicing Contract (six months of HOA Assessments), said amounts being the obligations of the Seller/Servicers.

160. For each claim submitted to Fannie Mae and Freddie Mac (as principals and as guarantor and master servicer of the mortgage loans of the MBS Trusts,) through the Seller/Servicer's above described false representations, certifications, and usage of false escrow documents or reimbursement forms, Fannie Mae and Freddie Mac paid to the homeowners associations and collection agencies more than that was required of them pursuant to the Mortgage Selling and Servicing Contract. The Seller/Servicers undertook these deceptive actions for the sole purpose to avoid their financial obligations and to pass those obligations onto Fannie Mae and Freddie Mac. Such actions violate the False Claims Act. Thus, on a national basis, the Seller/Servicers knowingly caused false claims to be presented to Plaintiff within the meaning of 31 U.S.C. § 3729.

161. The Seller/Servicers knew that the claims, statements, representations, and certifications were was false or fraudulent within the meaning of 31 U.S.C. §3729(b), and caused the submission of the false claims within the meaning of § (a)(l) and the making of a false certification within the meaning of § (a)(2).

162. The Seller/Servicers are liable in this action for civil penalties of not less than $5,000 and not more than $10,000, plus three (3) times the amount of damages which the Plaintiff sustained because of the acts as described herein.

COUNT II: VIOLATIONS OF 31 U.S.C. § 3729

(False Claims of Defendant HOAS and the Debt Collectors)

163. Relators incorporate each and every paragraph of this complaint as though fully set forth herein.

164. Relators seek a recovery on behalf of the United States, for all false claims submitted to Fannie Mae and Freddie Mac (as principals and as master servicer and guarantor of the mortgage loans of the MBS Trusts,) and submitted to HUD for the Non-Incurred Collection Charges, Fraudulent Lien Costs, Fraudulent Lien Release Costs, Excessive Super Priority Lien Amounts, and Excessive CC&R Amounts.

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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

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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
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43	Court Minutes: Motion for Reconsideration	7/12/2012	IX	2081-2082
60	Court Minutes: Motion to Retax	5/28/2013	XI	2427
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39	Decision	6/22/2012	IX	1889-1892
65	Decision	6/28/2013	XI	2466-2470
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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
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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
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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

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

	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

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

1-4 FAMILY RIDER
(Assignment of Rents)

LOAN NO.: 0508168244

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

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

THE MORTGAGE STORE FINANCIAL, INC., A CALIFORNIA CORPORATION

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

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

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

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

Initials: _____

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

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

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

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

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

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

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

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

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

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

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

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

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

HAWLEY MCINTOSH _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

PREPAYMENT RIDER

LOAN NO.: 0508168244

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

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

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

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

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

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

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

Initials: HM

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

HAWLEY MCINTOSH _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

LOAN NO.: 0508168244

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

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

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

(the "Lender").

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

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

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

Initials: _____

HAWLEY MCINTOSH

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

Ex. 4

C (41)

Inst #: 201007210001843
Fees: $16.00 N/C Fee: $25.00
RPTT: $186.15 Ex: #
07/21/2010 12:07:20 PM
Receipt #: 434089
Requestor:
SCOT LUDWIG
Recorded By: TAH Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN# 177-35-610-137
11-digit Assessor's Parcel Number may be obtained at:
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx

Quit Claim Deed

Type of Document
(Example: Declaration of Homestead, Quit Claim Deed, etc.)

Recording Requested By:
Konnel Peterson

Return Documents To: and Tax Statements:
Name IKon Holdings, LLC
Address 209 S Stephanie, Ste B123
City/State/Zip Henderson NV 89012

This page added to provide additional information required by NRS 111.312 Section 1-2

(An additional recording fee of $1.00 will apply)

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

CCOR_Coversheet.pdf ~ 06/06/07

QUITCLAIM DEED

FOR VALUE RECEIVED, SCOT M. LUDWIG does hereby convey, release, remise and forever quitclaim unto IKON Holdings, LLC, as its sole and separate property, whose address is 209 South Stephanie Street, Suite B-123, Henderson, Nevada 89102, all of his right, title and interest in the following described premises, to-wit:

Please see Exhibit "A" attached hereto.

together with their appurtenances, this property is located in Clark County, also known as 950 Seven Hills Drive, Unit 1411, Henderson, Nevada 89052

DATED this 14th day of July, 2010.

SCOT M. LUDWIG

STATE OF IDAHO)
)ss
County of Ada)

On this 14 day of July, 2010, before me, the undersigned, personally appeared SCOT M. LUDWIG, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County the day and year first above written.

NICOLE LETTUNICH BIERLE NOTARY PUBLIC STATE OF IDAHO

Notary Public
Residing at: Meridian, ID
Comm. Expires: 11/9/11

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 %

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 Grantee

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Scot M. Ludwig	Print Name: IKon Holdings, LLC
Address: 900 S 4th #207	Address: 209 S Stephanie St B123
City: Las Vegas	City: Henderson
State: NV Zip: 89101	State: NV Zip: 89012

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

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

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

CCOR_DV_Form.pdf - 01/12/09

Ex. 5

APN # 177-35-610-137
N47664

Recorded On: 09/30/2010
Book/Instr: 0002154 Book 20100930
County Of: Clark

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Ikon Holdings LLC

Mailing address(es):
209 S. Stephanie Ste B123, Henderson, NV 890112

*Total amount due through today's date is $6,050.14.
This amount includes late fees, collection fees and interest in the amount of $2,692.64.
* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.
Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: September 28, 2010

Winter Henrie

By: Winter Henrie, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N47664
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-554

Ex. 6

NEVADA ASSOCIATION SERVICES, INC.

Nevada Association Services
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885
Fax: (702) 804-8887
Toll Free: (888) 627-5644

October 18, 2010

Ikon Holdings LLC
209 S. Stephanie Ste B123
Henderson NV 890112

RE: 950 Seven Hills Drive #1411 / N47664
Horizons at Seven Hills / Ikon Holdings LLC

Dear Sir/Madam:

Per your request the current balance for the above property is $6287.94. If you wish to resolve this matter, please remit payment in full of $6287.94 in the form of a cashier's check or money order on or before 10/28/10.This amount includes October's assessment. Enclosed is an itemized breakdown for your review. If you are unable to remit payment in full, you may wish to fill out and return the enclosed Request for a Payment Plan Form which will be forwarded to the Management Company for approval. If you choose not to reinstate the account, collection proceedings will continue as indicated in previous correspondence.

Sincerely,

Veronica Meraz

Veronica Meraz
Nevada Association Services, Inc.

AR

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**

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

Electronically Filed
04/17/2012 10:12:12 AM

CLERK OF THE COURT

NEOJ
Kurt R. Bonds, Esq.
Nevada Bar No. 6228
Eric W. Hinckley, Esq.
Nevada Bar No. 12398
Alverson, Taylor, Mortensen
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nelovelock@hollandhart.com

Attorneys for Defendants
Horizons At Seven Hills Homeowners Association

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

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

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion For Summary Judgment and Order Granting Defendant's Countermotion For Summary Judgment was entered in the above-captioned matter on April 16, 2012.

A copy of said Order is attached hereto.

DATED this 11th day of April, 2012.

By _____

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 17th day of April, 2012, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Attorneys for Defendants 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,

Defendants.

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

ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

ORDER GRANTING DEFENDANT'S COUNTERMOTION FOR SUMMARY JUDGMENT

Hearing Date: March 12, 2012

Hearing Time: 9:00 a.m.

This matter came before the Court on March 12, 2012, for hearing on Plaintiff's Motion for Summary Judgment and on Defendant's Countermotion for Summary Judgment. James R. Adams, Esq. of the Adams Law Group and Puoy Premsrirut, Esq. of the law firm of Brown, Brown & Premsrirut appeared on behalf of Plaintiff Ikon Holdings, LLC ("Ikon"). Patrick J.

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Reilly, Esq. of the law firm of Holland & Hart LLP and Eric W. Hinckley, Esq. of the law firm of Alverson, Taylor, Mortensen, and Sanders appeared on behalf of Defendant Horizons at Seven Hills Homeowners Association ("Horizons"). After carefully considering the briefs and arguments of counsel, this Court makes the following findings of fact and conclusions of law:

I.

FINDINGS OF FACT

1. On or around June 28, 2010, Scott Ludwig purchased certain real property located at 950 Seven Hills Drive, Suite 1411, Henderson, Nevada 89052 (the "Property") at a foreclosure sale conducted by the holder of a first deed of trust against the Property.

2. The Property is located within Horizons.

3. Horizons had previously recorded a Notice of Delinquent Assessment Lien on June 17, 2009 and a Notice of Default and Election to Sell Under Homeowners Association Lien on August 4, 2009. Both of these recordings occurred prior to the foreclosure sale, in the amount of $4,289.50, with the amount of the lien to increase until the amount became current.

4. Shortly after the foreclosure sale, on July 14, 2010, Mr. Ludwig transferred title of the Property to Ikon. .

5. On or around September 30, 2010, Horizons recorded another Notice of Delinquent Assessment Lien ("Lien") against the Property.

6. Ikon disputed and did not pay any of the amounts demanded by Horizons.

7. Ikon did not begin making payments to Horizons until May 2011 when it began making regular monthly assessments to the Property.

8. It is undisputed that, as of the date of the hearing, Ikon had not paid any amount owed.

II.

CONCLUSIONS OF LAW

The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

> A party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part

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> thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). In ***Wood v. Safeway, Inc.***, 121 Nev. 724, 731, 121, P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and ***Matsushita Elec. Indus. Co. v. Zenith Radio Corp.***, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. ***Celotex***, 477 U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. ***Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.***, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the "slightest doubt" about the facts. ***Wood***, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely "build a case on the gossamer threads of whimsy, speculation, and conjecture." ***Id.*** at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present ***genuine*** issues of ***material*** fact to avoid summary judgment. ***Id.***, 121 P.3d at 1031.

In the instant case, Plaintiff's causes of action beyond those for Declaratory Relief and Injunctive Relief are not sustainable under the undisputed factual scenario involved in this case. It is undisputed that Plaintiff did not pay any of the SPL amount demanded and liened by Horizons, even the amounts it concedes it owes. As a result, Plaintiff has not suffered or incurred any damages that could be recovered under the First, Second, Third, Fourth and Fifth Causes of Action pleaded in Plaintiff's Complaint. In sum, this is not a case seeking attorney's fees and

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costs for a slander of title. ***See Horgan v. Felton***, 123 Nev. 577, 583-86, 170 P.3d 982 (2007). Further, the Court does not consider that the theories pleaded by Plaintiff have been shown to involve genuine issues of material fact as to damages that are otherwise recoverable under those causes of action.

* * *

Accordingly, this Court hereby DENIES Plaintiff's Motion for Summary Judgment and GRANTS Defendant's Countermotion for Summary Judgment in its entirety. This Order is without prejudice to Plaintiff's effort to seek attorney's fees and costs based upon whatever statutory or contractual premise that may or may not be applicable.

IT IS SO ORDERED.

DATED this 13th day of April, 2012.

DISTRICT COURT JUDGE

Submitted by:

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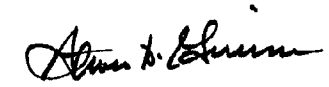

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DISTRICT COURT

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,

Defendants.

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

OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT

COUNTERMOTION FOR SUMMARY JUDGMENT

Hearing Date: May 7, 2012

Hearing Time: 9:00 a.m.

Defendant Horizons at Seven Hills Homeowners Association ("Horizons") hereby opposes the third motion for summary judgment ("MSJ #3") filed by Plaintiff Ikon Holdings, LLC ("Ikon") in the above-entitled action. In addition, Horizons makes a counter-motion for summary judgment on all remaining claims in this case.

This Opposition and Countermotion are made pursuant to NRCP 56 and EDCR 2.20 and are based on the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action.

DATED this 25th day of April, 2012.

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By _____

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

This is an action in which Plaintiff Ikon has sought declaratory relief on three issues: (1) the scope of a statutory super-priority lien created by NRS 116.3116 (the "Statutory SPL") against the underlying real property; (2) the scope of a contractual super-priority lien created by the CC&Rs (the "Contractual SPL"); and (3) whether Defendant Horizons "violated" NRS 116.3116 and the CC&Rs by demanding an amount different from the amount Plaintiff Ikon believed was owed.

This is the third and final motion for summary judgment filed by Plaintiff Ikon in this case, even though it is only a few short months old. In the first motion for summary judgment ("MSJ #1"), Ikon contended *inter alia* that the Statutory SPL created by NRS 116.3116 was capped at "nine times monthly assessments" and that the filing of a lawsuit was a condition precedent for the Statutory SPL. This Court agreed in part, concluding that the Statutory SPL was limited to the "simple formula" proffered by Plaintiff, but that a lawsuit need not be filed for a Statutory SPL to exist.

In Ikon's second motion for summary judgment ("MSJ #2"), Ikon asked for a ruling declaring that Horizons had "violated" both NRS 116.3116 and Section 7.9 of the Horizons Covenants, Conditions, and Restrictions ("CC&Rs"). This Court denied Plaintiffs' MSJ #2 outright, and granted Horizons's countermotion for summary judgment, adjudicating all other claims in its favor, concluding that Ikon had incurred no damages because it had never paid any amount of the Statutory SPL, even the amounts that it conceded were owed.

Now, Ikon focuses on the Contractual SPL created by the CC&Rs. Ikon insists that the Contractual SPL takes precedence over the Statutory SPL, arguing that the CC&Rs allow only for the recovery of "six times monthly assessments" instead of nine. Quite simply, Ikon has recognized—and indeed urges this Court to find—that there are two separate liens at issue in this lawsuit, one statutory and one contractual.

Recognizing that there is a separation and a distinction between the ***statutory lien*** created by NRS 116.3116 and the ***contractual lien*** created by the CC&Rs, Plaintiff now seeks a separate judicial declaration as to the scope of the Contractual SPL. Plaintiff skips to the end, however, assuming that the only issue to be decided is whether the Contractual SPL is six months or nine months long. Rather, Ikon fails to address the scope of the Contractual SPL, and whether it includes interest, collection fees and costs, even if those collection fees and costs exceed what Plaintiff describes as "nine times monthly assessments" or even "six times monthly assessments."

Parts of Sections 7.8 and 7.9 of the CC&Rs may be similar in some respects to the limiting language of the Statutory SPL, but the legal analysis to determine the actual scope of the Contractual SPL is very different from the NRS Chapter 116 analysis. This is because determining the scope of the Contractual SPL requires this Court to undertake a ***contract-based interpretation and analysis***, rather than guessing at what the Nevada Legislature might have intended when it enacted or amended NRS 116.3116. Regardless of what the Legislature considered or determined when NRS 116.3116 became law, the separate Contractual SPL is not limited to "six times monthly assessments." Rather, under Section 7.9 of the CC&Rs, the Contractual SPL survives foreclosure even as to interest, collection fees, and costs. And the very purpose of the CC&Rs was not just to provide to Horizons a legal right to recover some outstanding assessments, but also the mechanism to recover outstanding assessments by allowing for the recovery of collection fees and costs. A common sense and practical reading of the CC&Rs directs only one result—that the Contractual SPL is not merely limited to "six times monthly assessments," but that it allows for the recovery of interest, collection fees, and costs on top of the recoverable assessments so that Horizons would, as a practical matter, have the ability to go out and actually recover the amounts that were due and owing.

Accordingly, and to this extent, Horizons is entitled to summary judgment in its favor, and has filed a countermotion for summary judgment for the same.

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II.

STATEMENT OF FACTS

1. On June 7, 2005, Horizons executed a Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Horizons at Seven Hills (the "CC&Rs"). A copy of the CC&Rs is attached hereto as **Exhibit "A"**.

2. The CC&Rs were created with the following express intent:

> 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. . . .
>
> **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 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 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.

Exhibit A at HSH000003 to HSH000004 (emphasis in original and added). As a result, the CC&Rs were designed specifically to fund the Common Elements through assessments, and to give Horizons the mechanism and ability to fund and maintain those improvements with obligations that ran with the land. ***See id.***

3. Pursuant to the CC&Rs, there is no such thing as a "monthly assessment." Rather, assessments are made annually, with the board directing whether payments are to be billed on a quarterly or monthly basis. The CC&Rs provide:

> "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.

Exhibit A at § 1.6 (HSH000004). This language defining "Assessment, Annual" precludes any notion that there is such a thing as "six times monthly assessments" in the CC&Rs.

4. The CC&Rs also empower the Board to assess each unit, and personally obligate each Unit Owner to pay those assessments. Exhibit A at § 5.1 (HSH000016) and § 6.1 (HSH000021). The CC&Rs state as follows:

> 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 attorney's 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....

Exhibit A at § 6.1 (HSH000021 to HSH000022) (emphasis added).

5. Recording of the CC&Rs created notice and perfection of a contractual lien for assessments. Exhibit A at § 6.1 (HSH000021). The CC&Rs were recorded on July 6, 2005. ***Id.*** at HSH000001.

6. As a result, the CC&Rs create a ***contractual*** lien that is separate and distinct from the ***statutory*** lien created by NRS 116.3116. ***See*** Exhibit A at § 6.1 (HSH000021).

7. Section 7.9 of the CC&Rs establishes the priority of the assessment lien, and it is different in several respects from NRS 116.3116. Section 7.9 establishes the supremacy of the

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assessment lien, carves out an exception for a first deed of trust, and then re-affirms the supremacy of the lien for amounts "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...." Exhibit A at § 7.9 (HSH000025). Section 7.9 continues as follows:

> ***The sale or transfer of any Unit shall not affect an assessment lien.*** However, subject to the 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.***

Id. (emphasis added). In other words, by the terms of the CC&Rs, the assessment lien is not extinguished as to interest, costs, and fees, but only as to "payments which became due," which are the so-called "amounts which would have become due in the absence of acceleration" which are junior in priority to the first deed of trust. The amounts that are due for interest, fees, and costs remain as a "charge on the unit and shall be a continuing lien upon the Unit. . . ." Exhibit A at § 6.1 (HSH000021 to HSH00022).

8. As evidenced by the Affidavit of Lauren Scheer, which is attached hereto as **Exhibit "B"**, the original property manager for Horizons—APS Management—understood from the CC&Rs that interest, collection fees, and costs were not intended to be extinguished by a foreclosure of a first deed of trust.

9. Indeed, it was never a consideration that Horizons would not be able to recover interest, collection fees, and costs after a foreclosure by a first deed of trust. Exhibit B. In almost all instances, borrowers who are in default with their lenders tend to simultaneously default on their HOA obligations, almost without exception. This results in unpaid assessments and neglected properties. *Id.*

10. Most HOAs, including Horizons, lack the resources, staff, and ability to pursue collections on their own. Exhibit B. As a result, HOAs rarely perform their own collection work, and instead hire property managers or collection agencies to collect unpaid assessments. *Id.*

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11. Horizons would not be able to recover the principal obligation that is owed if it were limited in its ability to recover attendant collection fees and costs because the act of collection would be cost prohibitive. ***Id.***

12. At the time that the CC&Rs were drafted, interest, late fees, and costs of collection as part of Nevada's super-priority lien was and had been common practice in the industry for years. Exhibit B. The CC&Rs reflected that reality in the industry at the time and were applied in that manner. ***Id.***

13. Without collection agencies or property managers to pursue past due charges, HOAs would have little or no ability to enforce their rights to collect said charges from homeowners who do not pay voluntarily, thereby significantly increasing the costs to those homeowners who are not delinquent. Exhibit B.

14. Consistent with this understanding, in 2007, Horizons engaged Nevada Association Services, Inc. ("NAS") to pursue collections of unpaid assessments and penalties, and then renewed that engagement in 2009. ***See*** Consents and Authorizations attached hereto as **Exhibit "C"**. In the Consents and Authorizations, Horizons specifically represented that the CC&Rs allowed for—and NAS could charge for—collection fees and costs. The Authorization states:

> The Association permits NAS to charge collection fees and costs as provided under applicable State and Federal law, ***and the Association's governing documents.***

Id. (emphasis added). This is, of course, consistent with the application of the CC&Rs from day one, which was to allow for the recovery of collection fees and costs in the event of a foreclosure. ***Cf.*** Exhibit B.

16. As evidenced by the Declaration of Debbie Kluska, which is attached hereto as **Exhibit "D"**, an integral part of the collection process is the recording of a notice of lien with the Clark County Assessor. Such recordation provides notice to subsequent purchasers after foreclosure. ***Id.*** The types of charges HOAs retain their collection agencies to collect often include many different categories of assessments for common expenses. ***Id.*** These assessments for common expenses can include special assessments for repairs to common areas, charges for

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late payment of assessments, and fees or charges for the use, rental or operation of the common elements. ***Id.***

16. In addition, to pursue collection, HOAs and their collection agencies are forced to incur out of pocket costs, such as publication costs in advance of a foreclosure sale. Exhibit D. The out of pocket costs for publication and posting in advance of a foreclosure in Las Vegas are approximately $500.00 alone. Depending on the monthly amount due from the homeowner, the publication costs alone often exceed the SPL calculation proposed by Plaintiff in this case. ***Id.***

17. On June 17, 2009, and again on August 17, 2010, Horizons recorded notices of delinquent assessment liens. ***See*** **Exhibit "E"**. The notices identify liens created both by statute (NRS 116.3116) and by contract (the CC&Rs). ***Id.***

III.

LEGAL ARGUMENT

A. Standard of Review.

The Nevada Rules of Civil Procedure provide, in pertinent part, as follows:

> A party against whom a claim . . . is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof . . . the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

NRCP 56. Summary judgment must be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56(c). In ***Wood v. Safeway, Inc.***, 121 Nev. 724, 731, 121, P.3d 1026, 1031 (2005), the Nevada Supreme Court embraced the summary judgment standard set forth in seminal United States Supreme Court cases such as ***Anderson v. Liberty Lobby, Inc.***, 477 U.S. 242 (1986), *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and ***Matsushita Elec. Indus. Co. v. Zenith Radio Corp.***, 475 U.S. 574 (1986). Under this standard, summary judgment is designed to secure the just, speedy, and inexpensive determination of every action where appropriate. ***Celotex***, 477

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U.S. at 327.

Once the moving party demonstrates the absence of a genuine issue of material fact, the nonmoving party must show the existence of a genuine issue of material fact to avoid summary judgment. ***Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.***, 123 Nev. 598, 172 P.3d 131, 134 (2007). Nevada law no longer allows the nonmoving party to merely raise the "slightest doubt" about the facts. ***Wood***, 121 Nev. at 731, 121 P.3d at 1031. Thus, the nonmoving party cannot merely "build a case on the gossamer threads of whimsy, speculation, and conjecture." ***Id.*** at 732, 121 P.3d at 1031 (quotation omitted). The nonmoving party must present ***genuine*** issues of ***material*** fact to avoid summary judgment. ***Id.***, 121 P.3d at 1031.

B. The Language and Intent of the CC&Rs Directs that Amounts Due for Interest, Collection Fees, and Costs Survive Foreclosure

By filing an entirely separate motion for summary judgment, Plaintiff Ikon recognizes the separation between interpretation of the statutory lien created by NRS 116.3116, and the contractual lien created by the CC&Rs. Of course, a different legal analysis applies when interpreting the CC&Rs, as opposed to the statute.

Under Nevada law, this Court must interpret CC&Rs pursuant to the rules governing the interpretation of contracts. ***Diaz v. Ferne***, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004); ***see also Tompkins v. Buttrum Constr. Co. of Nev.***, 99 Nev. 142, 144, 659 P.2d 865, 866 (1983) ("The rules governing the construction of covenants imposing restrictions on the use of real property are the same as those applicable to any contract . . . ."). When the facts are not in dispute, the interpretation of CC&Rs is a question of law. ***Diaz***, 120 Nev. at 73, 84 P.3d at 666. In interpreting a contract, "[a] court should not interpret a contract so as to make meaningless its provisions." ***Musser v. Bank of Am.***, 114 Nev. 945, 949, 964 P.2d 51, 54 (1998) (quotation omitted).

Moreover, the Court must consider the intent and purpose of the CC&Rs when interpreting the CC&Rs' meaning. ***See, e.g., Battram v. Emerald Bay Community Assn.***, 204 Cal. Rptr. 107, 110 n.6 (Ct. App. 1984) ("This interpretation most satisfies the original intent of the CC&R drafters."). In fact, the Nevada Supreme Court has made clear that "the court shall

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effectuate the intent of the parties, which may be determined in light of the surrounding circumstances if not clear from the contract itself." ***Sheehan & Sheehan v. Nelson Malley and Co.***, 121 Nev. 481, 488, 117 P.3d 219, 224 (2005) (quotation omitted). As such, in interpreting CC&Rs, the intent of the drafter and the object of the deed or restriction should govern, giving the CC&Rs a just and fair interpretation. ***Zabrucky v. McAdams***, 28 Cal. Rptr. 3d 592, 595, 600 (Ct. App. 2005) (concluding "it would be in keeping with the intent of the drafters of the CC&Rs to read into Paragraph 11 a provision that the view may not be unreasonably obstructed").

In this particular case, the terms of the CC&Rs evidence an intent that interest, collection fees and costs should be recovered by Horizons upon a foreclosure, and that only the principal obligation of the SPL would be limited. Section 7.9 of the CC&Rs is very specific. The sale or transfer of any unit "shall not affect an assessment lien." By the express terms of the CC&Rs, the lien is extinguished ***only*** as to "payments which became due prior to such sale or transfer."

> ***The sale or transfer of any Unit shall not affect an assessment lien.*** However, subject to the 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.***

Exhibit A at § 7.9 (HSH000025). Non-principal amounts due, such as interest, collection fees and costs, are not "payments" and therefore remain as a "charge on the unit and shall be a continuing lien upon the Unit. . . ." Exhibit A at § 6.1 (HSH000021 to HSH00022).

In other words, applying this language, if, for example, a Unit owner were 18 months in arrears on payments for assessments, and the first deed of trust holder were to foreclose, the following would occur: (1) the lien for assessments that was incurred within the first 12 months of the default period would be extinguished; (2) the lien for assessments that were incurred within the six months prior to foreclosure would not be extinguished; and (3) the lien for interest on the surviving principal, collection fees, and costs incurred would also not be extinguished because they are not "payments which became due prior to such sale or transfer."

The CC&Rs do no expressly define "payments which became due prior to such sale or transfer." However, the CC&Rs repeatedly refer to "unpaid" assessments throughout. ***See, e.g.,***

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Exhibit A at § 7.1 (HSH000024) and § 7.7 (HSH000025). In addition Section 1.6 of the CC&Rs defines "Assessments, Annual" as the charges "which are to be ***paid*** in advance in equal periodic . . . installments...." Exhibit A at § 1.6 (HSH000004). A common sense reading of these provisions therefore directs that "payments" for the purposes of limiting the Contractual SPL means the principal obligation only. The key word here is "payments" which become due; the CC&Rs do not say "amounts" which became due. *Expressio unius est exclusio alterius.* Given this language, any lien as to interest, fees, or costs must survive a foreclosure conducted by a first deed of trust.

Such an interpretation makes practical sense. The intent and purpose of the CC&Rs was to give Horizons not only a legal ***right*** to recover some of the unpaid principal amounts as a result of a default, but the ***means*** to actually recover. ***See*** Exhibit B. It was designed precisely to avoid crafting the "bow without a string or arrows" that is referred to in ***Hudson House Condominium Ass'n, Inc. v. Brooks***, 611 A.2d 862, 865 (Conn. 1992). ***Hudson House*** goes precisely to the spirit, purpose, and intent of SPLs as a whole and the unreasonable and absurd results created by the interpretation proffered by Plaintiff. In that case, the Connecticut Supreme Court stated:

> ***Since the amount of monthly assessments are, in most instances, small, and since the statute limits the priority status to only a six month period, and since in most instances, it is going to be only the priority debt that in fact is collectible, it seems highly unlikely that the legislature would have authorized such foreclosure proceedings without including the costs of collection in the sum entitled to a priority.***
>
> ***To conclude that the legislature intended otherwise would have that body fashioning a bow without a string or arrows.***

611 A.2d at 866 (emphasis added) (citations omitted). Here, as to the CC&Rs, there is no "highly unlikely"—we know that the purpose of the CC&Rs was that the Contractual SPL would not be extinguished as to interest, collection fees, and costs, and that the so-called "six month" limitation on the Contractual SPL was as to principal only. Exhibit B.

It is also undisputed that limiting the Contractual SPL would hamstring Horizons' ability to collect unpaid assessments because no collection agency would take on the debt for collection,

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and the debt would go unpaid. Exhibits B and C. The attendant result is that unpaid defaults, SPLs that are otherwise recoverable, would go uncollected, forcing ever higher costs upon the "good" residents who actually pay their assessments and do not default. ***Id.*** This is an absurd result that would totally undermine the collection process for an HOA like Horizons, and was never intended when the CC&Rs were drafted. ***Id.***

C. Legislative Amendments to NRS 116.3116.

In this MSJ #3, Plaintiff claims that the SPL is limited to six months, not nine months, because there are separate contractual and statutory liens, with separate legal analyses to interpret these liens. In the alternative, however, to the extent that NRS 116.3116 controls analysis of the Contractual SPL, NRS 116.1206 would mandate a conformed SPL period of nine months, not six months, based upon the 2009 amendments to NRS 116.3116.

The CC&Rs were executed and recorded in 2005. Exhibit A. As mentioned previously, Section 7.9 of the Association's CC&R's provides:

> 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.

At the time the CC&Rs were executed and recorded, NRS 116.3116 mirrored the CC&Rs, to the extent that it provided for a SPL amount "which would have become due in the absence of acceleration during the 6 months immediately preceding institution of an action to enforce the lien...." ***See* Exhibit "F"**. However, in 2009, the Nevada Legislature amended NRS 116.3116 to increase the length of the SPL period from 6 months to 9 months. ***See* Exhibit "G"**. The amended statute now provides, in pertinent part, as follows:

> The lien is also prior. . .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

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> 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). As a result, to the extent the amended statute does not create a separate lien from the CC&Rs, there is an express conflict between the CC&Rs and Nevada law, which specifically directs seniority of the SPL for a nine month period, not six. NRS 116.1206 provides:

> 1. Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter:
>
> (a) **Shall be deemed to conform with those provisions by operation of law**, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.
>
> (b) Is **superseded** by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

NRS 116.1206 (emphasis added). If this Court rejects the notion that there is a separate contractual lien in the CC&Rs with a separate Contractual SPL, this Court must then follow NRS 116.1206, which requires that the CC&Rs conform to the so-called "nine times monthly assessment" period that, indeed, was argued so strenuously by Plaintiff Ikon as a "simple formula" at the outset of this case.

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IV.

CONCLUSION

Accordingly, and based on the foregoing, Horizons respectfully requests that this Court deny Plaintiff's Motion for Summary Judgment, that it grant Horizons's Countermotion for Summary Judgment, and that it enter a final judgment in this case.

DATED this 25th day of April, 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 25th day of April, 2012, I served a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT** via email and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

James R. Adams, Esq.
Assly Sayyar, Esq.
Adams Law Group, Ltd.
8010 West Sahara Avenue, Suite 260
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Email: james@adamslawnevada.com
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Susann Thompson

From: Susann Thompson
Sent: Wednesday, April 25, 2012 1:36 PM
To: 'James Adams'; 'assly@adamslawnevada.com'; 'ppremsrirut@brownlawlv.com'
Cc: Patrick Reilly
Subject: Horizons At Seven Hills/IKON Holdings - Opposition to Motion for Summary Judgment and Countermotion
Attachments: Opposition to Motion for Summary Judgment and Countermotion

Please see attached Opposition To Plaintiff's Third Motion For Summary Judgment and Countermotion for Summary Judgment. Thank you.

Susann Thompson
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HOLLAND&HART

EXHIBIT "A"

20050706-0003420

Fee: $111.00
N/C Fee: $0.00

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Requestor:
WILBUR M ROADHOUSE
Frances Deane ROF
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
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(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

TABLE OF CONTENTS

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 16 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 8.6 below.

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

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

Section 1.23 "Common Elements" shall mean all portions of the Properties, other than the Units, as provided in NRS § 116.017, and all Improvements thereon. Subject to the foregoing, and subject further to NRS § 116.2102, Common Elements may include, without limitation: Common Recreational 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, paneling, tiles, wallpaper, paint, finished flooring and other materials constituting any part of the finished interior surfaces thereof), and a Unit includes both the portions of the Condominium Building so described and the airspace so encompassed; together with the exclusive right to use, possess and occupy the Limited Common Elements serving such Unit exclusively; an undivided pro-rata fractional interest as tenants in common in the Common Elements (other than the Common Recreational Area, and any other Common Element conveyed in fee to the Association); easements of ingress and egress over and across all entry or access areas and Private Streets and of use and enjoyment of all other Common Elements in the Properties; membership and one vote in the Association (which membership and vote shall be appurtenant to the Condominium Unit); and the right to use an Assigned Parking Space as an Exclusive Use Area, pursuant and subject to the Governing Documents.

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

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

ARTICLE 2
OWNERS' PROPERTY RIGHTS; EASEMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(q) the rights of any other easement holders.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Section 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 on 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: (i) five (5) years after Declarant has ceased to offer any Units for sale in the ordinary course of business; or (ii) 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)(iii) above, if any such Specific Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Specific Assessment shall be enforceable pursuant to Articles 6 and 7; and

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

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

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

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

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

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

(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.

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

(e) By execution of its agreement with the Association, each and every Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, prompt and full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association 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 Units 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 separate savings or checking account, at a federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. **Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer. In the event that either the President or the Treasurer is absent or not reasonably available, the Secretary may co-sign in lieu of the absent officer (but not in lieu of both). In the event that either the President or the Treasurer is absent or not reasonably available, and the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Treasurer (but not in lieu of both) After the Declarant Control Period, all of the Directors must also all be Owners, and the President, Vice President, Secretary and Treasurer must also first be Directors.**

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision here n 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"), (ii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever; and (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary or Vice President may co-sign in lieu of either the President or the Treasurer, if either is not reasonably available and provided further that if the Secretary also is absent or not reasonably available, the Vice President may co-sign in lieu of the absent President or Secretary (but not in lieu of both)); and (vi) under no

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

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

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

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

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

Section 6.4 Budget; Reserve Budget.

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

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

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

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

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

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

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

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

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

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

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

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 effected 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 effected 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 can, 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 (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 8 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.

(c) 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 505 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 19.3, 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 effected, 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 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 5.8 above, and Section 17.16 below: (a) the Governing Documents shall be construed to be consistent with one another to the extent reasonably possible; (b) if there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term or provision of this Declaration fails to comply with provision of NRS Chapter 116 applicable hereto); (c) in the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail; and (d) in the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.14 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, neither Declarant nor Association, and/or none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former Association committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.15 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's sale of Units in the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.16 Compliance with Applicable Law. Notwithstanding any other provision set forth herein, it is the intent of Declarant that this Declaration and the other Governing Documents shall be enforceable pursuant to their respective terms, to the maximum extent permissible under the Act or other applicable law. Without limiting the foregoing, in the event any provision of this Declaration or other Governing Document is found to irreconcilably violate any applicable provision of the Act, or other applicable law, or any section respectively thereof, such violating provision of the relevant Governing Document shall be deemed automatically modified (or deleted, if necessary) to the minimum extent necessary to conform to the Act and/or other applicable law.

Section 17.17 Declarant's Right to Repair. Whether or not so stated in the deed, each Owner, by acquiring title to a Unit, and the Association, by acquiring title to any Common Element, shall conclusively be deemed to have agreed: (a) to promptly provide Declarant with specific written notice from time to time of any Improvement requiring correction or repair(s) for which Declarant

is or may be responsible, and (b) following delivery of such written notice, to reasonably permit Declarant (and/or Declarant's contractors and agents) to inspect the relevant improvement, and to take reasonable steps, if necessary or appropriate, to undertake and to perform corrective or repair work, and (c) to reasonably permit entry by Declarant (and Declarant's contractors and agents) upon the Unit or Common Element (as applicable) from time to time in connection therewith and/or to undertake and to perform such inspection and such work; and (d) that Declarant shall 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) ss.
COUNTY OF CLARK) 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. #1401464
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. Aug 17, 2005

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).

8. A non-exclusive easement of ingress, egress, and/or enjoyment over, across and of, all Private Streets, Common Recreational Area, and all other Common Elements, pursuant and subject to the foregoing Declaration.

[Declarant reserves the right from time to time to unilaterally record supplements to this Exhibit "A," setting forth the legal descriptions of any plat map and/or to unilaterally supplement, delete, or otherwise modify 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) 966-8388

(wmRGO.04\1.CONVCCRS.03.wpd)

EXHIBIT "B"

DECL
Kurt R. Bonds, Esq.
Nevada Bar No. 6228
Eric W. Hinckley, Esq.
Nevada Bar No. 12398
Alverson, Taylor, Mortensen
& Sanders
7401 W. Charleston Blvd.
Las Vegas, Nevada 89117
Tel: (702) 384-7000
Fax: (702) 385-7000
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ehinckley@alversontaylor.com

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Nicole E. Lovelock, Esq.
Nevada Bar No. 11187
HOLLAND & HART LLP
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nelovelock@hollandhart.com

Attorneys for Defendants
Horizons At Seven Hills Homeowners Association

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

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

DECLARATION OF LAUREN SCHEER

I, Lauren Scheer, hereby declare as follows:

1. I have personal knowledge of the matters set forth in this Declaration, except as to those matters stated upon information and belief, and I believe them to be true.

2. I am at least 21 years of age and am competent to testify to the matters stated herein.

3. I am a Vice-President of APS Management, which was the original property manager for the Horizons at Seven Hills development from 2005 to 2006.

4. From the beginning of the development, it was understood that the Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Horizons at Seven Hills (the "CC&Rs") did not provide for the extinguishment of an assessment lien as to interest, collection fees, and costs after the foreclosure of a unit by the first deed of trust.

5. At the time, it was never a consideration that Horizons would not be able to recover interest, collection fees, and costs after a foreclosure, and no one contended that such a recovery was precluded in such a way.

6. In almost all instances, borrowers who are in default with their lenders tend to simultaneously default on their homeowners association obligations, almost without exception. This results in unpaid assessments and neglected properties.

7. Most homeowners associations, including Horizons at the time, lack the resources, staff, expertise, and ability to pursue collections on their own. As a result, homeowners associations rarely perform their own collection work, and instead hire property managers or collection agencies to collect unpaid assessments.

8. Horizons would not have been able to recover the principal obligation owed by a defaulting unit owner if it had been limited in its ability to recover attendant collection fees and costs, because the act of collection would be cost prohibitive.

9. At the time that the CC&Rs were drafted, interest, late fees, and costs of collection as part of Nevada's super-priority lien was and had been common practice in the industry for years. The CC&Rs reflected that reality in the industry at the time and were applied in that manner.

10. Without collection agencies or property managers to pursue past due charges, homeowners associations would have little or no ability to enforce their rights to collect said charges from homeowners who do not pay voluntarily, thereby significantly increasing the costs

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to those homeowners who are not delinquent.

I declare under penalty of perjury under the laws of the United States and the State of Nevada that the foregoing is true and correct.

DATED this 25 day of April, 2012.

LAUREN SCHEER

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

EXHIBIT "C"

Nevada Association Services, Inc

6224 W. Desert Inn Rd., Suite A
Las Vegas, Nevada 89146
Tel: 702.804.8885 / 775.322.8005
Fax: 702.804.8887 / 775.322.8009
www.nas-inc.com

Consent and Authorization

Horizons at Seven Hills (the "Association") hereby appoints Nevada Association Services, Inc. ("NAS"), as the Association's agent for the purpose of collecting delinquent assessments, and/or fines, from Association homeowners. NAS is given full power and authority to act on behalf of and in the name of the Association to do all things in which NAS deems appropriate to effect the collection of the delinquency. This process may include, but is not limited to, sending demand letters, recording of a Delinquent Assessment Lien and if necessary proceeding with a non-judicial foreclosure. NAS is hereby granted the authority to speak directly to the delinquent homeowner(s) on behalf of the Association. The Association agrees that it will not accept any payments directly from the delinquent homeowner(s) and direct that all payments are to be made to NAS. Should the Association or its agent (except for NAS) accept direct payment, NAS may, at its option and sole discretion, take such action as NAS deems prudent including, but not limited to, refusal to serve the delinquency of the homeowner whose payment was accepted by the Association or canceling the file with fees and costs the responsibility of the Association.

NAS is being retained on an as-needed basis and NAS makes no representations or warranties regarding the successful result of its collection efforts. NAS has the option of declining to service the delinquency of any file presented by the Association. NAS may, in its own discretion, terminate the servicing of any Association collection file at any time.

The Association represents to NAS (and NAS is relying on such representation) that in referring any matter to NAS for collection of delinquent dues and assessments, the Association, in its assessment and delinquency determination, has complied with all applicable Federal and State rules and regulations, including, but not limited to applicable provisions of the Nevada Revised Statutes, Covenants Conditions and Restrictions (CC&R's), other Association governing documents and the Federal and State Fair Debt Collection Practices Act, if applicable. The Association also permits NAS to charge collection fees and costs as provided under applicable State and Federal law, and the Association's governing documents.

If NAS, its agents, officers or employees are named party to a lawsuit or other legal proceeding involving the Association and/or a homeowner, the Association agrees to indemnify and hold harmless NAS, its agents, officers or employees from any and all claims, losses, judgment, fees, charges and costs, including attorney's fees, incurred by NAS, its agents, officers or employees with respect to such lawsuit or legal proceeding (including defending a lawsuit). In addition to the indemnification described herein, if NAS, its agents, officers or employees, are named as a party to any lawsuit, the Association, at its own expense, will retain the services of legal counsel, satisfactory to NAS, to represent NAS in such proceeding. The fees and costs for such legal representation will be paid directly by the Association to legal counsel, or as otherwise agreed upon by the Association and NAS. This obligation of indemnification shall survive the termination of this Consent and Acknowledgment without time limitation.

The person signing below is a member of the Board of Directors or lawful agent of the Association with full power to bind the Association to the terms hereof.

Robert Waddell — Print Name

Sec/Tres — Title

10-8-07 — Date

Robert Waddell — Authorized Signature

RECEIVED
OCT 09 2007
NEVADA ASSOC SRV

January 2006(f)

EXHIBIT "D"

Patrick J. Reilly, Esq.
Nevada Bar No. 6103
Nicole E. Lovelock, Esq.
Nevada Bar No. 11187
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
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Tel: (702) 669-4600
Fax: (702) 669-4650
Email: preilly@hollandhart.com
nelovelock@hollandhart.com

Attorneys for Plaintiffs Nevada Association Services, Inc., RMI Management, LLC, and Angius & Terry Collections, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

PLAINTIFF 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

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

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Las Vegas, Nevada 89134
Phone: (702) 669-4600 • Fax: (702) 669-4650

I, DEBBIE KLUSKA, do hereby declare:

1. I am over eighteen years old and make this declaration on my own behalf and in support of Horizons At Seven Hills Homeowners Association's Motion for Clarification or, In the Alternative, For Reconsideration of order Granting Summary Judgment On Claim of Declaratory Relief.

2. I am the Office Supervisor of Nevada Association Services ("NAS"). If called upon as a witness, I could and would competently testify as to all of the matters stated herein.

3. NAS is a collection agency that works on behalf of several homeowners' associations ("HOAs") in the State of Nevada, including Defendant At Seven Hills

Homeowners Association ("Horizons"). Defendant Horizons, along with most other HOAs in Nevada, lack the resources, staff, and ability to pursue collections on its own.

4. Among other things, NAS pursues past due charges due to HOAs from delinquent homeowners, a task of particular importance in the foreclosure crisis currently overwhelming the Nevada housing market.

5. Without collection agencies to pursue these past due charges, HOAs would have little or no ability to enforce their rights to collect said charges from homeowners who do not pay voluntarily, thereby significantly increasing the costs to those homeowners who are not delinquent.

6. Collecting interest, late fees, and costs of collection as part of Nevada's super priority lien ("SPL") is and has been common practice in the industry for years.

7. Almost without exception, borrowers who are in default with their lenders simultaneously default on their HOA obligations. This results in unpaid assessments and neglected properties. By giving priority to the HOA ahead of a lender's deed of trust, HOAs are able to pay bills, abandoned properties do not become blighted, and neighboring "good" homeowners who pay their bills are not subject to increased HOA fees.

8. While Horizons possesses a statutory lien pursuant to NRS Chapter 116 on such assessments, it must take active steps to collect if it has any chance of recovering amounts that are past due. As a result, without collection agencies to pursue these past due charges, HOAs would have little or no ability to enforce their rights to collect said charges from homeowners who do not pay voluntarily, thereby significantly increasing the costs to those homeowners who are not delinquent.

9. As a result, Horizons has engaged NAS to pursue collections of unpaid assessments and penalties. Collecting interest, late fees, and costs of collection as part of Nevada's super-priority lien is and has been common practice in the industry for years. An integral part of the collection process is the recording of a notice of lien with the Clark County Assessor. Such recordation provides notice of the super-priority lien to subsequent purchasers after foreclosure.

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10. The types of charges HOAs retain their collection agencies to collect often include many different categories of assessments for common expenses. These assessments for common expenses can include special assessments for repairs to common areas, charges for late payment of assessments, and fees or charges for the use, rental or operation of the common elements.

11. In addition, to pursue collection, HOAs and their collection agencies are forced to incur out of pocket costs, such as publication costs in advance of a foreclosure sale. The out of pocket costs for publication and posting in advance of a foreclosure in Las Vegas are approximately $500.00. Depending on the monthly amount due from the homeowner, the publication costs alone often exceed the "nine times" super-priority lien calculation proposed by Plaintiff in this case. As a result, using the calculation proposed by the Plaintiff in this case, a HOA would never bother to pursue collection through a collection agency, as the out-of pocket costs alone would exceed the amount recoverable.

12. Given the foregoing, if HOAs cannot recover reasonable collection costs, they will be effectively unable to pursue and collect from property owners who are in violation of the CC&Rs when there is a lender foreclosure.

13. Instead, the only alternative for a HOA would be to file a judicial foreclosure action in accordance with NRS 116.3116(7), which specifically allows for "costs and reasonable attorney's fees" as part of the recovery. However, this would necessarily require (1) the hiring of an attorney; (2) the filing of a civil action; and (3) a race to the courthouse between the HOA and the trust deed holder for the borrower which is in default. The obvious result would be a flood of civil lawsuits and a flood of foreclosures—results that are plainly contrary to the public purpose of the statute itself—that might otherwise be avoided.

14. Horizons' concerns are particularly important and significantly impact the role of HOAs during these difficult economic times. With more foreclosures in Nevada than in any other state, HOAs have stepped up to maintain homes that have fallen into disrepair. Dead or overgrown landscaping is a common problem, as are unattended pools rife with algae. Poorly kept residences create neighborhood blight that depresses surrounding property values – values

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that have already been devastated by the worst housing market downturn in Nevada history. If HOAs are unable to recover the costs of collection, in addition to the delinquent assessments themselves, then HOAs have no ability to collect the delinquent assessments, and their task of maintaining these communities becomes much more daunting.

I declare under the penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 6th day of February, 2012, in Las Vegas, Nevada.

By: _____
DEBBIE KLUSKA

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Las Vegas, Nevada 89134
Phone: (702) 669-4600 • Fax: (702) 669-4650

EXHIBIT "E"

Receipt/Conformed Copy

Requestor:
NORTH AMERICAN TITLE COMPANY
06/17/2009 10:22:54 T20090211078
Book/Instr 20090617-0001827
Lien Page Count: 1
Fees: $14.00 N/C Fee: $0.00

Debbie Conway
Clark County Recorder

APN # 177-35-610-137
N47664

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Hawley McIntosh

Mailing address(es):
11 Creeping Bend Court, Henderson, NV 89052

*Total amount due through today's date is $2,896.00.
This amount includes late fees, collection fees and interest in the amount of $911.00.
* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: June 15, 2009

Autumn Fesel

By: Autumn Fesel, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N47664
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

Inst #: 201008170001986
Fees: $14.00
N/C Fee: $0.00
08/17/2010 11:47:28 AM
Receipt #: 467630
Requestor:
CLARK RECORDING SERVICE
Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 177-35-610-137
N47664

40

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on July 06, 2005, as instrument number 0003420 Book 20050706, of the official records of Clark County, Nevada, the Horizons at Seven Hills has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 950 Seven Hills Drive #1411 Henderson, NV 89052 and more particularly legally described as: Horizons At Seven Hills Ranch, Plat Book 125, Page 58, Unit 1411, Bldg 14 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Ikon Holdings LLC

Mailing address(es):
209 S Eastern Ste B123, Henderson, NV 890112

*Total amount due through today's date is $5,850.14.
This amount includes late fees, collection fees and interest in the amount of $2,682.64.
* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.
Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: August 16, 2010

Winter Henrie
By: Winter Henrie, of Nevada Association Services, Inc., as agent for Horizons at Seven Hills.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N47664
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-554

EXHIBIT "F"

Sec. 163. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any assessment levied against that unit or fines imposed against the unit's owner from the time the assessment or fine becomes due. Unless the declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j), (k) and (l) of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. 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.

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.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

8. The association upon written request shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days ***after receipt of the request and is binding on the association, the executive board and every unit's owner.***

after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section or by NRS 116.31162 to 116.31168, inclusive.

10. In a cooperative where the owner's interest in a unit is personal property (NRS 116.1105), the association's lien may be foreclosed in like manner as a security interest under ~~[NRS 104.9101 to 104.9507, inclusive.]~~ ***sections 2 to 134, inclusive, of this act.***

EXHIBIT "G"

⇓2009 Statutes of Nevada, Page 1207 (Chapter 286, AB 204)⇓

Sec. 2. NRS 116.3116 is hereby amended to read as follows:

116.3116 1. The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, 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. Unless the declaration otherwise provides, 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. 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.

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]~~ 9 months immediately preceding institution of an action to enforce the lien ~~]~~, ***unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than 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.

3. Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

4. Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

5. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due.

6. This section does not prohibit actions to recover sums for which subsection 1 creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

7. A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

8. The association, upon written request, shall furnish to a unit's owner a statement setting forth the amount of unpaid assessments against the unit. If the interest of the unit's owner is real estate or if a lien for the unpaid assessments may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board and every unit's owner.

9. In a cooperative, upon nonpayment of an assessment on a unit, the unit's owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and:

(a) In a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, the association's lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

(b) In a cooperative where the owner's interest in a unit is personal property under NRS 116.1105, the association's lien:

(1) May be foreclosed as a security interest under NRS 104.9101 to 104.9709, inclusive; or

(2) If the declaration so provides, may be foreclosed under NRS 116.31162 to 116.31168, inclusive.

A-11-647850-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	COURT MINUTES	May 07, 2012

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

May 07, 2012 9:00 AM All Pending Motions

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

COURT CLERK: Linda Denman

RECORDER: Cynthia Georgilas

PARTIES PRESENT: James Adams, Esq., for Plaintiff

JOURNAL ENTRIES

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PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF . . . OPPOSITION TO PLAINTIFF'S THIRD MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Mr. Adams advised the parties had a stipulation and order to continue this matter. COURT SO ORDERED.

Order SIGNED IN OPEN COURT.

CONTINUED TO 5/24/2012 AT 9:00AM

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05/18/2012 05:19:04 PM

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-B
Dept: No. 13

REPLY TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF & OPPOSITION TO COUNTER MOTION FOR 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 REPLY TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF & OPPOSITION TO COUNTER MOTION OR SUMMARY JUDGMENT. This Reply and Opposition

is made based upon the following Points and Authorities and all other pleadings and papers on file herein.

Dated this 18th day of May, 2012.

ADAMS LAW GROUP, LTD.

/s/ James R. Adams

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Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

In its Motion for Summary Judgment, Plaintiff has requested the following declaratory judgments:

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).

A. Defendant Does Not Dispute that Defendant Overcharged Plaintiff $1,974.52 in Violation of NRS 116.3116(2) for the Time Period Prior to Plaintiff's Acquisition of the Property at Foreclosure

In its Opposition and Counter Motion, Defendant does not even address Plaintiff's first request for declaratory relief. Accordingly, it is deemed admitted as it is unopposed. Based upon this Court's Order of December 12, 2011, wherein the Court ruled that NRS 116.3116(2) limits 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, Plaintiff merely seeks application of this ruling to declare that Defendant, in contravention of Nevada Revised Statutes §116.3116(2), has unlawfully demanded from Plaintiff $1,974.52 in excess of the Super Priority Lien to which it has no legal entitlement. Logic dictates as follows:

- There is no dispute from the demands issued by Defendant that Defendant demanded from Plaintiff $3,684.52 for the time period prior to Plaintiff taking title at foreclosure.
- There is also no dispute that Defendant's monthly assessments were $190.00.
- There is also no dispute that 9 times $190.00 equals $1,710.00.
- There is no dispute that $3684.52 is $1,974.52 more than $1,710.00.

Thus, there is no dispute that Plaintiff was overcharged by $1,974.52 pursuant to NRS 116.3116(2).

This Court is, therefore, requested to declare the rights of the parties that under NRS 116.3116(2), Plaintiff only owes Defendant $1,710.00 for the time period prior to Plaintiff's acquisition of title at the foreclosure auction and the Defendant overcharged Plaintiff in the amount of $1,972.52.

B. Defendant Raises New, and Disputed Issues of Material Fact Affecting Summary Judgment of Both Parties on the Issue of the CC&RS

Defendant raises a bizarre and heretofore un-imagined legal argument, i.e., that there are two super priority liens against every homeowners' property, one *statutory* and one *contractual.* Defendant's argument is akin to arguing that since a homeowners' trust deed permits foreclosure of the lender's note under contract, and also NRS Chapter 107 permits foreclosure of the lender's note, there are two separate debts owing, and not one. The incredulity of this argument requires little response other than to say there is but one super priority lien, and two references to it. The operation of the super priority lien is referenced in NRS 116.3116, but the HOA's desired expressed limits are contained in Defendant's CC&RS . The interplay between NRS 116.3116 and the CC&R provisions is analogous to NRS Chapter 86 (Limited Liability Companies) and Operating Agreements adopted by Nevada LLCs. Whereas Chapter 86 defines the outer limits of that law at which an LLC governance may occur, an Operating Agreement adopted by an LLC may differ so long as it does not violate Chapter 86. For example, to amend an Operating Agreement pursuant to NRS 86.286, unanimous consent is required. However, the Operating Agreement may lessen amendment requirements from unanimous should the Members of the LLC so desire.

Similarly, NRS 116.3116 authorizes an HOA to charge up to the 9 month statutory cap. However, an HOA may reduce or alter delinquency charges as to mortgagee successors, should it so choose by and through its CC&RS. Indeed, that is why NRS 116.3116 is referenced in the CC&RS's super priority lien provision (see Section 7.9 of the CC&RS).

> 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 © liens for real estate taxes and other governmental charges, and is otherwise subject to **NRS § 116.3116.**... 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.

The above language, incidentally, in large part is a mirror image of the language contained in the pre-2009 amended version of NRS 116.3116. Between the passage of the UCIOA in 1991 and the amended NRS 116.3116 in 2009, most of the CC&RS in Nevada made similar reference to the statutory super priority lien. The argument that there are two separate liens finds absolutely no support in statute, legislative history, or in any published or unpublished case. It is a mere fiction of the vibrant and creative legal mind of opposing counsel.

Unfortunately, the reason why Defendant has raised material issues of fact (despite the utterly unambiguous language in Section 7.8 and 7.9 of the CC&RS limiting amounts owed by transferees at foreclosure to 6 months of assessments) is because Defendant has included affidavits and arguments in its Opposition dealing with the "intent" of various CC&R provisions. Defendant claims that despite the unambiguous language of Section 7.8 and 7.9 that cap amounts owed by foreclosure transferees to 6 months of assessments, that collection fees and other costs were never "intended to be extinguished by a foreclosure auction of a first deed of trust." While there is no conceivable way Affiant Lauren Scheer (the "original property manager for Horizons") could possibly know what the "intent" of any particular CC&R provision is, Ms.Scheer has proclaimed, "From the beginning of the development, it was understood that the Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Horizons at Seven Hills (the "CC&Rs") did not provide for the extinguishment of an assessment lien as to interest, collection fees, and costs after the foreclosure of a unit by the first deed of trust." (See Affidavit of Lauren Scheer attached to Defendant's Opposition). Of course, the Affidavit lacks any foundation whatsoever. How could Ms. Scheer, a property manager, possibly know what the intent of the drafters of the CC&RS was?

If any particular relevant CC&R provision is ambiguous, the issue of the intent of the drafters would be a material fact in dispute. Thus, the Court must decide if any of the provisions of the Section

7.8 and 7.9 of the CC&RS are ambiguous. If so, discovery must be conducted to determine the true intent of the provisions (no discovery has yet been conducted). If Sections 7.8 and 7.9 are not ambiguous, the Court can simply issue its declaratory judgment. Section 7.8 plainly states:

> 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.

Thus, if the Court finds Sections 7.8 and 7.9 of the CC&RS ambiguous (i.e., having more than one meaning), Plaintiff requests a full scope of discovery to be conducted to determine whether it was the drafter's "intent" to contractually limit a foreclosure transferee's liability for fees which accrued prior to taking title at foreclosure auction to an amount equaling 6 months of assessments.

(1) **There is No Ambiguity in The Plain Language Interpretation Advanced by Plaintiff**

Reliance upon *Diaz v. Ferne* is misplaced to invoke the Court's CC&R review in this matter. In *Diaz*, on appeal, the Nevada Supreme Court overruled the district court which incorrectly found that the term "mobile home" includes "manufactured homes" and that manufactured homes cannot be placed on the lots designated for single-family dwellings. Such a question is not present here, as there is no difference or ambiguity in meaning over any word or provision of the CC&RS, which is why summary judgment in favor of Plaintiff is warranted. Instead, Defendant only wishes to create confusion because the plain reading of the CC&RS do not sustain the conduct and overcharging performed by the Defendant HOA.

On the other hand, Defendant advances its own self-created ambiguity to defeat its very own Counter Motion. To try to dissuade this Court from the plain language of the CC&RS, Defendant transcends the four corners of the CC&RS to explore the "intent of a property manager" in the CC&Rs. What Defendant fails to present before introducing extrinsic evidence is the existence of an actual ambiguity in the CC&RS. Fundamentally, before the Court can examine circumstances surrounding a contract, it must first identify an ambiguity. Without doing so, Defendant proceeds to introduce an affidavit of a Property Manager to try to proffer what the intent of the drafters entail. The property manager did not draft the CC&Rs, among other foundational flaws, and her testimony does not alleviate the first prudential hurdle of finding of ambiguity in the CC&RS.

(2) **There is No Conflict of Interpretation within Horizon at Seven Hills' CC&RS**

Similarly, Defendant's inclusion of *Battram v. Emerald Bay CC&R Committee* does not guide this Court's evaluation of Horizon at Seven Hills' CC&RS. 157 Cal. App.3d 1184, 204 Cal.Rptr. 107 (1984). In *Battram*, new members of the Emerald Bay Association sought to change their method of assessing association fees, from past practice of using county records versus the newly desired method of calculating fair market value. The new committee sought to change the assessment procedures by an amendment of 75% of the owners pursuant to the CC&RS provision permitting cancellation or annulment of any CC&R with 75% of the owners. In conflict within the same CC&Rs was an article requiring unanimous consent to change the basis of the homeowner fee assessment. Emerald Bay's CC&Rs contained provisions that were mutually exclusive (i.e., not able to co-exist). Accordingly the court willingly recognized the ambiguity and was called upon to resolve the conflict. There is simply no conflict in this case.

C. The CC&RS do not Violate NRS 116.3116(2). A Homeowners Association is Free to Contract with Homeowners to Require a Lesser Amount for the Super Priority Lien

Defendant's final argument is this: "... to the extent the amended statute does not create a separate lien from the CC&Rs, there is an express conflict between the CC&Rs and Nevada law, which specifically directs seniority of the SPL for a nine month period, not six." Opposition, 14:3-5. In support of its proposition, Defendant cites NRS 116.1206 which states:

> Any provision contained in a declaration, bylaw or other governing document of a common-interest community **that violates the**

provisions of this chapter:

> (a) Shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.
>
> (b) Is superseded by the provisions of this chapter, regardless of whether the provision contained in the declaration, bylaw or other governing document became effective before the enactment of the provision of this chapter that is being violated.

The Court should note that the term "violates" is used, not the term "conflicts" as argued by Defendant. In fact, this is a significant point as NRS 116.1206 was amended in 2003 to add the word "violates" and delete the word "conform." The post-2003 version of NRS 116.1206 amended to read as follows (bold italics are additions, strikeouts are deletions):

> 116.1206 1. ***Any provision contained in a declaration***, bylaw or other governing document of a common-interest community [~~created before January 1, 1992, that does not conform to~~] ***that violates*** the provisions of this chapter shall be deemed to conform with those provisions by operation of law, and any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

Many CC&RS provisions may be deemed not to "conform" to NRS 116, but only very few could be deemed to "violate" NRS 116.

Certainly, a homeowners' association could contract with a homeowner (through its CC&RS) to require a lesser amount (or no amount at all) for its super priority lien. Such a provision would not "violate" NRS 116.3116's maximum cap of 9 times the association's monthly assessments. However, a homeowners' association would not have the right to contract with a homeowner for a higher amount for the super priority lien (for example, 12 months of assessments instead of 9 months of assessments). Such an action would "violate" NRS 116.3116's cap of 9 times the monthly assessments. A more illustrative example is as follows: one does not "violate" the speed limit of 55 mph by traveling at a rate of 45 mph. The driver is free to travel at a lesser speed and does violate the maximum limit by doing so. However, a driver who travels at 65 mph does "violate" the maximum speed limit. Pursuant to statute, the driver is not free to do so. Likewise, a homeowners' association which requires a lesser amount (or no amount at all) for its super priority lien, does not "violate" NRS 116.3116's cap of 9 times the monthly assessments.

III.

CONCLUSION

For the reasons cited herein, Plaintiff request an order from the Court granting Plaintiff's Motion for Summary Judgment on Declaratory Relief and denying Defendant's Counter Motion.

Dated this 18th day of May, 2012.

ADAMS LAW GROUP, LTD.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Adams Law Group, Ltd., and that on this date, I served the following **REPLY TO OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT ON ISSUE OF DECLARATORY RELIEF & OPPOSITION TO COUNTER MOTION FOR SUMMARY JUDGMENT** upon all parties to this action by:

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 18th day of May, 2012.

An employee of Adams Law Group, Ltd.

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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,

Defendants.

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

REPLY MEMORANDUM IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT

Hearing Date: June 11, 2012

Hearing Time: 9:00 a.m.

Defendant Horizons at Seven Hills Homeowners Association ("Horizons") hereby files this Reply in support of its counter-motion for summary judgment on all remaining claims in this case.

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This Reply is made pursuant to NRCP 56 and EDCR 2.20 and is based on the attached Memorandum of Points and Authorities and supporting documentation, the papers and pleadings on file in this action.

DATED this 4th day of June, 2012.

HOLLAND & HART LLP

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF REPLY TO PLAINTIFF'S OPPOSITION TO COUNTERMOTION FOR SUMMARY JUDGMENT

I.

INTRODUCTION

It is remarkable that Plaintiff Ikon Holdings, Inc. ("Ikon"), states that "there is but one super priority lien" when it is Ikon that has urged this Court to make a judicial declaration that two separate liens exist, one statutory and one contractual. *See* Opposition 4:6-7. Ikon already asked this Court to declare that a *statutory* super-priority lien is limited to nine months pursuant to NRS 116.3116, which this Court ruled upon in the Order entered on January 20, 2012. Now, Ikon is requesting that this Court find that the *contractual* super-priority lien created by the Declaration of Covenants, Conditions & Restrictions and Reservation of Easements for Horizons at Seven Hills ("CC&Rs") is limited to six months. Therefore, it is without question that Ikon petitioned this Court to recognize the difference between a statutory lien created by NRS 116.3116 and a contractual lien created by the CC&Rs. Yet, remarkably, now, Ikon is retreating from this proposition because the legal analysis to determine the scope of the contractual super-priority lien requires a contract-based analysis that will result in the inclusion of interest, collection fees, and costs in the super-priority lien.

Moreover, if Ikon is now arguing that there is but one super-priority lien and the CC&Rs govern as long as it does not go beyond the outer limits of NRS 116.3116, then this Court could not have issued the declaratory ruling on whether interest, fees, and costs are included in NRS 116.3116 because this statute ***is not*** at issue in this litigation and the only justiciable controversy between the parties revolves around whether interest, fees and costs may be collected under the CC&Rs.

II.

LEGAL ARGUMENT

A. SUMMARY JUDGMENT ON REMAINING DECLARATORY RELIEF CLAIMS

In this litigation, Ikon has sought declaratory relief on three issues: (1) the scope of a statutory super-priority lien created by NRS 116.3116 (the "Statutory SPL") against the underlying real property; (2) the scope of a contractual super-priority lien created by the CC&Rs (the "Contractual SPL"); and (3) whether Defendant Horizons "violated" NRS 116.3116 and the CC&Rs by demanding an amount different from the amount Plaintiff Ikon believed was owed. ***See*** Complaint. Plaintiff acknowledges the first claim has been resolved by this Court and asserts that the second and third declaratory issue must still be determined. ***See*** Opposition. Requesting this type of relief recognizes that there is a separation and a distinction between the ***statutory lien*** created by NRS 116.3116 and the ***contractual lien*** created by the CC&Rs.[1]

Moreover, with regard to the second claim for declaratory relief, Plaintiff assumes that the only issue to be decided is whether the Contractual SPL is six months or nine months long. Yet, this wholly fails to consider whether the Contractual SPL includes interest, collection fees and costs, which must be analyzed. While parts of Sections 7.8 and 7.9 of the CC&Rs may be similar in some respects to the limiting language of the Statutory SPL, this Court *must* interpret the CC&Rs pursuant to the rules governing the interpretation of contracts, which is different from the NRS Chapter 116 analysis. ***Diaz v. Ferne***, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004) ("The rules of construction governing the interpretation of contracts apply to the

[1] Plaintiff does not deny that it had constructive notice of the CC&Rs and lien provisions contained in the recorded CC&Rs. Furthermore, Plaintiff does not dispute that the CC&Rs survived foreclosure because the CC&Rs were recorded prior to the deed of trust that was foreclosed upon. ***As such, Plaintiff is bound by the provisions of the CC&Rs including the lien provisions.***

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interpretation of restrictive covenants for real property."); ***see also Tompkins v. Buttrum Constr. Co.***, 99 Nev. 142, 144, 659 P.2d 865, 866 (1983).

1. Pursuant to the CC&Rs, the Contractual SPL survives foreclosure even as to interest, collection fees, and costs.

The Nevada Supreme Court states "that '[r]estrictive covenants ***are strictly construed***' and enforceable, ***if the original purpose for the covenant continues to result in a substantial benefit to the restricted subdivision***." *See Diaz*, 120 Nev. at 73, 84 P.3d at 665-66. (2004) citing ***Dickstein v. Williams***, 93 Nev. 605, 608, 571 P.2d 1169, 1171 (1977). Here, there is no question that including interest, fees, and costs in the Contractual SPL "resulis in a substantial benefit" to the subdivision and, therefore, the Contractual SPL should be enforced by this Court.

It is without dispute that the CC&Rs were designed specifically to fund the common elements through assessments and to give Horizons the mechanism and ability to fund and maintain those improvements with obligations that ran with the land. *See* Exhibit A to Motion, CC&Rs. The CC&Rs specifically state that:

> **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.

Id. (emphasis added). To further this end, the CC&Rs empowered the board to assess each unit, and personally obligate each unit owner to pay those assessments. ***Id.*** at § 5.1. The CC&Rs state as follows:

> 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

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> 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 attorney's 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....

Id. at § 6.1 (emphasis added).

While attempting to achieve the purpose of the CC&Rs, which is ***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,***" Section 7.9 of the CC&Rs creates the Contractual SPL. Specifically, Section 7.9 creates the supremacy of the assessment lien for amounts "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... ." *Id.* at § 7.9. Extinguishment of the lien, however, is another matter. Section 7.9 states:

> ***The sale or transfer of any Unit shall not affect an assessment lien.*** However, subject to the 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***.

Id. (emphasis added). By the terms of the CC&Rs, the assessment lien is not extinguished as to interest, costs, and fees, but only as to "payments which became due," which are the so-called "amounts which would have become due in the absence of acceleration" which are junior in priority to the first deed of trust. The amounts that are due for interest, fees, and costs remain as a "charge on the unit and shall be a continuing lien upon the Unit... ." *Id.* at § 6.1.

It is without question that the Supreme Court standard that a covenant is enforceable if the original purpose for the covenant continues to result in a substantial benefit to the restricted subdivision is met here. ***See Diaz***, 120 Nev. at 73, 84 P.3d at 665-66. (2004). As such, the CC&R's should be read for the stated purpose, which is ***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***

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the Properties. *See* Exhibit A to Motion. This requires that the Court read the CC&Rs as written and intended and find that the Contractual SPL includes interest, fees and costs.

B. DECLARATORY RELIEF AS TO NRS 116.3116 WAS INAPPROPRIATE

To oppose summary judgment in favor of Horizons, Ikon argued that there is but one super-priority lien and the CC&Rs govern because it does not go beyond the outer limits of NRS 116.3116. Essentially, under this argument, the amount owed under the CC&Rs is the only real dispute because the CC&Rs limited the lien available pursuant to NRS 116.3116. However, if this were the case, then there is no dispute as to NRS 116.3116 and declaratory relief as to this statute was not available to Ikon.

The Court may grant declaratory relief only where: (1) there exists a justiciable controversy (a controversy in which a claim of right is asserted against one who has an interest in contesting it); (2) the controversy is between persons whose interests are adverse; (3) the party pursuing declaratory relief has a legally protectable interest in the controversy; and (4) the issue involved in the controversy is ripe for judicial determination. ***See Kress v. Corey***, 65 Nev. 1, 26, 189 P.2d 352, 364 (1948); ***see also Cox v. Glenbrook***, 78 Nev. 254 (1962) (discussing definition of justiciable controversy); ***Wells v. Bank of Nev.***, 90 Nev. 192 (1974) (discussing the definition of legally protectable interest); and ***Phelps v. Second Judicial Dist. Ct.***, 106 Nev. 917 (1990)(discussing the meaning of "any right, status or legal relation"). In ***Cox v. Glenbrook Co.***, the definition of "justiciable controversy" was narrowed by the Nevada Supreme Court stating that "[f]actual circumstances which may arise in the future cannot be fairly determined now." 78 Nev. at 266.

Very simply, under Ikon's theory, NRS 116.3116 is not at issue in this litigation and the only justiciable controversy between the parties revolves around the amount that can be collected under the CC&Rs.

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III.

CONCLUSION

Accordingly, and based on the foregoing, Horizons respectfully requests that this Court grant Horizons' Countermotion for Summary Judgment, and that it enter a final judgment in this case.

DATED this 4th day of June, 2012.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 4th day of June, 2012, I served a true and correct copy of the foregoing **REPLY MEMORANDUM IN SUPPORT OF COUNTERMOTION FOR SUMMARY JUDGMENT** via electronic mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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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,

Defendants.

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

MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

Hearing Date:

Hearing Time:

Defendant Horizons At Seven Hills Homeowners Association ("Horizons"), by and through their attorneys of record Holland & Hart LLP, hereby submits its Motion for Reconsideration of the Order Granting Summary Judgment on Claim of Declaratory Relief

entered January 20, 2012 ("Order").

This Motion 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 June, 2012.

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Attorneys for Horizons At Seven Hills Homeowners Association

NOTICE OF MOTION

TO: All Interested Parties and/or their Counsel of Record

PLEASE TAKE NOTICE the undersigned will bring the foregoing Motion on for hearing before the above-entitled court on the 9 day of ~~June~~ July, 2012, at the hour of 9:00 a.m./~~p.m.~~ or as soon thereafter as may be heard.

DATED this 8th day of June 2012.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING SUMMARY JUDGMENT ON CLAIM OF DECLARATORY RELIEF

I.

INTRODUCTION

Just weeks ago, when discussing the authority to interpret the super-priority lien statutes, the Nevada Supreme Court held that the Commission for Common-Interest Communities and Condominium Hotels ("CCICCH") "is ***solely*** responsible for determining the type and amount of fees that may be collected by associations."[1] ***See State of Nevada, Department of Business and Industry, Financial Institutions Division v. Nevada Associated Services, Inc. et al.***, 2012 WL 1923974, *3 (May 23, 2012) (emphasis added), which is attached hereto as **Exhibit "A"**. The Court stated that "the responsibility of determining which fees may be charged, the maximum amount of such fees, and ***whether they maintain a priority***, rests with the Real Estate Division and the CCICCH." ***Id.*** (emphasis added).

Based upon the recent Supreme Court holding, this Court must reconsider the Order that held a numerical maximum exists by limiting the super-priority lien to "an amount equaling 9 times the homeowners' association's regular monthly assessments." Attached hereto as **Exhibit "B"** is a true and correct copy of this Court's Order.[2]

Horizons notes that the CCICCH has explicitly rejected the notion that there is a numerical maximum for the super-priority lien. This is the exact legal argument that has been made by Plaintiff—and adopted by this Court—in this case. In fact, on December 8, 2010, the CCICCH issued an advisory opinion ("Advisory Opinion") that addresses the ***same*** issue addressed in the Order and specifically concluded that all reasonable costs of collecting are part of the super-priority lien. Attached hereto as **Exhibit "C"** is a true and correct copy of the Advisory Opinion.

Because the CCICCH's Advisory Opinion explicitly rejected the position this Court

[1] There are currently two motions pending before the Nevada Supreme Court to have the Order of Affirmance published. The State of Nevada does not oppose publication of the Order of Affirmance.

[2] Horizons is not seeking reconsideration on the issue as to whether filing a complaint with the court to enforce an HOA's statutory lien is a condition precedent to the existence of an HOA's super-priority lien.

adopted in the Order and the Supreme Court held that the CCICCH is responsible for determining the fees contained in the super-priority lien, this Court should reconsider its Order to fully evaluate the weight of the Advisory Opinion and the reasoning of the CCICCH to then find that all reasonable costs of collecting are part of the super-priority lien, and that it is not simply limited to a "six times monthly assessments" or "nine times monthly assessments" limitation.

II.

STANDARD OF REVIEW AND SUPREME COURT ORDER

District court judges are allowed unlimited discretion to clarify prior orders before to the entry of final judgment. *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). In addition, Rule 2.24 of the Eighth Judicial District Court Rules ("EDCR") provides for the reconsideration of a ruling by the Court after service of the written notice of the order or judgment. A trial court judge is granted great discretion on reconsideration of its prior ruling. ***See, e.g., 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."). It is without question that reconsideration is appropriate when there is an intervening change in law. ***See, e.g., School District 1J, Multnomah County v. ACandS, Inc.***, 5 F.3d 1255, 1263 (9th Cir.1993), *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2742, 129 L.Ed.2d 861 (1994).

Here, reconsideration is particularly appropriate because the Nevada Supreme Court recently and unequivocally established that the Nevada Real Estate Division and CCICCH should interpret Chapter 116 of NRS, including the amounts to be included in the super-priority lien. The Nevada Supreme Court held:

> The language of NRS 116.615 and NRS 116.623 is clear and unambiguous. Thus, we apply a plain reading. *See Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). We will also read NRS Chapter 116 and NRS Chapter 649 in a way that harmonizes them as a whole. *Southern Nev.*

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> *Homebuilders v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005). **Based on a plain reading of the statutes, the responsibility of determining which fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests with the Real Estate Division and the CCICCH.** *See* NRS 116.615; NRS 116.623. Because the Real Estate Division is charged with adopting appropriate regulations concerning NRS Chapter 116, the regulations regarding the fees chargeable by community managers would then become "authorized by law" as required by NRS 649.375(2)(a).FN3 See NRS 116.615; NRS 116.623. Allowing the Real Estate Division to adopt regulations concerning the amount collectable by community managers and allowing the Department to enforce those regulations, if the community managers act in derogation of those regulations, harmonizes the chapters in a way to give each its full effect. *See Southern Nev. Homebuilders*, 121 Nev. at 449, 117 P.3d at 173. Furthermore, the Department's enforcement of the regulations adopted by the Real Estate Division avoids the absurd result of having a regulation without someone with authority to enforce it. *See id.* We therefore, determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116.....

Exhibit A at *3 (emphasis added). Since the CCICCH has already interpreted the exact legal issue that was addressed in the Order and the Court's interpretation is contrary to CCICCH's interpretation, Horizons request that this Court reconsider the Order and give the CCICCH Advisory Opinion the weight the Nevada Supreme Court holds it merits.

III.

LEGAL ARGUMENT

A. The CCICCH Adopted an Advisory Opinion Supporting Horizon's Interpretation of the Super-Priority Lien

The Nevada Supreme Court has made it clear that courts are to give "great deference" to administrative interpretation. ***Imperial Palace v. State, Dep't Taxation***, 108 Nev. 1060, 1067, 843 P.2d 813, 818 (1992); ***Dep't of Taxation v. DaimlerChrysler***, 121 Nev. 541, 549, 119 P.3d 135, 139 (2005); ***Thomas v. City of N. Las Vegas***, 122 Nev. 82, 101, 127 P.3d 1057, 1070 (2006)(citing ***Chevron U.S.A. v. Not. Res. Def. Council***, 467 U.S. 837 (1984). Indeed, particularly for pure questions of statutory interpretation, courts must defer to agency interpretations. ***See, e.g., Human Soc'y of U.S. v. Locke***, ___ F.3d ___, 2010 WL 4723195, at 9 (9th Cir. 2010)("'If a statute is ambiguous, and if the implementing agency's construction is

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reasonable, ***Chevron*** requires a federal court to accept the agency's construction of the statute, even if the agency's reading differs from what the court believes is the best statutory interpretation.'")(*quoting* ***Nat'l Cable & Telecomm. Ass'n v. Brand X Internet Servs.***, 545 U.S. 967, 980 (2005)).

The CCICCH Advisory Opinion explicitly rejected the position this Court adopted in the Order. The Order finds that the super-priority lien has a ***total numerical*** cap, which Plaintiff has repeatedly described as "nine times monthly assessments." Yet, the CCICCH has held that there is a ***temporal*** cap, not a numerical cap, that consists of assessments for common expenses that would have become due in the nine (9) month period immediately preceding the first action to foreclose the lien, ***plus*** all other itemized assessments granted by NRS 116.3116(1) and (7), including penalties, fees and costs of collection, charges, interest, attorney's fees and costs of suit. *See* Exhibit C.

In fact, the CCICCH expressly rejected the "nine times monthly assessments" approach urged by Plaintiff in this case. On December 8, 2010, the CCICCH issued the Advisory Opinion that specifically concludes that all reasonable costs of collecting are part of the super-priority lien. The Advisory Opinion stated as follows:

> The argument has been advanced that limiting the super priority to a finite amount . . . is necessary in order to preserve this compromise and the willingness of lenders to continue to lend in common interest communities. ***The State of Connecticut, in 1991, NCCUSL, in 2008, as well as "Fannie Mae and local lenders" have all concluded otherwise.***
>
> Accordingly, both a plain reading of the applicable provisions of NRS §116.3116 and the policy determinations of commentators, the state of Connecticut, and lenders themselves support the conclusion that associations should be able to include specified costs of collecting as part of the association's super priority lien.

See Exhibit 3 at 12 (emphasis added). The foregoing reference to the "State of Connecticut" is notably an express citation to and adoption of ***Hudson House Conominium Ass'n, Inc. v. Brooks***, 611 A.2d 862 (Conn. 1992), which specifically considered whether collection fees and costs survived foreclosure as part of the super-priority lien in addition to "nine months" worth of assessments. 611 A.2d at 613. The Connecticut Supreme Court held that such fees and costs

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survived foreclosure as part of the super-priority lien, even though assessments had already been capped at the so-called "nine times monthly assessment" amount. The court stated:

> In construing a statute, we assume that "the legislature intended to accomplish a reasonable and rational result." Section 47-258(a) creates a statutory lien for delinquent common expense assessments. Section 47-258(i) authorizes the foreclosure of the lien thus created. Section 47-258(b) provides for a limited priority over other secured interests for a portion of the assessment accruing during the six month period preceding the institution of the action. Section 47-258(g) specifically authorizes the inclusion of the costs of collection as part of the lien.
>
> Since the amount of monthly assessments are, in most instances, small, and since the statute limits the priority status to only a six month period, and since in most instances, it is going to be only the priority debt that in fact is collectible, ***it seems highly unlikely that the legislature would have authorized such foreclosure proceedings without including the costs of collection in the sum entitled to a priority. To conclude that the legislature intended otherwise would have that body fashioning a bow without a string or arrows.*** We conclude that § 47-258 authorizes the inclusion of attorney's fees and costs in the sums entitled to a priority.

611 A.2d at 616-17 (emphasis added).[3] Importantly, the *Hudson House* Court did not read a limitation into the statute that would limit total recovery to only the amount of regular monthly assessment payments over the super-priority period. To the contrary, and as the court noted, the legislature must have permitted all collection costs associated with enforcement of the super-priority lien to be recoverable. Indeed, to read the statute otherwise would make no practical sense at all, as it would fashion a proverbial "bow" with no "string" or "arrows." Similar to the rules of statutory interpretation in Connecticut, under Nevada law, courts must "consider the policy and spirit of the law and will seek to avoid an interpretation that leads to an absurd result." *Fierle v. Perez*, -- Nev. --, 219 P.3d 906, 911 (2009) (quotation omitted).

Indeed, the CCICCH slices the super-priority lien into two portions—the assessment portion (made up of the so-called "monthly assessments") and the remaining portion (made up of collection fees, costs, etc.). According to the CCICCH, the Advisory Opinion contemplates only a **temporal**

[3] Although the Connecticut Supreme Court noted that its legislature later amended the statute to specifically include "the Association's costs and attorney's fees in enforcing its lien," the court specifically noted that this merely "clarified that attorney's fees and costs are included in the priority debt." *Hudson House*, 611 A.2d at 617 n.4.

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limitation on the **assessment portion** of the HOA's lien that is entitled to super-priority. In other words, while the **assessment portion** of the super-priority lien is capped by NRS 116.3116, the remaining portion is not. The Advisory Opinion states:

> [A]lthough the ***assessment portion*** of the super-priority lien is limited to a finite number of months, because the assessment lien itself includes 'fees, charges, late charges, attorney fees, fines, and interest,' these charges may be included as part of the super-priority lien amount.

Id. (emphasis added). Therefore, according to the CCICCH, there is no numerical "cap" on the total amount of the super-priority lien, merely a temporal limitation on the **assessment portion**—the so-called "nine months of assessments" that underlie that total super-priority lien amount. ***See id.***

Significantly, there is a separate legal cap on the amount of collection fees and costs that can be charged by HOAs. This maximum amount is not set by statute, and is not set by NRS 116.3116, but by regulations imposed separately by the Nevada Real Estate Division. *See* NAC 116.470. This is a telling distinction. It would be totally redundant for the NRED to impose monetary caps on collection fees and costs by regulation if such collection fees and costs were already restricted by Plaintiff's suffocatingly small "nine times monthly assessments" interpretation of NRS 116.3116. Setting that aside, collection fees are capped by a total amount per unit ($1,950.00) and restricted in many other separate and discrete categories, as set forth below:

> **NAC 116.470 Fees and costs for collection of past due obligations of unit's owner.**
>
> 1. Except as otherwise provided in subsection 5, to cover the costs of collecting any past due obligation of a unit's owner, an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed a total of $1,950, plus the costs and fees described in subsections 3 and 4.
>
> 2. An association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice of delinquent assessment pursuant to

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paragraph (a) of subsection 1 of NRS 116.31162 which exceed the following amounts:

(a)	Demand or intent to lien letter	$150
(b)	Notice of delinquent assessment lien	325
(c)	Intent to notice of default letter	90
(d)	Notice of default	400
(e)	Intent to notice of sale letter	90
(f)	Notice of sale	275
(g)	Intent to conduct foreclosure sale	25
(h)	Conduct foreclosure sale	125
(i)	Prepare and record transfer deed	125
(j)	Payment plan agreement - One-time set-up fee	30
(k)	Payment plan breach letter	25
(l)	Release of notice of delinquent assessment lien	30
(m)	Notice of rescission fee	30
(n)	Bankruptcy package preparation and monitoring	100
(o)	Mailing fee per piece for demand or intent to lien letter, notice of delinquent assessment lien, notice of default and notice of ale	2
(p)	Insufficient funds fee	20
(q)	Escrow payoff demand fee	150
(r)	Substitution of agent document fee	25
(s)	Postponement fee	75
(t)	Foreclosure fee	150

NAC 116.470.

The Advisory Opinion demonstrates that the so-called "nine times monthly assessments" figure on NRS 116.3116 restricts only the **assessment portion** of the lien. Meanwhile, NAC 116.470 restricts the collection fee and cost portion of the lien. That is, quite simply, how it works. Thus, the conclusion reached by the CCICCH in issuing its Advisory Opinion allows for the recovery of collection fees and costs ***even when*** the "assessment portion" of the super-priority lien reaches its so-called "nine month" limit. This Court should honor that determination and follow it. ***Imperial Palace***, 108 Nev. at 1067, 843 P.2d at 818; ***DaimlerChrysler Services***, 121 Nev. at 548, 119 P.3d at 139; ***Thomas***, 122 Nev. at 101, 127 P.3d at 1070.

B. The FTC Federal Court Action and This Court's Potential Impact on that Case.

Most frustrating about the current state of this case is that the Court has ruled based on an incomplete picture. Since this Court's most recent decision, it has come to light that Plaintiff's counsel is a plaintiff in a *qui tam* False Claims Act case in federal court. The case, ***Adams v.***

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Wells Fargo Bank Nat'l Ass'n, et al., U.S. District Court Case No. 2:11-cv-00535 (the "FCA Action"), was filed under seal on April 8, 2011, and only unsealed on April 23, 2012, when the United States declined to intervene in the case. A true and correct copy of the complaint in that case is attached hereto as **Exhibit "D"** with exhibits omitted. The U.S. Government's refusal to intervene is attached hereto as **Exhibit "E"**, and the federal court's order unsealing the case is attached hereto as **Exhibit "F"**.

The caption alone in the case is 29 pages long (indeed the caption is longer than the complaint itself), and Horizons has been sued as a party defendant. Counsel for Plaintiff, acting as both a party litigant in the FCA Case and as counsel for himself, alleges that Horizons—simply by virtue of its difference of opinion over the interpretation of NRS 116.3116—has somehow engaged in a scheme to commit fraud against the United States Government. *See, e.g., id.* at pp. 47-49. Counsel seeks for his own personal remuneration "30% of any recovery to the government in this suit," which includes all monies recovered plus treble damages claimed. *Id.* at p. 56.

Horizons is not seeking to disparage or disqualify Plaintiff's counsel (though both may be deserved) for filing the FCA Action. In addition, Horizons understands why counsel did not disclose the FCA Action to the Court previously—the case was under seal and he was prevented from disclosing it to anyone. Fair enough.

However, this Court should know that this case is not a small state court action worth only a few thousand dollars, and apparently never has been. Make no mistake—***counsel will attempt to use any favorable decision in this case to support his own attempt to obtain money damages for himself personally in the FCA Action.*** As a result, Horizons asks this Court to make it clear, no matter how it rules, that the matter before this Court is a bona fide and good faith dispute between the two parties. Counsel's attempt to turn a legitimate disagreement over the meaning of a terribly worded statute into a multi-million dollar False Claims Act case (for his own personal bounty no less) is simply wrong, and it should not be rewarded in such a fashion.

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IV.

CONCLUSION

The Nevada Supreme Court has now held that "the responsibility of determining which fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests with the Real Estate Division and the CCICCH." Exhibit A. In addition, the Nevada Supreme Court has made it clear that courts are to "give deference to administrative interpretations." ***Thomas v. City of N. Las Vegas***, 122 Nev. 82, 101, 127 P.3d 1057, 1070 (2006) (citing ***Chevron U.S.A. v. Nat. Res. Def. Council***, 467 U.S. 837 (1984); ***see also Imperial Palace v. State***, 108 Nev. 1060, 1067, 843 P.2d 813, 818 (1992); ***see also Dep't of Taxation v. Daimler Chrysler Services N.A., LLC***, 121 Nev. 541, 119 P.3d 135 (2005). For these reasons, Horizons requests the Court reconsider the Order that is contrary to the CCICCH's Advisory Opinion and, instead, rule pursuant to the CCICCH Advisory Opinion that the super-priority lien includes costs of collection with no numerical limit.

DATED this 8th day of June, 2012.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I hereby certify that on the 8th day of June, 2012, I served a true and correct copy of the foregoing **MOTION 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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