IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE, LLC Appellant, vs. SATICOY BAY LLC SERIES 2227 SHADOW CANYON, Respondent.	Case No. 70382	Electronically Filed Oct 07 2016 10:36 a.m. Tracie K. Lindeman Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Department VII
The Honorable Carolyn Ellsworth, District Judge
District Court Case No. A-14-702938-C

APPELLANT'S APPENDIX VOL. 2

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2227 SHADOW CANYON, Plaintiff, v. NATIONSTAR MORTGAGE, LLC; PATERNO C. JURANI and REPUBLIC SILVER STATE DISPOSAL, DBA REPUBLIC SERVICES, Defendants.	Case No.: A-14-702938-C Dept.: V **DEFENDANT NATIONSTAR MORTGAGE, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT**

Defendant Nationstar Mortgage, LLC (**Nationstar**), by and through its counsel of record, Akerman LLP, hereby submits its reply in support of its motion for summary judgment (**NMSJ**) against Saticoy Bay LLC Series 22277 Shadow Canyon (**Saticoy Bay**) and in opposition to the countermotion for summary judgment by Saticoy Bay (**SBCM**).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Nationstar's motion for summary judgment should be granted and Saticoy Bay's countermotion for summary judgment should be denied. As explained both in the NMSJ and below, Saticoy Bay could not have obtained title to the property free and clear of Nationstar's deed of trust because the foreclosure sale of the property was commercially unreasonable. Specifically, the sale

of the property for less than 11% of its fair market value was not commercially reasonable, especially when coupled with defects in the notice and the HOA's fraudulent inclusion of fees to which it was not entitled in the lien. Moreover, NRS 116 *et seq.* (the **HOA Lien Statute**) is facially unconstitutional under the Due Process Clause and void for vagueness. Because the HOA's foreclosure sale was conducted pursuant to an unconstitutional statutory scheme, the sale was invalid and summary judgment in favor of Nationstar and against Saticoy Bay is proper.

I. ARGUMENT

A. The HOA Sale Was Commercially Unreasonable.

Saticoy Bay argues in its opposition and countermotion that an HOA foreclosure sale does not need to be conducted in a commercially reasonable manner, but that even if it did need to be conducted in a commercially reasonable manner, Nationstar has produced no evidence to show the HOA sale was not so conducted. (Saticoy Bay's Countermotion at 8-11.) However, not only can a sale be overturned if it is not conducted in a commercially reasonable manner, but Nationstar has provided undisputed evidence of fraud, unfairness, and oppression coupled with a grossly inadequate sales price, thus resulting in a commercially unreasonable sale. Alternatively, Saticoy Bay has failed to proffer any evidence showing the sale was commercially reasonable and conducted in a manner calculated to benefit Nationstar or the borrower.

First, Saticoy Bay's position that an HOA sale need not be conducted in a commercially reasonable manner is contradicted both by its own opposition and countermotion, as well as by numerous Nevada courts. (*See* SBCM at 9:8-27.) *See also, e.g.*, *Kal-Mor-USA, LLC v. Bank of America, N.A.*, --- F. App'x ---, 2015 WL 5042812 (9th Cir. Aug. 27, 2015) (recognizing that an HOA foreclosure sale can be commercially unreasonable); *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131 at 1135-36 (D. Nev. 2015) (analyzing whether an HOA sale was conducted in a commercially reasonable manner); *US Bank, N.A. v. SFR Investments Pool 1, LLC*, --- F. Supp. 3d ---, 2015 WL 5023450, at *8 (D. Nev. Aug. 26, 2015) (*SFR II*) (recognizing that whether an HOA sale is commercially reasonable can be a fact-sensitive review).

Second, Nationstar has identified sufficient evidence to show the HOA sale here was commercially unreasonable, or, in the alternative, Saticoy Bay has not identified any evidence to

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show the HOA sale was conducted in good faith. While inadequacy of price alone is insufficient to set aside a sale of a property,

> [C]ourts are not slow to seize upon other circumstances impeaching the fairness of the transaction as a cause for *vacating it*, especially if the inadequacy [of price] be *so gross as to shock the conscience*. If the sale has been attended by any irregularity … if any undue advantage has been taken to the prejudice of the owner of the property, or he has been lulled into a false security; or if the sale has been conclusively or in any other manner conducted for the benefit of the purchaser, and the *property has been sold at a greatly inadequate price*, the sale *must be set aside*….

Golden v. Tomiyasu, 387 P.2d 989, 995 (1963)(emphasis added). Judge Adair recently quoted that section of *Golden* before invalidating a sale as commercially unreasonable. Summary Judgment Order, *2713 Rue Toulouse Trust v. Bank of America, N.A.*, Case No. A-13-693517-C (EJDC), slip op. at 4 (May 8, 2015) (granting summary judgment in favor of the deed of trust beneficiary, stating that the investor-purchaser knew of the lender's senior interest in the property, yet nonetheless bought the property "for a price that [the purchaser] knew was commercially unreasonable.").

While the *Golden* court did not define a price that would be so "gross as to shock the conscience," the Restatement (Third) of Property (Mortgages) states that under the gross inadequacy standard: "a court is warranted in invalidating a sale where the price is less than *20 percent of fair market value*. Section 8.3 cmt. b (emphasis added). Further, "in extreme cases a price may be so low (typically *well under 20% of fair market value*) that it would be an abuse of discretion for the court to refuse to invalidate it." *Id.* (emphasis added).

Here, the HOA sale was not conducted in a commercially reasonable manner calculated to protect the borrowers or Nationstar. At the onset, the sale price is grossly inadequate. Saticoy Bay purchased the property for $35,000, although the market value of the property was $335,000.00 (NMSJ at Exs. G, J.) Red Rock notified the HOA was notified at least three times of the approximate value of the property. (*See id.* at Exs. G-H.) Instead of pricing the opening bid closer to the market value, the HOA unfairly and oppressively set the opening bid at an amount that brought about a sale for a mere 10.4% of the market value; which is grossly inadequate under the Restatement analysis.

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Saticoy Bay suggests that in order for a sale to be commercially unreasonable, there must also be an additional showing of fraud, unfairness, or oppression. (SBCM at 9.) Even assuming such a showing is necessary, Nationstar has presented undisputed evidence showing such fraud, unfairness, or oppression existed. At the onset, the HOA was aware of the market value of the property and intentionally decided to undervalue the property at the HOA sale. (*See* NMSJ at Exs. G-H.) Additionally, the HOA unfairly and fraudulently added additional amounts to the lien for violations and fines, in direct violation of NRS 116.31162(5). (NMSJ Ex. I.) Last, the notice of trustee's sale failed to identify the amount necessary to satisfy the lien as of the date of the proposed sale, in direct violation of NRS 116.311635(3)(a). (NMSJ Ex. F.) Last, the HOA has admitted it improperly added violation fine amounts to the amount due, in direct violation of NRS 116.31162(5). (NMSJ at Ex. I.)

B. Saticoy Bay Cannot Rely on the Deed Recitals to Validate an Invalid Sale.

Saticoy Bay's argument that its alleged interest in the property is protected by the recitals in the foreclosure deed lacks merit. The recitals contained in the foreclosure deed are not conclusive proof that all requirements of law have been satisfied. Specifically, Saticoy Bay's countermotion for summary judgment should be denied and Nationstar's motion for summary judgment should be granted because (1) the foreclosure deed's recitation of compliance with the HOA Lien Statute is not a substitute for actual compliance, and (2) the foreclosure deed's recitals are unsupported legal conclusions not entitled to the NRS 116.31166 presumption.

1. The foreclosure deed's recitation of compliance with the HOA Lien Statute is not a substitute for actual compliance.

Saticoy Bay's contention that recitations of compliance with the HOA Lien Statute excuses the HOA from actually complying with the statute's notice provisions overlooks the requirements of NRS 116.31166(3). Saticoy Bay's reading of NRS 116.31166 ignores an axiomatic proposition: no part of a statute should be construed to render another void. *See Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532, 534 (2003); *Banegas v. State Indus. Ins. System*, 117 Nev. 222, 229, 19 P.3d 245, 250 (2001) ("[W]ords within a statute must not be read in isolation, and statutes must be construed to give meaning to all of their parts and language within the context of the

purpose of the legislation."). Further, where statutory provisions may be viewed as conflicting, they must be harmonized. *See, e.g. Int'l Game Tech., Inc. v. Second Judicial Dist. Court ex rel. County of Washoe*, 124 Nev. 193, 201, 179 P.3d 556, 561 (2008); *Acklin v. McCarthy*, 96 Nev. 520, 523, 612 P.2d 219, 220 (1980) ("An entire act must be construed in light of its purpose and as a whole.").

Ignoring these two maxims, Saticoy Bay reads NRS 116.31166(1)–(2) to mean that an HOA's compliance with the HOA Lien Statute rests solely on it reciting compliance with the statute's notice provisions in a foreclosure deed. (*See* SBCM at 5-8.) According to Saticoy Bay, because the foreclosure deed in the instant case contained these recitations, it is entitled to summary judgment on without producing any evidence of actual compliance with the HOA Lien Statute. (*See id.*) However, Saticoy Bay's interpretation is flawed because it would render the following subsection—NRS 116.31166(3)—void.

Saticoy Bay essentially argues the recitals in the foreclosure deed are conclusive proof the foreclosure extinguished Nationstar's Deed of Trust under NRS 116.31166(1)–(2). (*See* SBCM at 5-8.) Saticoy Bay's argument ignores NRS 116.31166(3)'s requirement the foreclosure sale be conducted *pursuant to NRS 116.31162, 116.31163, and 116.31164* to vest the purchaser at the HOA foreclosure sale with title to the property. The Nevada Supreme Court has explained that the Legislature's use of "pursuant to" means "in compliance with; in accordance with; under…[a]s authorized by; under…[i]n carrying out." *In re Steven Daniel P.*, 129 Nev. Adv. Op. 73, 309 P.3d 1041, 1044 (2013) (quoting Black's Law Dictionary at 1356 (9th ed. 2009)). The court further explained that "pursuant to" is a "restrictive term" that mandates compliance. *Id.* at 1044.

Here, by using the phrase "pursuant to" in NRS 116.31166(3) with reference to NRS 116.31162, 116.31163 and 116.31164, the Nevada Legislature mandated compliance with those statutes. Consequently, an HOA's foreclosure sale does not vest title without equity or right of redemption unless the HOA actually complied with NRS 116.31162, NRS 116.31163, and NRS 116.31164, not just NRS 116.31166(1).

In contrast, Saticoy Bay's interpretation of NRS 116.31166 not only renders the notice requirements of NRS 116.31162, NRS 116.31163, and NRS 116.31164 meaningless, it also would lead to absurd and unjust results. Following Saticoy Bay's logic, an HOA could fail to record any of

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the three notices the HOA Lien Statute requires, *falsely* recite they did in fact record the notices, and the court would be forced to hold that the notices were in fact recorded, *even if* the opposing party produced irrefutable evidence that proved the recitals were false. And there is no limiting principle to Saticoy Bay's position; a dishonest HOA could collude with a dishonest purchaser to sell property without any proper announcement to the current owner or other security holders and still take title to the property free and clear under the aegis of a patently false, yet "irrefutable" recitation. The Nevada Legislature could not have possibly intended such unjust consequences.

2. The Trustee's Deed's recitals are unsupported legal conclusions not entitled to the NRS 116.31166 presumption.

Additionally, Saticoy Bay is not entitled to the NRS 116.31166 presumption regarding notice because the foreclosure deed contains only unsupported legal conclusions. Saticoy Bay relies on the minimal recitations in the foreclosure deed that, pursuant to NRS 116.31164 and 1116.31166, are allegedly "conclusive proof" that proper notice was provided and proper procedure was followed. (*See* Opp. at 5-8.) However, the foreclosure deed provides no facts regarding notice. (*See* NMSJ Ex. G.) Rather, it contains only legal conclusions not subject to the "conclusive proof" standard of NRS 116.31166(1). (*See id.*)

NRS 116.31166(1) is modeled after the Uniform Common Interest Ownership Act. UCIOA makes clear that "a recital of the *facts* of nonpayment of the assessment and of the giving of the notices required by this subsection are *sufficient proof of the facts recited*. . . ." UCIOA § 3-116(1)(4) (emphasis added). Nothing in UCIOA or NRS 116.31166(1) allows a purchaser to rely on unsupported legal conclusions regarding compliance with the statute.

Per NRS 116.31166, the deed recitals[1] entitled to conclusive proof of the matters recited are limited to: (a) default, (b) the elapsing of the 90 days, and (c) the giving of notice of sale. NRS 116.31166(1). Here, the pertinent "facts," such as actual dates, are not cited in the Trustee's

[1] The common meaning of "recital" is a formal statement of relevant facts. *See* Black's Law Dictionary 1435 (Rev. 4th. Ed. 1968) ("Recital: The formal statement or setting forth of some matter of fact, in any deed or writing, in order to explain the reasons upon which the transaction is founded . . . The formal preliminary statement in a deed or other instrument, of such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the transaction is founded.").

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Deed—the presumption described in NRS 116.31166(1) and UCIOA § 3-116(1)(4) is therefore inapplicable.

Specifically, Saticoy Bay's foreclosure deed does not attest to any facts showing compliance with the following requirements of the HOA Lien Statute: (1) that the Notice of Delinquent Assessment was mailed; (2) that the Notice of Default was served by certified mail on the owners of record and all parties of interest that requested notice; (3) that 90 days passed between the mailing of the notice of default and the publishing of the Notice of Sale; (4) proof of mailing of all notices as required by law; (5) posting of the Notice of Sale on the Property; (6) posting of the Notice of Sale in three public places for twenty consecutive days prior to the foreclosure sale; or (7) the publishing of the Notice of Sale in a newspaper for three consecutive weeks prior to the sale. (Countermotion Ex. G.) *See also* NRS 116.311635(1)(a).

SFR contends the following passage in the Trustee's Deed is "conclusive proof" of all seven requirements: "Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 06/24/2010 as instrument number 0002131 Book 20100624 which was recorded in the office of the recorder of said county. Red Rock Financial Services has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Lien for Delinquent Assessments and Notice of Default and the posting and publication of the Notice of Sale." (SBCM at 6:1-4.) This self-serving, conclusory allegation is entitled to no presumption under NRS 116.31166.

The Alaska Supreme Court, interpreting the same UCIOA provision at issue here,[2] rejected the argument that conclusory allegations in a foreclosure deed are entitled to any presumption in *Rosenberg v. Smidt*, 727 P.2d 778 (Alaska 1986). There, the appellants alleged that under Alaska's applicable statute, the recitals in the foreclosure deed were conclusive evidence of compliance in

[2] The *SFR Investments* Court noted that other states' cases interpreting UCIOA provisions are particularly persuasive because one purpose of adopting a uniform act is "to make uniform the law with respect to its subject matter among states enacting it." *SFR Investments*, 334 P.3d at 410 ("[I]n addition to the usual tools of statutory construction, we have available … other states' cases to explicate NRS Chapter 116."). Like Nevada, Alaska has adopted and currently uses the 1982 version of UCIOA. *See e.g.*, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Common%20Interest%20Ownership%20Act%20(1982).

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favor of bona fide purchasers. *Id.* at 783. The deed in that case—strikingly similar to the Trustee's Deed at issue here—stated:

> All other requirements of law regarding the mailing, publication and personal delivery of copies of the Notice of Default and all other notices have been complied with, and said Notice of Sale was publicly posted as required by law and published in the Anchorage Times on August 26 and September 2, 9, and 16, 1980.

Agreeing with the respondents' arguments that the recitals in the deed concerned legal, not factual conclusions, the court concluded that "what is required is a recital of fact specifying what the trustee has done, not a mere conclusory statement that the trustee has complied with the law." *Id.* at 785.

Like the foreclosure deed in *Rosenberg*, the foreclosure deed in this case presents *no facts* entitled to the presumption that the HOA complied with the notice provisions of the HOA Lien Statute. It does not provide, for example, what notice was given, when notices were given, the facts concerning the default which led to the foreclosure, or any detail regarding the conduct of the sale. Because the foreclosure deed does not provide the proper factual recitations, it is not entitled to any presumption under NRS 116.31166(1).

C. Nationstar is entitled to summary judgment because the HOA Lien Statute is facially unconstitutional.

Nationstar is entitled to summary judgment because the HOA Lien Statute is facially unconstitutional under the Due Process Clause. Under binding Nevada law, the non-judicial foreclosure of an HOA lien conducted under a statute and not any agreement between the parties is a form of state action that must comply with the requirements of due process. The HOA Lien Statute fails to meet these constitutional requirements. It does not mandate that mortgagees receive actual notice of the pendency of the HOA foreclosure sales that purportedly extinguish their property interests, as required by the Due Process Clause.

1. The HOA Lien Statute is facially unconstitutional because no set of circumstances exist under which a request-notice statute satisfies the Due Process Clause.

To succeed on a facial challenge to a statute, "the challenger must establish that no set of circumstances exist under which the [statute] would be valid." *United States v. Salerno*, 481 U.S.

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739, 745 (1987). The statute is unconstitutional because it requires mortgagees to opt-in to their due process rights by requesting notice of a foreclosure sale that can eliminate their property interest. The United States Supreme Court has held that, "under all circumstances," the Due Process Clause requires that foreclosure statutes mandate actual notice of a pending foreclosure sale to any mortgagee whose security interest may be extinguished by that sale. *Mullane*, 339 U.S. 306 at 314; *Mennonite*, 462 U.S. at 800. Accordingly, "no set of circumstances exists under which" a foreclosure statute can be valid unless it requires actual notice "under all circumstances" to mortgagees whose property interest may be extinguished by the statutorily-authorized foreclosure. *See Salerno*, 481 U.S. at 745. For every case, the HOA is exempted from providing the notice that is required. Opt-in provisions such as the ones contained in the HOA Lien Statute have been universally condemned as violative of the unambiguous Due Process standards espoused in *Mullane* and *Mennonite*. *See, e.g. Island Fin., Inc. v. Ballman*, 607 A.2d 76, 81 (Md. Ct. Spec. App. 1992) ("Constitutional due process protection does not exist only for those who follow the notice statute but encompass all interests that may be affected by a state action."); *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986) (holding opt-in scheme unconstitutional because the Constitution requires notice "both to mortgagees of record who have requested such a notice and to mortgagees of record who have not requested such a notice").[3]

The law which Saticoy Bay claims extinguished Nationstar's deed of trust does not meet minimum due process requirements. Because the HOA Lien Statute does not require a mortgagee receive actual notice prior of a foreclosure sale that purportedly extinguishes its property interest, the

[3] *See also Jefferson Tp. v. Block 447A*, 548 A.2d 521, 524 (N.J. 1988) ("We conclude that a person's entitlement to the notice required by due process cannot be conditioned on the requirement that he request it."); *Reeder & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989) ("[A]fter *Mennonite* a mortgagee is required to receive actual notice of a tax sale unless the mortgagee's address is not reasonably identifiable."); *City of Boston v. James*, 530 N.E.2d 1254 (Mass. App. Ct. 1988) (holding that a "shifting of responsibility" from the foreclosing party to the mortgagee is unconstitutional "even when the persons deprived of notice are sophisticated and knowledgeable"); *Seattle First National Bank v. Umatilla County*, 713 P.2d 33 (Or. App. 1986) (holding that statute permitting notice only to mortgagee who makes request unconstitutional as violating affirmative duty to provide notice); *In re Foreclosure of Tax Liens*, 103 A.D.2d 636, 640 (N.Y. App. Div. 1984) ("The Erie County statutes create a real danger that a mortgagee will be forever divested of his property without ever learning of the impending foreclosure."); *United States v. Malinka*, 685 P.2d 405, 409 (Okla. Civ. App. 1984) ("*Mennonite* clearly places the onus on the State to provide notice notwithstanding that a mortgagee might take steps to protect its own interest.").

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statute is invalid on its face, in turn invalidating the HOA's foreclosure. Accordingly, this Court should grant summary judgment in favor of Nationstar.

2. HOA foreclosures are subject to due process constraints because eliminating property rights solely through statutory authority is a state action.

Saticoy Bay contends the non-judicial foreclosure at issue lacks a state actor and action to justify application of the Due Process Clause of the U.S. and the Nevada Constitutions. (SBCM at 12-13.) Saticoy Bay is incorrect. First, Saticoy Bay disregards a decision of the Nevada Supreme Court finding due process is required where the challenged "taking" by a private party is pursuant to state authorization. *J.D. Constr. v. IBEX Int'l Group*, 240 P.3d 1033 (Nev. 2010). Specifically, the Nevada Supreme Court has held in an analogous circumstance that the Due Process Clause applies even where no state actor directly participates in the proceeding that deprives the plaintiff of its property interest. *Id.*

In *J.D. Construction*, a private party recorded a mechanic's lien on the property of another private party. No state actor was directly involved in placing the lien, yet the Nevada Supreme Court held that "[a] mechanic's lien is a 'taking' in that the property owner is deprived of a significant property interest, which entitles the property owner to federal and state due process." *Id.* at 1040 (citing *Connolly Dev't, Inc. v. Superior Court*, 553 P.2d 637, 645 (Cal. 1976) (holding that private party's imposition of a "stop notice" lien involved "significant state action" because the imposition is "encouraged, indeed only made possible, by explicit state authorization.")). *J.D. Construction* provides sufficient binding authority that due process is invoked here. Where a statute duly authorized by the Nevada Legislature delegates to a private party the right to deprive another private party of "a significant property interest," whether through recording a lien or foreclosing on one, the property owner is entitled to "federal and state due process." *Id.*

Similarly in *Connolly*, the California Supreme Court held that there was "no question" that the state-law "stop notice" lien at issue—which could be enforced by a purely private procedure "without filing or recordation before any state official"—"involve[d] significant state action" and triggered due-process protections. *Id.* at 815. The *Connolly* Court expressly rejected arguments that

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the lien did not involve state action, noting that the private enforcement procedure "'is not just action against a backdrop of an amorphous state policy, but is instead action encouraged, indeed only made possible, by explicit state authorization.'" *Id.* at 815 & n.14 (quoting *Klim v. Jones*, 315 F. Supp. 109, 114 (N.D. Cal. 1970)).

Like the liens in *J.D. Construction* and *Connolly*, the taking and extinguishment of a deed of trust through the HOA Lien Statute is possible only because of these statutory provisions, demonstrating clearly that the right to take the mortgagee's property was created by the Nevada Legislature, which is plainly a state actor. Without the HOA Lien Statute, a deed of trust would have priority over the HOA lien and any foreclosure of the HOA lien could not extinguish the more senior rights. Saticoy Bay does not cite *J.D. Construction* or, indeed, any binding authority of the Nevada Supreme Court in support of its argument that the HOA's foreclosure did not trigger the protections of due process.

Next, Saticoy Bay's assertion that the non-judicial foreclosures at issue lack a sufficient state action to justify application of the Due Process Clause of both the U.S. and Nevada Constitutions also fails. The precedent cited by HOA discussing non-judicial *mortgage* foreclosures is entirely distinguishable because those cases involve private, contractual rights, which are merely regulated by non-judicial foreclosure laws. In contrast, the HOA Lien Statute does not merely regulate the enforcement of contractual rights, but rather imposes a non-contractual, non-judicial foreclosure right that would not exist but for the state statute.

Saticoy Bay entirely ignores the differences between Nevada's non-judicial foreclosure scheme for deeds of trust and the HOA Lien Statute. HOA's reliance on *Charmicor v. Deaner*, 572 F.2d 694 (9th Cir. 1978), for example, is misplaced. Although *Charmicor* might seem applicable because it addressed a general Nevada statute on non-judicial *deed of trust* foreclosures, the similarities between the Nevada statute in *Charmicor* and the HOA Lien Statute end there. *Charmicor* itself, along with the cases it relies upon and the cases that interpret it, convincingly demonstrate that it has no applicability here.

The *Charmicor* court held state action was not present because a non-judicial deed of trust foreclosure is a *procedure agreed upon by private parties*, and the state merely restricts and limits

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the right to non-judicial foreclosure. *Id.* Indeed, the Ninth Circuit relied in its interpretation on *United States v. Hertz, Inc. v. Niobrara Farms*, 41 Cal. App. 3d 68, 87 (1974), which held that the Due Process Clause is not implicated by a non-judicial mortgage foreclosure under California law because "[i]t is accomplished *entirely* pursuant to procedures agreed upon in advance by the parties." *Id.* at 87 (emphasis added). The Ninth Circuit returned to *Charmicor* more recently, considering a Hawaii non-judicial foreclosure statute, and pointed out that non-judicial foreclosure statutes do "not confer the power of sale, but merely authorize[ ] the parties to contract for the express terms of foreclosure upon default." *Apao v. Bank of N.Y.*, 324 F.3d 1091, 1095 (9th Cir. 2003) (citing *Charmicor*, 572 F.2d at 695). It is clear that these cases depend on the fact that two parties voluntarily agreed by contract to permit the exercise of foreclosure and sale remedies non-judicially.

These decisions have no application here because this case is not one where the parties agreed by contract to the private remedy of non-judicial foreclosure. Nationstar is not a consenting party who agreed to a purely private remedy based on a contractual agreement. There is no agreement between Nationstar or the mortgage owner, on the one hand, and the HOA on the other. Rather, under the HOA Lien Statute, the mortgagee's property interest is extinguished as a result of a statute which sets a super-priority, *regardless of any underlying contract* to which the holder of a first deed of trust, or even the homeowner, is a party. But for the HOA Lien Statute, mortgagees could not have their constitutionally-protected property interest extinguished by an HOA.

Where property rights are extinguished by private action authorized solely by a state statute, the state action requirement is satisfied. *Culbertson v. Leland*, 528 F.2d 426, 432 (9th Cir. 1975). In *Culbertson*, the Ninth Circuit held that a private seizure of property pursuant to an innkeeper's lien statute constituted state action. *Id.* at 432. The Arizona statute at issue in *Culbertson* authorized the keeper of a hotel or lodging house to seize, without notice or judicial procedure, the personal property of a lodger who failed to pay rent. *Id.* at 427. The court held that the state action requirement was met because the parties "had no contractual relationship concerning [the] property," and consequently it was the statute, and not a private agreement, that "was the *sine qua non* for the activity in question." *Id.* The court distinguished cases where a "written instrument defined the rights of the parties," and thus "can be left and has traditionally been left to private hands." *Id.* at

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431. In those cases, the court explained, "the written agreement of the parties set forth their respective rights and liabilities; the statute merely reiterated and confirmed their arrangement," and thus the repossession "did not deprive [the debtor] of any rights which he had not already yielded voluntarily and for consideration." *Id.* at 432. The innkeeper and the tenant, like the holder of a first deed of trust and the HOA, had not contracted to permit the non-judicial seizure. That seizure was authorized solely by state statute. As a consequence, "the state's involvement through that statute is not insignificant," and thus constituted state action. *Id.*

Here, the state of Nevada has more than merely acquiesced in private conduct. Nevada is overtly involved every aspect of HOA super priority lien foreclosure, except foreclosing on the property itself. First, Nevada has imposed an obligation to pay sums due on a lien onto a party who has no connection to the debt. Nationstar is not a unit owner. Nationstar does not have any agreement to step into the shoes of the unit owner. Second, the State of Nevada created a super priority association lien unknown at common law. Third, the lien's priority was lengthened in 2009 from six to nine months specifically to benefit the State of Nevada, which feared the cost of providing services could shift from planned communities to the state. Fourth, the super priority lien is also regulated and enforced through state law. *See* NRS § 116.31162; *See* NRS § 116.31164. Fifth, the state of Nevada has forbidden HOA and secured lenders from reaching any agreement that may affect the super priority lien. The state action requirement is met here.

The mortgagees whose property interests the HOAs purportedly extinguish are not bound by contract; mortgagees have not yielded their property rights to HOAs "voluntarily and for consideration." Instead, like the innkeeper in *Leland*, the *sole source* of an HOA's ability to extinguish a mortgagee's property interest is statutory—namely, the HOA Lien Statute. Accordingly, a foreclosure pursuant to the HOA Lien Statute is a state action, and is thus subject to the Due Process strictures of both the Nevada and federal constitutions.

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3. NRS 116.31168 is a request-notice provision and incorporation in limited circumstances of certain provisions of NRS 107.090 does not render it otherwise.

The HOA Lien Statute does not require mortgagees be provided with actual notice of HOA foreclosure sales, but rather explicitly states mortgagees are only entitled to notice if they request notice in advance. *See* NRS 116.31163(1)–(2); NRS 116.31165(1)(b)(1)–(2). These are the hallmark of request-notice provisions and cannot be negated.

Saticoy Bay contends that NRS 107.090 is incorporated into NRS 116 wholesale. (SBCM at 13-19.) This is plainly incorrect. Saticoy Bay's claim is refuted by the plain language of the statutes and would render multiple statutes superfluous. Additionally, the Nevada legislature recently amended NRS 116.31168 to remove any mention of NRS 107.090 and make clear that the opt-in procedure applies to both notices of default and sale. *See* S.B. 306 § 7, 2015 Leg., 78th Sess. (Nev. 2015). The legislature contemporaneously amended NRS 116.31163 and 116.311635, which are applicable to foreclosures where notices of default or sale are recorded on or after October 1, 2015, to require copies of the notices be mailed to all lien-holders of record prior to recordation of the notices. *See id.* §§ 3-4, 9(1). The need for these amendments confirms that the HOA Lien Statute did not previously require such notice.

D. Nationstar is Entitled to Summary Judgment Because NRS 116.3116 is Unconstitutionally Vague.

Saticoy Bay argues NRS 116.3116 could not be void for vagueness because Nationstar was on notice its lien could be extinguished prior to the Nevada Supreme Court's decision in *SFR*. (SBCM at 20-23.) However, such an argument mischaracterizes the state of the law surrounding the pre-*SFR* landscape.

As noted in Nationstar's motion, A law that does not give a person of "ordinary intelligence fair notice" of what the law forbids or requires is unconstitutionally vague and violates due process. *Carrigan v. Comm'n on Ethics*, 129 Nev. Adv. Op. 95, 313 P.3d 880, 884 (2013) (citing *State v. Castaneda*, 126 Nev. Adv. Op. 45, 245 P.3d 550, 553 (2010) (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 18, 130 S. Ct. 2705, 2718 (2010))). As recognized by the *SFR* court, prior to its

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decision, both the state and federal judiciary within Nevada disagreed as to whether failure to pay the super-priority amount extinguished a first-position deed of trust. *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 412 (2014) (collecting cases).

In fact, cases throughout this jurisdiction continue to further evidence the complete lack of direction from NRS 116.3116. Specifically, courts, HOAs, and senior lienholders continue disagree as to what amounts are included in the super priority lien; whether an HOA is permitted to provide the senior lienholder with information related to a delinquent assessment lien; what constitutes an adequate description of the lien in the required statutory notices; and whether the entire scheme violates due process.

This court cannot even profess to reach consistent decisions as to the contours of the statute, much less could a person of ordinary intelligence. As a result, summary judgment against Saticoy Bay and in Nationstar's favor is appropriate.

II. CONCLUSION

This Court should grant Nationstar's Motion for Summary Judgment and deny Saticoy Bay's Countermotion for Summary Judgment because the sale was commercially unreasonable, as evidence by the grossly inadequate sales prices coupled with other indicia of the HOA's lack of good faith in the sale. Further, the HOA Lien Statute is facially unconstitutional under the Due Process Clause and unconstitutionally vague.

DATED this 8th day of October, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 8th day of October, 2015, I caused to be served a true and correct copy of foregoing **DEFENDANT NATIONSTAR MORTGAGE, LLC'S OPPOSITION TO PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT**, in the following manner:

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SATICOY BAY LLC SERIES 2227 SHADOW CANYON, Plaintiff, vs. NATIONSTAR MORTGAGE LLC, Defendant.	CASE NO. A-14-702938-C DEPT. NO. V **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY JUDGMENT; OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

THURSDAY, OCTOBER 22, 2015

FOR THE PLAINTIFF: MICHAEL F. BOHN, ESQ.

FOR THE DEFENDANT: ARIEL E. STERN, ESQ.
STEVEN G. SHEVORSKI, ESQ.

COURT RECORDER:
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District Court

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LAS VEGAS, NEVADA, THURSDAY, OCTOBER 22, 2015, 10:07 A.M.

THE COURT: Case No. A-14-702938. This is Saticoy Bay LLC Series 2227 Shadow Canyon, plaintiff, versus Nationstar Mortgage, LLC, et al. Okay.

MR. BOHN: Michael Bohn for plaintiff.

THE COURT: Good morning.

MR. SHEVORSKI: Steven Shevorski of Akerman on behalf of Nationstar Mortgage, Your Honor.

THE COURT: Thank you.

MR. STERN: Ariel Stern for Nationstar.

THE COURT: All right. And so it's Nationstar Mortgage's Motion for Summary Judgment, and Countermotion by plaintiff for Summary Judgment. You have my written tentative.

MR. SHEVORSKI: We do, indeed, Your Honor.

THE COURT: All right. So you see that I'm inclined to deny your motion. I did, you know, look at your additional arguments regarding state action and addressed those. And given that, I'm inclined to grant the countermotion for summary judgment, so.

MR. SHEVORSKI: I understand, Your Honor. And I'm relatively new to the case. And what I would say, you know, having read your tentative where I think at a minimum, we were the moving party here. We believe that under Restatement of Mortgages, subsection (8) -- 8.3, comment B, that a sale in

this particular instance, because it is below -- the undisputed evidence shows that it's below the 20 percent barrier based on the fair market value of the property at the time of the sale. We provided expert testimony as to that, and that's an undisputed fact. We believe that alone, on a summary judgment matter, because it is below the 20 percent matter threshold, it should be dispositive.

One thing if -- to address the countermotion that I would argue, that I didn't see in the briefs, and I apologize, I hope you'll entertain it is, it is common in Nevada through the Golden -- I think it -- I can't pronounce it very well so I'll call it the Golden -- the Golden case -- that you need price plus something in order to set aside a sale, and that's from the Deed of Trust foreclosure context.

Here there is price plus something, and so you have an extremely low price. And there is a nexus to the something here and that is, no cry out -- no cry out from the auctioneer telling the bidders what they're buying.

Is the super priority satisfied, is there a dispute over the super priority, has there been a tender, has there not been? And that is material information that is being withheld from the bidders, and there is a nexus between that and the low price itself because no one can know what they're buying. All they are getting is a Deed without warranty that says nothing about -- and it says, without warranty.

It goes farther than the statute, actually, Your Honor. The deed goes farther than the statute. It says, without warranty as to encumbrances or anything else. So they cannot know. And as an auctioneer, you need to tell the whole truth about your article, what you're selling, because bidders rely on it. You can't sell a Rembrandt and not --

THE COURT: But isn't -- isn't that why there was a low price, because they did -- because they know about these possibilities and that was what was happening with all of these that, you know --

MR. SHEVORSKI: That's an important point, Your Honor, and I'd like to address that.

THE COURT: Okay.

MR. SHEVORSKI: This is something different, Your Honor. And I -- and Mr. Bohn, we had a -- we had a trial here in the Telegraph Road Trust matter, Mr. Haddad testified under oath, yes, that we all knew that -- that there could be -- that the Court before September 18, 2014 could rule that the super priority cannot extinguish a Deed of Trust.

But this is different, because even if, when the SFR case came out the way it did, this is in addition to that, because no court has ever ruled that my client can't protect itself through tender. No court has ever ruled that there's nothing my client can do or not do that would protect itself prior to the sale. SFR itself, in the very first line, says

the super priority is up to nine months.

And further down in the opinion the majority wrote that, we're surprised that U.S. Bank they -- all they had to do was pay nine months or pay the whole thing off. It's in the disjunctive.

Now, keeping that information quiet from the auction. This is different. This is not whether or not a super priority could extinguish a Deed of Trust, this is additional information that those bidders -- that the structure of the sale itself is keeping from those bidders and that was not -- and that could've been remedied, could have been remedied by a cry out saying, no tender here, you're buying this free and clear. No one has talked to us from the Bank. And that is material information that is being withheld that is price plus, under the jurisprudence of the Nevada Supreme Court dealing with foreclosures.

Now, there is some talk that commercial reasonableness doesn't apply to Chapter 116. I'd like to take a little bit of issue with that. It absolutely does, because if you look at the legislative history in 1991 when -- and it's AB 221, if you look at the -- there's actually a spreadsheet, almost an Excel spreadsheet if it existed at the time, in that legislative history that says where they are drawing the Doctrine of Good Faith from. And it is a Uniform Commercial Code principle. It's in Article 2. And Article 2

is carried over into Article 9.

And so absolutely there is a commercial reasonableness standard, and that's what in the Supreme Court of Vermont they were drawing from. They were saying when they -- in the Will case where they set aside -- they didn't say, you know, gosh, you know, maybe the sale is voidable.

They said, because there was price plus in that instance, that material information was withheld, we are setting the sale aside as void, because there is a Doctrine of Good Faith under the Uniform Common Interest Ownership Act. And that was in a state, Your Honor, that did not have the legislative history that we do.

Here, the legislature, in great detail, told us where they're getting every single provision of this statute. And they tried to do it in a way that was different from the other uniform states.

THE COURT: But that case dealt with foreclosure against the owner of the property where the owner -- am I wrong? I mean, tell me if I'm wrong.

MR. SHEVORSKI: No, you're correct.

THE COURT: Where the owner is disputing the foreclosure and saying, you took my house, and that the sale was a bad faith sale and we don't have --

MR. SHEVORSKI: Sure.

THE COURT: -- the same facts.

MR. SHEVORSKI: Sure. But I would say that the distinction from, in what I would call an Article 3 context, the standing argument, we do have standing here to set aside the sale because we have an actual injury, in fact, the loss of our collateral. And we have -- and there is redressability. We have -- there can be a remedy that fixes it. You could return the parties, meaning, the unit owner and the interested lienholders. to the status quo ante. So we certainly have an injury, in fact. We certainly have the chance for this Court to provide some redress.

So, I believe there's a very strong argument to be made that we have standing. And, indeed, in this context, if we're talking in a 14th Amendment procedural due process context. And that's like the point of Mullane vs. Hanover Trust case, because it wasn't -- it wasn't a homeowner coming in there, it was interested creditors who the Court said, yes, you can come into Court, and if you don't get proper notice, you can come into Court and set aside that sale. That's what we attempt to do here.

And because a creditor is injured where a sale is done improperly, and that's what we believe occurred here. And we believe that in this particular -- at a minimum, there is a genuine issue of material fact to show that because there was no cry out and, indeed, the testimony in deposition with Red Rock Financial Services is, they agreed with us at the

time of the sale that they were not eliminating the Deed of Trust, and so there was no reason for them to cry out.

Now, good intentions aside, that shows they were not crying out. That shows they were withholding that information from the bidders, and they had no idea, separate and apart from how the SFR case was going to come out. Even if they won on SFR, SFR said the Bank can protect itself.

And we are arguing in this case, and we think we have a -- we have the right to argue before the trier of fact, that it was the withholding of that information which is the nexus that is part of the -- I'll call it the salable of the things that should've been done at that sale, which caused the low price, in addition to the uncertainty as to what 116.3116(2)(c) meant.

Separate and apart from that, there was an irregularity in the sale where despite the best intentions of the trustee, they withheld material information from the bidders which chilled the bidding, because even if they thought in their wildest dreams that SFR was going to come out the way it did, they still had to account falsely for a risk that they could be eliminated if the Bank protected itself and Red Rock didn't say anything. That is the nexus. That is the price plus that we believe at a minimum creates a genuine issue of material fact that is worthy of going to trial.

Secondly, on state action, I read Your Honor's

opinion.

THE COURT: Um-hum.

MR. SHEVORSKI: The one thing I would say to take this out of the Apao case in the Ninth Circuit, which is a bank foreclosure case, and it's good, because it does deal with Chapter 107. But one thing that is different is, we have Chapter 278, we have the Clark County Code, which essentially says, if you're going to develop property in Clark County, and you want your map approved for your development, if you have any kind of landscaping whatsoever, if you have a private street, you have to form an HOA.

Now, that is the first part. That is state action. It is causing the creation of these entities. That is a state policy to force the formation of HOAs.

State action again arises in 2009, by Assemblyperson Spiegel in her testimony on AB 204 in April of that year. Assemblyperson Spiegel expressly on the record -- and I know this isn't in the brief and I'll certainly give --

THE COURT: This is new information.

MR. SHEVORSKI: I --

THE COURT: Okay?

MR. SHEVORSKI: You know, we're a large firm. Sometimes I get called to these things.

MR. STERN: Mr. Shevorski's our guru on state action which is why he's in this.

THE COURT: Well, you know what? Maybe it would be better to allow some additional briefing since this wasn't addressed initially.

MR. SHEVORSKI: I'd be -- I'd -- that would be -- that would be wonderful.

THE COURT: It's --

MR. SHEVORSKI: I certainly --

THE COURT: It's --

MR. SHEVORSKI: Mr. Bohn's a friend of mine. I don't want to sandbag him, but I have read the --

THE COURT: No, I would want him to be able to --

MR. SHEVORSKI: Absolutely.

THE COURT: -- address the very --

MR. STERN: And we appreciate the Court's --

THE COURT: -- issues you're raising.

MR. STERN: -- willingness to allow us to submit that additional briefing, Your Honor. It's discretionary.

THE COURT: Mr. Bohn?

MR. BOHN: I'd rather just have you grant the motion on -- my Countermotion for Summary Judgment, as much as I enjoy coming here and hanging out with Steve and Ariel, it -- you know, I -- well, Mr. -- well Mr. Shevorski is very persuasive and passionate about what he says.

If you want additional briefing, I'm not going to argue. I still -- I am confident in the position of my client

in this case. And he's got some very unique arguments which are well thought out, but I really don't think they hold water in any event. So if he wants to raise additional arguments and you're inclined to give him additional time, certainly.

THE COURT: Well, I'd like to -- yeah, I'd like to consider those additional arguments since overall I've just been ruling that I don't think there's state action so -- that we can't reach procedural, you know, a lack of procedural due process, because we don't have a state action. So this is the first time I'm hearing this information and I certainly wouldn't rule without giving you an opportunity to actually brief it. And I -- frankly, I want to read the cases and look at what your arguments are on paper and it's -- where I have time to consider it more than on the fly here, at this point, when it hasn't --

MR. BOHN: Well, my only condition --

THE COURT: -- been raised.

MR. BOHN: -- is I'm out of town Thanksgiving week. I don't want anything scheduled that week, so.

MR. SHEVORSKI: Of course. And --

THE COURT: Probably, nobody does.

MR. STERN: Judge Sturman is having us do trial that week, so.

THE COURT: Oh, not with Mr. Bohn; somebody else?

MR. STERN: No.

MR. BOHN: Yeah.

MR. STERN: No. A case that's near the five-year rule and she's --

THE COURT: Oh.

MR. STERN: -- she dropped down on the hammer on us today.

MR. SHEVORSKI: Oh, it must be O'Mallio's (phonetic) case.

MR. STERN: Yes.

MR. SHEVORSKI: Yeah.

THE COURT: All right. So how long do you want then?

MR. SHEVORSKI: I could -- today's Friday. I can have it on file by next Friday. I have most of it memorized, so.

THE COURT: Okay.

MR. BOHN: Next Friday's a holiday.

THE COURT: Oh, yeah, next Friday is a holiday.

MR. SHEVORSKI: Oh, that's right. It's Nevada day.

THE COURT: Right.

MR. SHEVORSKI: I tried to explain that to one of our colleagues in Alabama the other day and he said, that's nothing compared to what we have.

THE COURT: Oh. Well, and as well, I'm still picking a jury on Day 4 in a med mal case --

MR. SHEVORSKI: Oh, my goodness.

THE COURT: -- that's going to go until November 5th, and then I start immediately a slip and fall case which will take us into -- through my civil stack, and then I start my criminal stack. So you don't necessarily need to rush, because I'm not going to -- I'm going to give Mr. Bohn ample time. And I'm not going to have time to really look at it in depth because I'm still in trial, too, so.

MR. SHEVORSKI: So, two weeks, and two weeks, and a hearing the week after that would be fine with me.

THE COURT: December 10th looks best for our calendar.

THE CLERK: For the hearing.

THE COURT: For the hearing.

MR. SHEVORSKI: For the hearing?

MR. BOHN: November 10?

MR. SHEVORSKI: December 10th.

THE COURT: December.

MR. BOHN: December 10.

MR. SHEVORSKI: Is that okay with you, Micky?

MR. BOHN: I just had --

THE COURT: Especially, if they get it filed fairly early then that will --

MR. BOHN: December 10. When's my trial?

THE COURT: -- give you plenty of time.

MR. BOHN: I have a Supreme Court settlement conference starting at 10:00 o'clock that morning.

THE COURT: Oh.

MR. BOHN: We can do it a week after, or.

THE COURT: Yeah, that was -- the 10th was sort of the earliest time, so the 17th would be okay.

MR. SHEVORSKI: Does that work for you?

MR. BOHN: Yes.

THE COURT: Okay.

MR. SHEVORSKI: Okay. And we'll have our brief, so what is -- not this -- what is --

MR. BOHN: Two weeks, and two weeks?

MR. SHEVORSKI: Two weeks and -- and you can have as much time as you need, I mean --

MR. BOHN: Okay.

MR. SHEVORSKI: -- we're dropping this on you, so.

MR. BOHN: All right. Well, I'm sure I'll be seeing it again, so --

THE COURT: All right.

MR. BOHN: -- it will be added to the --

MR. SHEVORSKI: So we'll do our brief in two weeks and then Mr. Bohn can have as much as -- time as he wants.

MR. BOHN: Two more weeks and --

THE COURT: Yeah. As long as you --

MR. BOHN: -- we'll see you on the 17th.

THE COURT: -- give it -- get it to me, you know, like a week before the hearing would be nice, your brief. Then I have time -- I can take it home over the weekend, too.

MR. SHEVORSKI: Okay.

MR. BOHN: Sounds like fun.

MR. SHEVORSKI: What date do I have for my brief, Your Honor?

THE COURT: I'm sorry?

MR. SHEVORSKI: What brief -- what time do I have for my brief to -- from -- so it's two weeks from today. What date is that?

THE COURT: That's -- well, today is the 22nd, and the 5th.

THE CLERK: It will be November 5th.

MR. SHEVORSKI: Perfect. Thank you very much, and thank you for indulging me.

THE COURT: Thank you.

THE CLERK: What did you want though, Judge, 10:00 or 9:00?

THE COURT: At the hearing?

THE CLERK: Yes.

THE COURT: 9:00.

THE CLERK: So that's December 17th, 9:00 a.m.

THE COURT: All right. Thank you.

MR. BOHN: Thank you.

MR. STERN: Thank you, Your Honor.

(Proceeding concluded at 10:25 a.m.)

* * * * *

CERTIFICATION

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

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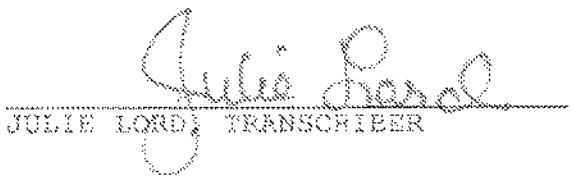

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2227 SHADOW CANYON,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC; PATERNO C. JURANI and REPUBLIC SILVER STATE DISPOSAL, DBA REPUBLIC SERVICES,

Defendants.

Case No.: A-14-702938-C
Dept.: V

DEFENDANT NATIONSTAR MORTGAGE, LLC'S SUPPLEMENTAL BRIEF ON PROCEDURAL DUE PROCESS AND COMMERCIAL REASONABLENESS

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Defendant Nationstar Mortgage, LLC (**Nationstar**), files it supplement brief on federal procedural due process and the doctrine of commercial reasonableness.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

First, NRS Chapter 116's scheme of non-judicial HOA super priority foreclosure violates the federal procedural due process clause. Nevada unique planning laws mandated the creation of HOAs, such as the one in this case, that have common open space and private streets in the development. Nevada's super priority foreclosure scheme mandated that secured lenders act as guarantor of unit owner's obligation to pay assessments. Nevada's legislature, through purposeful design in 1991 and 1993, then designed an opt-in super priority foreclosure scheme when actual

notice is Nationstar's due. **Second**, Nevada's legislature also violated the procedural due process principle articulated in *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 51-52 (1989) because it created a super priority scheme designed to compel lenders to overpay the super priority amount without creating a "clear and certain remedy" for the affected lender. **Third**, sale was commercially unreasonable. The *de minimus* auction price is bad enough, but then HOA compounded its error by keeping bidders in the dark about whether the senior lender tendered. Nationstar should be able to argue to a trier of fact that there is a nexus between auctioneer's lack of disclosure and the de minimus auction price.

STATEMENT OF FACTS

A. Sun City Anthem's CC&Rs Impose Upon the Community, Not the Municipality or State Government, the Responsibility to Maintain Common Open Space.

On February 7, 2006, Pulte Mortgage, LLC recorded a deed of trust, encumbering real property located at 2227 Shadow Canyon Drive, Henderson, Nevada 89044 (the **Property**). The Property is located with Sun City Anthem. Sun City Anthem's CC&Rs are attached as **Ex. A**. The CC&Rs are vital for understanding the constitutional questions before the Court.

The CC&R's provide at Article 7.2 the homeowners association's responsibility to maintain all areas of common responsibility within the planned community. (*Id.* at 33). These common open spaces include, structures, landscaping ponds, streams, or wetlands that serve as storm drainage systems, facilities it owns that are provided for common uses, and all perimeter walls that separate lots from common areas. (*Id.* at 33-34). As this Court will see, this provision in the CC&Rs is no accident. It is a requirement of Nevada state law, as a result of the same assembly bill that adopted the Uniform Common Interest Ownership Act in Nevada, AB 221.

B. Red Rock Financial Services, Inc. Kept Bidders in the Dark Regarding Whether the Super Priority Had Been Paid.

Nationstar deposed Red Rock Financial Services, Inc.'s (**RRFS**) person most knowledgeable regarding its collection policies. (**Ex. B**). RRFS testified it was its policy not to provide a super priority payoff to lenders in 2010 until 2014. (*Id.* at 11:3-21). RRFS further testified that it would not accept a lender's delivery of a check for 9 months' assessments, if the check contained language

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it deemed too restrictive. (*Id.* at 12:2-11). Finally, RRFS testified as to its understanding of super priority from 2010 until 2014:

> Q. And was that policy different in 2010?
>
> A. Yes.
>
> Q. And can you describe how it existed in 2010?
>
> A. It did not. the super priority only applied after the first mortgage deed of trust foreclosed.

(*Id.* at 9:10-14). This means that RRFS, the auctioneer, did not inform bidders about whether the lender had tendered, or redeemed, the super priority portion of the HOA lien. This is so because RRFS did not even think the super priority arose, or became choate, until the lender foreclosed.

REQUEST FOR JUDICIAL NOTICE

Nationstar requests that the Court take judicial notice of the following exhibits pursuant to NRS 48.130(1)(b).

1. **Exhibit A.** The CC&Rs represent a publicly recorded document concerning the governance of the common interest community at issue. *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986);

2. **Exhibits E, F, and G.** Legislative history relating to the enactment of AB 221 and AB 204 in 2009. *Aramark Facility Servs. v. SEIU, Local 1877*, 530 F.3d 817, 826 n.4 (9th Cir. 2008); and

4. **Exhibits C and D.** Published Articles Concerning Planned Unit Communities in the United States. *U.S. v. W.R. Grace*, 504 F.3d 745 (9th Cir. 2007).

LEGAL DISCUSSION

I. NRS Chapter 116's Non-Judicial Super Priority Scheme Violates Nationstar's Federal Procedural Due Process Rights to Notice and an Opportunity to be Heard.

A. Nevada Purposefully Designed an Opt-In Notice Scheme When Actual Notice is Nationstar's Due.

1. State Action's Definition.

There is no simple line between state action and private action. Any attempt to drawn one violates U.S. Supreme Court jurisprudence on this issue: "If the Fourteenth Amendment is not to be

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displaced…its ambit cannot be a simple line between States and people operating outside formally governmental organizations, and the deed of an ostensibly private organization or individual is to be treated sometimes as if a State had caused it to be performed." *Brentwood Academy v Tennessee Second. Sch. Athletic Ass'n*, 531 U.S. 288, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001).

Whether particular private actions can be fairly attributable to the government "admits of no easy answer." *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172, 92 S.Ct. 1965 1971, 32 L.Ed.2d 627 (1972); "Only by sifting facts and weighing circumstances can the nonobvious involvement of the State in private conduct be attributed its true significance." *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722, 81 S.Ct. 856, 860, 6 L.Ed.2d 45 (1961). The Ninth Circuit has recognized four different criteria, or tests, used to identify state action: "(1) public function; (2) joint action; (3) governmental compulsion or coercion; and (4) governmental nexus." *Sutton, Jr. v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-836 (9th Cir. 1999). Regardless of the label used, the challenged action must result from government policy. *Id.* at 835.

a. Nevada Mandated the Creation of this HOA to Govern and Maintain the HOA's Common Open Space.

NRS Chapter 278A was Nevada's planned unit development law prior to NRS Chapter 116. This chapter became inapplicable to common interest communities because of Nevada's adoption through AB 221 of the Uniform Common Interest Ownership Act:

> AN ACT relating to property; enacting the Uniform Common-Interest Ownership Act; appropriately modifying chapters 117 and 278A of NRS as they remain in effect for condominiums and planned unit developments created before the effective date of this act; and providing other matters properly relating thereto.

See 1991 Nev. Stat., Page 535.

However, NRS Chapter 278A remained relevant in one key respect because AB 221 amended NRS Chapter 278A in a key respect. AB 221 made this amendment to NRS 278A.130:

> 278A.130 [1.] The ordinance must provide that the city or county may accept the dedication of land or any interest therein for public use and maintenance, but the ordinance must not require, as a condition of the approval of a planned unit development, that land proposed to be set aside for common open space be dedicated or made available to public use. ***If any land is set aside for common open space, the planned unit development must be organized as a common-interest***

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> ***community in one of the forms permitted by sections 2 to 128, inclusive, of this act.*** The ordinance may require that the [landowner provide for and establish an organization for the ownership and maintenance of any common open space, and that the organization] *association for the common-interest community* may not be dissolved or dispose of any common open space by sale or otherwise, without first offering to dedicate the common open space to the city or county. That offer must be accepted or rejected within 120 days.
>
> [2. The ordinance may authorize the organization to make reasonable assessments to meet its necessary expenditures for maintaining the common open space in reasonable order and condition in accordance with the plan. The assessments must be made ratably against the properties within the planned unit development that have a right of enjoyment of the common open space. The ordinance may provide for agreement between the organization and the property owners providing:
>
> (a) A reasonable method for notice and levy of the assessment; and
>
> (b) For the subordination of the liens securing the assessment to other liens either generally or specifically described.]

1991 Statutes of Nevada, Page 584-585. (emphasis added).

In sum, the same Act that created NRS Chapter 116 also accomplished the following by amending Chapter 278A. **First**, all developers of planned unit developments[1] were required to create a homeowners association to govern and maintain any open space[2] within planned unit developments. **Second**, Nevada stripped the ability of private parties to subordinate the assessment lien.

Here, Sun City Anthem created common open spaces, which include, structures, landscaping ponds, streams, or wetlands that serve as storm drainage systems, facilities it owns that are provided for common uses, and all perimeter walls that separate lots from common areas. (*Id.* at 33-34). In sum, the state of Nevada mandated that Sun City Anthem Homeowners Association be created to govern and maintain these common open spaces.

b. Creation and Proliferation of HOAs is Encouraged by Government Action.

Private community associations have exploded in numbers over the past 40 years. In 1970, there were approximately 10,000 community associations. (**Ex. C**, Community Ass'n Institute, *Community Ass'n Fact Book*, p. 8 (2014)) There were 333,600 community associations governing

[1] A planned unit residential development includes a condominium. NRS 278A.240.
[2] "Common open space" means land or water dedicated to the use of the residents of the planned unit residential development. NRS 278A.040

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66,000,000 Americans as of 2014. *Id.* There are many reasons for the exponential expansion in common interest communities, but one major reason is patent – significant government encouragement due to significant government cost saving. The savings to local governments are summarized as:

> Local government gets developments that are significantly self-financing, often have additional amenities, and add to the local tax base. At the same time, RCA development relieves local government and, thereby, existing taxpayers of much of the responsibility for financing infrastructure and services.

(**Ex. D**, Residential Community Associations: Private Governments in the Intergovernmental System?, p. 5 (1989). Statistics may, in fact, underestimate, the savings to local government of the privatization of government services:

> Public finance statistics do not include estimates of how much money RCAs are spending on "public" services, or of the precise extent to which RCA members are subsidizing the public services provided to non-RCA homeowners. The increasing number of RCA communities and the fact that they are estimated to include as many as 29 million people suggest that public finance statistics seriously understate expenditures for community facilities and services. In all probability, RCAs account for the most significant privatization of local government responsibilities in recent times, as measured by the amount of expenditure relief given to the public sector for capital investment and operations.

Id. at p. 18. Recently, the Foundation for Community Research estimated the savings to local government of services provided by homeowners associations as "between $2 to $4 billion a year by minimizing the need for building and health code enforcement and other public safety services." (**Ex. C**, *supra*, Community Association Fact Book, Community Services as an Association Core Function, p. 26 (2014).

c. Nevada's Legislature Expressly Stated the Super Lien Serves State Interests.

Nevada adopted the UCIOA in 1991. *See* 1991 Nev. Stat., Page 535. The initial period of super priority was 6 months. However, because super priority serves a governmental purpose, Nevada's legislature responded to the financial crisis by increasing the length of super priority from 6 months to 9 months. NRS § 116.3116(2)(c) was amended by Assembly Bill 204 in 2009. *See* 2009 Nev. Stat., Page 1207.

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In its original form, AB 204 extended the period of priority from six months to two years, but this provision was reduced to nine months of priority. Assembly Person Ellen Spiegel testified about the legislature's purpose in extending the period of priority in her March 6, 2009 testimony:

> Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. **This is necessary now because foreclosures are now taking up to two years**. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

(**Exhibit E**, Hearing on AB 204 Before Assemb. Comm. on the Judiciary, 75th Legislature, p. 34 (2009) (Statement of Assemblyperson Ellen Spiegel).

Assemblyperson Spiegel then explained the legislature's policy goals in expanding the time period applicable to the super priority lien:

> The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, **prevent cost-shifting from common-interest communities to local governments**.

(*Id.*; see also **Exhibit F**, Document Submitted by Assemblyperson Spiegel in conjunction with her testimony on March 6, 2009, at pgs. U-3 and U-13). (Emphasis added).

2. State Action is Satisfied in this Case.

There is no specific formula for determining whether under the facts of a particular case the state action definition has been fulfilled. Generally, state action will be found where there is a sufficiently close nexus between the government and the challenged action that the private actor's conduct can be fairly attributable to the state. *Sutton, Jr. v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 836 (9th Cir. 1999).

a. Government Compulsion.

Nevada's unique planning laws and super priority foreclosure scheme meet the government compulsion test. State action exists where the state has used coercive power, whether covert or overt, or provided significant encouragement to the private actor such that the challenged action can

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be fairly attributable to the state. *Blum v. Yaretsky*, 457 U.S. 991, 104, 102 S.Ct. 2777, 73 L.Ed.2d 534 (1982).

Nevada used its coercive power to both mandate the creation of homeowners associations and then created the threat of super priority foreclosure to dragoon lenders into subsidizing homeowners associations. **First**, Nevada enacted NRS 278A.130 and mandated the creation of homeowners associations that have any open space for the use of residents in the planned unit development. **Second**, because this particular Property is in Clark County and serviced by private streets, Clark County mandated the creation of a private interest community. **Third**, the state of Nevada's legislature created the super priority lien in 1991. Before the state's enactment, no such right existed. **Fourth**, the length of time of the super lien, 6 months, was state created in 1991. **Fifth**, Nevada's legislature extended super priority from 6 months to 9 months to ensure there was no cost-shifting from private actors to local governments for the services provided by the planned communities, but had traditionally been provided by the state. **Sixth**, the super priority lien is mandatory according to state law and cannot be contracted around through private agreement by anyone.

b. The State of Nevada is Intertwined with Super Priority Foreclosure.

The case of *Culbertson v. Leland*, 528 F.2d 426 (9th Cir. 1975) provides a useful demonstration of an instance where the state has become intertwined with a private actor's exercise of power over property necessitating procedural due process. The *Culbertson* court concluded the defendant, the owner of a hotel, acted under color of law when, after she evicted the plaintiffs, she seized their personal property as collateral, pursuant to the Arizona Innkeeper's Lien statute. *Culbertson*, 528 F.2d at 427. The court reasoned the defendant was acting under color of state law because, "the lien statute at issue here gave [defendant] a right she would not have had at common law." *Id.* at 430. The court also noted the parties did not have a contractual relationship regarding disposition of the property. *Id.* at 432. The court reasoned that because the statute was the "sole authority for the seizure, which would not otherwise have been even colorably legal, ... [a]nd since the statute was the *sine qua non* for the activity in question, the state's involvement through the statute is not insignificant." *Id.*

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Here, the state of Nevada has more than merely acquiesced in private conduct. Nevada is overtly involved every aspect of HOA super priority lien foreclosure, except foreclosing on the property itself. **First**, Nevada has imposed an obligation to pay sums due on a lien onto a party who has no connection to the debt. Nationstar is not a unit owner. Nationstar does not have any agreement to step into the shoes of the unit owner. **Second**, the state of Nevada created a super priority association lien unknown at common law. **Third**, the lien's priority was lengthened in 2009 from 6 to 9 months specifically to benefit the state of Nevada, which feared the cost of providing services could shift from planned communities to the state. **Fourth**, the super priority lien is also regulated and enforced through state law. *See* NRS § 116.31162; *See* NRS § 116.31164. **Fifth**, the state of Nevada has forbidden HOA and secured lenders from reaching any agreement that may affect the super priority lien. The state action requirement is met here.

3. The HOA Lien Statute's Opt-in Notice Provisions, NRS 116.31163 and NRS 116.31168(1), Violate Federal Procedural Due Process.[3]

The HOA Lien Statute does not mandate actual notice to a deed of trust holder prior to an HOA's foreclosure. Rather, the HOA Lien Statute impermissibly requires those with a security interest in a Nevada property subject to an HOA lien to "opt-in" to their constitutional protections by requesting notice prior to an HOA's foreclosure—a requirement that fails to provide the mandatory notice guaranteed by the Due Process Clause.[4] The HOA Lien Statute is invalid on its face.

a. Actual Notice is Nationstar's Due, Not Opt-In Notice.

The HOA Lien Statute is unconstitutional because it does not ensure mortgagees with a potential loss of their property interests will receive notice and an opportunity to be heard.[5] The Due Process Clause of the U.S. Constitution requires that, "at a minimum, [the] deprivation of life,

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[3] The Nevada Legislature recently amended the HOA Lien Statute. *See* S.B. 306. Those amendments apply only to notices of default and/or sale recorded on or after October 1, 2015.

[4] In fact, the provision has now met with the disapprobation of the Nevada Legislature which, after HOAs commenced a recent surge of foreclosures, overwhelmingly agreed to amend the HOA Lien Statute to strip out the "opt-in" notice provision and require mandatory notice. The reason is clear: where the State allows the extinguishment of such a significant interest in real property, it must also mandate the holder of the lien to be extinguished have notice and some opportunity to remediate.

[5] A foreclosure under the HOA Lien Statute alleged to have extinguished a first deed of trust is state action subject to a due-process challenge. *See Culbertson*, 528 F.2d 426 (holding that private innkeeper's seizure of property without notice pursuant to state innkeeper's lien statute constituted state action and violated due process).

liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (emphasis added). An "elementary and fundamental requirement of due process … is notice reasonably calculated, *under all circumstances*, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tulsa Prof'l Collection Services, Inc. v. Pope*, 458 U.S. 478, 484 (1988) (quoting *Mullane*, 339 U.S. at 314) (emphasis added). Put more simply, state action may not extinguish an interest in real property unless the holder of that interest is afforded notice of that action.

The U.S. Supreme Court has applied this standard in the same context as this case—where a mortgagee's property interest was purportedly extinguished by a non-judicial foreclosure. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983). The *Mennonite* Court held the Due Process Clause required "[n]otice by mail or other means *as certain to ensure actual notice* [to the mortgagee] is a minimum constitutional precondition" to a non-judicial foreclosure sale that can extinguish the mortgagee's interest. *Id.* On its face, Nevada law does not "under all circumstances" provide to a deed of trust holder notice "of the pendency of an action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at 314.

b. NRS 116.31163's Plain Language Requires A Secured Lender to Opt-in to Receive Notice from the HOA.

On the HOA Lien Statute's face, mortgagees must receive notice *only* if they have previously requested notice from HOA. In NRS § 116.31163, the statute provides a notice of default and election to sell need only be provided to a mortgagee who "has requested notice" or "has notified the association" more than thirty days before recording the notice of default of the existence of a security interest. NRS § 116.31163(1)-(2). Section 116.311635 similarly requires notice of an HOA foreclosure sale be sent only to those mortgagees who have requested notice under NRS 116.31163, or those who have "notified the association." NRS § 116.311635(1)(b)(1)-(2). A third provision concerning notice of delinquent assessments does not require notice to mortgagees at all. NRS § 116.31162.

The omission of any requirement that notice be given to deed of trust beneficiaries under HOA Lien Statute may be explained by its unique history. In drafting the HOA Lien Statute, the

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Nevada Legislature ignored the advice of the drafters of the Uniform Common Interest Ownership Act ("UCIOA"), upon which the statute is based. Section 3-116(j)(1) of the 1982 uniform act would have required that a foreclosure on an HOA's superpriority lien "be foreclosed in like manner as a mortgage on real estate [or by power of sale under [insert appropriate state statute]]." Nevada instead drafted the requirements for foreclosing on an HOA lien from scratch—and in the process, failed to ensure that affected deed of trust beneficiaries would receive adequate notice.[6]

The HOA Lien Statute explicitly permits the total extinguishment of a first deed of trust without *any* notice to the mortgagee holding that deed. If a mortgagee does not request notice—or, put differently, fails to "opt in" to its constitutional rights—Nevada law will extinguish a first deed of trust without notice. Such a result contravenes *Mennonite*, which holds a "party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." 462 U.S. at 799; *see also Mullane*, 339 U.S. at 314 (notice must be afforded "under all circumstances").

While *Mennonite* did not specifically address an opt-in or request-notice provision such as the one created by Nevada law, a broad consensus has emerged in state and federal courts that such provisions are unconstitutional under *Mennonite*. The Fifth Circuit, for instance, considered a Louisiana statute that required notice of a foreclosure sale only to those persons who had filed a request for such notice in the mortgage records. *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 885-86 (5th Cir. 1989). The Fifth Circuit applied *Mullane* and *Mennonite*, and held the statute "as interpreted by the district court, cannot be squared with *Mennonite*'s allocation of notice burdens." *Id.* at 890. Moreover, a slew of state-court decisions have reached the same conclusion regarding the

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[6] The drafters of the UCIOA have tacitly acknowledged the problem with Nevada's statute, issuing the following comment as part of the 2008 version of the uniform law:

> In some states, nonjudicial foreclosure procedures require notice to subordinate lienholders only when those lienholders have recorded a timely request for notice of sale on the real property records. . . . The issue of notice to subordinate lienholders becomes more critical under this Act, given that subsection (c) gives the association a limited priority over the otherwise-first mortgage lender, thus rendering that lender a subordinate lienholder. ***It would be manifestly unfair for an association's foreclosure sale to extinguish the lien of the otherwise-first mortgage lender if the association did not in fact provide the lender with notice of that sale.***

Uniform Law Commission, UCIOA cmt. 8 (2008) (emphasis added). To remedy this defect, the 2008 version of the uniform act includes a new section expressly stating that an association's foreclosure "does not terminate an interest that is subordinate to the lien to any extent unless the association provides notice of the foreclosure to the record holder of the subordinate interest." *Id.* § 3-116(r).

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validity of opt-in notice statutes.[7]

The Nevada Legislature drafted a notice scheme explicitly disclaiming the obligation to provide notices of default or sale to mortgagees who do not file a prior request for such notice. The abundant case law cited in the preceding paragraphs establishes such a scheme is plainly unconstitutional. The Legislature has recognized its error, and amended the HOA Lien Statute, leaving behind a number of properties and cases to which the old, flawed law applies. The version of the HOA Lien Statute applicable here is susceptible to a facial attack because HOA asserts the sale extinguished Nationstar's senior deed of trust even though the applicable version of the HOA Lien Statute did not require notice to Nationstar or its predecessors in interest. This alone is sufficient to invalidate the statute and the foreclosure at issue in this case. *See, e.g.*, *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 456 (1st Cir. 2009) (sustaining facial attack on notice provisions and holding "actual notice cannot defeat [facial] due process claim").

c. Nevada's Legislature, *by purposeful design*, created an opt-in notice foreclosure scheme through its Enactment and Amendments to NRS Chapter 116.

NRS 116.31168(1) does not save the Chapter 116's super priority foreclosure scheme. The rule is that "every *reasonable* construction must be resorted to, in order to save a statute from unconstitutionality.' " *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Construction Trades Council*, 485 U.S. 568, 575 (1988) (quoting *Hooper* v. *California*, 155 U.S. 648, 657 (1895)) (emphasis added). Indeed, to construe NRS 116.31168(1) as an actual notice provision to lienholders would be to ignore Nevada's legislature's express purpose in creating that statute in 1991 and amending it in 1993.

NRS 116.31168(1) is unique among UCIOA states. The Uniform Law Commission instructed legislatures simply to borrow the mortgage foreclosure scheme already in place in each adopting state, rather than create a new foreclosure scheme for lien foreclosure:

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[7] *See* also *Island Fin., Inc. v. Ballman*, 607 A.2d 76, 81 (Md. Ct. Spec. App. 1992) ("Constitutional due process protection does not exist only for those who follow the notice statute but encompasses all interests that may be affected by a state action."); *accord, e.g.*, *Wylie v. Patton*, 720 P.2d 649, 655 (Idaho 1986); *Reeder & Assocs. v. Locker*, 542 N.E.2d 1371, 1373 (Ind. Ct. App. 1989); *City of Boston v. James*, 530 N.E.2d 1254, 1256 (Mass. App. Ct. 1988); *Jefferson Twp. v. Block, 447A*, 548 A.2d 521, 524 (N.J. 1988); *In re Foreclosure of Tax Liens*, 103 A.D.2d 636, 640 (N.Y. App. Div. 1984); *United States v. Malinka*, 685 P.2d 405, 409 (Okla. Civ. App. 1984); *Seattle First Nat'l Bank v. Umatilla Cnty.*, 713 P.2d 33, 35-37 (Or. App. 1986).

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> (j) The association's lien may be foreclosed as provided in this section:
> (1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate [or by power of sale under[insert appropriate state statute]

UCIOA § 3-116(j)(1) (1982). Nevada ignored the Uniform Law Commission's advice. Rather than borrower from the existing mortgage foreclosure scheme, Nevada created NRS 116.31168(1).

The legislative history to AB 221 contains a spreadsheet detailing the basis of each section of Nevada's version of the UCIOA. The legislature's spreadsheet explains where all of Chapter 116's notice provisions are derived. The notice provisions applicable to unit owners and their successors or assigns are lifted from NRS 117.075, which is why only the unit owner and his successors or assigns receive the notice of default and the notice of sale. *Compare* NRS 117.075(2)-(3) and **Exhibit G** (AB 221's legislative history) at pg. 95. The legislature in its spreadsheet also identified the request for notice provision for lienholders of NRS 107.090. *Compare* NRS 107.090 and **Exhibit G** at pg. 95.

However, there was one unique, additional notice provision applicable to all lienholders that Nevada created in 1991, but eliminated in 1993. As originally drafted in 1991, NRS 116.31168(1) also required the HOA to "also give reasonable notice of its intent to foreclose to all holders of liens in the unit who are known to it." 1991 Statutes of Nevada, Page 570. This portion of NRS 116.31168(1) was the only provision that put the onus on an HOA to give notice without a secured lender having to opt-in for notice and request it.

Nevada's legislature eliminated NRS 116.31168(1)'s actual notice requirement, through passage of AB 612 in 1993. 1993 Statutes of Nevada, Page 2373. Next, Nevada enacted NRS 116.31163 as part of AB 612:

> The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:
> 1. ***Each person who has requested notice pursuant to NRS 107.090 or 116.31168***;
> 2. Any holder of a recorded security interest encumbering the unit's owner's interest ***who has notified the association***, 30 days before the recordation of the notice of default, of the existence of the security interest; and
> 3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit

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> is the subject of a contract of sale and the association has been requested to furnish the certificate required by NRS 116.4109.

1993 Statutes of Nevada, Page 2355. (emphasis added).

The legislative history of Nevada's unique version of the UCIOA demonstrates that the legislature created an opt-in notice scheme by design. This Court should not re-write Nevada's super priority scheme in order to save it.

4. NRS Chapter 116 Is Intended to Force First Position Mortgagees to Pay the Entire HOA Lien Without Providing a "Clear and Certain Remedy" for a Refund.

Nevada's legislature designed Chapter 116's super priority foreclosure scheme to force lenders to pay off the entire homeowner's association lien. This is patent. There is no provision of Chapter 116 that obligates an HOA, or its trustee to provide the super priority amount or even provide a breakdown of the amounts owed by the unit owner. RRFS' conduct in this very case is an example of how NRS Chapter 116 was designed to function. Worse still, Nevada's legislature did not create a right for a lienholder to demand a statement of the outstanding balance owed by the unit owner until the passage of SB 280 in 2013, which created NRS 116.4109(7)-(8). This new provision only applies to the resale of units. NRS 116.4109(8).

Nevada's Supreme Court tacitly acknowledged that it was the Nevada legislature's design to compel a first position mortgagee to pay off the entire lien when it wrote in the SFR decision "[a]nd from what little the record contains, nothing appears to have stopped U.S. Bank from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance." *SFR Investments Pool 1, LLC v. US Bank, NA*, 334 P.3d 408, 418 (2014).

Contrary to the Nevada Supreme Court's assumption in *SFR Investments*, 334 P.3d at 418 & n.6, the fact that a holder of a security interest could overpay the lien amount and then try to seek a refund does not eliminate the due-process problem with the HOA Lien statute because the State has not implemented a procedure for providing such a refund. *See García-Rubiera v. Fortuño*, 665 F.3d 261, 278 (1st Cir. 2011); *accord McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 51-52 (1989). Nevada cannot design a super priority foreclosure scheme that puts secured lenders under the duress of having their collateral extinguished in order to compel overpayment, without providing a "clear and certain remedy" for the affected lender.

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Here, Nevada provided no "clear and certain remedy." **First**, there is no private right of action under Chapter 116. **Second**, Nevada did not create an administrative remedy to recover overpayments. **Third**, the Nevada Real Estate Division's dispute resolution process is unavailable in nearly every instance since the jurisdictional amount is $7,500,[8] attorney's fees are not recoverable, and any result is non-binding between the parties.[9] **Fourth**, a secured lender, if allowed to sue for a refund in court, may necessarily have to pursue actions in multiple courts against difference parties such as the management company, the HOA's foreclosure trustee, and the HOA – all of whom would have been wrongly overpaid and from whom the secured lender would have to seek a refund.[10] **Fifth**, the costs of pursuing a common law cause of action against multiple parties in multiple courts create an undue burden on a secured lender where the super priority amount is, at most, 9 months of assessments. *SFR Investments Pool 1, LLC*, 348 P.3d at 408 ("NRS 116.3116 gives a homeowners' association (HOA) a superpriority lien on an individual homeowner's property for ***up to nine months*** of unpaid HOA dues.")

D. The HOA Sale Was Commercially Unreasonable.

NRS §116.1113 provides as follows:

> Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

Nevada's legislature explained in the legislative history where their concept of good faith is derived. (**Exhibit G**, at pg. 95). Nevada's UCIOA's concept of good faith is derived from the Uniform Commercial Code Sec. 1-203, which Nevada codified at NRS 104.1203. Thus, the appropriate analogy of a HOA sale is secured transactions sale under the Uniform Commercial Code and not a bank foreclosure sale.

---

[8] The amount of the HOA lien at the time of sale in this case was $7,050, but it could just as easily been over the jurisdictional limit depending upon how long the unit owner was delinquent, the amount of monthly assessments, the rate of interest and for how long interest accrued, whether penalties were assessed, the amount of the management fees, and the amount of collection costs and attorney's fees.

[9] http://red.nv.gov/Content/CIC/ADR/About/

[10] Multiple actions would be necessary since the HOA lien is comprised of amounts owed to the HOA trustee and the management company that would likely be below the jurisdictional limit for small claims court, whereas the remainder of the lien owed to the HOA could easily be over the small claims or even justice court limit.

Good faith in a UCIOA foreclosure sale was interpreted and applied in *Will v. Mill Condominium Owner's Association*, 848 A.2d 336 (Vt. 2004). In *Will*, the property was sold pursuant to a homeowners association lien of $3,510.10. *Id.* at 338. The fair market value of the property was $70,000. *Id.* The Vermont Supreme Court interpreted the same uniform act that Nevada adopted. *Id.* at 340-341. The court voided the trustee's sale because the sale was not made in a commercially reasonable manner.

The law in Nevada has always been consistent with the result in *Will, supra*. A secured party must, after default, proceed in a commercially reasonable manner to dispose of collateral. NRS 104.9504(3); *Jones v. Bank of Nevada*, 91 Nev. 368, 535 P.2d 1279 (1975). Every aspect of the disposition, including the method, manner, time, place, and terms, must be commercially reasonable. NRS 104.9504(3). Although the price obtained at the sale is not the sole determinative factor, it is, nevertheless, one of the relevant factors in determining whether the sale was commercially reasonable. *First Nat'l Bank of Bellevue v. Rose*, 188 Neb. 362, 196 N.W.2d 507 (1972).

The case of *Iama Corp, v. Wham*, 99 Nev. 730, 736, 669 P.2d 1076, 1080 (1983), is instructive. There, the Nevada Supreme Court reversed a trial court's finding that a sale of collateral was conducted in a commercially reasonable manner. Central to the court's decision was the wide discrepancy between the fair market value and the sale price of the collateral. *Id.* The court then scrutinized whether proper notice was given, whether the bidding was competitive and whether the sale was conducted pursuant to the sheriff's office's normal procedures. *Id.* The court ultimately set aside the sale because the pre-foreclosure conduct of the seller detrimentally affected the price the collateral would bring at auction. *Iama Corp.*, 99 Nev. at 736-37, 669 P.2d at 1079-80. Nationstar cites this case as illustrative of the factors a fact finder must consider in a commercial reasonableness analysis—factors plaintiff has not established in this case.

Even if this Court were to apply good faith concepts from the mortgage foreclosure context, the sale should still be set aside. The Restatement (Third) of Property (Mortgages) expressly supports Nationstar's defense that this sale should be set aside because the price is grossly inadequate. Section 8.3 provides:

> (a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with

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> applicable law does not render the foreclosure defective **unless the price is grossly inadequate**.
>
> (b) Subsection (a) applies to both power of sale and judicial foreclosure proceedings.

(emphasis added). The Restatement authors went on to define what it means by "grossly inadequate:"

> "Gross inadequacy" cannot be precisely defined in terms of a specific percentage of fair market value. Generally, however, a court is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount. See Illustrations 1-5. **While the trial court's judgment in matters of price adequacy is entitled to considerable deference, in extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it.**

Id. at cmt. b. (Emphasis added.)

Here, Nationstar's expert provided that the fair market value was $335,000. The HOA sold the property to plaintiff for $35,000. This is less than the 20% mark set by the Restatement's authors. This Court should void the sale on this ground alone.

The HOA's commercially unreasonable conduct went further. The HOA, through its foreclosure agent, kept bidders in the dark regarding its position that it was not even conducting a super priority sale. RRFS should have recorded a notice that the property was being sold subject to the deed of trust, or should have chosen a judicial foreclosure method of foreclosure to alleviate uncertainty regarding the quality of title at action. Regardless of the uncertainty in Nevada law existing prior to the *SFR* decision, RRFS caused further confusion and uncertainty by keeping whether a tender had occurred secret from bidders. RRFS, even with good intentions, deprived bidders of material information about the quality of title they were bidding on at the auction. The result was a sale for about 10% of the property's fair market value. This Court should set the sale aside as void.

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CONCLUSION

Nevada was free to ignore UCIOA's creators recommendation to borrow from their existing mortgage foreclosure scheme and create from scratch a novel super priority foreclosure scheme, but it had to do consistently with procedural due process. Nevada's unique super priority foreclosure scheme deprives Nationstar of its right to notice and an opportunity to be heard. Plaintiff's quiet title/declaratory relief claim fails under both state and federal law. The Court should grant summary judgment in Nationstar's favor.

DATED this 6th day of November, 2015.

AKERMAN LLP

/s/ Steve Shevorski, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 6th day of November, 2015, I caused to be served a true and correct copy of foregoing **DEFENDANT NATIONSTAR MORTGAGE, LLC'S SUPPLEMENTAL BRIEF ON PROCEDURAL DUE PROCESS AND COMMERCIAL REASONABLENESS**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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EXHIBIT A

23

20001031
.02253

APN: 190-06-110-007

WHEN RECORDED RETURN TO:

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Vicky Lewis
Real Estate Paralegal
Del Webb Corporation
11500 S. Eastern Avenue
Henderson, Nevada 89052

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SUN CITY ANTHEM

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20001031
.02253

AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SUN CITY ANTHEM

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the 28TH day of September, 2000, by Del Webb Communities, Inc., an Arizona corporation ("Declarant").

RECITALS

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Sun City Anthem (the "Declaration"), dated June 26, 1998, was Recorded in the office of the Clark County Recorder on June 29, 1998 in Book No. 980629 as Instrument No. 00719, thereby creating the common-interest community known as Sun City Anthem; and,

WHEREAS, the 1999 Nevada Legislature adopted Senate Bill 451 ("SB 451") amending the Nevada Uniform Common-Interest Ownership Act, NRS §116.1101 et. seq. (the "Act"); and,

WHEREAS, the Revisor's Note to NRS 116.31065 requires that any declaration of a common-interest community created on or after January 1, 1992, that does not conform to the provisions of the Act, as amended by SB 451, must be changed not later than October 1, 2000, to conform to those provisions and may be so changed without complying with the procedural requirements generally applicable to the adoption of an amendment to the declaration; and,

WHEREAS, Declarant desires to comply with the Revisor's Note to NRS116.31065 by executing this Amendment to conform the Declaration to the Act, as amended by SB 451;

NOW THEREFORE, the Declaration is hereby amended and restated in its entirety as follows in order to conform to the Act, as amended by SB 451.

PART ONE: INTRODUCTION TO THE COMMUNITY

Del Webb Communities, Inc., as developer of Sun City Anthem, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of Sun City Anthem as a master planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as owner of the real property described in Exhibit "A," intends by Recording this Declaration to create a general plan of development for the planned community known as Sun City Anthem. This Declaration provides a flexible and reasonable procedure for the future expansion of Sun City Anthem to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Sun City Anthem. An integral part of the development plan is the creation of Sun City Anthem Community Association, Inc., an association comprised of all owners of real property in Sun City Anthem, to own, operate, and maintain various common areas and community improvements, and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This document is prepared pursuant to the Nevada Common Interest Ownership Act, NRS § 116.1101, *et seq.*, and establishes a planned community as defined therein.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of Sun City Anthem in the future by Recording one or more Supplemental Declarations, shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns.

Unless otherwise provided by Nevada law, this Declaration shall run with the land and have perpetual duration. This Declaration may be terminated only by a Recorded instrument signed by Owners of at least 80% of the total Lots, and which complies with the termination procedures set forth in the Act. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general plan of development for Sun City Anthem which may be supplemented by additional covenants, restrictions, and easements applicable to particular Neighborhoods.

The Governing Documents shall be enforceable by Declarant, the Association, the Council, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article XVI, if applicable.

In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, and/or the provisions of any other articles of incorporation, by-laws, rules, or policies governing any Neighborhood, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration.

All provisions of the Governing Documents shall apply to all Owners and to all Occupants of their Lots, as well as their respective tenants, guests, and invitees. Any lease on a Lot shall provide that the tenant and all Occupants of the leased Lot shall be bound by the terms of the Governing Documents and shall be responsible for compliance with such terms by their guests and invitees.

Unless otherwise specifically provided, any notice provided for in the Governing Documents shall be provided in accordance with the By-Laws.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

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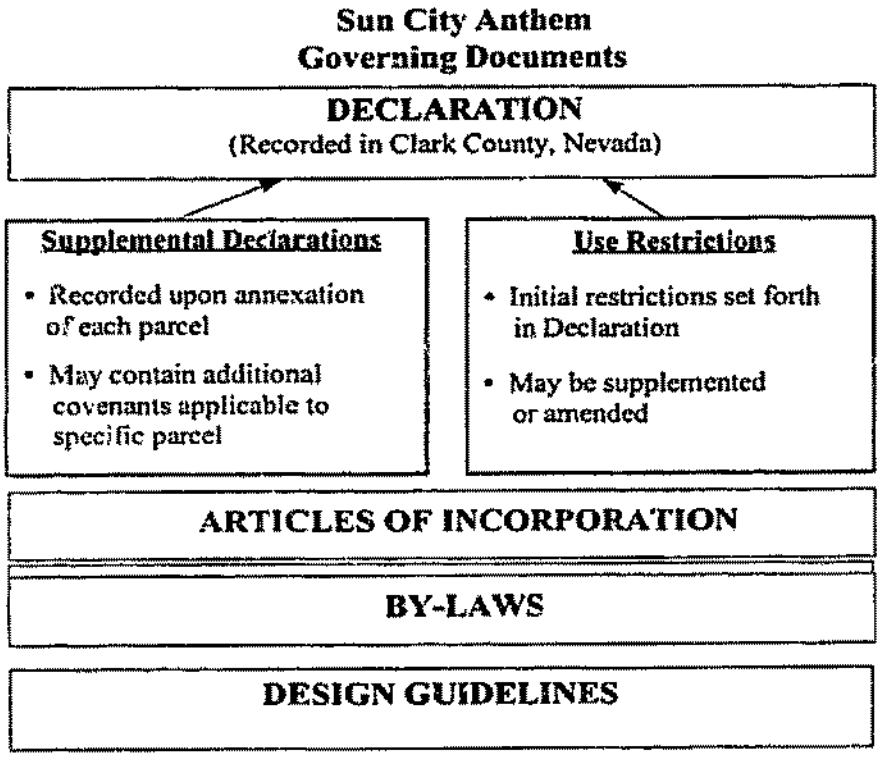
The following diagram summarizes the Governing Documents for Sun City Anthem.



All diagrams which are included in the Governing Documents are intended only to summarize the express written terms therein. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

1.4. Anthem Community Council.

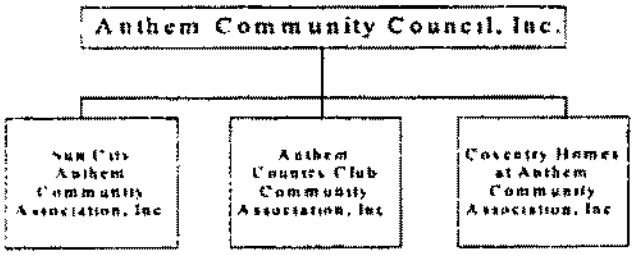
Declarant has recorded the Declaration of Covenants and Easements for the Anthem Community and has created the Anthem Community Council to provide a means for each Anthem residential community jointly to participate in community-wide affairs. The members of the Council shall be the Association, the Anthem Country Club Community Association, Inc., and the Coventry Homes at Anthem Community Association, Inc. While Home Owners are not members of the Council, each Home Owner is subject to the Community Covenant.

The Council is authorized to organize, fund, and administer such activities, services, and programs designed to build and enhance the sense of community within Anthem as its board of directors deems necessary, desirable, or appropriate. By way of example, such activities, services, and programs may include primary and adult education programs; community-wide

recycling or other services; cultural, arts, and entertainment activities; and promotional or public relations activities on behalf of the Anthem community. In addition, the Council shall own and maintain such real property and facilities as is conveyed or transferred to it by Declarant or its affiliates.

The Council shall assess each of the Council members for all or any portion of the incurred costs. In addition, the Council may charge use or consumption fees for use of or participation in Council activities, services, and programs as provided in the Community Covenant.

Council Membership Structure



Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Act": The Nevada Common Interest Ownership Act, Nevada Revised Statutes, Chapter 116.1101, *et seq.*, as it may be amended from time to time.

"Activity Cards": Those certain cards which are issued by the Association in accordance with the terms and conditions set forth in Article XV and which confer upon the holder rights of access to and use of recreational facilities and other Common Areas within the Properties.

"Age-Qualified Occupant": Any person (i) 50 years of age or older who owns and Occupies a Dwelling Unit and was the original purchaser of the Dwelling Unit from Declarant; or (ii) 55 years of age or older who Occupies a Dwelling Unit. An Occupant of an ancillary "guest house" or "in-law suite" on a Lot, unless also an Age-Qualified Occupant of the primary Dwelling Unit the Lot, shall not be an Age-Qualified Occupant.

"Anthem": That certain master planned community located in Henderson, Clark County, Nevada, which is more particularly described in the Master Plan, as it may be amended from time to time.

"Anthem Community Council" or "Council": The Anthem Community Council, Inc., a Nevada nonprofit corporation, its successors and assigns.

"Architectural Review Committee" or "ARC": The committee Declarant may create at such time as it shall determine in its sole discretion to review new construction (other than that installed by Declarant) and modifications and to administer and enforce the architectural controls for Sun City Anthem, as more specifically provided in Section 4.2.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

"Articles of Incorporation" or "Articles": The Articles of Incorporation of Sun City Anthem Community Association, Inc., as filed with the Nevada Secretary of State.

"Association": Sun City Anthem Community Association, Inc., a Nevada nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Lots.

"Benefited Assessment": Assessments levied against a particular Lot or Lots for expenses incurred or to be incurred by the Association for the purposes described in Section 8.5.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving the same role as the board of directors under Nevada corporate law and as the "executive board" as defined in the Act.

"By-Laws": The By-Laws of Sun City Anthem Community Association, Inc., attached as Exhibit "C," as they may be amended from time to time.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, all areas designated as a "common element" or "common area" on the Plats, and all interests as provided in the Act. The term shall include the Limited Common Area, as defined below, and may also include, without limitation, recreational facilities, entry features, signage, landscaped medians, rights of way and roads, lakes, ponds, parks, greenbelts, enhanced and native open space, trails, sidewalks and land operated as a golf course, if owned by the Association .

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Declarant shall initially establish such standard which may be more specifically defined in the Design Guidelines, the Use Restrictions, Rules, and Board resolutions. Any subsequent amendments to the standard shall meet or exceed the standards set during the Declarant Control Period. Such standards may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and demands of Sun City Anthem change.

"Community Covenant": That certain Declaration of Covenants and Easements for the Anthem Community that has been or will be Recorded, as may be amended from time to time.

"Declarant": Del Webb Communities, Inc., an Arizona corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

"Declarant Control Period": The period of time during which Declarant is entitled to appoint a Majority of the members of the Board of Directors as provided in the By-Laws.

"Design Guidelines": The architectural, design, and construction guidelines and application and review procedures applicable to the Properties as promulgated and administered pursuant to Article IV, as they may be amended.

"Dwelling Unit": Each building or structure or portion of a building or structure situated upon a Lot and which is intended for use and Occupancy as an attached or detached residence for a single family. Notwithstanding the above, an ancillary "guest house" or "in-law suite" on a Lot shall not be a separate Dwelling Unit but, instead, shall be deemed a part of the structure serving primarily as the Dwelling Unit on the Lot.

"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Guidelines, Use Restrictions, Rules, and the Community Covenant and other documents governing the administration and operation of the Council, as they may be amended.

"Home Owner": An Owner other than Declarant.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in Article XII, and being a "limited common element" as defined in the Act.

"Lot": A contiguous portion of the Properties, whether improved or unimproved, other than Common Area, common property of any Neighborhood Association, , and property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and Occupied for residential purposes and to contain a Dwelling Unit. The term shall mean all interests defined as "Lot" in Section 166.11039 of the Act. The term

shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on a Recorded Plat.

Prior to Recording a Plat, a parcel of vacant land, or land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number of Lots set by Declarant in conformance with the Master Plan.

"Majority": Unless otherwise specifically defined in a provision of the Governing Documents, Majority of those votes, owners, or other groups as the content may indicate totaling more than 50% of the total eligible number.

"Master Plan": The master land use plan for the development of Sun City Anthem as approved by Henderson, Nevada, and as it may be amended, which plan includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B" that Declarant may from time to time subject to this Declaration. The Master Plan may also include subsequent plans which Henderson, Nevada, approves for the development of all or a portion of the property described in Exhibit "B" which Declarant may from time to time subject to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

"Maximum Lots": The maximum number of Lots approved for development within Sun City Anthem under the Master Plan, as amended from time to time; provided, however, that nothing in this Declaration shall be construed to require Declarant to develop the maximum number of lots approved. The Maximum Lots as of the date of this Declaration is 3313 Lots. This number shall increase if additional Lots are approved for development under the Master Plan.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Neighborhood": Any residential area within the Properties which is designated as a Neighborhood, whether or not governed by a Neighborhood Association, as more particularly described in Section 6.4, created for the purpose of sharing Limited Common Areas, receiving benefits or services from the Association which are not provided to all Lots, and for the purpose of electing Neighborhood Representatives as provided in Section 6.4. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Lots within a particular

Neighborhood, then such benefited Lots shall be assessed an additional Benefited Assessment for such benefits or services.

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (an advisory committee established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

"Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8.2.

"Neighborhood Association": An owners association having subordinate, concurrent jurisdiction with the Association over any Neighborhood. Nothing in this Declaration shall require the creation of a Neighborhood Association for any Neighborhood.

"Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include, without limitation, the expenses of maintaining, operating insuring, repairing, and replacing Limited Common Area assigned to the Neighborhood, a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may specifically be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

"Neighborhood Representatives": The representative or alternate selected by the Members within each Neighborhood to represent the Neighborhood in Association matters other than those requiring a vote of the membership, as described in Section 6.4.

"Occupy", "Occupies", or "Occupancy": Unless otherwise specified in the Governing Documents, staying overnight in a particular Dwelling Unit for at least 60 days in the subject calendar year. The term "Occupant" shall refer to an individual who Occupies a Dwelling Unit.

"Owner": One or more Persons, which may include Declarant, who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Plat": The engineering survey or other surveys for all or any portion of the Properties, together with such other diagrammatic information regarding the Properties as may be required by the Act, other laws, or included in the discretion of Declarant, as they may be amended and supplemented from time to time and Recorded.

"Private Amenities": Certain real property and any improvements and facilities thereon located adjacent to, in the vicinity of, or within the Properties or Anthem, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on either a club membership basis or otherwise.

"Properties" or "Sun City Anthem": The real property described in Exhibit "A," together with such additional property as is made subject to this Declaration in accordance with Article IX and the Act. Exhibit "A" and each Supplemental Declaration which subjects property to the Declaration shall provide a legal description of the Common Area included therein, if any.

"Qualified Occupant": Any of the following Persons who Occupy a Dwelling Unit:

(a) any Age-Qualified Occupant;

(b) any Person 19 years of age or older who Occupies a Dwelling Unit with an Age-Qualified Occupant; and

(c) any Person 19 years of age or older who Occupied a Dwelling Unit with an Age-Qualified Occupant and who continues, without interruption, to Occupy the same Dwelling Unit after termination of the Occupancy of said Age-Qualified Occupant.

Notwithstanding the above, an Occupant of an ancillary "guest house" or "in-law suite" on a Lot, unless also a Qualified Occupant of the structure serving primarily as the Dwelling Unit on the Lot, shall not be a Qualified Occupant.

"Record", "Recording", or "Recorded": To file, the filing, or filed of record with the Office of the County Recorder of Clark County, Nevada. The date of Recording shall refer to that time at which a document, map, or Plat is Recorded.

"Rules": Regulations and guidelines relating to the use of Common Area and conduct of Persons on the Properties, as more specifically provided and authorized in Article III.

"Special Assessment": Assessments levied in accordance with Section 8.4.

"Supplemental Declaration": An instrument Declarant executes which amends this Declaration pursuant to Article IX and the Act and subjects additional property to this Declaration, identifies Common Area within the additional property, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions, easements, and obligations on the land described in such instrument.

"Use Restrictions": The restrictions on use and conduct set forth in Section 3.6, as may be modified and expanded in accordance with Article III and the Act.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use, conduct, maintenance, and architecture within Sun City Anthem are what give the community its identity and make it a place that people want to call "home." Yet those standards must be more than a static recitation of "thou shalt not's." This Declaration establishes procedures for rulemaking as a dynamic process which allows the community standards to evolve as the community grows and as technology evolves.

Article III Use and Conduct

3.1. Restrictions on Use, Occupancy, and Alienation

The restrictions set forth in this Section 3.1 may be amended only in accordance with Article XXI.

(a) Residential and Related Uses

The Properties shall be used only for residential, recreational, and related purposes. Related purposes may include, without limitation, offices for any management agent or agents retained by the Association, business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration. In addition, any commercial activity that directly advances the residential and recreational character of the Properties may be authorized by Declarant or the Association, if consistent with the Governing Documents. Any Supplemental Declaration or any additional Recorded covenants may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

(b) Age Restriction. Sun City Anthem is intended to provide housing primarily for persons 55 years of age or older, subject to the rights reserved to Declarant in Section 10.16. The Properties shall be operated as an age restricted community in compliance with all applicable Nevada and federal laws. Persons under 19 years of age may stay overnight in a Dwelling Unit for up to 60 days during the year, but shall not Occupy any Dwelling Unit.

Subject to Section 10.16, each Dwelling Unit, if Occupied, shall be Occupied by an Age Qualified Occupant; provided, however, that once a Dwelling Unit is Occupied by an Age-Qualified Occupant, other Qualified Occupants of that Dwelling Unit may continue to Occupy the Dwelling Unit, regardless of the termination of Occupancy by said Age-Qualified Occupant. Notwithstanding the above, at all times, at least 80% of the Dwelling Units within the Properties shall be Occupied by at least one Person 55 years of age or older.

The Board shall establish policies and procedures from time to time as necessary to maintain its status as an age restricted community under Nevada or federal law. The Association

shall provide, or contract for the provision of, those facilities and services designed to meet the physical and social needs of older persons as may be required under such laws.

(c) Business Use. No business or trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in or from any Dwelling Unit or Lot, except that an Owner or Occupant may conduct business activities within the Dwelling Unit so long as:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit;

(ii) the business activity conforms to all zoning requirements for the Properties;

(iii) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and

(iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

"Business and trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to any activity conducted by Declarant or a Person approved by Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the operation of a "vacation villa," "vacation getaway," or similar program permitting temporary residential use. Additionally, this Section shall not apply to any activity conducted by the Council, Association, or a Person approved by the Association for the purpose of operating, maintaining or advancing the residential and recreational character of the Properties.

The leasing of a Dwelling Unit shall not be considered a business or trade within the meaning of this subsection.

(d) Leasing of Dwelling Units. For purposes of this Declaration, "leasing" is defined as regular, exclusive residency in a Dwelling Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service,

gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased.

No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that structures used for ancillary purposes, such as an "in-law suite" or detached "guest house," may be Occupied but not independently leased. There shall be no subleasing of Dwelling Units or assignment of leases except with the Board's prior written approval. All leases shall be in writing.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board or its designee by the Owner within ten days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable Use Restrictions and Rules regulating leasing and subleasing.

(e) Maximum Occupancy. Dwelling Units shall not be Occupied by more than two Persons per bedroom in the Dwelling Unit.

(f) Occupants Bound. All provisions of the Governing Documents shall apply to all Occupants, guests, and invitees of any Lot. Every Owner shall cause all Occupants, guests, and invitees of his or her Lot to comply with the Governing Documents and shall be responsible for all violations and losses to the Area of Common Responsibility caused by such Persons, notwithstanding the fact that such Persons also are fully liable and may be sanctioned for any violation.

(g) Subdivision of a Lot and Time-Sharing. No Lot shall be subdivided or its boundary lines changed except with the Board's prior written approval: provided, however, Declarant, its successors and assigns, hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and replat any Lot(s) they own and, for so long as Declarant owns any portion of the Properties, convert Lots into Common Area.

No Lot shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years. However, Declarant hereby reserves the right for itself and its assigns to operate such a program.

3.2. Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Properties, a framework of affirmative and negative covenants, easements, and restrictions governing the Properties. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology which inevitably will affect Sun City Anthem, its Owners and residents. Therefore, this Article establishes procedures for modifying and expanding the Use

Restrictions, set forth in Section 3.6 below, and such Rules as may be created and revised from time to time.

3.3. Use Restriction and Rule Making Authority.

(a) Board's Authority. Subject to the terms of this Article, the Act, and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions and may create, modify, and enforce reasonable Rules governing the use of the Properties, consistent with other provisions in the Governing Documents. The Board shall send notice to all Owners concerning any proposed action on Use Restrictions or Rules at least ten business days prior to the Board meeting at which such action is to be considered. For this purpose, notice may be sent to each Owner in any manner permitted under the Act, including, if so permitted: U.S. mail; electronic telecommunication (*i.e.*, fax or "e-mail") with confirmation of receipt; broadcast on the community television channel; or publication in the community newsletter delivered or mailed to each Owner, provided that such notice is clearly identified under a separate headline in the newsletter. Neighborhood Representatives and Members shall have an opportunity to be heard at a Board meeting prior to such action being taken subject to reasonable Board imposed restrictions.

Such action shall become effective, after compliance with subsection (c) below, unless acting at a meeting, Members representing a Majority of the total votes in the Association and Declarant, for so long as it owns any property described on Exhibits "A" or "B," disapprove the action. The Board shall have no obligation to call a meeting to consider disapproval except upon receipt of a petition signed by Home Owners representing at least 10% of the total votes of the Association as required for special meetings in the By-Laws. Upon receipt of such petition prior to the effective date of any Board action under this Section 3.3(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Members' Authority. Alternatively, the Members, at an Association meeting duly called for such purpose and in accordance with Section 2.4 of the By-Laws, may adopt provisions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions or Rules by a vote of Neighborhood Representatives representing a Majority of the total votes in the Association and the approval of Declarant, for so long as it owns any property described on Exhibits "A" or "B."

(c) Notice. At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall provide a copy of the new Use Restriction or Rule or explanation of any modifications to the existing Use Restrictions or Rules to each Owner specifying the effective date. For this purpose, the Board may send a copy of the new or modified Use Restriction or Rule either by any manner permitted under the Act, including, if so permitted: U.S. mail; electronic telecommunication (*i.e.*, fax or "e-mail") with confirmation of receipt; publication in the community newsletter delivered or mailed to each Owner, provided

that such notice is clearly identified under a separate headline in the newsletter; or broadcast on the community television channel.

Upon written request by a Member or Mortgagee, the Association shall provide, without cost, a single copy of the newly revised Use Restrictions and Rules. The Association may charge a reasonable fee for additional copies of the revised Use Restrictions and Rules.

(d) No Authorization To Change Design Guidelines. Nothing in this Article shall authorize the Board or the Neighborhood Representatives to modify, repeal, or expand the Design Guidelines. In the event of a conflict between the Design Guidelines and the Use Restrictions and Rules, the Design Guidelines shall control.

(e) No Application to Administrative Rules and Regulations. The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use and operation of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the method of allocating or reserving use of a facility (or any portion of a facility) by particular individuals at particular times. The Board shall exercise business judgment in the enactment of such administrative rules and regulations.

3.4. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Lots and the Common Area is limited by the Use Restrictions and Rules as may be amended, expanded, and otherwise modified. **Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision and that the Use Restrictions and Rules may change from time to time as provided under Section 3.3.** All purchasers of Lots are on notice that changes may have been adopted by the Association and that such changes may not be set forth in a Recorded document. Copies of the current Use Restrictions and Rules may be obtained from the Association.

3.5. Protection of Owners and Others.

No Use Restriction or Rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth in Section 3.6:

(a) Abridging Existing Rights. If any Use Restriction or Rule would otherwise require Owners to dispose of personal property which they maintained in or on the Lot prior to the effective date of such regulation, or to vacate a Lot in which they resided prior to the effective date of such regulation, and such property was maintained or such Occupancy was in compliance with the Governing Documents as such Use Restriction or Rule shall not apply to any such Owners without their written consent.

(b) Activities Within Dwelling Units. No Use Restriction or Rule shall interfere with the activities carried on within the confines of Dwelling Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of Occupants of other Lots, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, that create an unreasonable source of annoyance, or that otherwise violate local, state, or federal laws or regulations.

(c) Alienation. No Use Restriction or Rule shall place a blanket prohibition on leasing or conveying any Lot or require the Association's consent before leasing or conveying any Lot. However, the Association may (i) require that Owners use Association approved lease forms; (ii) impose a reasonable fee on the lease or conveyance of a Lot based upon the Association's related administrative costs; (iii) require that Owners provide the Association advance notice of any lease or conveyance; (iv) require such other payments or actions as this Declaration may require; and impose a minimum lease term.

(d) Allocation of Burdens and Benefits. No Use Restriction or Rule shall alter the allocation of financial burdens among the various Lots or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the available Common Area, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(e) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Lots of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions with respect to displays visible from outside the dwelling.

No Use Restriction or Rule shall regulate the content of political signs; however, Use Restrictions and Rules may regulate the time, place and manner of posting such signs (including design criteria).

(f) Similar Treatment. Similarly situated Owners shall be treated similarly; provided, the Use Restrictions and Rules may vary by Neighborhood.

(g) Household Composition. No Use Restriction or Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to limit the total number of Occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair use of the Common Area, to require that one or more member be older than a certain age, and, to require that no person under

a certain age reside in a Dwelling Unit for longer than a specified period during the calendar year.

(h) Reasonable Rights To Develop. No Use Restriction, Rule, or any other action by the Association or Board shall unreasonably impede Declarant's right to develop the Properties in accordance with the rights reserved to the Declarant in this Declaration and the Act.

The limitations in subsections (a) through (h) of this Section 3.5 shall only limit rulemaking authority exercised under Section 3.3; they shall not apply to amendments to this Declaration adopted in accordance with Article XXI and the Act.

3.6. Initial Use Restrictions and Rules.

(a) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Properties, except that a maximum of three pets is permitted in each Dwelling Unit, the composition of which may include dogs, cats, birds, or other pets as determined from time to time by the Board. Pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health of other Persons, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or others within the Properties shall be removed upon the Board's request. If the Owner fails to honor such request, the Board may cause the pet to be removed.

The Board may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and Occupants, including Rules requiring damage deposits, waste removal, leash controls, noise controls, and limits based on any reasonable factor, including size and capacity of the Lot and fair share use of the Common Area; provided, however, any regulation prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Property in compliance with the Use Restrictions and Rules in effect prior to the adoption of such regulation. The Board may also adopt Rules which prohibit pets from certain Common Area locations. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial purpose.

(b) Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(c) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Properties or which results in unreasonable levels of sound or light pollution.

(d) Garage Doors. Garage doors shall remain closed at all times except when entering and exiting the garage and for a reasonable length of time during day-light hours while performing regular home maintenance activities (*e.g.*, lawn care and gardening, car washing, etc).

(e) Exterior lighting Excessive exterior lighting is prohibited on any Lot. The Board (or its designee) in its sole discretion shall determine whether any exterior lighting is excessive.

(f) Temporary Structures. Tents, shacks, or other structures of a temporary nature are prohibited on any Lot except as may be authorized by Declarant during initial construction within the Properties. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair.

(g) Storage of Goods. Storage of furniture, fixtures, appliances, machinery, equipment, or other goods and chattels by a Home Owner is prohibited on the Common Area or, if not in active use, any portion of a Lot which is visible from outside the Lot

(h) Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the Occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the Occupants and invitees of other Lots.

(i) Signs. No sign shall be erected within the Properties without the Board's written consent, except those required by law or unless specifically permitted in the Design Guidelines, including posters, circulars, and billboards. This restriction shall not apply to entry and directional signs installed by Declarant. If permission is granted to any Person to erect a sign within the Properties, the Architectural Review Committee shall have the right to restrict the size, color, lettering, and placement of such sign. The Board, Council, and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

(j) TV Antennas and Satellite Dishes. Standard TV antennas and other over-the-air reception devices (including satellite dishes) of less than one meter in diameter shall be permitted upon the Properties. Installation of standard TV antennas and over-the-air reception devices shall comply with any and all Design Guidelines, or other applicable rules and guidelines adopted by the Architectural Review Committee or the Board; provided, however, that such rules or regulations do not unreasonably increase the cost of installing, maintaining, or using such devices. Declarant, Council, and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or any portion of Anthem, including the Properties, should any master system or systems require such exterior apparatus.

(k) Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size, and style which are pre-approved by the Architectural Review Committee, as specifically permitted under the Design Guidelines, or required by the applicable governing jurisdiction. In no event shall such containers be maintained so as to be visible from outside the Lot unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

(l) Unsightly or Unkempt Conditions. All portions of a Lot outside enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the Lot and not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well designed interior fireplace.

(m) Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of the Properties except in a garage, driveway, parking pad, or other area designated by the Board. No person shall park any commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Properties other than in enclosed garages; provided, however, one boat or recreational vehicle may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than four nights within each calendar month. This Section shall not apply to emergency vehicle repairs.

Only electronic powered golf carts may be operated within the Properties; gasoline powered golf carts are prohibited.

(n) Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within the Properties or within any golf course is permitted, except that the Association and its agents shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the

authorized or unauthorized use of lakes, ponds, streams or other bodies of water within or adjacent to the Properties.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, installed, or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Design Guidelines.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or decorate the interior of his or her Dwelling Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Dwelling Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or similarly licensed building designer unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities until 100% of the Maximum Lots have been conveyed to Home Owners, nor to the Association during the Declarant Control Period.

4.2. Architectural Review.

(a) By Declarant. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Lot unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the sole discretion of Declarant or its designee.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in the interest of Declarant and shall owe no duty to any other Person. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of

the Properties or any real property adjacent to the Properties or in Anthem, unless earlier terminated in a written, Recorded instrument executed by Declarant.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) to the ARC, or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated. It shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Review Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over all architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall be approved, shall serve, and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount as the Board may establish.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the ARC or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. Declarant or the ARC may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to Declarant and the ARC in

considering applications. The Design Guidelines are not the exclusive basis for decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties or has the right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the Board's consent. Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no other limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Design Guidelines shall be made available to Owners and any requesting prospective purchaser who is a party to a binding contract to purchase a Lot. In Declarant's sole discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it unilaterally may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any activity within the scope of this Article, an Owner shall submit an application for approval of the proposed activity in such form as the Design Guidelines or the ARC may specify. A prospective purchaser who is a party to a binding contract to purchase a Lot also may be permitted to submit an application for approval. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the ARC may require the submission of such additional information as deemed reasonably necessary to consider any application.

In reviewing each submission, Declarant or the ARC may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and or attractiveness of particular improvements. The reviewing party shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures set forth herein.

The ARC shall, within 30 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The ARC may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the ARC fails to respond within the 30-day period, approval shall be deemed to have been given, subject to Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

Until expiration of Declarant's rights under this Article Section 4.2(a), the ARC shall notify Declarant in writing within three business days after the ARC has approved any application relating to proposed activity within the scope of matters Declarant delegated to the ARC. The notice shall be accompanied by a copy of the application and any additional information Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on a project for which Plans have been approved within 90 days from the date of closing of escrow on the Lot or the date of approval, whichever is later, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any construction activity. Once construction is commenced, it shall be diligently pursued to completion. All construction shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the ARC grants an extension in writing, which it shall not be obligated to do. If approved construction is not completed within the required time, it shall be considered nonconforming and, unless an extension of time is granted, shall be subject to enforcement action by the Association, Declarant, or any aggrieved Owner.

Notwithstanding the above, the initial landscaping on any Lot shall be installed as approved within 90 days from the date of the initial closing of escrow on the Lot.

The Board, with the consent of Declarant, may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed activity until the work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the

future. Approval of applications or Plans for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration ; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the ARC may not authorize variances without the written consent of Declarant, so long as Declarant owns any portion of the Properties or has the right to expand the Properties pursuant to Section 9.1.

4.6. Limitation of Liability.

The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application are made on the basis of aesthetic considerations only, and neither Declarant nor the ARC shall bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements; or (c) conformity of quality, value, size, or design with other Dwelling Units. Declarant, the Association, the Council, the Board, any party retained by the ARC as a consultant, any committee, or member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on or modifications to any Lot.

Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a builder in Sun City Anthem; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Board, the ARC, and the members of each, shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Association issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate and which may violate this Article or the Design Guidelines.

4.8. Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the Association, or the ARC, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot, and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs (which may include administrative charges), together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Lot and collected as a Benefited Assessment unless otherwise prohibited in this Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved activity and all activity previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved activity by the deadline set forth in the approval, Declarant or the Association, shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefited Assessment unless otherwise prohibited in this Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, Declarant, the Association, and their officers and directors shall not be held liable to any Person nor exercising the rights granted by this paragraph.

The Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

4.9. Prohibited Improvements. The following structures and improvements are prohibited on any Lot, and may be permitted only be amending this Declaration in the manner provided in Article XXI:

(a) Detached garages (except as authorized by Declarant during initial construction);

(b) Detached storage buildings and detached sheds;

(c) Compost piles or containers;

(d) Decks or balconies;

(e) Basketball goals;

(f) Free-standing flagpoles;

(g) Outside clothes lines or other outside facilities for drying or airing clothes; and

(h) Satellite dishes of more than one meter in diameter.

All other proposed structures or improvements (*e.g.*, signs, fences, dog runs, ramadas, gazebos, lawn statues, fountains, etc.) are subject to the review and approval requirements set forth in this Article IV and the Design Guidelines and, in any event, may be prohibited under the Design Guidelines.

Article V Maintenance and Repair

5.1. Maintenance of Lots.

Each Owner shall maintain his or her Lot, Dwelling Unit, and all landscaping and other improvements comprising the Lot, as well as the interior surface of any perimeter wall or fence, in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless some or all of such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining the sidewalk and landscaping located in the public right-of-way adjacent to his or her Lot unless all or part of such maintenance is assumed by the Association or a Neighborhood Association pursuant to a Supplemental Declaration, or any additional covenants applicable to such Lot or Neighborhood. The Owners' responsibility to maintain the sidewalk shall terminate if the local ordinance requiring private maintenance of sidewalks in the public right-of-way is repealed and notice is given to the Owners by the Association.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 8.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.2. Maintenance of Neighborhood Property.

Any Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of its common property and any wall, fence, or curb located on the Common Area or public right-of-way within 10 feet of its boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from this area without prior approval pursuant to Article IV.

Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated in a similar manner.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided for in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Lot is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Benefited Assessment against the benefited Lot and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. In the event that such repair and reconstruction cannot be promptly undertaken, the Owner shall clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and shall present a timetable for repair and reconstruction to the Board within 90 days of the damaging or destructive event. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Lot. Additional Recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependent upon the support and participation of every Owner in its governance and administration. The Declaration establishes Sun City Anthem Community Association, Inc. as the mechanism by which each Owner is able to provide that support and participation. While many powers and responsibilities are vested in theBoard, some decisions are reserved for the Association's membership -- the owners of property in the community.
Article VI The Association and Its Members

6.1. Function of the Association.

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Nevada laws, as applicable.

6.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of

such membership, subject to reasonable Board regulation, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, trustee,or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The Association shall have one class of membership composed of all Owners. Each Owner shall have one equal vote for each Lot in which it holds the interest required for membership under Section 6.2, except that there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.10. Accordingly, the total number of votes for the Association shall equal the total number of Lots created under and subject to this Declaration.

Special Declarant Rights (as defined in the Act and otherwise), including the right to approve, or withhold approval of, actions proposed under the Governing Documents during Declarant Control Period, are specified in the relevant sections of the Governing Documents. Declarant may appoint or remove a Majority of the Board during the Declarant Control Period, as specified in the By-Laws.

Members may vote directly or by proxy as provided in the By-Laws. The Board shall determine whether votes shall be cast in person or by mail. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice and in the event that more than one such co-Owner casts a vote, the Lot's vote shall be suspended and shall not be included in the final vote tally on the matter being voted upon.

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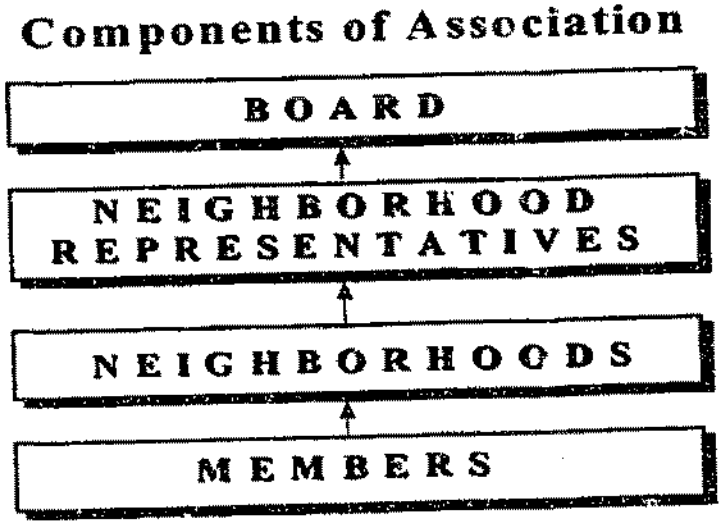
6.4. Neighborhoods and Neighborhood Representatives.

The following diagram illustrates the interrelationships between various components of the Association:



(a) Neighborhoods. Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the property submitted thereby to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, Declarant unilaterally may amend this Declaration or any Supplemental Declaration to create or redesignate Neighborhood boundaries; provided, two or more existing Neighborhoods shall not be combined without the consent of Owners of a Majority of the Lots in the affected Neighborhoods.

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The following is a summary of the formation and function of Neighborhoods:

NEIGHBORHOOD

- Created by Declarant when property is annexed or later
- Comprised of Lots which share common interests
- May request that the Association provide special services or a higher level of services

The Owners of Lots within any Neighborhood may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of the Lots in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a Majority of the Lots within the Neighborhood, the Association shall provide the requested services. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot to all Neighborhoods receiving the same service), shall be assessed against the Benefited Lots within such Neighborhood as a Neighborhood Assessment.

Each Neighborhood shall hold meetings annually or more frequently as may be required by the Board or upon the petition of at least 10% of the Owners of Lots within the Neighborhood. The Neighborhood Representative shall preside over Neighborhood meetings, shall place such issues on the agenda as the Board may determine, and shall provide for an open forum for Neighborhood Owners to discuss new matters. The presence of at least 15% of the Owners in a Neighborhood shall constitute a quorum at any Neighborhood meeting. Except as otherwise provided herein, Neighborhood meetings shall be called and held in accordance with the relevant provisions of By-Laws Article II.

(b) Neighborhood Representative. The Owners within each Neighborhood shall elect a Neighborhood Representative who shall preside over Neighborhood meetings and shall be responsible for communication between the Owners in the Neighborhood and the Board. Neighborhood Representatives also shall attend Neighborhood Representative meetings when requested by the Board.. In addition, each Neighborhood shall elect an alternate Neighborhood Representative who shall act in the absence of the Neighborhood Representative. The Neighborhood Representative and alternate Neighborhood Representative shall be Owners in good standing of a Lot in the Neighborhood they represent.

The Neighborhood Representative and alternate Neighborhood Representative shall be elected on an annual basis, either by written ballot cast by mail or at a meeting of the Members within such Neighborhood, as the Board determines; provided, however, upon written petition signed by Members holding at least 10% of the votes attributable to Lots within any Neighborhood, the election for the Neighborhood Representatives shall be held at a Neighborhood meeting (as provided for in subsection (a) above). In the event quorum is not obtained at a Neighborhood meeting called for the purpose of electing the Neighborhood Representatives, the election shall be conducted by written ballot.

The Board may appoint a nominating committee for the purpose of selecting candidates for the Neighborhood Representative positions. Additionally, eligible candidates may nominate themselves for election to these positions in accordance with procedures adopted by the Board.

The Board shall call for the first election of a Neighborhood Representative from a Neighborhood not later than one year after the conveyance of a Lot in the Neighborhood to a Home Owner. Subsequent elections shall be held each year on a date established by the Board. Each Member who owns a Lot within the Neighborhood shall be entitled to cast one equal vote per Lot owned. The candidate who receives the greatest number of votes shall be elected as the Neighborhood Representative and the candidate receiving the next greatest number of votes shall be elected as the alternate Neighborhood Representative. The Neighborhood Representative and the alternate Neighborhood Representative shall serve a term of one year and until their successors are elected.

The Board shall remove any Neighborhood Representative or alternate Neighborhood Representative from office upon submission of a signed petition from a Majority of the applicable Neighborhood's Lot Owners requesting that such action be taken. Any Neighborhood Representative may be removed with or without cause. In the event that the Neighborhood Representative is removed, or the position becomes vacant for any other reason, the alternative Neighborhood Representative shall fill the vacancy for the remainder of the term. In the event that the alternate Neighborhood Representative position becomes vacant, or both positions become vacant at the same time, the Board shall fill such vacancies by appointing a replacement from the pool of Neighborhood Owners in good standing.

Until such time as the Board first calls for election of a Neighborhood Representative for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Lots on any issue requiring a membership vote under the Governing Documents.

6.5. Voting Groups and Representative Voting.

Declarant may, but shall not be obligated to, combine different Neighborhoods into "voting groups" for the purpose of electing directors to the Board. Such voting groups shall be designated to promote representation on the Board by groups with disimilar interests and to

avoid particular groups dominating the Board due to the number of votes held by such groups. Declarant shall establish voting groups, if at all, no later than the expiration of the Declarant Control Period by Recording a Supplemental Declaration identifying each group by legal description or other means by which the Lots within each group can clearly be determined. Declarant may amend such designations, in its discretion, at any time during the Declarant Control Period. In any event, each voting group shall elect an equal number of directors to the Board.

Declarant also may, with the consent of the Board, require that votes of Members on any matter permitted under Nevada law be exercised by or through Neighborhood Representatives. In such event, a Neighborhood Representative may be permitted to exercise the vote of Members owning Lots within its Neighborhood in its discretion or in accordance with the specific instruction of the Member. Declarant shall establish such voting authority for Neighborhood Representatives, if at all, by Recording a Supplemental Declaration describing such authority prior to the termination of the Declarant Control Period. Such Supplemental Declaration shall not be an amendment to this Declaration and shall not require the consent or approval of any Person other than the Board. The purpose of giving Neighborhood Representatives voting authority shall be to promote efficiency, simplicity, and manageability in Association meetings and voting.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. The Association shall operate any facilities on the conveyed property as intended from the date of completion of construction of the facility and the issuance of a certificate of occupancy, if applicable. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

7.2. Maintenance of Area of Common Responsibility.

(a) Generally. The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all portions of and structures situated upon the Common Area;

(ii) landscaping within public rights-of-way within or abutting the Properties;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Plat of any portion of the Properties, or any covenant, contract, or agreement for maintenance thereof entered into by the Association (or by Declarant on the Association's behalf);

(iv) all ponds, streams, and wetlands located within the Properties which serve as part of the stormwater drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith;

(v) any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities must be identified by written notice from Declarant to the Association and shall remain a part of the Area of Common Responsibility and shall be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association; and,

(vi) all perimeter walls or fences Declarant constructs surrounding the Properties or which separate a Lot from the Common Area or any golf course, regardless of whether such wall or fence is located on the Common Area or on a Lot; provided that Owners shall be responsible for maintaining the interior surface of the perimeter wall or fence located on such Owner's Lot as provided in Section 5.1. A perimeter wall or fence shall not be a party wall or party fence as set forth in Section 13.1.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation, and management of wildlife, snakes, rodents, and pests within the Area of Common Responsibility.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to any property which the Association is obligated to maintain by this Declaration or any Supplemental Declaration, either by agreement with the Neighborhood Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed as a Neighborhood Assessment against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) Continuous Operation. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members representing 75% of the votes in the Association and Declarant, for so long as it owns property described on Exhibits "A" or "B," agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

(c) Maintenance as Common Expense. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and such other costs as provided in Section 7.2(a) shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) to which such Limited Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the

negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(iv) Directors' and officers' liability coverage (including coverage for committee members);

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood, which insurance shall comply with the requirements of Section 7.3(a)(i). Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Lot insured.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Lots within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Limited Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Las Vegas area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the

applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the procedures set forth in Section 3.26 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Benefited Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Nevada which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the Benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;

(iii) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross-liability provision; and

(vi) a provision vesting in the Board's exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

The Association shall provide Declarant at least 20 days prior written notice of any cancellation, termination, substantial modification, or non-renewal of any Association insurance policy.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 80% of the total votes in the Association, and Declarant, for so long as it owns any property described on Exhibits "A" or "B," decide within 60 days after the loss not to repair or reconstruct. If the damage is to Limited Common Area, 80% of the Owners to which such Limited Common Area is assigned and Declarant, for so long as it owns any property described on Exhibits "A" or "B," must vote not to repair or reconstruct.

If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

If Owners to which Limited Common Area is assigned vote (as provided above) not to repair or reconstruct improvements on such Limited Common Area, then any insurance proceeds attributable to such Limited Common Area, minus the costs of clearing and landscaping, shall be distributed to such Owners in proportion to their ownership interest therein. If Members vote (as

provided above) not to repair or reconstruct improvements on Common Area, then any insurance proceeds attributable to such Common Area, minus the costs of clearing and landscaping, shall be distributed to all Owners in equal amounts. This provision may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

(d) Waiver of Claims. To the extent permitted by law, the Association and each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Properties, waives any claims against Declarant and its affiliates for any damages or losses for which insurance coverage is available, to the extent of such insurance coverage.

7.4. Compliance and Enforcement.

(a) Every Owner and Occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the By-Laws. The Board shall establish a range of penalties for such violations, with violations of the Declaration, unsafe conduct, harassment, or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation:

(i) imposing a graduated range of reasonable monetary fines which shall, pursuant to the Act, constitute a lien upon the violator's Lot. However, unless the imposed fine was for a violation affecting the health, safety and welfare of the Association, such lien may not be foreclosed by the Association. The amount of each such fine must be commensurate with the severity of the violation and shall in no event exceed the maximum permitted by the Act. The Rules may be enforced by the assessment of a fine only if: (A) the person alleged to have violated the Rules has received notice of the alleged violation that informs him of his opportunity to request a hearing on the alleged violation; and, (B) at least thirty (30) days before the alleged violation, said Person was given written notice of the Rule that the Person allegedly violated. If a fine is imposed pursuant to this subsection and the violation is not cured within fourteen (14) days or such longer cure period as the Board establishes, the violation shall be deemed a continuing violation and the Board may thereafter impose an additional fine for the violation for each seven (7) day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard. In the event that any Occupant, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board. The Board shall publish and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot Owner a schedule of fines applicable to particular violations;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of Article IV and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties; and

(viii) levying Benefited Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.26 of the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking Rules);

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Benefited Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Benefited Assessment against all Lots within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) **The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:**

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such decision shall not be construed a waiver of the Association's right to enforce such provision at a later time under other circumstances of preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce applicable State and local laws and ordinances, and shall permit the Council and governmental bodies to enforce their respective laws and ordinances within the Properties for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Indemnification of Officers, Directors and Others.

(a) Indemnification. The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation, the By-Laws, and Nevada law.

(b) Claims Related to Breach of Duty. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party, and no provision of the Governing Documents shall be construed to impose a duty upon the Board to sue under any circumstances. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in the By-Laws.

(c) Exclusion from Liability for Other Tortious Acts.

(i) Volunteer directors, officers, and committee members of the Association shall not be personally liable in excess of the coverage of insurance specified in subparagraph (D) below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer director, officer, or committee member and the Association:

(A) the director's, officer's, or committee member's act or omission was performed within the scope of their duties;

(B) the director's, officer's, or committee member's act or omission was performed in good faith;

(C) the director's, officer's, or committee member's act or omission was not willful, wanton, or grossly negligent; and

(D) the Association maintained and had in effect (at the time the act or omission of the director, officer, or committee member occurred and at the time a claim was made) one or more insurance policies which included coverage for general liability of the Association and individual liability of directors, officers, and committee members for negligent acts or omissions in that capacity, both in the amount of at least $2,000,000.00.

(ii) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer under this subsection (c).

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

The Association shall indemnify and forever hold each such director, officer, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Safety.

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. THE ASSOCIATION, THE BOARD, THE ASSOCIATION'S MANAGEMENT COMPANY, ANY NEIGHBORHOOD ASSOCIATION, THE COUNCIL, AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SMICURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THE ABOVE 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.

EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF ITS LOT THAT THE ASSOCIATION, ITS BOARD, COMMITTEES, NEIGHBORHOOD ASSOCIATIONS, THE COUNCIL, AND ALL OTHER PERSONS INVOLVED WITH THE GOVERNANCE, MAINTENANCE, AND MANAGEMENT OF THE PROPERTIES, AS WELL AS DECLARANT, ARE NOT INSURERS OF SAFETY OR SECURITY WITHIN

THE PROPERTIES. ALL OWNERS AND OCCUPANTS OF ANY LOT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PERSONS, LOTS, AND THE CONTENTS OF LOTS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE ASSOCIATION'S MANAGEMENT COMPANY, ANY NEIGHBORHOOD ASSOCIATION, THE COUNCIL, AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO 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.

7.8. Provision of Services.

The Association shall be authorized, but not obligated, to enter into and terminate, in the Board's discretion, contracts or agreements with other entities, including Declarant and the Council, to provide services to and facilities for the Members of the Association, their guests, lessees, and invitees and to charge use and consumption fees for such services and facilities. For example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

7.9. Change of Services and Use of Common Area.

The Board shall have the power and right to terminate provided services or to change the use of portions of the Common Area during the Declarant Control Period without the approval or consent of the Members. Thereafter, the Board may do so with the consent of a Majority of the Owners, and the Declarant's consent (so long as Declarant owns any property described in Exhibits "A" or "B"). Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area, and (d) the new use is consistent with the then effective Master Plan.

Notwithstanding the above, if the Board resolution states that the change will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within 30 days of the notice. If less than 10% of the Members submit written objections, the change shall be deemed approved and a meeting shall not be necessary.

This Section 7.9 shall not apply to the Board's ability to make and change rules relating to managing existing uses (e.g., scheduling use of rooms, etc.).

7.10. View Impairment.

DECLARANT, THE ASSOCIATION, AND THE COUNCIL DO NOT GUARANTEE OR REPRESENT THAT ANY VIEW OVER AND ACROSS LOTS OR THE OPEN SPACE FROM ADJACENT LOTS WILL BE PRESERVED WITHOUT IMPAIRMENT. DECLARANT, THE ASSOCIATION, AND THE COUNCIL SHALL NOT HAVE THE OBLIGATION TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING EXCEPT AS SET FORTH IN ARTICLE V. TREES AND OTHER LANDSCAPING MAY BE ADDED TO LOTS AND TO THE OPEN SPACE FROM TIME TO TIME SUBJECT TO APPLICABLE LAW AND THE GOVERNING DOCUMENTS. ANY EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR ARE HEREBY EXPRESSLY DISCLAIMED.

7.11. Relationship with Neighborhoods.

The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association (if such Neighborhood Associations are established) which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Benefited Assessments to cover the costs, as well as an administrative charge and sanctions.

7.12. Relationship with Governmental and Tax-Exempt Organizations.

The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to state or local governments and non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members, and residents. The Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("IRC"), such as, but not limited to entities which (are exempt from federal income taxes under IRC Sections 501(c)(3) or 501(c)(4), as may be amended from time to time.

7.13. Relationship with Council and Anthem Communities.

The Properties are and shall remain a part of the scheme of development for Anthem. In order to preserve and enhance the scheme of development and promote interaction among the residential communities of Anthem, the Community Covenant has been or will be Recorded to allocate certain rights, maintenance responsibilities, and obligations to contribute to the financial burdens of preserving, promoting, and protecting Anthem. The rights, responsibilities, and obligations set forth in the Community Covenant shall constitute covenants running with the land on the Properties as well as all other property subject to the Community Covenant. The Council shall be empowered by the Community Covenant, to administer, manage, and promulgate these rights, responsibilities, and obligations. The Council is also empowered to exercise any rights granted to it by this Declaration or by any other Recorded covenant or easement.

7.14. Recycling Programs.

The Board may establish a recycling program and recycling center within the Properties, and in such event all Owners and Occupants of Dwelling Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

Until the Association first levies assessments, the Declarant shall be responsible for all Common Expenses. Thereafter, assessments for Common Expenses shall be levied at least annually in accordance with this Article.

Not less than 30 days nor more than 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3, and distribute a copy of the budget to each Owner. In lieu of distributing copies of the budget, the Board may distribute summaries of the budget, accompanied by a written notice that the budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request. The budget shall also reflect the sources and estimated amounts

of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in Section 8.6. The budget may include amounts for operating reserves.

The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment under Section 8.6 to fund the Common Expenses. Accordingly, the formula for calculating the Base Assessment against each Lot shall be the total budget amount for the coming year divided by the total number of Lots created under and subject to this Declaration. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.7(b)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

At least 30 days prior to adopting the proposed budget, the Board shall send notification of the amount of the Base Assessment to be levied pursuant to such budget and notice of the time, date, and place of a membership meeting to consider such budget, to each Owner. The membership meeting to consider the annual budget shall occur not less than 14 nor more than 30 days from the notice date, and the Board may hold such meeting in conjunction with any other scheduled membership meeting. Except as otherwise provided herein, such meeting shall be governed by the relevant provisions of the By-Laws concerning special meetings of the members. Whether or not a quorum is present, the budget shall automatically become effective unless disapproved at the meeting by Persons representing at least 90% of the total votes in the Association.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

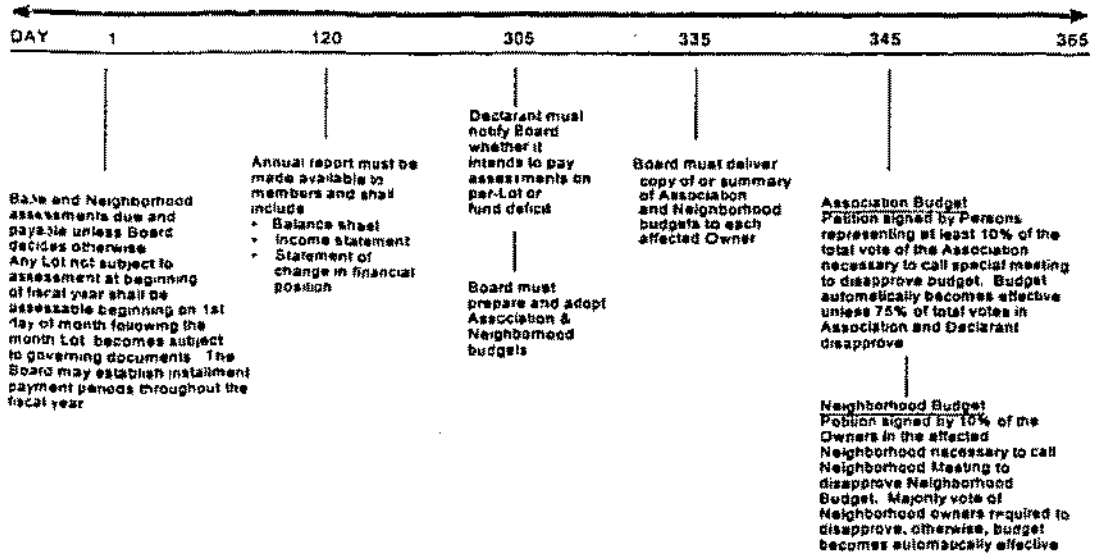
Any amounts accumulated from assessments for general Common Expenses in excess of the amount actually required for such Common Expenses and reserves for future Common Expenses may be credited to each Lot assessed in proportion to the share of the assessments so assessed. Such credits may be applied to the next annual Base Assessment against that Lot and thereafter until exhausted, unless the Board determines that calculation and application of such

credit on a more frequent basis is preferable. In the alternative the Board may apply such excess amount to operating or capital reserve accounts or otherwise, in its discretion.

The procedures outlined above shall not apply to the initial Association budget established by Declarant.

The following diagram depicts the timing for submitting budgets and collecting assessments:

SUN CITY ANTHEM
COMMUNITY ASSOCIATION, INC.
FISCAL YEAR



8.2. Budgeting and Allocating Neighborhood Expenses.

Not less than 30 days nor more than 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year, and distribute a copy of the budget, together with notice of the amount of the Neighborhood Assessment, to each Owner in the applicable Neighborhood. In lieu of distributing copies of the budget, the Board may distribute summaries of the budget, accompanied by a written notice that the budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request. Each such budget shall include any costs for additional services or a higher level of services which the Owners in such Neighborhood have approved pursuant to Section 6.4(a) and

any contribution to be made to a reserve fund pursuant to Section 8.3. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Lots in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Lots in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by petition signed by a Majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the Benefited Lots in proportion to the benefit received.

Such budget and assessment shall become effective unless disapproved at a meeting of the Neighborhood by Owners of a Majority of the Lots in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Lots in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Lots in the affected Neighborhood to disapprove the revised budget as set forth above.

Any amounts accumulated from assessments for Neighborhood Expenses in excess of the amount required for actual Neighborhood Expenses and reserves for future Neighborhood Expenses may be credited to each Lot assessed in proportion to the share of such assessments so assessed. Such credits may be applied to the next annual assessment for such Neighborhood Expenses against that Lot and thereafter until exhausted, unless the Board determines that calculation and application of such credit on a more frequent basis is preferable. In the alternative, the Board, in its discretion, may apply such excess amounts to the Neighborhood operating or capital reserve accounts or otherwise.

8.3. Budgeting for Reserves.

Pursuant to the Act, the Association shall establish an adequate reserve, funded on a reasonable basis, for the repair, replacement and restoration of the major components of the common elements. The reserve fund may be used only for those purposes, and not be used for daily maintenance. Money in the reserve accounts may not be withdrawn without the signatures of at least two members of the Board or the signatures of at least one member of the Board and one Officer of the Association who is not a member of the Board.

The Board shall, not less than 30 days nor more than 60 days before the beginning of the fiscal year of the Association, prepare and distribute a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. In lieu of distributing copies of the reserve budgets, the Board may distribute summaries 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. The reserve budget for the Area of Common Responsibility shall be distributed as aforesaid to all Owners in the Community, and the reserve budget for each Neighborhood shall be distributed as aforesaid to the Owners comprising the Neighborhood in question.

The budget for maintenance of reserves shall include, at minimum:

(a) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Area of Common Responsibility or capital items which the Association maintains as a Neighborhood Expense, as the case may be;

(b) as of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are set aside, to repair, replace or restore the major components of the Area of Common Responsibility or capital items which the Association maintains as a Neighborhood Expense, as the case may be;

(c) a statement indicating whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major components, Area of Common Responsibility or capital items which the Association maintains as a Neighborhood Expense, as the case may be, or to provide adequate reserves for that purpose; and,

(d) a general statement describing the procedures used for the estimation of accumulation of cash reserves needed, including, without limitation, the qualifications of the Person responsible for the preparation of the reserve studies required under this Section.

The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to Section 8.1 or the Neighborhood Expense budgets adopted pursuant to Section 8.2, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. So long as the Board exercises business judgment

in determining an adequate amount of reserves, the amount of the reserve fund shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. So long as Declarant owns any property described in Exhibits "A" or "B," neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

The Board shall cause a reserve study to be conducted at least once every five years by a qualified individual, as defined in the Act. The Board shall review the results of the reserve study at least annually to determine if the reserves are sufficient and make any adjustments it deems necessary to maintain the required reserves. The Association shall cause the first study of the reserves to be prepared by October 1, 2000. The study must be conducted by a person qualified by training and experience to conduct such a study (as determined pursuant to the Act), including a member of the Board, an Owner, or the management agent of the Association who is qualified. The study must include, without limitation:

(aa) a summary of an inspection of the major components of the Area of Common Responsibility or capital items which the Association maintains as a Neighborhood Expense, as the case may be, that the Association is obligated to repair, replace, or restore;

(bb) an identification of the major components of the Area of Common Responsibility or capital items which the Association maintains as a Neighborhood Expense, as the case may be, that the Association is obligated to repair, replace, or restore which have a remaining useful life of less than 30 years;

(cc) an estimate of the remaining useful life of each major component or capital item so identified;

(dd) an estimate of the cost of repair, replacement, or restoration of each major component or capital item so identified; and,

(ee) an estimate of the total annual assessments that may be required to cover the cost of repair, replacement, or restoration of the major components or capital items so identified after subtracting the reserves of the Association as of the date of the study.

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within any Neighborhood if such Special Assessment

is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing a Majority of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of Declarant, if such exists. Owners shall be given notice in writing at least 21 days in advance of a meeting to consider Special Assessments for capital improvements. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Benefited Assessments.

The Association shall have the power to levy Benefited Assessments against a particular Lot to cover the costs, including overhead, interest, administrative, and legal costs, of:

(a) providing services to Lots upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in Section 7.8). Benefited Assessments for special services may be levied in advance of the provision of the requested service; and,

(b) bringing the Lot into compliance with the Governing Documents, or as a consequence of the conduct of the Owner or Occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Association or Council shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.26 of the By-Laws, before levying any Benefited Assessment under this subsection (b).

The Association may also levy a Benefited Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Lots in, or the Neighborhood Representative representing, the Neighborhood and an opportunity for such Owners or Neighborhood Representative to be heard before levying any such assessment

8.6. Authority to Assess Owners; Time of Payment.

Declarant establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first adopts a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments, including interest, late charges, and other costs, to be paid in full immediately.

8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a maximum rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of Nevada law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself fr[illegible] liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option To Pay Assessments. During the Declarant Control Period, Declarant may satisfy its obligation for assessments on Lots which it owns either by paying such assessments in the same manner as any other Owner or by paying the difference between the amount of assessments levied on all other Lots subject to assessment and the amount of actual

expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Declarant Control Period, Declarant shall pay assessments in the same manner as any other Owner on all of its Lots which have not been conveyed to Home Owners.

8.8. Lien for Assessments.

In accordance with the Act, and subject to the limitations of any applicable provision of the Act or Nevada law, the Association shall have an automatic statutory lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including administrative costs and attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any first Mortgage Recorded on the Lot before the date on which the assessment sought to be enforced became delinquent, or (c) liens and encumbrances Recorded before the Recording of the Declaration. Notwithstanding the foregoing, the Association's lien for delinquent assessments shall be prior to a Recorded first Mortgage equal to the Common Expenses based on the Association's annual budget as provided in this Article VIII which would have come due on the absence of acceleration, during the six months immediately preceding the institution of an action to enforce the lien.

Such lien, when delinquent, may be enforced in the manner prescribed in the Act.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first mortgage or security interest shall extinguish the lien as to any installments of such assessments due prior to the foreclosure. The subsequent Owner to the foreclosed Lot shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

8.9. Limitation on Increases of Assessments.

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 8.5, the Board may not impose a Base Assessment, Neighborhood Assessment, or Benefited Assessment that is more than 20% greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds 5% of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current fiscal year, without a Majority vote of a quorum of Owners of the Lots which are subject to the applicable assessment at a meeting of the Association.

For purposes of this Section, "quorum" means the Owners of more than 50% of the Lots which are subject to the applicable assessment. In addition, the term "Base Assessment" or "Neighborhood Assessment" shall be deemed to include the amount assessed against each Lot plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

(a) an extraordinary expense required by an order of a court;

(b) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or

(c) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which the Board could not have reasonably foreseen in preparing and distributing the budget pursuant to Section 8.3. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

8.10. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) all Common Area and such portions of the property Declarant owns which are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) all property within Anthem owned or maintained by the Council or by another residential association, and any other property not subject to this Declaration;

(c) any property dedicated to and accepted by any governmental authority or public utility; and

(d) property any Neighborhood Association owns for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, both Declarant and the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Sun City Anthem and to accommodate changes in the master plan which inevitably occur as a community the size of Sun City Anthem grows and matures.

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may from time to time subject to the provisions of this Declaration all or any portion of the property described in Exhibit "B" by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall constitute an "amendment" pursuant to Section 116.2110 of the Act, but shall not require the consent of any Person except the owner of such property, if other than Declarant. Declarant's right to expand the community includes the right to create Lots, Common Area, and Limited Common Area with respect to such annexed property.

Declarant's right to expand the Properties pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

Declarant reserves the right, but not the obligation, to annex additional property not described in Exhibits "A" or "B" to the extent allowed by the Act. Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

Annexation shall be accomplished by Recording a Supplemental Declaration describing the property being annexed. All Lots subject to this Declaration, whether initially described in Exhibit "A" or annexed pursuant to a Supplemental Declaration, shall have equal voting rights and an equal, pro rata share of liability for Base Assessments.

9.2. Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of 67% of the total votes in the Association at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, the consent of Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary. Any Supplemental Declaration under this Section shall comply with the requirements of the Act.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effective Date of Supplemental Declaration.

Any Supplemental Declaration Recorded pursuant to this Article shall be effective upon Recording unless otherwise specified in such Supplemental Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property pursuant to Section 9.1, for the purpose of removing and withdrawing any portion of the Properties from the coverage of this Declaration, whether originally described in Exhibit "A" or added by Supplemental Declaration; provided, no property described on a particular Plat shall be withdrawn after a Lot shown on that Plat has been conveyed by Declarant to any Person other than an affiliate of Declarant. Any withdrawal shall reduce the Maximum Lots subject to the Declaration, the number of votes in the Association, and the Lots subject to assessment. Such amendment shall not require the consent of any Person other than the Owner

of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the request of Declarant.

10.2. Marketing and Sales Activities.

Declarant may construct and maintain upon portions of the Common Area and any Lot it owns such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction, marketing, and sale of Lots, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant shall have easements for access to and use of such facilities.

10.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the real property described on Exhibit "B" as indicated on any Plat, in this Declaration, or as it deems appropriate in its sole discretion.

Every Person that acquires any interest in the Properties acknowledges that Sun City Anthem is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4. Right to Designate Sites for Governmental and Public Interests.

For so long as Declarant owns any property described in Exhibits "A" or "B," Declarant may designate sites within the Properties for government, education, or religious activities and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks, and other public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

10.5. Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recording without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by Recorded written consent signed by Declarant.

10.6. Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions or Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.7. Right to Merge or Consolidate the Association.

Declarant reserves the right to merge or consolidate the Association with another common interest community of the same form of ownership or make it subject to a master association.

10.8. Right to Appoint and Remove Directors During Declarant Control Period.

Declarant may appoint and remove the Association's officers and directors during the Declarant Control Period as provided in the By-Laws.

10.9. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a Recorded written instrument signed by Declarant. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.10. Easement to Inspect and Right to Correct.

(a) Easement. Declarant reserves for itself and such other Persons as it may designate perpetual, non-exclusive easements throughout Sun City Anthem to the extent reasonably necessary for the purposes of accessing, inspecting, testing, redesigning, correcting, or improving any portion of Sun City Anthem, including Lots and the Area of Common Responsibility. Declarant shall have the right to redesign, correct, or improve any part of Sun City Anthem, including Lots and the Area of Common Responsibility.

(b) Right of Entry. In addition to the above easement, Declarant reserves a right of entry onto a. Except in an emergency, the Owner shall be given reasonable notice prior to such entry. In all circumstances, entry into a Dwelling Unit shall be only after Declarant notifies the Home Owner (or Occupant) and agrees with the Home Owner regarding a reasonable time to enter the Dwelling Unit to perform such activities. Each Owner agrees to cooperate in a

reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this Section.

Entry onto the Area of Common Responsibility and into any improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association, except in an emergency.

(c) Damage. Any damage to a Lot or the Area of Common Responsibility resulting from the exercise of the easement and right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Lot and entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

10.11. Exclusive Rights to Use Name of Development.

No Person shall use the name "Anthem" or "Sun City Anthem" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Anthem" or "Sun City Anthem" in printed or promotional matter where such term is used solely to specify that particular property is located within "Anthem" and Sun City Anthem and the Association shall be entitled to use the words "Sun City Anthem" in its name.

10.12. Del Webb Marks.

Any use by the Association of names, marks, or symbols of Del Webb Corporation or any of its affiliates (collectively "Del Webb Marks") shall inure to the benefit of Del Webb Corporation and shall be subject to Del Webb Corporation's periodic review for quality control. The Association shall enter into license agreements with Del Webb Corporation, terminable with or without cause and in a form specified by Del Webb Corporation in its sole discretion, with respect to permissive use of certain Del Webb Marks. The Association shall not use any Del Webb Mark without Del Webb Corporation's prior written consent.

10.13. Vacation Villas.

Declarant may, in its discretion, construct residential improvements for temporary Occupancy in or adjacent to the Properties and designate such improvements as "Vacation Villas." Vacation Villas located outside of the Properties shall not be Lots or Dwelling Units, and their owners shall not be Members of the Association; provided, however, such Vacation Villas shall have access to the Common Area and facilities in consideration of the payment of such fees as provided by a contract or some covenant to share costs.

Owners of Vacation Villas located within the Properties shall be Members of the Association. Declarant may transfer or lease Vacation Villas and make Vacation Villas available for use by guests selected in its discretion. Occupants of the Vacation Villas shall have a non-

exclusive easement for use, access, and enjoyment in and to the Common Area, including but not limited to any recreational facilities within the Common Area. The Board shall assign activity or use privilege cards to Declarant on behalf of all owners of Vacation Villas for the purpose of exercising such easement. Vacation Villas shall remain Vacation Villas until Declarant otherwise provides in written notice to the owner of such Vacation Villa and to the Association.

10.14. Equal Treatment.

So long as Declarant owns any property described in Exhibits "A" or "B," neither the Association nor any Neighborhood Association shall, without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

(a) limits the access of Declarant, its successors, assigns, and affiliates or their personnel and or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents Declarant, its successors, assigns, and affiliates or their personnel from advertising, marketing, or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by Declarant, its successors, assigns, and affiliates in Sun City Anthem from becoming members of the Association or enjoying full use of its Common Areas, subject to the membership provisions of this Declaration and the By-Laws;

(d) discriminates against or singles out any group of Members or prospective Members or Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges other than Benefited Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Members or Declarant, but shall not prohibit the establishment of Benefited Assessments];

(e) impacts the ability of Declarant, its successors, assigns, and affiliates, to carry out to completion its development plans and related construction activities for Sun City Anthem, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Sun City Anthem shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction, and landscaping activities and utilities; or

(f) impacts the ability of Declarant, its successors, assigns, and affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any Neighborhood Association shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties or the Exhibit "B" property) to interfere with the rights of Declarant set forth in this Declaration or to impede access to any portion of the Properties or the Exhibit "B" property over the streets and other Common Areas within the Properties.

10.15. Right to Use Common Area for Special Events.

As long as Declarant owns any property described in Exhibits "A" or "B," Declarant shall have the right to use all Common Area, including any recreational facilities, for up to eight days each year to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by Declarant in its sole discretion. Any such event shall be subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Association;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage (excluding lost revenue) resulting from the special event; and

(c) Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign the rights contained in this Section 10.15 to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

10.16. Sales by Declarant.

Notwithstanding the restriction set forth in Section 3.1, Declarant reserves the right to sell Lots to Persons between 50 and 55, inclusive years of age; provided, such sales shall not affect Sun City Anthem's compliance with all applicable State and Federal laws under which the Properties may be developed and operated as an age-restricted community.

10.17. Termination of Rights.

The rights contained in this Article shall terminate as specifically provided in the Act, or upon the earlier of (a) 30 years from the conveyance of the first Lot to an Owner, or (b) Recording by Declarant of a written statement that all of its sales activities have ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. This Article X shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in Exhibits "A" or "B."

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents and any other applicable covenants;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) the Board's right to:

(i) adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend the right of an Owner to use recreational facilities within the Common Area;

(A) for any period during which any charge against such Owner's Lot remains delinquent, and,

(B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to Section 3.26 of the By-Laws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 17.5 and 20.4;

(vii) limit the use of those portions of the Common Area designated "Limited Common Areas," as described in Article XII to the exclusive use of certain Owners; and,

(viii) create, enter into agreements with, and grant easements to tax-exempt organizations under Section 7.12;

(d) the right of the Association to rent or lease any portion of any clubhouse or other recreational facilities within the Common Area on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family and guests; and,

(e) the requirement that access to and use of recreational facilities within the Properties shall be subject to the presentation of an Activity Card issued by the Association for such purpose and as provided under Article XV of the Declaration.

The initial Common Area contained within the real property identified in Exhibit "A" shall be conveyed to the Association prior to or concurrent with the conveyance of the first Lot to a Home Owner.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the

improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Association and Utility Easements. Declarant reserves for itself, so long as Declarant owns any property described in Exhibit "A" or "B" of this Declaration, and grants to the Association, the Council, and all utility providers, perpetual non-exclusive easements throughout all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways, trails, drainage systems, street lights, and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on a Plat;

(ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 11.3(a)(i); and

(iii) reading utility meters.

(b) Other Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B."

(c) Property Restoration. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or Occupant.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access,

and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association also shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner. Any damage caused as a result of the Association fulfilling its maintenance responsibilities shall be repaired by the Association at its expense.

Declarant grants to the Association, an easement and the right to enter a Lot to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

11.6. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association, and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water to the extent reasonably necessary to exercise their rights under this Section. Except in the case of an emergency, reasonable notice shall be given prior to the exercise of the above easements.

Declarant further reserves for itself, the Association, and its successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water within the Area of Common Responsibility; and (c) maintain and landscape thm slopes and banks pertaining to such areas. All Persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.7. Easements for Cross-Drainage.

Declarant hereby reserves for itself and grants to the Association that every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and Declarant as long as it owns any property described in Exhibits "A" or "B" to the Declaration.

11.8. Rights to Stormwater Runoff, Effluent, and Water Reclamation.

Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, that Declarant shall retain all such rights. Such rights shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 11.8 may not be amendmd without the consent of Declarant or its successor, and the rights created in this Section 11.8 shall survive termination of this Declaration.

11.9. Easements for Golf Course.

(a) The Properties are burdened with an easement permitting golf balls unintentionally to come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or common property of a Neighborhood to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls.

Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant; the Association or its Members (in their capacities as such); the Council or its members; Del Webb Communities, Inc., its successors, successors-in-title to the golf course, or assigns; any builder or

contractor (in their capacities as such); any agent, officer, director, or partner of any of the foregoing, or any officer or director of any partner.

(b) The owner of any golf course within or adjacent to any portion of the Properties, its agents, successors, and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair, and replacement of its golf course.

(c) Any portion of the Properties immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of any golf course within or adjacent to any portion of the Properties, its successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

(e) The owner of any golf course within or adjacent to any portion of the Properties, its successors, and assigns, as well as its agents, members, guests, invitees, employees, and authorized users of such golf course, shall at all times have a right and non-exclusive easement of access and use over all roadways and golf cart paths, if any, located or to be located within the Properties and reasonably necessary to travel to and from the golf course. The Association shall permit the parking of vehicles on the streets within the Properties at reasonable times before, during, and after golf tournaments and other similar functions held at the golf course

Article XII Limited Common Areas

12.1. Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and Occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians, cul-de-sacs, lakes, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

12.2. Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area: provided,

however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Neighborhood Representatives representing a Majority of the total votes in the Association, including a Majority of the votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require Declarant's written consent. Any assignment or reassignment of Limited Common Area shall be made in accordance with the requirements of the Act.

12.3. Use by Others.

The Association may, upon approval of a Majority of the Owners of or upon approval of the board of directors of a Neighborhood Association (if applicable) for the Neighborhood(s) to which any Limited Common Area is assigned, permit Owners of Lots in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Area.

Article XIII Party Walls and Other Shared Structures

13.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Lots, other than a perimeter wall or fence as provided in Section 5.1 and Section 7.2, which serves and or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

13.2. Maintenance, Damage, and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and is not repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such

contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

13.3. Right to Contribution Runs with Land.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

13.4. Disputes.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XVI.

Article XIV Golf Course

14.1. Assumption of Risk and Indemnification.

Each Owner, by its purchase of a Lot in the vicinity of any golf course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such golf course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) use of effluent in the irrigation of the golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls and golf clubs, and (g) design or redesign of the golf course.

Each such Owner agrees that Declarant, the Association, the Council, and any of Declarant's affiliates or agents shall not be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, the Association, or the Council. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, the Association, and the Council against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

14.2. View Impairment.

Declarant, the Association, and the Council do not guarantee or represent that any view over and across any golf course from adjacent Lots will be preserved without impairment. No provision of this Declaration shall be deemed to create an obligation of the Association,

Declarant, or the Council to relocate, prune, or thin trees or other landscaping except as provided in Article V. The owner of the golf course, if any, may, in its sole and absolute discretion, add trees and other landscaping to such golf course from time to time. In addition, the owner of any golf course may, in its sole and absolute discretion, change the location, configuration, size, and elevation of the tees, bunkers, fairways, and greens on such golf course from time to time. Any such additions or changes to such golf course may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any golf course may not adversely affect drainage flow across the Properties.

Article XV Activity Cards

15.1. Issuance by the Board.

One Activity Card shall be allocated to each Qualified Occupant of a Lot, up to a maximum of two Activity Cards per Lot. No Activity Cards shall be allocated to any Lot which is not Occupied by a Qualified Occupant. The Board shall determine entitlement to Activity Cards on an annual basis. Activity Cards shall be renewed annually without charge, provided, the Lot continues to be Occupied by a Qualified Occupant and all applicable assessments and other charges pertaining to the Lot have been paid. The Board may establish policies, limits, and charges with regard to the issuance of additional cards and guest privilege cards.

The Board may issue Activity Cards to persons who have signed binding contracts to purchase a Lot, subject to such policies as the Board may determine from time to time.

15.2 Assignment of Rights.

The right to an Activity Card is based upon Occupancy of a Lot. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall be deemed to have assigned his or her rights to an Activity Card to the lessee of such Lot. The lessee of the Lot shall be entitled to an Activity Card only if the Lot continues to be Occupied by a Qualified Occupant. Any Owner who leases or otherwise transfers Occupancy of his or her Lot shall provide the Association with immediate written notice thereof and shall surrender to the Association his or her previously issued Activity Card. Activity Cards shall be surrendered by any holder who ceases to Occupy a Lot, or at any time upon written notification from the Association that the holder no longer is entitled to hold an Activity Card.

15.3. Vacation Villas.

Each Vacation Villa, as described in Section 10.13, located within the Properties shall be allocated three Activity Cards for use by the temporary Occupants of the Vacation Villa. Vacation Villas located adjacent to the Properties (may be issued Activity Cards based on the arrangements set forth in a contract or covenant to share costs between the Association and the owner of such Vacation Villas. Additional Activity Cards shall be issued to Declarant upon request with payment of the then current charge for additional Activity Cards. In the event that no "then current charge" is in effect at the time of such request, the charge for additional Activity Cards for Vacation Villas shall be determined in the reasonable discretion of Declarant.

15.4. Issuance to Declarant.

As long as Declarant owns any portion of the Properties or has the right to annex property pursuant to Section 9.1, the Association shall provide Declarant, free of charge, with as many Activity Cards as Declarant, in its sole discretion, deems necessary for the purpose of marketing the Properties or any property described in Exhibit "B." Declarant may transfer the Activity Cards to prospective purchasers of Lots subject to such terms and conditions as it, in its sole discretion, may determine. Activity Cards provided to Declarant shall entitle the bearer to use all Common Area and recreational facilities (subject to the payment of admission fees or other use fees charged to Qualified Occupants holding Activity Cards).

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Sun City Anthem as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in Sun City Anthem.

Article XVI Dispute Resolution and Limitation on Litigation

16.1 Prerequisites to Actions Against Declarant.

Prior to any Owner, the Association, or any Neighborhood Association filing a civil action, undertaking any action in accordance with Section 15.4, or retaining an expert for such actions against Declarant or any Builder or sub-contractor of any portion of Anthem Country Club, the Owner, the Board or the board of the Neighborhood Association, as appropriate, shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the potential adverse party shall be notified of the alleged problem or deficiency and provided reasonable opportunity to inspect and repair the problem.

16.2. Consensus for Association Litigation.

Except as provided in this Section, the Association or a Neighborhood Association shall not commence a judicial or administrative proceeding without first providing at least 21 days

written notice of a meeting to consider such proposed action to its Members. Taking such action shall require the vote of Owners of 75% of the total number of Lots in the Association or in the Neighborhood Association, as appropriate. This Section shall not apxly, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the collection of assessments and the foreclosure of liens); (b) counterclaims brought by the Association in proceedings instituted against it; or (c) actions to protect the health, safety, and welfare of the Members. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

16.3. Alternative Method for Resolving Disputes.

Declarant, the Association, any Neighborhood Association, their officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Sections 16.4 ("Claims") shall be resolved using the procedures set forth in Section 16.5 in lieu of filing suit in any court.

16.4. Claims.

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents, or the rights, obligations, and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 16.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the pro visions of Section 16.5:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III and Article IV;

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(d) any suit by an Owner concerning the aesthetic judgment of the Architectural Review Committee, the Association, or Declarant pursuant to their authority and powers under Article IV;

(e) any suit in which any indispensable party is not a Bound Party; and

(f) any suit as to which any applicable statute of limitations would expire within 90 days of giving the Notice required by Section 16.5(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 16.5.

16.5. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) Claimant's proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss good faith ways to resolve the Claim.

(b) Negotiation and Mediation. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in the Las Vegas, Nevada area.

If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim;

provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a written notice of termination of the mediation proceedings. The notice of termination of mediation shall set forth that the Parties are at an impasse and the date that mediation was terminated.

The Association must satisfy the mediation or arbitration process under the direction of the Nevada Real Estate Division and in compliance with Nevada Revised Statutes.

16.6. Allocation of Costs of Resolving Claims.

Each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s).

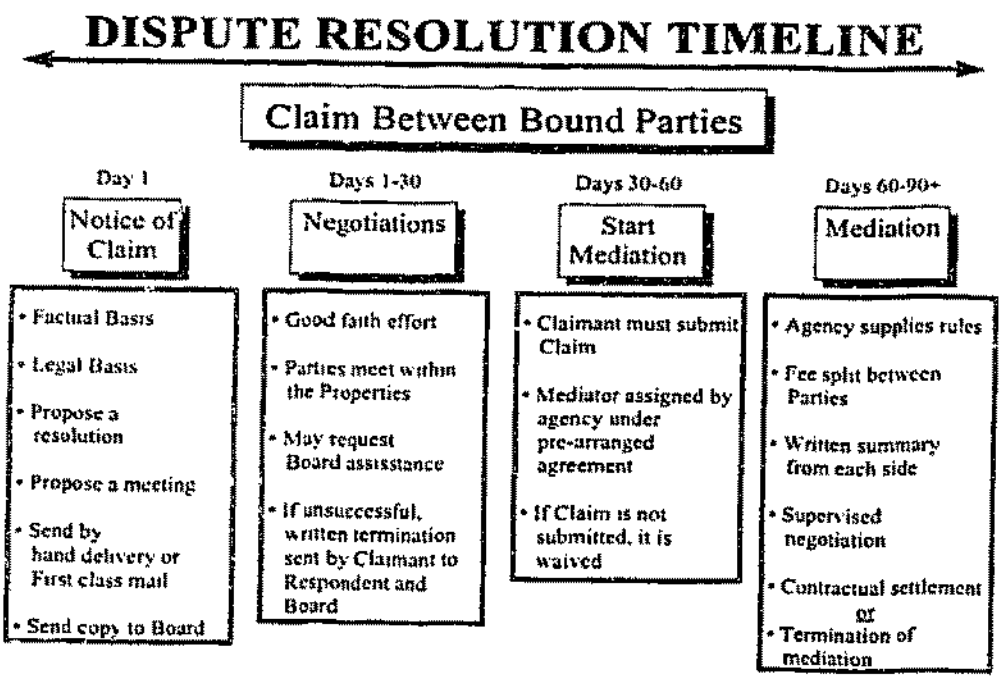
16.7. Enforcement of Resolution.

After resolution of any Claim through negotiation or mediation, if any Party fails to abide by the terms of any agreement, then any other Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 16.5. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

16.8. Attorneys' Fees.

In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Lot(s) involved in the action.

The following diagram depicts the dispute resolution process:



Article XVII Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

17.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

17.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

17.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

17.5. HUD/VA Approval.

During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Lot: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance, or mortgaging of Common Area; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

Article XVIII Private Amenities

Access to and use of any Private Amenity is strictly subject to the rules and procedures of the owner of such Private Amenity, and no Person gains any right to enter or to use any Private Amenity by virtue of membership in the Association or ownership or Occupancy of a Lot.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Private Amenities. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity.

The ownership or operation of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations by an independent Person, (b) establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of a Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity, or (c) the conveyance of a Private Amenity to one or more affiliates, shareholders, employees, or independent contractors of Declarant. No consent of the Association, any Neighborhood Association, any Neighborhood Representative, or any Owner shall be required to effectuate any change in ownership or operation of any Private Amenity, subject to the terms of any written agreements entered into by such owners.

Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners. Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Sun City Anthem are dynamic and constantly evolving as circumstances, technology, needs, desires, and laws change over time. Sun City Anthem and its governing documents must be able to adapt to these changes while protecting the things that make Sun City Anthem unique.

Article XIX Changes in Ownership of Lots

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

Article XX Changes in Common Area

20.1. Condemnation.

If a Lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be allocated as provided in the Act. If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Members representing at least 67% of the total vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

20.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring

and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

20.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Clark County, Nevada, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by Sections 17.5 and 20.4.

20.4. Actions Requiring Owner Approval.

If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Lot, then the following actions shall require the prior approval of Home Owners representing not less than sixty-seven percent (67%) of the total votes held by Home Owners in the Association and the consent of Declarant, if such exists: merger, consolidation, or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; and dedication, conveyance, or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 20.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

20.5. Delivery of Amendments to Owners.

If any change is made to this Declaration or other Governing Document of the Association, the Association 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 Lot or to any other mailing address designated in writing by the Lot Owner and filed with the Secretary, a copy of the change that was made.

20.6 Liberal Construction to Comply with the Act.

It is the intention of Declarant that this Amended and Restated Declaration be liberally construed to conform to the provisions of the Act, as amended by SB 451. To the extent that it does not expressly conform to the Act, as amended, this Declaration shall be deemed to conform with the Act by operation of law.

Article XXI Amendment of Declaration

21.1. Corrective Amendments.

In addition to specific amendment rights granted elsewhere in this Declaration, until conveyance of the first Lot to a Home Owner, Declarant may unilaterally amend this Declaration

for any purpose. Thereafter, Declarant, or the Board with consent of the Declarant, unilaterally may amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

21.2. By Owners.

Except as otherwise specifically provided above, in the Act, and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 67% of the total votes in the Association, and the consent of Declarant, so long as Declarant is entitled to exercise rights under Article X.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

21.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant (or the assignee of such right or privilege). Additionally, no amendment may remove, revoke, or modify any right or privilege of the Council without the Council's written consent.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be presumed conclusively that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment validly adopted by the Association shall be certified by the President or Secretary of the Association, and shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within 12 months of its Recording or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Nothing in this Article shall be construed to permit termination of any easement created in this Declaration or Supplemental Declaration without the consent of the holder of such easement.

21.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date and year first written above.

Del Webb Communities, Inc.,
an Arizona corporation

By: Scott A. Middleton
Name: SCOTT A. MIDDLETON
Title: VICE PRESIDENT

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On October 30, 2000, personally appeared before me a notary public, SCOTT A MIDDLETON, VICE PRES. of Del Webb Communities, Inc., personally known to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
VICKY LEWIS
Appt. No.97-2555-1
My Appt. Expires June 24, 2001

[NOTARIAL SEAL]

Notary Public:

By: _____
Name: _____
Title: _____

My Commission Expires: _____

Exhibit"A"

Land Initially Submitted

All of Sun City Anthem Unit No. 1 as shown by map thereof on file in Book 84 Page 55 of Plats in the office of the County Recorder of Clark County, Nevada

All of Sun City Anthem Unit No 2 as shown by map thereof on file in Book 84 Page 62 of Plats in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 3 as shown by map thereof on file in Book 84 Page 67 of Plats in the office of the County Recorder of Clark County Nevada.

All of Sun City Anthem Unit No. 3A as shown by Map thereof on file in Book 94 of Plats, Page 67, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 4 Phase 1 as shown by Map thereof on file in Book 86 of Plats, Page 69, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 4 Phase 2 as shown by Map thereof on file in Book 90 of Plats, Page 14, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 4 Phase 3 as shown by Map thereof on file in Book 90 of Plats, Page 21, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 5 as shown by Map thereof on file in Book 92 of Plats, Page 24, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Vacation Getaways as shown by Map thereof on file in Book 86 of Plats Page 87, in the office of the County Recorder of Clark County, Nevada

All of Sun City Anthem Unit No.7 as shown by Map thereof on file in Book 92 of Plats, Page 74, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 8 as shown by Map thereof on file in Book 90 of Plats, Page 80, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 8A as shown by Map thereof on file in Book 92 of Plats, Page 93, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. as shown by Map thereof on file in Book 95 of Plats, Page 02, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 10 as shown by Map thereof on file in Book 93 of Plats, Page 25, in the office of the County Recorder of Clark County, Nevada.

All of Sun City Anthem Unit No. 11 as shown by Map thereof on file in Book 95 of Plats, Page 02, in the office of the County Recorder of Clark County, Nevada.

EXHIBIT "B"

Land Subject to Annexation

All or portions of Sections 11, 12, 13, 14 and 24 of Township 23 South, Range 61 East and Sections 5,6, 7, 8, 17, 18, 19, and 20 of Township 23 South, Range 62 East.

Any contiguous property with a 2 mile radius of the above property.

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.02253

EXHIBIT "C"

AMENDED AND RESTATED BY-LAWS

OF

SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC.

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AMENDED AND RESTATED BY-LAWS

OF

SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC.

THESE AMENDED AND RESTATED BY-LAWS OF SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., are made by Sun City Anthem Community Association, Inc., a Nevada nonprofit corporation (the "Association")

RECITALS

WHEREAS, the original Declaration of Covenants, Conditions and Restrictions for Sun City Anthem dated June 28, 1998 was Recorded in the office of the Clark County Recorder on June 29, 1998 in Book No. 980629 as Instrument No. 00719, thereby creating the common-interest community known as Sun City Anthem;

WHEREAS, the original By-Laws of Sun City Anthem Community Association, Inc. were recorded in the office of the Clark County Recorder on _____ as Instrument No. _____ (the "By-Laws");

WHEREAS, the 1999 Nevada Legislature adopted Senate Bill 451 ("SB 451") amending the Nevada Uniform Common-Interest Ownership At, NRS §116.1101 et. seq. (the "Act");

WHEREAS, the Revisor's Note to NRS 116.31065 requires that any by-laws of a common-interest community crated on or after January 1, 1992, that do not conform to the provisions of the At, as amended by SB 451, must be changed no later than October 1, 2000, to conform to those provisions and may be so changed without complying with the procedural requirements generally applicable to the adoption of an amendment to the By-Laws; and,

WHEREAS, the Association desires to comply with the Revisor's Note to NRS 116.31065 by executing this Amendment to conform the By-Laws to the Act, as amended by SB 451;

NOW THEREFORE, the By-Laws are hereby amended and restated in their entirety as follows in order to conform to the Act, as amended by SB 451.

Article I Name, Principal Office, and Definitions

1.1. Name. The name of the corporation is Sun City Anthem Community Association, Inc. (the "Association").

1.2. Principal Office. The Association's principal office shall be located in Henderson, Nevada. The Association may have such other offices, either within or outside the State of Nevada, as the Board of Directors may determine or as the Association's affairs may require.

1.3. Application. The provisions of these By-Laws are applicable to Sun City Anthem which is located in Henderson, Nevada. All present and future Owners and their tenants, future tenants, employees and any other Person who might use the facilities of Sun City Anthem in any manner are subject to these By-Laws and that certain Declaration of Covenants, Conditions, and Restrictions for Sun City Anthem (the "Declaration") recorded in the Office of the Country Recorder of Clark County, Nevada. The mere acquisition or lease of any Lot or Dwelling Unit in the community will signify that the acquirer or tenant accepts, ratifies, and agrees to comply with these By-Laws.

1.4. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration, unless the context indicates otherwise.

Article II Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. Membership. The Association shall have one class of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. Place of Meetings. Meetings of the Association Members shall be held within the Properties or at such other suitable place as the Board may designate.

2.3. Annual Members Meetings. A meeting of the Members of the Association must be held at least once each year. The first Association Members meeting, whether a regular or special meeting, shall be held within one year from the Association's incorporation. The Board shall set subsequent regular annual Members meetings so as to occur at least 30 days but not more than 120 days before the close of the Association's fiscal year on a date and at a time set by the Board. If the Owners have not held a meeting for 1 year, a meeting of the Owners must be held on the following March 1st.

2.4. Special Members Meetings. The President may call special Members meetings. In addition, it shall be the duty of the President to call a special Members meeting if so directed by Board resolution or upon a petition signed by Members representing at least 10% of the total vote of the Association.

2.5. Notice of Members Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members and a copy of the agenda for the meeting shall be delivered, either personally, by prepaid mail, or such other method as may be permitted by

Nevada law, to each Owner, not less than 10 nor more than 60 days before the date of such meeting, by or at the direction of the President, the Secretary, or the Members calling the meeting.

The meeting notice and agenda shall state the purpose or purposes for which the meeting is called, specific issues or items to be addressed, which may include the general nature of any proposed amendments to the Declaration or these By-Laws, any budgetary changes, any fees or assessments which the Association proposes to impose or increase, and any proposal to remove an officer or Board member, other than appointed by Declarant as applicable. Such notice shall also notify the Members that they have a right to receive a copy of the minutes of the meeting (subject to a reasonable cost imposed by the Association for making such a distribution) and that they have a right to speak at the meeting (subject to reasonable time limitations). The meeting agenda should clearly describe those items on which action may be taken at the meeting and, for each such action, provide for a period of time for Member comment and discussion. No business shall be transacted at a meeting except as stated in the agenda; provided, however, that in an Emergency (as hereinafter defined), the Members may take action on an item which is not listed on the agenda. As used herein, "Emergency" means any occurrence or combination of occurrences that (i) could not have been reasonably foreseen, (ii) affects the health, welfare, and safety of the Members, (iii) requires the immediate attention of, and possible action by, the Board, and (iv) makes it impracticable to comply with the notice provisions of this Section.

If mailed, the meeting notice shall be deemed delivered when deposited in the United States mail addressed to the Owner at his or her address as it appears on the Association's records for receipt of such notices, postage prepaid.

2.6. Waiver of Notice. Any Member may, in writing, waive notice either before or after such meeting. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. A Member's attendance at a meeting shall be deemed such Member's waiver of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. If any Members meeting requiring the votes of the Members cannot be held because a quorum is not present, or has not appeared by proxy a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members

to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting. Members' voting rights shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. Members may vote at a meeting by voice vote or ballot or may vote by mail or other means of modern communication not prohibited by Nevada law, and as the Board determines. Unless otherwise provided, all voting shall be subject to the quorum requirements of Section 2.11. If only one of several Owners of a Lot is present at a meeting of the Association, that Owner is entitled to cast all the votes allocated to that Lot. If more than one of the Owners are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners, unless the Declaration expressly provides otherwise. There is a majority agreement if any one of the Owners casts the votes allocated to that Lot without protest made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

Only a vote cast in person, by secret ballot or by proxy, may be counted.

No votes allocated to a Lot owned by the Association may be cast.

2.9 Proxies. Except as otherwise provided in this section or the Act, votes allocated to a Lot may be cast pursuant to a proxy executed by an Owner. An Owner may give a proxy only to a member of his immediate family, his tenant who resides in Sun City Anthem, another Owner who resides in Sun City Anthem, or any other Person permitted by the Act. If a Lot is owned by more than one person, either Owner of the Lot may vote or either Owner of the Lot may register protest to the casting of votes by the other Owner of the Lot through an executed proxy. A Lot's Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. 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 Lot's Owner 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 he will be casting votes and the voting instructions received for each proxy.

A proxy terminates immediately after the conclusion of the meeting for which it was executed. A vote may not be cast pursuant to a proxy for the election of a member of the Board of the Association.

All proxies shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. In the event of any conflict between two or

more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

A proxy shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation.

2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence of Persons representing 10% of the total votes of the Association shall constitute a quorum at all Members meetings, and for such other purposes as a quorum may be required under the Declaration, these By-Laws, or Nevada law. However, pursuant to the Act, proxies cannot be counted in the establishment of a quorum for any meeting in which directors are being elected.

2.12. Conduct of Meetings. The President shall preside over all Members meetings, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings. Owners may attend any Members meeting and shall be permitted to speak at any such meeting; provided, the Board may establish reasonable limitations on the time each Owner may speak at these meetings. Within 30 days after any Members meeting, the Secretary shall make available a copy of the minutes or a summary of the minutes to the Members (subject to a reasonable cost imposed by the Association for making and distributing copies).

2.13. Action Without a Members Meeting. Unless otherwise prohibited by Nevada law, any action required or permitted by law to be taken at a meeting of the Members may be taken by written consent or by ballot cast by mail without a meeting, in accordance with the following procedure:

(a) The Secretary shall send written notice of the proposed action for which consent is requested to each Member entitled to vote thereon at least 10 days prior to the deadline for returning the ballots or consents. The notice shall be accompanied by a ballot or consent form (i) describing the proposed action, (ii) providing a place to indicate, in the case of a ballot, how the Member's vote is to be cast, or in the case of a consent, the Member's approval or disapproval of the proposed action, (iii) providing a method of identifying the Member and the Lot(s) for which the ballot is cast or consent is given, and in the case of a consent, a place for the Member's signature, and (iv) indicating the address to which completed forms should be returned and the deadline for returning them, if any.

(b) The proposed action shall be deemed approved if ballots approving the action or consents are received from Members holding at least a majority of the total votes entitled to be cast, unless a greater percentage of votes is required under the Governing Documents or Nevada

law for such action, in which case such greater percentage of votes shall be required to approve the action. Such ballots or consents shall have the same force and effect as a vote of the Members at a meeting. Ballots or consents shall be kept with the Association's records for the period of time required for corporations under Nevada law. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote, fairly summarizing the material features of the authorized action.

Article III Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1. Governing Body; Composition. The Association's affairs shall be governed by a Board of Directors. Each director shall have one equal vote. Except with respect to directors appointed by Declarant during the Declarant Control Period, the directors shall be Members; provided, Members representing the same Lot may not serve on the Board at the same time. Directors appointed by Declarant need not be Members. In the case of a Member which is not a natural person, any individual authorized by such Member by written notice to the Association shall be eligible to serve as a director; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by Declarant. After the Declarant Control Period, at least a majority of the directors shall be Members.

3.2. Number of Directors. The Board shall consist of three to seven directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3. Directors During Declarant Control Period. Subject to the provisions of Section 3.5, Declarant shall appoint and remove directors in its sole discretion during the Declarant Control Period. The Declarant Control Period shall terminate upon the first to occur of the following:

(a) 60 days after Declarant has conveyed 75% of the Maximum Lots to Home Owners;

(b) five years after the Declarant has ceased to offer Lots for sale in the ordinary course of business; or,

(c) five years after Recording the most recent Supplemental Declaration adding property to the Declaration as provided in Section 9.1 of the Declaration.

Nothing in this Section shall preclude Declarant from voluntarily relinquishing control of the Board earlier than required by this Section. In such event, Declarant reserves the right to disapprove Association actions as provided in Section 3.19 until such time as the Declarant Control Period would have otherwise expired under this Section.

Within 30 days after Home Owners are entitled to elect a majority of the Board members, Declarant shall deliver to the Association all personal property of the Owners and the Association which Declarant holds or controls including such items as are specifically required to be delivered under Section 116.31038 of the Act.

3.4. Nomination.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening and closing date of a reasonable filing period in which all eligible persons who have an interest in serving as a director may file as a candidate for such positions. The Board shall establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient, and cost-effective manner.

Except with respect to directors appointed by Declarant during the Declarant Control Period, nominations for election to the Board also shall be made by a nominating committee. The nominating committee shall consist of three or more Persons and a chairperson, who shall be a Board member. The remaining members of the nominating committee shall be Members.

The nominating committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the nominating committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Pursuant to the Act, not less than thirty (30) days prior to the election of members to the Board, the Association shall provide notice to each Owner of his or her eligibility to serve as a member of the Board. Each Owner who is qualified to serve as a member of the Board may have his or her name placed on the ballot along with the names of the nominees selected by the Association's nominating committee.

An officer, employee, agent, or director of a corporate Owner of a Lot, a trustee or designated beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot may be a member of the Board. In all events where the Person serving or offering to serve as a member of the Board is not the record Owner, he or she shall file proof in the records of the Association that (i) states that he or she is associated with the Owner and (ii) identifies the Lot(s) owned by the Owner.

Each candidate shall be given a reasonable, equal opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Member may vote for each position to be filled. The candidates receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms. Every election of Board members must be conducted by secret written ballot. The Secretary of the Association shall cause to be sent prepaid by United States mail to the mailing address of each Lot within Sun City Anthem or to any other mailing address designated in writing by the Lot Owner, a secret ballot and a return envelope. For the

purposes of determining whether a quorum is present for the election of any member of the Board, only the secret written ballots that are returned to the Association may be counted. Votes cast for the election of a member of the Board must be counted in public. After termination of the Declarant control period, every annual election of Board members must be held during the month of May.

3.5. Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within 60 days after the time that Owners own 25% of the Maximum Lots, or whenever Declarant earlier determines, the President shall call for an election by which Owners shall be entitled to elect one of the three directors. The remaining two directors shall be appointees of Declarant. The director elected by Owners shall not be subject to removal by Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 60 days after the time that Owners own 50% of the Maximum Lots, or whenever Declarant earlier determines, the Board shall be increased to five directors. The President shall call for an election by which Owners shall be entitled to elect two of the five directors. The remaining three directors shall be appointees of Declarant. The directors elected by Owners shall not be subject to removal by Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is shorter. If such directors' terms expire prior to the event described in subsection (c) below, successors shall be elected for a like term.

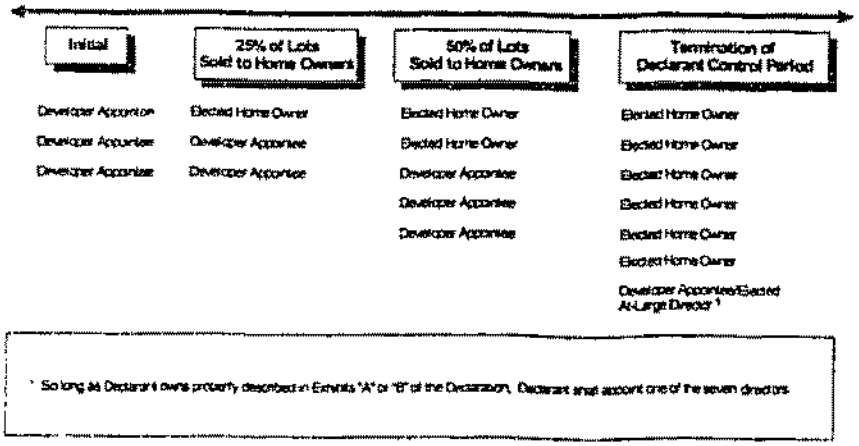
(c) Upon termination of the Declarant Control Period, the Board shall be increased to seven directors, at least a majority of whom must be Owners, and an election shall be held. Each of the seven directors shall be elected by the Owners. The members of the Board shall take office upon election and shall serve a term of two years (or such other term, not to exceed two years, as the Board may establish) unless earlier removed from office as herein provided. A member of the Board may be elected to succeed himself.

Declarant shall be entitled to appoint the one other director so long as Declarant owns any property described on Exhibits "A" or "B" to the Declaration for sale in the ordinary course of its business in the development of the Properties. Thereafter, Declarant's appointee shall resign and the remaining directors shall appoint a director to serve until the next annual meeting, at which time Owners shall elect a director, who shall serve the remaining year of the term or for two years, as applicable.

Upon the expiration of term of office of each director elected by the Owners, the Owners shall elect a successor to serve a term of two years. Directors elected by Owners shall hold office until their respective successors have been elected. Director(s) appointed by Declarant shall serve at Declarant's discretion and may be removed and replaced by Declarant at any time with or without cause.

The following diagram depicts the Board composition at various stages of community development.

COMPOSITION OF BOARD OF
SUN CITY ANTHEM
COMMUNITY ASSOCIATION, INC.



Within thirty (30) days after appointment or election to the Board, a director must certify in writing that he or she has read and understands the Governing Documents of the Association and the provisions of the Act to the best of his or her ability.

3.6. Removal of Directors and Vacancies. Any director elected by the Owners may be removed, with or without cause, by the vote of Owners holding two-thirds of the votes entitled to be cast for the election of such director at any Members meeting at which a quorum is present. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Owners entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Owners who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Owners, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual election of directors, at which time the Owners entitled to fill such directorship may elect a successor for the remainder of the term. In the event of the death, disability, or resignation of a director appointed by Declarant, Declarant may appoint a successor director to fill the vacancy.

B. Board Meetings.

3.7. Organizational Meetings. The first Board meeting following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8. Regular Board Meetings. Regular Board meetings may be held at such time and place a majority of the directors shall determine, but at least one such meeting shall be held every ninety (90) days.

3.9. Special Board Meetings. There shall be special Board meetings when the President or any two directors sign a written notice calling such meeting.

3.10. Notice; Waiver of Notice.

Except in an Emergency (as hereinafter defined), the Association shall, not less than 10 days before the date of a meeting of the Board, provide notice of the meeting to the Owners. Such notice must be:

(a) Sent prepaid by United States mail to the mailing address of each Lot within Sun City Anthem or to any other mailing address designated in writing by the Owner; or

(b) Published in a newsletter or other similar publication that is circulated to each Owner.

In accordance with the Act, in the event of an Emergency, the association shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Lot within the Association. If delivery of the notice in this manner is impracticable, the notice will be hand-delivered to each Lot within the Association or posted in a prominent place or places within the Common Areas of the Association.

The notice of a meeting of the Board of the Association 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 the Owner to:

(i) 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,

(ii) Speak to the Association or Board, unless the Board is meeting in executive session.

As used in this Section, "Emergency" means any occurrence or combination of occurrences that (i) could not have been reasonably foreseen, (ii) affects the health, welfare, and safety of the Members, (iii) requires the immediate attention of, and possible action by, the Board, and (iv) makes it impracticable to comply with the notice provisions of this Section.

(b) The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the meeting's purpose. Notice of a Board meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Board Meetings. Board members or any committee the Board designates may participate in a Board meeting or committee by conference via telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless otherwise specifically provided in these By-Laws or the Declaration. A Board meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the remaining directors constituting the quorum. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened Board meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. The Association shall not compensate directors unless approved by a majority of the votes in the Association at a regular or special Association meeting. Any director may be reimbursed for expenses incurred on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Board majority, excluding the interested director.

3.14 Conduct of Board Meetings. The President shall preside over all Board meetings, or the Vice President in the President's absence and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

The agenda for every meeting of the Board must consist of (a) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to the Declaration or these By-Laws, any fees or assessments to be imposed or increased by the Association, any budgetary changes, and any proposal to remove an officer or member of the Board, (b) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items; and (c) a period devoted to comments by Owners and discussion of those comments. 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.

At least once every ninety (90) days, the Board shall review at one of its meetings (aa) a current reconciliation of the operating accounts of the Association, (bb) a current reconciliation of the reserve accounts of the Association, (cc) the actual revenues and expenses for the reserve accounts, compared to the budget for those accounts for the current year, (dd) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained, (ee) an income and expense statement, prepared on at least a quarterly basis, for the operating and reserve accounts of the Association, and (ff) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

Not more than thirty (30) days after each meeting of the Board, the Association 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 to him.

3.15. Open Board Meetings. Except as otherwise provided in this Section or in Sections 3.14, 3.16, or 3.26 hereof, an Owner may attend any meeting of the Board and speak at any such meeting. The Board may establish reasonable limitations on the time an Owner may speak at such a meeting.

Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and, subject to Section 3.26, may exclude Persons other than directors, to (a) consult 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 attorney-client privilege; (b) discuss matters relating to personnel; or (c) discuss a violation of the Governing Documents alleged to have been committed by an Owner. Any matter discussed in executive session must be generally noted in the Board meeting minutes. Further, the Board shall maintain detailed minutes of any matter discussed regarding an Owner's alleged violation of the Governing Documents which shall contain a written statement of the results of the hearing and the sanction, if any, imposed. However, upon request the Board shall only be required to provide

said Owner (or his or her designated representative) with a copy of the decision, and not the detailed minutes. Except as otherwise provided in Section 3.26, an Owner shall not be entitled to attend or speak at a meeting of the Board held in executive session.

3.16 Action Without a Formal Board Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the Board's proceedings. A notice of the Board's action shall be posted in a prominent place within the Properties within three business days after all written consents to an action have been obtained. Failure to give notice shall not render the action taken invalid.

C. Powers and Duties.

3.17. Powers. The Board shall have all of the powers and duties necessary to administer the Association's affairs and to perform all responsibilities and exercise all the Association's rights as set forth in the Governing Documents, the Act, and as otherwise provided by law. Except for those acts or other powers which are to be done and exercised by the membership, or otherwise limited or prohibited under Nevada law or the Governing Documents, the Board may do or shall cause to be done all acts and things which in their business judgment benefits the Association.

3.18. Duties. The Board's duties shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel and contract with managers as necessary, including affiliates of Declarant, to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;

(f) making and amending Use Restrictions and Rules in accordance with the Declaration;

(g) opening of bank accounts on the Association's behalf and designating the signatories required;

(h) making or contracting to make repairs, additions, and improvements to or alterations of the Area of Common Responsibility in accordance with the Declaration and these By-Laws;

(i) enforcing the Governing Documents and bringing any legal proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned as provided in Section 16.2 of the Declaration, and subject to the notification requirements of NRS 116.3115(10);

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying all taxes and/or assessments which are or could become a lien on the Common Area or a portion thereof;

(l) paying the cost of all services rendered to the Association;

(m) keeping books with detailed accounts of the Association's receipts and expenditures;

(n) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other Association books, records, and financial statements as provided in Section 6.4;

(o) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(p) indemnifying an Association director, officer, or committee member, or former director, officer, or committee member to the extent such indemnity is permitted or required by Nevada law, the Articles, or the Declaration; and,

(q) any other duty required of a planned community homeowners association board of directors pursuant to the Act.

3.19. Right of Declarant to Disapprove Actions. The rights set forth in this Section shall continue until expiration of the Declarant Control Period.

(a) Declarant's Right to Disapprove Actions. Declarant voluntarily may relinquish its right to appoint and remove Association officers and directors; provided, in such instance,

Declarant shall have the right to disapprove any Association action, policy, or program, the Board and any committee which, in the sole judgment of Declarant, would tend to impair rights of Declarant under the Declaration or these By-Laws, or interfere with the development or construction of any portion of the Properties, or diminish the level of services the Association provides.

(b) Notice. Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Association's Secretary, which notice complies with the requirements for notice of Board meetings set forth in Section 3.10 and which notice shall set forth in reasonable particularity the agenda to be followed at such meeting.

(c) Participation. Declarant shall be given the opportunity at any Association meeting, including Board and committee meetings, to join in or to have its representatives, or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein. Declarant, its representatives, or agents may make its concerns, thoughts, and suggestions known to the Board and/or members of the subject committee, either during or outside of the meeting.

(d) Time Period for Consent. Declarant, acting through any officer, or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counterclaim on behalf of any committee, the Board, or the Association. Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

No action, policy, or program subject to Declarant's right of disapproval shall become effective or be implemented until and unless the requirements of subsections (b) and (c) above have been met and the time period set forth in this subsection (d) has expired.

3.20. Management. The Board may employ a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(e), 3.18(f), 3.18(g) and 3.18(i). Declarant or its affiliate may be employed as managing agent or manager. Any manager retained by the Association must be certified, unless that individual is exempt from certification by Nevada law.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21. Accounts and Reports. The following management standards of performance shall be followed unless the Board, by resolution, specifically determines otherwise:

(a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) Association cash accounts shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and,

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and,

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating

(income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor, or insurer of any first Mortgage on a Lot, the Association shall provide an audited financial statement.

3.22. Borrowing. The Association shall have the power to borrow money for any legal purpose. The Board shall obtain approval of Members entitled to cast at least a majority of votes at a duly called and held Members meeting at which a quorum is present if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

Portions of the Common Area may be subjected to a security interest by the Association provided that Home Owners entitled to cast at least a majority of the Association's votes, including a majority of the votes of Lots not owned by Home Owners, agree to such action. Limited Common Area may also be subjected to a security interest provided that all Owners of Lots to which the area is allocated agree to such action. During the Declarant Control Period, no Mortgage shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Home Owners representing at least 67% of the total votes attributable to Home Owners in the Association and the approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veteran Affairs, if either such agency insures or guarantees the Mortgage on any Lot.

3.23. Rights to Contract. The Association shall have the right to contract with any Person for the performance of various duties, functions, and services. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Neighborhoods and other owners or residents associations, within and outside the Properties and Anthem; provided, any common management agreement shall require the consent of a majority of the total number of Association directors. The Association shall have the right to terminate contracts entered into during the Declarant Control Period as set forth in the Act.

3.24. Board Training. In conjunction with this requirement, prior to serving as a director, each Board member shall certify in writing that he or she has read and understands the Governing Documents and the provisions of the Act. Each director shall attend a Board training seminar within the first six months he or she serves as a director. Such seminar shall educate the directors about their responsibilities and duties and may be live, video or audio tape, or other format. The Board shall offer the seminar at a time reasonably convenient for the subject director.

3.25. Board Standards. In the performance of their duties, Association directors and officers shall act as fiduciaries and are subject to insulation from liability provided for directors and officers of corporations by Nevada laws and Section 116.3103 of the Act, and as otherwise provided in the Governing Documents. Directors are required by Section 116.3103 of the Act to

exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

3.26. Enforcement Procedures.

Prior to exercising certain enforcement rights set forth in Section 7.4 of the Declaration and the Governing Documents, the Association shall comply with the following notice and hearing procedures:

(a) Notice. Prior to imposing any sanction as provided in the Governing Documents which requires notice, the Board or, if so directed by the Board, the Deed Restriction Enforcement Committee, or the management agent, shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the Deed Restriction Enforcement Committee within 15 days of delivery of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless the Board or the Deed Restriction Enforcement Committee receives a request for a hearing within such time period. Proof of proper notice shall be placed in the Board's record book. Proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator requests a hearing.

If the Board or the Deed Restriction Enforcement Committee does not receive a timely request for a hearing, the sanction stated in the notice shall be imposed; provided, the Board or the Deed Restriction Enforcement Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured or if a cure is diligently commenced within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction any Person's future violations of the same or other provisions and rules.

(b) Hearing. If the alleged violator requests a hearing within the allotted 15-day period, the hearing shall be held before the Deed Restriction Enforcement Committee, or if it has not been established, before the Board in executive session unless the alleged violator requests in writing that such hearing be conducted in a regular open Board meeting. The alleged violator may attend the hearing and testify concerning the alleged violation, but may be excluded by the Board from any other portion of the hearing, including, without limitation, the deliberations of the Board. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. However, upon request, the Board is only required to provide the alleged violator (or his designated representative) with a copy of the decision, and not the detailed minutes.

(c) Appeal. Following a hearing before the Deed Restriction Enforcement Committee, the alleged violator shall have the right to appeal the decision to the Board. To perfect this right, the alleged violator must file a written notice of appeal with the management agent, President, or Secretary of the Association within 15 days after the hearing date. The Board may promulgate guidelines with respect to filing such written appeals.

Notwithstanding anything to the contrary in this Section, the Board may elect to enforce the Governing Documents by certain sanctions set forth in Section 7.4 of the Declaration including by suit at law or in equity to enjoin any violation, or to recover monetary damages, or both, without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner or other Person responsible for the violation shall pay all costs, including reasonable attorneys' fees actually incurred.

Article IV Officers

4.1. Officers. The Association's officers shall be a President, Vice President, Secretary, and Treasurer, each of whom shall be elected from among the Board members. Other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties the Board prescribes. Any two or more offices may be held by the same individual, except the offices of President and Secretary. An officer, employee, agent, or director of a corporate Owner of a Lot, a trustee or designated beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot may be an officer. In all events where the Person serving or offering to serve as an officer is not the record Owner, he or she shall file proof in the records of the Association that (i) states that he or she is associated with the Owner and (ii) identifies the Lot(s) owned by the Owner.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first Board meeting following each annual Association meeting who shall serve until their successors are elected unless earlier removed from office as herein provided.

4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served. The Board may fill a vacancy arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties. The officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting. The Secretary shall keep the minutes of all meetings of the Association and the Board and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, the Board may direct any officer to perform all duties incident to the office of Secretary. The Treasurer shall have primary responsibility for preparing the Budget as provided in the Declaration and these By-Laws and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association (other than for the withdrawal of reserve funds) shall be executed by at least two officers or by such other Person or Persons as may be designated by Board resolution. The Board shall require signatures for the withdrawal of reserve funds of either two Board members or a Board member and officer of the Association who is not also a Board member. For purposes of this Section, "reserve funds" means monies the Board has identified in the budget for use to defray the future repair or replacement of, or additions, to those major components which the Association is obligated to maintain.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V Committees

5.1. General. The Board may establish such committees and charter clubs as it deems appropriate to perform such tasks and functions as the Board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, any committee member, including the committee chair, may be removed by the vote of a majority of the directors. Any resolution establishing a charter club shall designate the requirements, if any, for membership therein. Each committee and charter club shall operate in accordance with the terms of the resolution establishing such committee or charter club.

5.2. Deed Restriction Enforcement Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board shall appoint a Deed Restriction Enforcement Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Deed Restriction Enforcement Committee shall be responsible for taking such enforcement actions set forth in the Governing Documents, shall be the hearing tribunal of the Association, and shall conduct hearings held pursuant to Section 3.26.

5.3. Neighborhood Committees. In addition to any other committees appointed as provided above, each Neighborhood which has no formal organizational structure or Neighborhood Association may, but is not required to, elect a Neighborhood Committee to determine the nature and extent of services, if any, collectively desired by the Owners to be provided to the Neighborhood by the Association in addition to those provided to all Association Owners. A Neighborhood Committee is an advisory committee only and, unless otherwise expressly provided by the Governing Documents or delegated by the Board, it shall have no authority to govern or administer the affairs of the Neighborhood. The Neighborhood Committee may advise the Board on any issue, but it shall not have the authority to bind the Board.

Upon receipt of a signed petition of 10% or more of a Neighborhood's Owners, the Board shall authorize the establishment of a Neighborhood Committee for that Neighborhood. As determined by the Board, a Neighborhood Committee shall consist of three to five members. The Board shall promulgate procedures for electing committee members and for conducting Neighborhood Committee affairs in general. Neighborhood Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board of Directors from a Neighborhood shall be an *ex officio* member of the Neighborhood Committee. Members of the Neighborhood Committee shall elect a chairperson who shall preside at its meetings and be responsible for transmitting all communications to the Board.

In conducting its duties and responsibilities, each Neighborhood Committee shall abide by notice and quorum requirements applicable to the Board under Sections 3.10, 3.11, and 3.12. Neighborhood Committee meetings shall be open to all Neighborhood Lot Owners.

Article VI Miscellaneous

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise established by Board resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order* (the then current edition) shall govern the conduct of Association proceedings when not in conflict with Nevada law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Nevada law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Nevada law, the Declaration, the Articles of Incorporation, and these By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. Upon reasonable advance written notice, the Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing, during the regular working hours of the Association and for a purpose reasonably related to his or her interest in a Lot, the books, records, and other papers of the Association, including, without limitation: Declaration, By-Laws, and Articles of Incorporation, including any amendments; the Association's rules; the membership register; books of account; the financial statement of the Association; the budgets of the Association; the reserve studies of the Association; and the minutes of meetings of the Members, the Board, and committees. Confidential records, including, but not limited to, other Members' files, personnel records, attorney-client privileged communications and executive session minutes are not subject to inspection or copying pursuant to this subsection. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate. The Board shall provide a copy of any of the records to an Owner within fourteen (14) days after receiving a written request therefor.

(b) Rules for Inspection. The Board shall establish rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and,

(iii) payment of the cost of reproducing copies of documents requested, which shall be in an amount that complies with the Act.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or,

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. Amendment.

(a) By Declarant. Prior to the conveyance of the first Lot by Declarant to an Owner, the Declarant may unilaterally amend these By-Laws. After such conveyance, and subject to the requirements of Article XVII of the Declaration, if applicable, Declarant may unilaterally amend these By-Laws at any time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Lots; provided, any such amendment shall not adversely affect the title to any Lot unless the Lot Owner shall consent thereto in writing. Prior to termination of the Declarant Control Period, Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of a majority of the total Owner votes in the Association, and the Declarant's consent during the Declarant Control Period. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recording unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

(d) Notification of Changes to Governing Documents. If any change is made to these By-Laws or any other Governing Document of the Association, the Association shall, within thirty (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 Lot or to any other mailing address designated in writing by the Lot Owner, a copy of the change that was made.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege for so long as Declarant owns any property described on Exhibits "A" or "B" to the Declaration.

EXHIBIT B

EXHIBIT B

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2227 SHADOW CANYON, Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; PATERNO C. JURANI and REPUBLIC SILVER STATE DISPOSAL, DBA REPUBLIC SERVICES, Defendants.	CASE NO. A-14-702938-C DEPT NO. V

CERTIFIED COPY

DEPOSITION OF JULIA THOMPSON
PERSON MOST KNOWLEDGEABLE 30(b)(6) FOR
RED FINANCIAL SERVICES, LLC

Taken by Defendant Nationstar Mortgage, LLC

Taken on Tuesday, July 28, 2015

At 3:06 p.m.

At All-American Court Reporters

1160 North Town Center Drive, Suite 300

Las Vegas, Nevada

REPORTED BY: CINDY MAGNUSSEN, RMR, CCR NO. 650

APPEARANCES:

For Defendant Nationstar Mortgage, LLC:

ALLISON R. SCHMIDT, ESQ.
Akerman, LLP
1160 Town Center Drive
Suite 330
Las Vegas, Nevada 89144
(702) 634-5000

For Red Rock Financial Services, LLC:

STEVEN B. SCOW, ESQ.
Koch & Scow, LLC
11500 South Eastern Avenue
Suite 210
Henderson, Nevada 89052
(702) 318-5040

Also Present: Steve Koerner

EXAMINATION

EXHIBITS

LAS VEGAS, NEVADA; JULY 28, 2015

3:06 P.M.

-oOo-

(NRCP Rule 30(b)(4) waived by the parties prior to the commencement of the deposition.)

Thereupon--

JULIA THOMPSON,

was called as a witness, and having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. SCHMIDT:

Q. This is the time set for the deposition in the case designated as A-14-702938 of the NRCP 30(b)(6) witness of Red Rock Financial Services.

Can you state your name and spell your last name for the record, please.

A. Julia Thompson, T-h-o-m-p-s-o-n.

Q. Thank you, Ms. Thompson. And I am Allison Schmidt. I am the attorney for Nationstar Mortgage in this case.

I'm going to hand you what we will mark as Exhibit A. Have you reviewed this document?

A. Yes.

Q. And you rereviewed the topics attached to the deposition subpoena?

A. Yes.
Q. And are you designated by Red Rock to provide testimony on behalf of Red Rock for these topics?
A. Yes.
Q. And can you tell me how you prepared for today's deposition?
A. I reviewed the file.
Q. And did you discuss your deposition today with anybody?
A. No.
MR. SCOW: Well, besides your attorney.
THE WITNESS: Besides my attorney.
BY MS. SCHMIDT:
Q. Great. And can you just sort of briefly describe for me the type of documents that are contained in the file that you reviewed?
A. They were documents containing to collection action taken by Red Rock on this property.
Q. Okay. And for the record, this property is 2227 Shadow Canyon; is that correct?
A. Yes.
Q. Okay. Is there any reason you can't provide your best testimony today?
A. No.
Q. And have you been deposed before?

A. Yes.
Q. Approximately how many times?
A. Several.
Q. Okay. So we can skip over the formalities. You understand that the oath you have given today is the same that you would take in a court of law. Correct?
A. Yes.
Q. Okay. What is your position at Red Rock?
A. Account coordinator.
Q. And what are your job duties as account coordinator?
A. Lately I have been attending depositions, and preparing the documents for the duces tecums. Otherwise I handle homeowner correspondence, disputes, complaints.
Q. And how long have you been in that position?
A. The current position, about two and a half years.
Q. And can you describe for me the type of services that Red Rock Financial Services provides?
A. We're a debt collector for homeowners associations.
Q. And approximately how many HOAs does Red Rock provide services for?
A. I'm not sure.
Q. Would you say it's more than 50?

A. Yes.
Q. Okay. Are the services generally the same for each HOA?
A. Yes.
Q. And is Red Rock a limited liability company?
A. As far as I know.
Q. Are you aware of who Red Rock's managers are?
A. I know who my manager is.
Q. Do you know who the LLC managers are?
A. I don't think so.
Q. Okay. And this might be redundant, but do you know who the LLC members are?
A. Not specifically.
Q. Okay. And who do you report to?
A. Rhonda Leavitt.
Q. Okay. And what's her job title?
A. Vice president of operations.
Q. Okay. Do you know approximately how many employees Red Rock Financial Services has?
A. About 14 or 15, I believe.
Q. Is -- strike that.
All right. Does Red Rock currently have any policies and procedures to notify a senior deed of trust holder of the initiation of HOA foreclosure proceedings?

A. Yes.
Q. Can you describe the policy for me?
A. Notices are sent -- a copy of the notice of default, notice of foreclosure sale are sent to anybody appearing as having a vested interest, including the deed of trust.
Q. And which notices get sent to the deed of trust beneficiaries?
A. The notice of default, the notice of sale, and there is another one or two courtesy notices that are also sent.
Q. Was this policy any different in 2010?
A. Not that I'm aware.
Q. Was the policy any different in 2013?
A. No.
Q. And was the policy any different in 2014?
A. No.
Q. Okay. Does Red Rock currently have any policies and procedures as to whether the super priority existed prior to foreclosure by a first deed of trust holder?
A. Currently or at the time the sale was held on this property?
Q. Let's start with currently, and then work our way back.
A. Okay. Can you repeat the question one more

time?

Q. Sure. Does Red Rock currently have any policies and procedures as to whether a super priority lien existed prior to foreclosure by a first deed of trust?

A. Currently we do. Yes.

Q. And what is the policy currently?

A. That the nine months -- the super priority amount consists of the nine months of assessments, late fees, interest, and all the collection charges.

Q. And was that policy different in 2010?

A. Yes.

Q. And can you describe how it existed in 2010?

A. It did not. The super priority only applied after the first mortgage deed of trust foreclosed.

Q. And do you know approximately when that policy changed?

A. I want to say the end of 2014. October, maybe.

Q. Was it possibly the end of -- oh, I think you're right. I'm sorry.

A. Yes.

MR. SCOW: The day everything changed.

MS. SCHMIDT: Yes.

THE WITNESS: It was the SFR Investment, that huge case.

MS. SCHMIDT: Who could forget?

THE WITNESS: Yes.
MS. SCHMIDT: Okay.
MR. SCOW: And actually, Allison, could you repeat that question again?
MS. SCHMIDT: I'll have you read it back, the last question.
MR. SCOW: Would you mind?
(Testimony read.)
MR. SCOW: Thank you.
I asked just because I was going to potentially clarify it. But I don't think we need to.
BY MS. SCHMIDT:
Q. Okay. All right. Does Red Rock currently have any policies and procedures for handling requests for super priority payoffs?
A. Currently, yes, we do.
Q. And can you describe that policy for me as it exists currently?
A. Currently, if a first mortgage requests a super priority, we will provide it whether the lender has foreclosed or not.
Q. And is that policy the same for all the HOAs that Red Rock works with?
A. As far as I know, yes.
Q. And what is provided in response to a payoff

request presently?
A. It depends on what they ask for.
Q. If a first deed of trust holder asks for a super priority payoff, what information is provided?
A. We will provide them the mine months of assessments, late fees, interests, and all collection fees and costs.
Q. Will Red Rock provide an itemized statement of those fees and costs?
A. We include an accounting ledger. Yes.
Q. Okay. Was the policy the same in 2010?
A. No.
Q. Can you tell me how it was different in 2010?
A. We did not provide super priority payoffs unless the first mortgage had already foreclosed.
Q. If Red Rock received a request for a super priority payoff in 2010, how would Red Rock respond?
A. We would provide them the full balance.
Q. And was that the same policy in 2013?
A. Yes.
Q. And was that the same policy in January of 2014?
A. As far as I understand. Yes.
Q. If Red Rock received a super priority payoff request in -- we will say prior to 2014, would that information be forwarded to the HOA?

A. I do not think so. No.
Q. If a lender on a first deed of trust submitted a payment to Red Rock prior to 2014 in an amount less than the full payoff, would Red Rock accept it?
A. If there is any restrictive endorsement, we would not accept the payment.
Q. And can you describe for me what you mean by restrictive endorsement?
A. If the payment was intended to satisfy a super priority balance or the account in full, we would have rejected it.
Q. Okay. Moving on to this particular foreclosure action. Can you tell me when approximately Red Rock and Sun City entered into agreement regarding collection on this property?
A. I don't recall off the top of my head.
Q. Would there be separate agreements for each property, or is there one overarching agreement with the association?
A. There is one agreement with the association.
Q. Okay. And then pursuant to that agreement, the association would send Red Rock information regarding different properties that were in default?
A. Right.
Q. Okay. All right. I'm going to mark as

Exhibit B the document that you guys just provided me. Can you just describe for me what that is?

A. It is the agreement between Red Rock and Sun City Anthem.

Q. And would this be the agreement that governed the relationship between Red Rock and Sun City Anthem with respect to this particular foreclosure?

A. I believe so.

MS. SCHMIDT: Okay. I'm going to take that from you. It's the only copy I have.

(Exhibits A and B marked)

BY MS. SCHMIDT:

Q. When Red Rock receives an account that's delinquent, what information does it receive from the HOA?

A. Usually the homeowner's name, address, and the account balance.

Q. And what's the first step that Red Rock would take to collect on that for the HOA?

A. We would send the intent to lien letter to the homeowner.

Q. And what information does that letter contain?

A. It lets them know the account has been sent to collections, and they have a certain amount of time to provide payment in full before we record a lien.

CERTIFICATE OF REPORTER

I, Cindy Magnussen, Certified Court Reporter, State of Nevada, do hereby certify:

That I reported the deposition of Julia Thompson PMK 30(b)(6) for Red Rock Financial Services, LLC, commencing on Tuesday, July 28, 2015, at 3:06 p.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes. That prior to the conclusion of the proceedings, the reading and signing was waived by the witness or a party.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

In witness whereof, I hereunto subscribe my name at Las Vegas, Nevada, this 6th day of August, 2015.

Cindy Magnussen

CINDY MAGNUSSEN, RMR, CCR No. 650

EXHIBIT C

2014
Community Association
Fact Book

FOUNDATION FOR
COMMUNITY ASSOCIATION
research

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The Foundation for Community Association Research (FCAR) was founded in 1975. FCAR is a 501(c)(3) organization that supports and conducts research and makes that information available to those involved in association development, governance and management.

FCAR provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions. Your support is essential to our research.

Table of Contents

1. Acknowledgement

1.1 General Editor

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President, Association Data, Inc. (ADI)
Mountain House, CA

The information in the *Community Association Fact Book* was developed with significant assistance from Clifford J. Treese, CIRMS. A member of CAI almost since its inception, Treese is a past president of both CAI and the Foundation for Community Association Research (FCAR). We express our gratitude for his invaluable contributions. He can be reached at **clifford.treese@gmail.com**.

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2.2 Sources

American Community Survey (ACS)
Census – Statistical Brief 1994
CAI: Common Ground magazine
CAI Government & Public Affairs (G&PA)
CAI Press
California Department of Real Estate
California Law Revision Commission
Colorado Department of Regulatory Agencies
Connecticut Judicial Branch Law Libraries
Department of Agriculture – Rural Development
Department of Veterans Affairs (VA)
Federal Emergency Management Agency (FEMA)
Federal Home Loan Mortgage Corporation (Freddie Mac)
Federal Housing Administration (FHA)
Federal National Mortgage Association (Fannie Mae)
Florida Department of Business & Professional Regulation
Florida Division of Condominiums, Timeshares and Mobile Homes
Foundation for Community Association Research
Hawaii Real Estate Branch
Maryland Montgomery County Office of Common Ownership Communities
National Association of Homebuilders (NAHB)
National Association of Realtors (NAR)
Nevada Real Estate Division
Urban Land Institute
Virginia Common Interest Community Board

2.3 Notes on Community Association Data: The *Fact Book* is based on information from six sources grouped in two categories:

- Public Data: (1) Census data, (2) State data, (3) Related housing industries data such as that from the National Association of Realtors (NAR) and the National Association of Homebuilders (NAHB),
- FCAR and CAI Data: (4) FCAR data accumulated over time, (5) CAI data, also, accumulated over time, and (6) Data provided by CAI members.

The public data is largely from the Census and the American Community Survey (ACS). This data has a lag time to publication, i.e., certain of the ACS 2014 data may not be available until late in 2015. Some public association data is available from individual states. This state data, also, may have a lag time from collection to publication. Usually, both the few states with association data and the ACS data lack specificity in critically identifying the three basic types of associations: condominiums, cooperatives and planned communities. Similarly, the public data may count certain association units, but not the entities (the associations) themselves. From a timing viewpoint, FCAR, CAI data and CAI member data are more readily available. Because of the timing issue, the *Fact Book* data generally will be one year ahead of public data.

3. Getting Started with the FCAR 2014 Fact Book

3.1 CAI and the Growth of Community Associations

It's been said that the growth of community associations (condominiums, planned communities and cooperatives) offers the greatest single extension of homeownership opportunities since the housing reforms of the New Deal and the provision of GI Bill benefits just after World War II. The Community Associations Institute estimates that in 1970 there were 10,000 community associations nationwide. In 2014, there are 333,600 associations housing more than 66 million Americans. **See the Statistical Review 2014**. From its inception, CAI has grown along with association housing, along with the homeowners and along with association professionals – to foster better communities based on fostering harmony, transparency and sustainability.

The **Community Associations Institute** (CAI) is a national nonprofit 501(c)(6) organization founded in 1973 to foster competent, responsive community associations through research, training and education.

The **Foundation for Community Association Research** (FCAR) is a national, nonprofit 501(c)(3) organization devoted to common interest community research, development, and scholarship. Incorporated in 1975, the Foundation supports and conducts research in the community association industry.

3.2 Community Association 2014 Fact Book – Key Features

The *Fact Book* is published by FCAR and it documents, in general, the history, current status, trends and future issues of U.S. community association housing. The *Fact Book*, also, provides community association information on a state-by-state basis in "State Summaries." The *Fact Book* and any one of the *State Summaries* will facilitate, demonstrate and provide an understanding of four points:

(1) **Evidence-Based Decisions**: Facilitate the creation, publication and analysis of credible data such that evidence-based decisions on various community association issues, regulations and laws can be made.

(2) **Contributions to the Economy and Society**: Demonstrate the role of community associations as part of the evolving *transformation of land development practices* and in maintaining housing as shelter, as a neighborhood benefit and as an investment.

(3) **Core Services:** Provide an understanding that there are three core services delivered by associations to residents (owners and renters)

- Governance Services,
- Community Services and
- Business Services

– and that these three core services are complimentary to a broad range of both local and national housing services, housing goals and of related public policy considerations.

(4) **Associations as a Housing Market**: Demonstrate that all three types of community associations in and of themselves, are an important housing market that needs to be understood and analyzed in a comprehensive manner.

3.3 ***Statistical Review 2014***: The *Statistical Review 2014* is part of the *Fact Book*, but it is provided as a separate document available by a hyperlink. Like its predecessor, the *Statistical Review 2013* (also found by hyperlink), *Review 2014* provides national facts concerning community associations.

3.4 **State Summaries:** While the *Fact Book* and the ***Statistical Review 2014*** deal with community associations from a broad national perspective, there are 51 *State Summaries* (including the District of Columbia) that bring the national data to the state level. The format of the *State Summaries* generally follows the Fact Book, but without the emphasis on history, definitions and comparative matters.

4. Community Association National Trends and Issues

In *Democracy in America*, Alexis de Tocqueville reflected in differing ways on the constant activity that characterized American society in the 1830s as it strived for continuous improvement at all levels of society and government. Little has changed since that time. He would be right at home at a community association board meeting, at a CAI Chapter program or at a national CAI Conference or Law Seminar. The best way to keep up with association trends and issues (and the need for continuous improvement) at either or both the national or local level is through the links that follow.

4.1 At the National Level

CAI Issues and Advocacy

- From federal affairs, to state issues, to amicus briefs and more – this is constantly updated. Topics include regulatory issues with FHA and FEMA, new mortgage rules and CAI's Public Policies.

CAI Common Ground Magazine Key Issues

- From aging in place, to fostering participation, to manager licensing and more – key themes from the *Common Ground* articles. A subscription to **Common Ground** is part of CAI Membership, but separate subscriptions are available.

Chronological History of the Federal Involvement in Community Associations

- From the early Twentieth Century through today, you can track over 40 major federal initiatives and related issues and activities that have impacted community associations.

4.2 At the Local Level

CAI Local Chapters

- This will help you find and contact any of CAI's 60 U.S. Chapters and CAI's South African Chapter.

CAI Grass Roots Advocacy Center

- CAI's Government & Public Affairs provides political information and intelligence for the association industry.

4.3 At all Levels for All Interests

CAI Press: CAI Press, the publishing division of CAI, is dedicated to publishing the very best resources for community associations. We offer the largest collection of over 100 books on association governance, management and operations. Browse by category, view our most popular products and discover what's new. Check back frequently to see our Featured Products and to take advantage of our money-saving promotions.

Webinars: CAI webinars offer specialized, professional training without leaving your home or office. Conducted via internet and audio teleconference, the programs are hosted by industry experts to keep you up to date on the latest legislative activity, management trends, industry best practices and subjects of special interest to community managers and homeowners. More than 150 **on-demand webinars** are now available, and new live webinars are added every month. Continuing education credit for management credentials is available.

Snap Surveys: The Foundation for Community Association Research periodically conducts targeted surveys of key industry groups to produce interesting, intriguing, or newsworthy research.

If you are just interested in finding out more about community associations, this *Fact Book* and a *State Summary* is the place to start. If you live in an association or work in the association industry, this *Fact Book* will help keep you and your association current on the latest facts, trends and issues.

5. Getting Started with Community Associations

5.1 Community Association Basics: Community associations (condominiums, planned communities and cooperatives) are housing management organizations that deliver three core services to their residents (owners and tenants):

▶ Governance Services: Services designed to secure cooperation and compliance of residents based on fair and efficient adherence to association governing documents, local, state and federal laws;

▶ Community Services: Services designed to produce a harmonious living environment as well as a cooperative framework for working within the local governmental system; and,

▶ Business Services: Services designed to maintain and replace the common assets of the association based on sustainable and prudent practices that not only protect the value of the homes, but that are consistent with a broad range of local and national housing goals.

In delivering these three core services, a successful community association provides its residents with:

- Organized and productive business operations to control costs
- Transparent governance principles and practices
- Clear and timely communications
- Fair and effective rules notification and enforcement procedures
- Creative programs designed to foster a sense of community and enhance residents' enjoyment of their homes
- Efficient use of land and resources based on prudent budgeting and accumulation of reserves.

5.2 Community Association Contributions to the Economy: In the aggregate, community association housing was valued at just over $4.9 trillion dollars at 2014 Q4 [Estimate based on the **Federal Reserve Z.1 Financial Accounts**]. Further, the notion of **Housing Services** plays an important role in this country's Gross Domestic Product (GDP). According to a National Association of Home Builders (NAHB) **Report**: "Historically, residential investment has averaged roughly 5% of GDP while housing services have averaged between 12% and 13%, for a combined 17% to 18% of GDP. These shares tend to vary over the business cycle."

Community association housing is an important and growing component of both residential investment and "Housing Services." Using NAHB estimates, community associations contribute about 4.0% to 4.3% to GDP. Community associations are not only a place to live, but they are a place to work and for the creation of jobs.

By fairly and effectively delivering the three core services, community associations protect and enhance value:

- Value of the individual homes (and the lenders' interests in those homes),
- Value derived from accepting shared responsibilities, performing mutual obligations that impact the larger community, and the
- Value inherent in governance, collective participation, and collaborative decision making at a very essential level – the level of the home.

5.3 Community Association General Terms

- Community Association (CA): Used by the Community Associations Institute (CAI) and the **Division of Florida Condominiums, Timeshares and Mobile Homes**
- Common Interest Community (CIC): Used by the **Uniform Law Commission**, promulgator of the uniform real property acts: Uniform Condominium Act (UCA), Uniform Planned Community Act (UPA), Uniform Common Interest Ownership Act (UCIOA) and the Uniform Manufactured Housing Act (UMHA).
- Common Interest Realty Association (CIRA): Used only by the American Institute of Certified Public Accountants (AICPA) and the Financial Accounting Standards Board (FASB), see the **AICPA CIRA Wiki**
- Common Interest Development (CID): Used by the **California Bureau of Real Estate** and in the Davis-Stirling Act which has been substantially recodified in **California Civil Code Division 4 Part 5** on January 1, 2014. Also, on that date a new statute was created for **Commercial and Industrial Common Interest Developments, Division 4 Part 5.3**.

5.4 Three Basic Types: Condominium, Planned Community & Cooperative

The *Fact Book* provides three ways to understand the three basic types of community associations. A fundamental point of all three ways is the reminder that you cannot tell which of three basic types of community associations you are looking at by their architectural style. For instance, a detached single family home could be in a regular subdivision without an association or it could be in a condominium association, in a cooperative association or in a planned community. The governing documents are critical to determining the type of association.

First Way: Different parts of the country have more of one of the three types than the other two. For instance, New York state (and, in particular, New York City) has many more cooperatives than other states. Many states in the southeast and southwest have many more planned communities than other regions.

All three types of associations are characterized by being predominately designed for residential use with possibly some nominal percentage devoted to non-residential use, typically commercial.

- Planned Communities: Around 51% to 55%
- Condominiums: Around 42% to 45%
- Cooperatives: Around 3% to 4%

In a planned community, each member (owner) owns a dwelling unit/home on a lot. A separate nonprofit corporation holds title to the common areas which are subject to recorded Covenants, Conditions & Restrictions (CC&Rs). The planned community is governed by a board of directors elected by the owners. The owner's deed requires membership in the corporation. There may or may not be a state enabling statute. Planned communities are referred to by a number of different names that reflect diverse architectural styles and regional nomenclature variations, such as Homeowner Association (HOA), Property Owner Association (POA), Townhome Association and Planned Unit Development (PUD). The recorded CC&Rs are determinative and not the architectural style.

In a condominium, each individual member holds title to a specific unit and an undivided interest as a "tenant-in-common" in the common elements. Unlike in a planned community or in a cooperative, the entity (the condominium association itself) does not own the common elements. These common elements generally include the structural components, the exterior of the building or buildings, the grounds, the amenities, and all portions of the property other than the units (as defined). The condominium is governed by a board of directors elected by the owners. The condominium is subject to a recorded Declaration of Condominium (Declaration). There is always a state enabling condominium statute.

In a cooperative, a corporation holds title to the entire project, both units and common elements. A proprietary lease or membership document gives each member of a cooperative exclusive use of a unit for a specified period of time. The cooperative is governed by a board of directors elected by the owners. There may or may not be a state enabling statute.

Most associations are nonprofit corporations under state corporation laws, but they are not nonprofit (tax exempt) under federal income tax laws. Condominium and cooperatives can never be tax-exempt.

All three types of associations have three essential characteristics:

- Automatic Membership: All owners automatically become members of the association when taking ownership of the unit and that membership ceases only when the unit is sold.
- Mutually Binding Obligations: Governing documents bind all owners to the community association and require mutual obligations by owners, the board of directors and the association itself.
- Mandatory Assessments: All owners pay mandatory lien-based assessments to fund the operation of the association and maintain the common elements. Cooperatives are different in their enforcement of collections.

Second Way: This diagram of a Hypothetical Community Association is the second way. It may be useful to review the chart below both before and after reviewing the commentary on each type of association provided in the Third Way, Appendix One.

Common Area/Common Elements						
Common Area/ Common Elements	Lot/Unit 1	Lot/Unit 2	Lot/Unit 3	Lot/Unit 4	Lot/Unit 5	Common Area/ Common Elements
	Lot/Unit 6	Lot/Unit 7	Lot/Unit 8	Lot Unit 9	Lot/Unit 10	
Common Area/Common Elements						

	Units/Lots 1-10	Common Area/Common Elements Lot		
	Unit Owner Title	Assn Title	Unit Owner Title	Assn Title
Condominium	X	.....	X*	.....
Cooperative	.....	X	.....	X
Planned Community	X	.....	.....	X

X* --- The unit owners in a condominium have an undivided interest in the common elements as tenants in common. This is a critical definition for a condominium: An association is not a condominium if there are no common elements. Unlike in a planned community or in a housing cooperative, the condominium association does not own the common elements (or common area), hence the early condominium property acts sometimes referred to the board of directors as the "board of managers" – who "managed" the common elements.

Third Way: See **Appendix One: Basic Types of Associations By Selected Characteristics**

5.5 Varieties on the Community Association Theme: The entities below appear with some regularity in discussions of community associations, but a number of them do not all fall within the more generally accepted definition of a primarily residential community association.

•**Cohousing:** Cohousing association living can be organized in one of the three basics types of community association, but it is usually more definably based on personal commitments, some degree of communal living and/or communal participation as well as the recorded governing documents.

•**Communities for 55 and Older:** Quoting from the HUD Factsheet - "The Housing for Older Persons Act (HOPA), signed into law by President Clinton on December 28, 1995, amended the housing for older persons exemption against familial status discrimination. The HOPA modified the statutory definition of housing for older persons as housing intended and operated for occupancy by at least one person 55 years of age or older per unit. It eliminated the requirement that housing for older persons have significant services and facilities specifically designed for its elderly residents. It required that facilities or communities claiming the exemption establish age verification procedures. It established a good faith reliance defense or exemption against monetary damages for persons who illegally act in good faith to exclude children based on a legitimate belief that the housing facility or community was entitled to the exemption."

While HOPA has been in place for some time, it has been subject to continuous discussion. 55+ Communities can be organized as rentals as well as community associations. Many states and local governments have similar statutes and regulations dealing with 55+ housing as well as other issues related to aging.

Residential community associations are subject to the various state and **Federal Fair Housing Laws and Executive Orders**. Generally, residential community associations are not subject to the **Americans with Disabilities Act** unless they have amenities and commercial space open for public use.

•**Gated Communities:** This type of community association, if carefully defined, has three characteristics: (i) restricted access usually by being fully enclosed by a fence, wall or separator of some sort, (ii) controlled entrance by a fully staffed front gate and (iii) full time 24x7 security for the common area. Without such a definition, all housing (rental or ownership) in the U.S. is "gated" or "locked down" by some measure. Many associations have restricted access because the building permits issued for construction only allow for one two curb cut for access to a thoroughfare. Using the definition above, there are perhaps 3,000 to 5,000 gated communities in the U.S. They are expensive to maintain.

•**Lake Communities:** In the EPA's most recent **Assessment of Lakes, Ponds and Reservoirs**, there were 41,666,049 acres of water in these entities. Of that amount, 17,904,199 acres were "assessed" for quality issues and of that amount 7.1 million acres had recreational use with a "good" attainment status rating. Generally, the body of water needs to be 10 acres or more to be assessed. This would put the number of "lake communities" with possible residential housing at between 710,000 and 1.8 million. A conservative sub-set of these "lake communities," probably 200,000 to 250,000, contain some combination of part-time and full-time housing depending on public infrastructure and the ability to obtain property insurance. These communities may have by-laws and operating Rules & Restrictions. Typically, they do not qualify as community associations by general standards; but they might be considered border-line communities.

•**Limited-Purpose Association (LPA):** This type of association is used and described by statute only in Nevada, see **NAC 116.095**

•**Live/Work Association:** There is no set definition for this type of community association except that a person lives where the person works. Therefore, the association combines both residential and commercial uses. FHA in **Mortgagee Letter 2012-18** requires that the non-residential part must be less that 25% of the floor area and the non-residential part must be subordinate to the unit's residential use and character.

•**Master Planned Community (MPC):** This is a planned community of some size that may be comprised of either sub-associations or cost-centers. The sub-associations may be any of the three basic types of associations. Cost centers are used to allocate revenue and expense liabilities more equitably. Since a MPC is basically a planned community, there usually is no enabling statute for the MPC although if a condominium is a sub-association, the condominium would have to be enabled by statute. MPCs, typically, exceed 1,000 lots or units and can range up to 50,000 lots or units. Other similar terms are Large Scale Association (LSA) and Large Scale Master Association (LSMA), and Large Scale Maser Planned Community (LSMPC).

•**Manufactured Housing Communities/Parks (MHC):** This refers to the type of construction which is regulated, as of 1976, by the **HUD Office of Manufactured Housing** and state agencies. See this list of **State Manufactured Housing Agencies**. The **Manufactured Housing Institute** maintains a **Summary of Manufactured Housing State Laws & Cases**.

Manufactured housing typically in found in rental communities and they were (and still are to some extent) referred to incorrectly as "mobile home parks. MHC associations can be found in a cooperative or condominium association. According to the **American Housing Survey 2013**, there are 8,600,000 manufactured housing units. Of that total, 154,000 manufactured homes are in a community association – cooperative (103,000 units) and condominium (51,000 units) association.

There are 18 states with manufactured housing laws that deal with some aspect of the conversion of a rental manufactured housing community/park to a cooperative or condominium. Those 18 states and links to those laws are found in the given individual *State Summary* at #5.4 "Community Association and Related Statutes."

•**Mixed Use Association:** This type of community association can be found in any of the three basic types and combines residential and commercial uses. The percentage of commercial use varies, but typically is less than 20% of the square footage (to be more readily acceptable for residential mortgage lending). The commercial uses may or may not be in an association. There usually is no enabling statute unless a condominium is involved.

•**Private Road Maintenance Agreements:** Individual properties or groups of properties may be bound by recorded covenants and/or state statutes to maintain streets and roads that might otherwise be maintained by local government. These can be borderline associations. Nevertheless, the **Fannie Mae Seller Guide** [B4-1.3-04, April 15, 2014] requires that if the street is community or privately owned that there must be an adequate, legally enforceable covenant or agreement for maintenance.

•**Business Park Association (BPA):** Common practice does not include business parks within the three basic types of community associations. There is usually no enabling statute unless a condominium is involved. The BPA is created by conventional real estate transactions. See also Business Improvement District below. See **NAIOP**

•**Business Improvement District (BID):** Outwardly, BIDs resemble commercial community associations. They are created by legislation, but they may or may not be supported by recorded covenants. BIDs are usually public/private partnerships arranged around additional tax assessments to fund operations. Common practice does not include a BID in the definition of a community association. See **The Business Improvement District Model**

•**Reciprocal Easement Agreement (REA):** A REA has a recorded declaration that provides for cost sharing, maintenance and similar duties among entities in a common development. Sometimes, the REA gives one of the entities in the development responsibility of the management of certain common areas used by all the entities. REAs are sometimes used in residential, commercial and mixed use associations. The REA itself is just an agreement and not an association.

•**Special Tax District (STD):** Special tax districts (also called Special Purpose Districts) are not community associations. STDs have been popular in California, Florida, Colorado and other states by developers of associations to **fund public improvements**. If the STD is part of the development of a community association, then much or all of the association's common area and amenities may be placed in the STD whose construction is then paid for by bond financing. The bonds, in turn, are repaid by separate assessments levied against the members of the association. In this instance, the STD is an overlay of the community association so that homeowners pay two assessments, one to the association and one to the STD (to repay the bond financing and to pay for operations of the STD). The latter assessment usually is tax deductible. If the development process falters or the association falters, the bond holders may step in to cure a default. Other similar terms are Community Facility District (CFD) and Special Purpose District (SPD). There are over 37,000 such Districts of all types in the U.S, but not all are connected in some manner with a community association. See **Census 2012 of All State Governments**

Also, see **Chronological History of Federal Involvement in Community Associations**

•**Timeshare Association (TS):** Common practice does not include timeshare associations (of any kind) within the three basic types of community associations even though the TS may be organized as a condominium. Timeshare **terminology** defines the concept in various ways. There is some type of TS legislation in every state. See **American Resort Development Association (ARDA)**

5.6 Varieties of Community Association Uses

The *Fact Book* is mainly focused on residential community associations although some commercial use may be present. Nevertheless, residential associations can be developed around special themes and uses. Similarly, there are associations, apart from residential ones, that serve a variety of ownership interests and use and, as mentioned, there are associations comprised solely of manufactured homes and of those aged 55+.

- Star Gazing Planned Community
- Winery Planned Community
- Equestrian Planned Community
- Docks & Dockominium (Condominium)
- Rackominium (for boats)
- Site and Land Condominium
- Airport and Airport Garage Condominium
- Garage Condominium
- Cruise Ship Condominium
- Silent Cooperative (for the Deaf)
- Three Dimensional Airspace Subdivisions
- Wheat Growers Condominium Storage
- Retail Condominium
- Industrial Condominium
- Office Condominium
- Medical Office Condominium
- Condotel (hotels with a condominium component)
- Nudist Resort Condominium

5.7 U.S. Condominium Unit Owners 55+

Like the rest of the U.S. population, owners in community associations are getting older. Some association owners are aging-place while others in age-restricted communities described in #5.5 above. The data next is specific to condominium unit owners that are 55+:

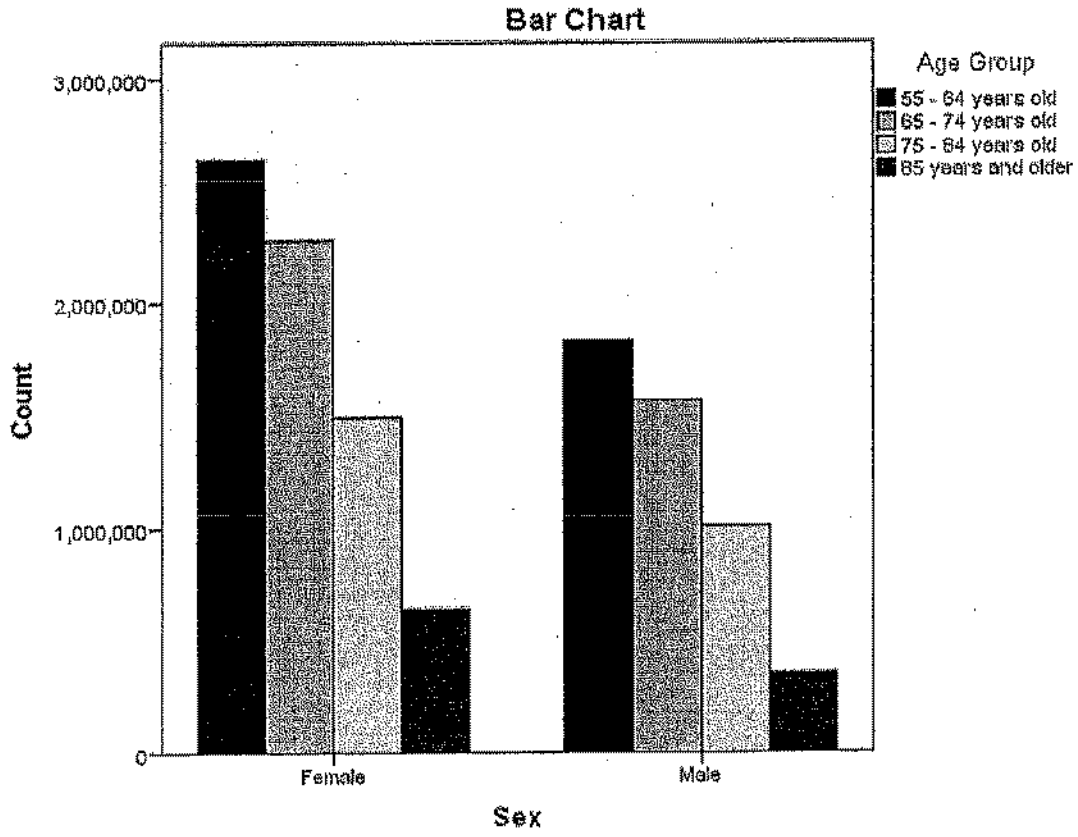
Table 1: *Persons Age 55 and Over Living in a Condominium by Age Group and Sex*

			Age Group				
			55 - 64 years old	65 - 74 years old	75 - 84 years old	85 years and older	Total
Sex	Female	Count	2,637,364	2,274,578	1,496,225	640,071	7,048,238
		% within Sex	37.4%	32.3%	21.2%	9.1%	100.0%
	Male	Count	1,832,541	1,570,225	1,009,276	353,770	4,765,812
		% within Sex	38.5%	32.9%	21.2%	7.4%	100.0%
Total		Count	4,469,905	3,844,803	2,505,501	993,841	11,814,050
		% within Sex	37.8%	32.5%	21.2%	8.4%	100.0%

Data above and chart below from American Community Survey (ACS) 2011 - 2013, and Integrated Public Use Microdata Series (IPUMS-USA). Created courtesy of Lynn Boergerhoff, MPH, **Community Association Atlas**.

See also the **Age of Housing by State** and **Housing Vacancies and Homeownership (CPS/HVS)**.

Figure 1
Persons Age 55 and Over Living in a Condominium by Age Group and Sex



In addition to the data above, the U.S. Condominium Unit Owner 55+ data contains information of the following categories:

- Table 2: *Race of Persons Age 55 and Over Living in a Condominium*
- Table 3: *Hispanic, Latino, or Spanish Origin of Persons Age 55 and Over Living in a Condominium*
- Table 4: *Mortgage Status of Households of Persons Age 55 and Over Living in a Condominium by Sex of Householder*
- Table 5: *Selected Monthly Owner Cost (SMOC) Burden by Mortgage Status of Households with Persons Age 55 and Over Living in a Condominium*
- Table 6: *Decade Housing Built of Persons Age 55 and Over Living in a Condominium*
- Table 7: *Household Size of Persons Age 55 and Over Living in a Condominium by Sex*
- Table 8: *Sex of Persons Age 55 and Over Living Alone in a Condominium*
- Table 9: *Physical, Mental, or Sensory Difficulty of Persons Age 55 and Over Living in a Condominium*

See **Part Four of the Fact Book 2014** for condominium unit owners 55+ data in each state and the District of Columbia.

6. Residential Land Use and Development – A Brief History

6.1 Land and More Land: The real issue in Colonial and early 19th Century America was what to do with all of America's land. Of the nearly 2.3 billion acres of U.S. land area, only 20% of it was never in the public domain. Colonial governors had several methods by which land was distributed, but, even after independence was achieved, the new federal and state governments owned most of the land. For the next one hundred plus years after independence, real estate meant putting land ownership in private hands. Initial land sales during that period, while seemingly inexpensive, were still too costly for most citizens. Ground leases, borrowed from England, built some early American fortunes, but this practice literally could not span a continent.

Land distribution resulted in politically generated federal legislation including "Homestead Acts" which gave a person title up to 160 acres of freehold land outside of the original thirteen colonies. The **Homestead Act of 1862** formally ended in 1976 except in Alaska. The last homestead acreage was given out in Alaska in 1986. See the **2010 National Resources Inventory** for the most updated information on non-federal land use and see the **Alaska Summary Resource Inventory 2007 (2012)**.

6.2 New Frontier – Land Subdivision and Public Regulation: America, urban and otherwise, continued to grow at rapid pace after the Civil War driven by a vast supply of land, immigration, the evolution of innovative construction techniques (such as balloon frame housing) as well as other improvements in construction materials and techniques. While the frontier was slipping away, vacant building lots in urban areas were sold on a mass scale often for cheap credit and nominal down payments. Most of this new housing was not in a subdivision and it usually lacked, to some degree, water, sewers and paved sidewalks and streets.

In fact, merchant builders, as known today, acting under enforced building codes and land use regulations, did not really become a factor in housing construction until after World War II. A less sophisticated sub-divider in the late nineteenth century sold a lot and little else. These subdividers were often called "curb-stoners," "fly by nights," "land butchers"; They set up shop at the curb, sold the lot and then left. Nearly all houses were built under contract by owners often with financing by several methods including Building & Loan Associations and with the help of family and friends. Land use controls were nominal at best.

Urban transportation, first by horse drawn vehicles, then by electric street car, then by railroad and later by automobile, moved cities outward, usually leaving sections of the urban core over time in dilapidated or slum conditions. Certain suburban builders both before the Civil War, but more increasingly afterward, focused on affluent markets and began construction of what would now be termed master planned communities (MPCs). For example: **Llewellyn Park**, NJ, **Riverside**, IL, **Tuxedo Park**, NY, **Roland Park**, MD, and just at the beginning of the 20th century, **Palos Verdes Estates**, CA. See **Historic Residential Suburbs** and **Suburban Development Practices**. These "community builders" were operating in an environment with little or no zoning and nominal building codes. Early master planned communities (using today's terminology) were part of the first phase in the *transformation of land development practices* by private real estate interests in conjunction with what later became public regulations such as zoning. This initial transformation in land use together with another phase just before and after WWII, eventually led to the rise of community associations.

Transformation of Urban Land Development, 1850s-1920s	
Main Private Planning & Development Tools	**Main Public Planning & Development Tools**
Administration and coordination of capital investment	Zoning
Creation and use of deed restrictions	Subdivision regulations

Marc A. Weiss, *The Rise of the Community Builders*, Columbia University Press, 1987

Apart from homes for the affluent and the internal controls created by deed restrictions, this fee simple system of complete property rights in private ownership, as practiced in the late 19th and early 20th century, did not fully overcome land and housing speculation whether by investors or individuals. "Land-jobbing" and "town-jobbing" was part of the frenetic activity observed by Alexis de Tocqueville (and referenced earlier).

6.3 New Deal Housing Reforms, GI Bill After WWII and Mortgage Finance: In many respects, the New Deal Housing Reforms, the GI Bill and mortgage finance reforms completed another phase in the *transformation of land development practices.* Unlike the initial phase that was centered mainly on the affluent homeowner/homebuyer, this new phase moved to the middle class and it was no longer urban in the sense that the new homeowners might still be primarily tied to the central city by employment or otherwise. The creation of **Levittown**, Long Island and **Park Forest**, IL, after WWII, represented both the successful use of war-time mass production techniques to build affordable subdivisions all at once, but also the creation of housing for the average consumer who could buy a home in a complete community.

Overall, the period from the end of WWII through the 1970s saw a dramatic increase in personal income and housing growth. Things started out, however, a bit more hesitantly. No sooner had WWII ended when the battle over housing started. There was a shortfall of nearly 3 million housing units. President Truman first extended wartime housing controls to stimulate production and then experimented with rent controls to limit hardships, but neither really worked. What would work was a matter of intense debate. While private market housing developers were adapting wartime production techniques to the mass production of subdivision homes, housing policy advocates, planners and academics envisioned a future that would rectify historical ills: slum and blighted areas, poor sanitation, inadequate construction regulation and all of those urban ills that the arc of reform stretching from the Progressive period to the New Deal had failed to eliminate.

Between 1870 and 1940 **mortgage banking in the U.S.** underwent significant changes. By the use of the conditional commitment for mortgage insurance and by supporting long term amortized mortgages, FHA set the stage for the two **Government Sponsored Enterprises** – Fannie Mae and Freddie Mac to play a crucial role in the expansion of homeownership. These entities and others are discussed in #8.3 of the *Fact Book.* FHA, in the early 1960s, and then Fannie Mae, in the early 1970s – provided support for the necessary state legislation and the mortgage underwriting guidelines for the development of condominiums. This began current phase in the *transformation of land development practices* with its increased emphasis on promoting homeownership for the middle class and for under-served markets. This phase, also, saw a phase in the creation of large master planned communities often on a city-building scale such as with **Reston**, VA, **Columbia**, MD, and **The Woodlands**, TX.

7. Rise of Community Associations

7.1 Foundations for Growth of Community Associations: The use and acceptance of deed restrictions and public subdivision regulations coupled with affordable housing financing arising from New Deal Housing Reforms and the GI Bill laid the groundwork for the rise and growth of community associations after WWII. Community associations are an ongoing part of *the transformation of land development practices.* Once again, the effects of the New Deal Housing Reforms and the GI Bill can be seen from another perspective by following the **Chronological History of Federal Involvement in Community Associations**

7.2 Brief History of Condominiums, Cooperatives and Planned Communities

In the United States, community associations or common interest communities (CICs) – condominiums, planned communities and cooperatives – were developed over the past 170 years. As with many other concepts borrowed, in part, from Europe, associations evolved into something uniquely American arising, in part from:

- This country's independence as the "first new nation" and the nation's continuous striving for improvement, and in part from,
- Community associations being part of the *transformation of land development practices*, and in part from,
- Community association growth and development that linked volunteer participation with professional support to produce well run housing management organizations responsible for an important part of this country's housing and GDP.

In order of historical appearance, the three (3) basic types:

►**Planned Communities:** Planned communities were sporadically developed beginning in the 1820s and mores so after the Civil War, usually geared toward the high income homeowner. They received more systematic treatment in the affluent large scale master planned communities mentioned earlier and with **J.C. Nichols** and the creation of the Country Club district in Kansas City, MO. Planned communities came into their own a decade after the **Urban Land Institute** publish *The Homes Association Handbook*, Technical Bulletin No. 50, in 1964. Planned communities have tended to serve market-rate and above homebuyers. Planned communities are sometimes called by a variety of names such as homeowner associations (HOAs), property owner associations (POAs) and townhouse associations. Architectural style, however, is not determinative of any one of the three basic types of associations. Planned communities rank first in terms of the number of community associations. See the ***Statistical Brief 2012***, ***Statistical Brief 2013***, and ***Statistical Brief 2014***. ***See p.52*** for selected characteristics of planned communities.

►**Cooperatives:** Cooperatives were first centered in New York City beginning in the 1880s and 1890s. Initially, they involved luxury apartments, but later they catered to immigrant affinity groups and organized labor as a means of providing affordable and decent housing for garment workers and others. Cooperatives have tended to serve two market extremes: Either low-moderate income homebuyers and families or luxury cooperatives such as those that were developed in New York City and that spread to other major urban centers such as Chicago and Washington, D.C. In 1950, the National Housing Act added **FHA Cooperative Section 213** which increased the popularity of cooperative housing for the decade before FHA mortgage insurance for condominiums (cited next) cut short this initial growth. Cooperatives rank third in the number of community associations. ***See p.50*** for selected characteristics of cooperatives.

►**Condominiums:** A few condominiums were created by common law efforts both before and after WWII. The U.S. condominium concept was borrowed from Puerto Rico, but the historical origins are from Europe. Condominiums received a significant boost in 1961 with the passage of National Housing Act Sections **234(c)** and **234(d)** that extended mortgage insurance, respectively, for unit owner mortgages and for project development mortgages. This FHA mortgage insurance, however, was not available unless the state had a condominium act. ***See p.49*** for selected characteristics of condominiums.

By the end of the 1960s, every state had such an act – a "First Generation Condominium Act." Condominiums have tended to serve the first-time homebuyer market, empty-nesters and others seeking direct relief from traditional detached homeowner maintenance issues. Condominiums rank second in the number of community associations.

7.3 Reasons for Growth of Community Associations: Housing is more than just shelter in U.S. society – homeownership is often thought to be essential to achieve the "American Dream." Residential real estate development has always been subject to cyclical economic, social and political forces. Most recently, these forces have required home builders and developers to cooperate and negotiate more than ever with public bodies and, in some cases, the public itself in order to obtain building permits, design approvals, environmental releases and financing for their projects. These forces, together with demographic changes, and smart growth activities, also, have influenced the growth of community associations.

Community associations provide:

►**More Effective Delivery of Services by Collective Management**: Americans have accepted, for the most part, the collective management structure of community association living. The private covenants and rules and regulations characteristic of associations, of course, are not novel in residential living whether rental or ownership. In some types of community associations, Americans have sought these private controls in return for recreational amenities, clubhouses and social activities. In all types of community associations, however, Americans have accepted these private covenants and rules because collective management and architectural controls are perceived to protect and enhance the value of their largest single investment: their homes.

►**More Flexibility in Development and Land Planning:** With respect to the development of the associations, local jurisdictions often require builders and developers to create community associations if they want to construct new housing. Because of local fiscal problems created by rising school populations and voter-imposed limits on real estate tax increases, these jurisdictions require associations to assume many responsibilities that traditionally belonged to local and state government, such as infrastructure development, road and sidewalk maintenance, snow removal and storm water management. For instance, the Public Works Department of some jurisdictions only focus on street signs and similar matters. One reason for this narrow focus is that the county effectively delegates (or privatizes) some of its previous obligations by requiring that developers of residential properties create community associations to fulfill such tasks. This type of privatization, also, is consistent with smart growth practices that stress collaboration, density, efficiency and design.

►**Expansion of Affordable Homeownership:** There has been an effort to increase the percentage of homeowners in America, especially in underserved market groups such as minorities, women, and immigrants and in underserved locations such as in urban centers and inner ring suburban areas. Almost from their inception in the 1960s, condominiums have tended to serve the affordable end of market rate housing, especially for first-time buyers. This was especially true of early condominium conversions. Many states and city governments have requirements that mandate a developer provide a certain percentage of housing units just for low and moderate income families with the balance of the units for market rate families. These types of requirements are found in "inclusionary housing" ordinances and laws.

►**Minimize the "Free Rider" Problem:** Community associations are housing management organizations not only for maintaining home values, but, also, for reducing the need for government oversight and for minimizing the effects of externalities or social costs. When viewed from a public goods perspective, associations avoid or minimize both the **tragedy of the commons** (where no one is responsible) through mandatory membership and collective management, and they avoid or minimize the "free rider" problem (where not all beneficiaries pay their share), through mandatory covenants, lien based assessments and agreements that require reciprocal actions by both the association (acting through the board of directors) and the homeowners.

It bears repeating: Community association housing is an important and growing component of both residential investment and "Housing Services." Using NAHB estimates, community associations contribute about 4.0% to 4.3% to GDP. Community associations are not only a place to live, but they are a place for jobs and for economic growth.

The rise and growth of community associations is the current phase in the *transformation of land development practices*. In the early history of associations, the three core services tended to be applied as follows:

- Business meant austerity
- Governance meant compliance
- Community meant conformity

As associations have matured and absorbed the changes brought about by the *transformation in land development practices*, by environmental challenges and by the lessons learned from development and operations, current thinking and practices set a new analogue.

- Community means harmony
- Governance means transparency
- Business means sustainability

8. Community Associations Housing in the Federalist System

8.1 State Laws Coupled with Federal Involvement: Condominiums always are created by state statute. Planned communities and cooperatives, however, can be created by conventional real estate methods. As mentioned, there is an important and evolving federal involvement that now combines with state and even municipal association laws and regulations. To help understand this local/federal combination and its impact on associations:

- Review Appendix A: Basic Types of Associations By Selected Characteristics
- Review **Chronological History of Federal Involvement in Community Associations**
- Examine any **State Summary in the Fact Book 2014**

8.2 Role of the Uniform Law Commission: By the end of the 1960s, every state had a condominium act that enabled the creation of the association in a manner that would facilitate mortgage lending and title insurance. This early legislation is often referred to as "First Generation Condominium Acts." Little attention was paid to planned communities. Housing cooperatives, with a more narrow geographic focus, had a long history, beginning in the 1920s, in the New York market. Problems with conversions to condominium, a lack of balance between consumer protection and developer flexibility, and other issues, however, led to the need to take a closer look at state community association legislation by the **Uniform Law Commission**. The result were a series of model and uniform laws dealing with the three types of associations that have been adopted in varying forms in a number of states.

Uniform Common Interest Ownership Act (UCIOA)
- UCIOA 1982: adopted in Alaska, Colorado, Minnesota, Nevada, West Virginia.
- UCIOA 1994: adopted in Connecticut, Vermont.
- UCIOA 2008: adopted in Connecticut, Delaware, and Vermont.

Uniform Condominium Act (UCA): The Uniform Condominium Act has been adopted in: Alabama, Arizona, Kentucky, Louisiana, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Pennsylvania, Rhode Island, Texas, Virginia and Washington.

Model Real Estate Cooperative Act (MREA): This has been withdrawn.

Planned Community Act (PCA): UPCA has been adopted only in Pennsylvania, 1997. The Law Commission does not show Oregon as having it, but it may have a close version. The Planned Community Act started out as a Uniform Act, but was changed to a Model Act in 2003.

Uniform Manufactured Housing Act (UMHA): UMHA was created by the Law Commission in 2012. Most states have statutes that deal with manufactured housing (formerly called mobile homes). UMHA deals with the proper classification of such housing as real property versus personal property. Approximately 18 states deal directly with the conversion of mobile homes to cooperative or to condominium. Those 18 states and links to those laws are found in the given individual *State Summary* at #5.4 "Community Association and Related Statutes."

UCIOA permits the creation of all three basic types community associations in that statute. Generally, when the uniform acts are adopted, they are modified to state interests and needs. Collectively, these uniform laws are sometimes referred to as the "Uniform Real Property Acts."

8.3 Role of the "Agencies": Two **Government Sponsored Enterprises** (GSEs) – Federal National Mortgage Associations (doing business as Fannie Mae) and the Federal Home Loan Mortgage Corporation (doing business as Freddie Mac) have played and continue to play an active role in the development and operation of community associations largely because of certain weaknesses in First Generation Condominium Acts as adopted in various states.

There are four federal agencies, however, that also play a role in the development and operations of associations:

- **Federal Housing Administration (FHA)**,
- **Department of Veterans Affairs (VA)**,
- **Federal Emergency Management Agency (FEMA)** and its **National Flood Insurance Program (NFIP)** and, to a lesser extent, the
- **Government National Mortgage Association (Ginnie Mae)**

They all have played and continued to play and active role in the development and operation of community associations. FEMA, through the NFIP, provides flood insurance for condominium associations in its **Residential Condominium Building Association Policy (RCBAP)**. FEMA also has a **Standard Flood Policy for Condominium Unit Owners**. FEMA does not have special insurance programs for planned communities and cooperatives. FEMA NFIP and RCBAP information is available in the *State Summaries.*

Collectively, all these entities have sometimes been called the "Agencies." The GSEs, FHA and VA influence associations through underwriting guides.

- The GSEs (Fannie Mae and Freddie Mac) purchase mortgage loans made for home/units in associations from lenders.
- FHA insures mortgages for homes in associations.
- VA guaranties mortgages for homes in associations.
- Ginnie Mae buys mortgages only from FHA, VA, HUD's Public and Indian Housing Program and from the **Dept. of Agriculture's Rural Development Program** and, therefore, Ginnie Mae has a minimal direct involvement with associations. Ginnie Mae securities are the only Mortgage Backed Securities (MBS) to carry the full faith and credit guaranty of the United States government.

These Agencies (apart from FEMA) will only perform those actions if the association meets certain guidelines. In addition to meeting underwriting guidelines, each of the "Agencies" has a list of "Ineligible Project Types." Freddie Mac's approval process is 100% lender delegated, i.e. the lender makes the decision if the association meets Freddie Mac Guidelines. Fannie Mae, FHA and VA take the opposite approach, i.e., the lender needs to ask the given Agency if in doubt about whether the association meets the Guidelines.

While flood insurance is required if the association is in a Special Flood Hazard Area, FEMA can provide flood insurance even if the association is not located in such an Area. In fact, people outside of mapped high risk areas file nearly **25% of all claims** with the National Flood Insurance Program and receive one-third of Federal Disaster Assistance for flooding. These areas also receive one third of Federal Disaster Assistance for flood damage.

These Guidelines and related information are detailed and they are regularly updated:

- **Fannie Mae Selling Guide**
- **Freddie Mac Snapshot Selling/Servicing Guide**
- **FHA Condominium Project Approval and Processing Guide** and **Mortgagee Letter 2012-18**
- **VA - Lenders Handbook Chapter 16 Common Interest Communities**
- **NFIP Condominium Coverage** and **FEMA Flood Insurance Manual**
- **Ginnie Mae Mortgage Backed Securities (MBS) Guide**

See also **FHA Production Reports**, **FHA Single Family Loan Performance**, **FHA Single Family Origination Trends Report** and **HUD/FHA Handbooks**.

Each *State Summary*, also, contains links for the "approved" condominium projects in state by Fannie Mae, FHA and VA. Each *Summary* also lists other applicable state statutes.

8.4 Community Association Housing as Part of U.S. Housing & Population

The links below also are found in the 51 *State Summaries* (including the District of Columbia). This data is more appropriately viewed in those *Summaries* where the specific state data can be seen in the context of certain association data.

- General Housing Characteristics for All U.S. States
- Population – Age, Household Type, Disability and Place of Birth
- New Housing – With and Without a Mortgage by Age Group
- U.S. Condominium Unit Owners 55+
- NAHB Eye on Housing Table 1
- U.S. Census Condominiums – Statistical Brief, 1994
- FCAR 2014 Statistical Brief
- FCAR 2013 Statistical Brief
- FCAR 2012 Statistical Brief

8.5 Comparing Community Associations to Other Entities: See **Appendix Two.** There are nearly 37.7 million entities in the U.S. – charitable, governmental, business and community associations – in the U.S. Associations represent just under 1% of the total.

8.6 Comparing Association Financial Management to For-Profit & Tax-Exempt Entities: See **Appendix Three.** To some extent, the financial management and taxation of community associations falls between for-profit businesses and tax-exempt charitable organizations. Appendix Two makes clear where associations fit in terms of recognizable and reported entities.

All condominiums and nearly all planned communities have federal income tax filing obligations under one of two sections of the Internal Revenue Code (IRC). One federal tax filing option is under **IRC Section 528** and **Form 1120-H** is used. The other filing option is under **IRC Section 277** and file **Form 1120** is used.

Some planned communities qualify as tax-exempt under **IRC Section 501(c)(4)** and they file IRC **Form 990**. Condominiums and cooperatives can never qualify under IRC Section 501(c)(4) because of **IRS Revenue Ruling 69-280**. A planned community, however, might qualify if it met the requirements of **IRS Revenue Ruling 72-102** and of **IRS Revenue Ruling 74-99**. See also **Homeowners' Association Tax Library**.

Housing cooperatives are taxed under **IRC Sub-chapter T** and file **Form 1120-C**. In order to qualify for the through mortgage interest and real estate taxes to their shareholder members, housing cooperatives also must adhere to **IRC Section 216** requirements.

The **Financial Accounting Standards Board (FASB)** provides accounting guidance for "common interest realty associations" (CIRAs). On July 1, 2009, the FASB Accounting Standards Codification (ASC) became "the single official source of authoritative, nongovernmental U.S. generally accepted accounting principles (GAAP)." **CIRAs are in #972**. For further information, see the American Institute of Certified Public Accounts (AICPA) **Common Interest Realty Association Wiki**. Also see **Financial Guide to Homeowners' Associations and Other Realty Associations**.

FASB requires the association's accounting statements to be presented in accordance with **Generally Accepted Accounting Principles (GAAP)**. For community associations, accrual accounting and fund accounting are the preferred accounting methods. Funding accounting usually involves an Operating Fund and a Reserve Fund. FASB refers to reserves as "major repairs and replacements." The establishment of **reserve standards** and reserves themselves should be determined and calculated by a **Reserve Specialist** or someone with similar qualifications. The existence of reserves has become an important issue in mortgage financing especially with the GSEs, FHA and VA. The underwriting guidelines (i.e., "Seller Guides" and "Processing Guides") all have special sections for reserves. See the various *State Summaries* for state reserve requirements in the enabling statutes, and #12.4 below.

HUD insured and/or assisted housing cooperatives have to submit financial statements audited in accordance with **OMB Circular A-133**.

Most states also have community association income tax requirements.

The association's budget process, distribution of financial information and collection of delinquent assessments are found in the enabling statute and/or in the recorded governing documents. There is an emphasis placed on four financial and risk management areas: (i) Reserves as mentioned above, (ii) Lien Priority and Foreclosure, (iii) Budget Formation and (iv) Risk Management and Insurance. Risk Management and Insurance is discussed in #12 below.

Community association lien priority in certain states places the association's lien for assessments in a priority position with respect the mortgage lender's lien. This priority is recognition that the association has to look after the lender's asset (the mortgaged home) when the owner is not paying assessments. Lien priority is a state-by-state issue and can be found in the *State Summaries*. Also, see #12.3 below. Foreclosure processes are state-specific.

There are several research articles discussing community association lien priority:

- Andrea Boyack, **Community Collateral Damage: A Question of Priorities**
- William Breetz, **The Six Month Limited Lien Priority**
- Daniel Goldmintz, **Lien Priorities**

Certain states and local jurisdictions have a more detailed approach to association budgets, by way of example see:

- California **Operating Cost Manual**
- Florida **Budgets & Reserve Schedules**
- Fairfax County VA **Community Association Manual**
- Virginia **Condominium Regulations**

9. CAI Professional Designations, Manager Licensing & Legislative Issues

9.1 Professional Designations

Community Associations Institute (CAI) and Community Association Managers International Certification Board (CAMICB) are pleased to provide this database of credentialed professionals. This database allows you to locate community managers and professionals who have earned the following credentials:

Management Credentials	Other
Certified Manager of Community Associations (CMCA)	Reserve Specialist (RS)
Association Management Specialist (AMS)	Community Insurance and Risk Management Specialist (CIRMS)
Professional Community Association Manager (PCAM)	College of Community Association Lawyers (CCAL)
Large-Scale Manager (LSM)	Educated Business Partner – Distinction
Accredited Association Management Company (AAMC)	

- Learn more about what these designations mean to you and your community.

9.2 Association Manager Licensing

- Fact Book 2014 Manager Licensing [Only states with licensing are listed]

9.3 Association Legislation Initiatives and Tracking

- Fact Book 2014 Legislative Action Committee
- Fact Book 2014 Legislative Tracking Report

10. Community Services as an Association Core Function

Introduction: The **Statistical Review 2014** reports on the active involvement of more than 2.3 million homeowner volunteers who served on association boards of directors and committees providing $1.6 billion dollars of time to their associations. In addition to privatizing certain infrastructure and development functions mentioned in #7.3, the community services functions save local government between $2 to $4 billion a year by minimizing the need for building and health code enforcement and other public safety services.

Associations perform many of these governmental type functions as part of common area inspections and obtaining cooperation and compliance from residents. **New Jersey**, for instance, makes clear that it understands that community associations have the same inspection functions as do hotel owners and rental apartment building owners. New Jersey, also, recognizes that community association assessments often cover the same services paid for in property taxes. See the *New Jersey State Summary* at Section #5.4 for the "Municipal Services Act for Community Associations." Also, see this CAI Amicus Brief on **Reimbursement Under the New Jersey Municipal Services Act**

Community Services run the range of activities below and include a variety of related activities that are discussed in this CAI publication:

Managing & Governing: How Community Associations Function

10.1 An Introduction to Community Association Living

Introduction: The purpose of An Introduction to Community Association Living is to introduce community volunteer leaders and members to community associations, provide a greater understanding of exactly how a community association works from both an organizational and people standpoint, and to endow members with the information necessary for fully enjoying and benefiting from community association living.

10.2 From Good to Great Communities

Every community has its own history, personality, attributes and challenges, but all associations share common characteristics and core principles. Good associations preserve the character of their communities, protect property values and meet the established expectations of homeowners. Great associations also cultivate a true sense of community, promote active homeowner involvement and create a culture of informed consensus. The ideas and guidance conveyed in this brochure speak to these core values and can, with commitment, inspire effective, enlightened leadership and responsible, engaged citizenship.

10.3 Community Matters – What You Should Know Before You Buy

Whether you are considering buying a home in a community that is newly developed (either new construction or a conversion), a resale in an existing community or you are renting with the possibility of buying—you need to consider certain key points about community association governance and operations. This publication will help. Also, this information runs parallel to the **Consumer Finance Protection Bureau** (CFPB) campaign on **Know Before You Owe**. Further, the *State Summaries* provide information links for those states that require disclosure upon sale. The states with some version of the Uniform Real Property Acts require disclosure upon sale. If interstate land sales are involved, then the CFPB by means of the requirement for **Interstate Land Sales Registration** provides consumer protection.

10.4 Community Harmony & Spirit [FCAR Best Practices]

How do managers and boards increase resident involvement within community associations? By treating all residents as stakeholders and developing and conducting community harmony and spirit-enhancing programs and including residents in the initial stages of program development. Building community spirit is more than informing residents about board action and improvements. It's asking their opinions and developing programming that they will enjoy that will spur further community involvement.

10.5 Community Security [FCAR Best Practices]

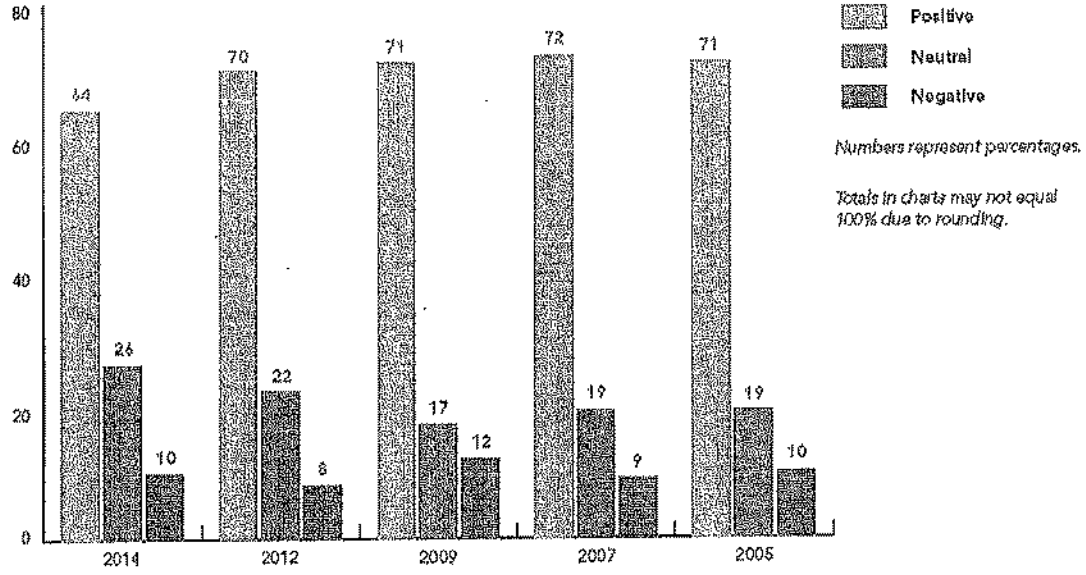
The goal of this Best Practices Report is to give you an assessment and review of many community security systems and features—including useful tips and tools—to help meet residents' crime prevention needs.

10.6 Judging Community Association Success

The Foundation for Community Association Research commissioned a national survey of association residents in early 2014 by Public Opinion Strategies, and the results affirm what we learned from similar national surveys in 2005, 2007, 2009 and 2012. Here are some of the key findings:

- 90% of residents rate their overall community association experience as positive (64%) or neutral (26%).
- 90% of residents say association board members "absolutely" or "for the most part" serve the best interests of their communities.
- 83% say they get along well with their immediate neighbors.
- 92% say they are on friendly terms with their association board.
- 83% of residents say their community managers provide value and support to residents and their associations.
- 88% of residents who had direct contact with their community manager say it was a positive experience.
- 70% of residents say their association's rules protect and enhance property values; only 4% say the rules harm property values.

Are residents satisfied with their overall community association experience?



11. Governance Services as an Association Core Function

Introduction: Each of the **State Summaries** provides information on the state statutes that have an impact on how community associations are governed. The **2014 Statistical Review**, also, estimates that 30% to 40% of associations are self-managed. In these self-managed communities, the boards of directors avail themselves of advice from key professionals such as attorneys, accountants, insurance agents and Reserve Specialists; but the management itself is provided by the board. See the list of *CAI Professionals by Designation* in #9.1 above.

Good governance involves more than meeting legal requirements. Increasingly, association disputes, including construction defect matters, are often first approached by internal dispute resolution before moving on to more formal actions.

Nevertheless, association law is very important. The role of the Uniform Law Commission (see #8.2) in bringing changes at the state statute level has been discussed. In terms of property law, the **American Law Institute** (ALI) in its **Restatement of the Law Third, Property (Servitudes)** in Vol. 2, Chapter 6, "Common Interest Communities" brought about a comprehensive discussion of the basic elements of association law. Professor Susan French, the Reporter on the ALI project, has an explanatory article titled **Making Common Interest Communities Work: The Next Step**.

CAI continues to work toward using the law to help communities work, see:

- **Amicus Briefs Filed on Behalf of Community Associations**
- **College of Community Association Lawyers**
- **Community Association Law Reporter**
- **Community Association Law Seminar**

See **Managing & Governing: How Community Associations Function** for a general discussion of governance as a core service.

11.1 Governance [FCAR Best Practices]

It is CAI's purpose to foster vibrant, responsive, competent community associations that promote harmony, a sense of community and responsible leadership. Common characteristics of such community associations include good communication, trust in the management and board of directors, continuing education of board members and homeowners, and uniform, flexible and reasonable enforcement of governing documents. Inclusiveness—the involvement of as many residents of the community as possible—is a critical element in fostering a sense of community.

11.2 Strategic Planning [FCAR Best Practices]

Strategic planning is more than ensuring your association will remain financially sound and be able to maintain its reserves—it's projecting where your association expects to be in five, ten, or fifteen years—and how your association will get there. It is a systematic planning process involving a number of steps that identify the current status of the association, including its mission, vision for the future, operating values, needs (strengths, weaknesses, opportunities, and threats), goals, prioritized actions and strategies, action plans, and monitoring plans. Strategic planning is the cornerstone of every common-interest community. Without strategic planning, the community will never know where it is going—much less know if it ever got there.

11.3 Transition [FCAR Best Practices]

The purpose of this report is to provide builders and associations with guidelines they can use to develop and turn over a community association project in such a way that transition becomes much easier and less confrontational. The ultimate goal of transition is for the unit owners to take over and move forward with a good reputation, with no litigation, and word-of-mouth sales.

11.4 Ethics [FCAR Best Practices]

The concept has come to mean various things to various people, but, generally, it's coming to know what is right or wrong in the workplace and doing what's right—usually in regard to products and services and to relationships with stakeholders. In times of fundamental change, values that were once followed inherently are now strongly questioned or no longer followed. Consequently, there is no clear moral compass to guide leaders through complex workplace dilemmas. Attention to ethics in the workplace sensitizes leaders and staff to how they should act. Perhaps most important, in times of crises and confusion, attention to business ethics helps ensure that when leaders and managers are struggling, they can retain a strong moral compass.

11.5 Fact Book 2014 Community Association & Related Statutes

Association statutes are found in the *State Summaries*.

While the state condominium or similar enabling act and the association's declaration and related governing documents are critically important to governing the association, there are many other local, state and federal laws that impact a condominium and other types of community associations. Certain states have provided specific administrative support directed at assisting with association issues.

Community Association Ombudsman Programs by State

[Not all states have an Ombudsman]

See **Census 2012 of All State Governments**
Also, see **Chronological History of Federal Involvement in Community Associations**.

11.6 Fact Book 2014 Community Association Volunteer Immunity

For more detailed information on volunteer immunity for association leaders and volunteers, see this comprehensive publication entitled **Voluntary Immunity in Community Associations**
Volunteer directors and officers who serve on their boards face the potential for personal liability in serving the association. Although all states provide some form of immunity from liability for volunteers, the number of suits being filed each year against both community associations and their boards is increasing. The protections offered by states vary widely, and prudent board members need to consider them when formulating policy and participating in a community association. Volunteer Immunity offers a summary of volunteer immunity according to the federal Volunteer Protection Act and each state's volunteer immunity statutes and explanations of how the statutes apply to community associations and their volunteer officers and directors. Includes a chart of volunteer immunity by state.

11.7 **Fact Book 2014 Standard of Care for Community Association Directors & Officers**

Community association directors and officers need to understand the duties they owe to their association and fellow owners, the nature of those duties, and the liability performing those duties may bring. How much a volunteer leader knows about his or her state's standard of care can be the difference between liability and immunity. *Standards of Care* provides a survey of each state's standard of care for community association directors and officers, a brief description of the standards by which they must perform their duties and recommendations for complying with their state's standard of care. Also includes a discussion of notable trends in state legislation, how the standard of care may evolve and a chart of the standard of care by state. For more detailed information on standards of care for association directors and officers, see this comprehensive publication entitled **Standards of Care in Community Associations**

11.8 **Fact Book 2014 – Community Association Deed Based Transfer Bans**

11.9 **Fact Book 2014 – Community Association Clothesline Ban**

11.10 **Fact Book 2014 – Community Association Ombudsman Programs**

11.11 **Fact Book 2014 – Community Association Solar Rights and Easements**

11.12 **College of Community Association Lawyers (CCAL) State Law Pages**

[See selected states]

12. **Business Services as an Association Core Function**

Introduction: Community associations are "big business" in small increments. As mentioned in #5.2, the associations themselves have an aggregate value of over $4.9 trillion dollars and, in terms of residential fixed investment and Housing Services, contribute at least 4% to GDP. The *2014 Statistical Review* also points that the 7,000 – 8,000 community association management companies employ nearly 100,000 people to assist the 60% to 70% of associations that require professional management to deliver the core services under discussion. Section #9.1 of the *Fact Book* lists the various CAI management (and other) credentialing programs.

Physical asset management incorporating diligent maintenance and carefully structured reserve funds are two of the three most important association business services. The third important business service involves risk management and insurance. Most planned communities have nominal direct property exposures to loss because insurance for the homes is the responsibility of the owner. In 10% to 20% of planned communities, however, insurance is maintained on a blanket basis as though the planned community was a condominium or cooperative. For those planned communities as well as for condominiums and cooperatives risk management and insurance expenses can be almost 25% to 30% of the budget especially if catastrophic perils such as flood, wind and earthquake are being insured.

Only a few states such as Florida and Illinois have comprehensive association insurance requirements. For most states, the governing documents contain more detailed insurance obligations. In turn, those requirements are driven by Fannie Mae and Freddie Mac insurance requirements in their Seller Guides. This is a reminder that association insurance is necessary for both physical asset management and to enable the association homeowner to obtain mortgage financing and refinancing.

Insurance for the association is classified as commercial insurance while insurance obtained by a homeowner is classified as personal insurance. Generally, property insurance is obtained on the full insurable replacement cost of the property as well as for mechanical breakdown of common equipment. Liability insurance often includes Directors & Officers (D&O) Liability Insurance. Usually fidelity insurance is purchased to protect operating and reserve funds. In a condominium, if the building or home is in a **Special Flood Hazard Area**, then flood insurance will be required in order to obtain a mortgage or refinancing. See the various State Summaries for the amount of flood insurance in place.

Association residents (owners and tenants) typically obtain personal insurance for their homes:

- **HO-6** for a homeowner in a condominium, cooperative or in a planned community that insures like a condominium or cooperative.
- **HO-3** for a homeowner in a typical planned community.
- **HO-4** for a tenant renting a home in a community association.

Nationally, around one-third of all homeowners own their homes debt free which means that there is no mortgage lender pushing the owner to have insurance. Probably less than 50% of condominium owners have an HO-6. See the various **State Summaries** the percentage of homes without mortgages.

12.1 Condominium Insurance Requirements

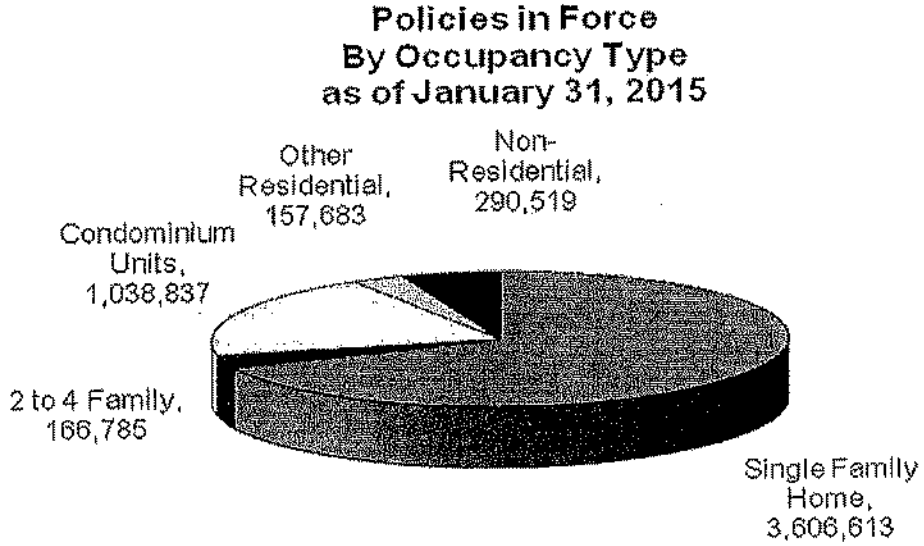
See 50 State Condominium Insurance Survey

12.2 Flood Insurance – Condominiums: Fact Book 2014

Note: Flood insurance offered by FEMA through the National Flood Insurance Program (NFIP) was subject to substantial changes in the **Biggert-Waters Flood Reform Act of 2012**. Not all of the changes have been enacted. See also the **Homeowner Flood Insurance Affordability Act of 2014**.

For help assistance regarding FEMA flood insurance see the newly created **Flood Insurance Advocate**. See the list of *Fact Book* Contributors for more source information.

- **NFIP Policies in Force by Occupancy Type** [Continually Updated]



OCCUPANCY TYPE	POLICIES IN FORCE
Single Family Home	3,606,613
2 to 4 Family	166,785
Condominium Units	1,038,837
Other Residential	157,683
Non-Residential	290,519
Unknown Occupancy	1
All Policies	5,260,438

For additional information see the **FEMA Policy & Claims Statistics for Flood Insurance** and see also **FEMA Flood Insurance Statistics are Continually Updated**

See **Condominium RCBAP Claims** and see **Condominium RCBAP Premiums** for all states.

12.3 Fact Book 2014 Lien Priority

National Matrix of Association "Super-Priority" Lien Legislation

UCIOA Amendments to 3-116 with Comments

Recent Lien Priority Litigation

12.4 Fact Book 2014 Reserve Fund Requirements

12.5 Community Association Insurance

Commercial insurance is one of the most important components of a community association's risk management program. To help managers and boards fully understand insurance issues, this guide will explore three key areas:

- Insurance terminology, in terms of coverages, policies, and practices
- Association exposures to loss and insurance coverages
- Risk management and the association insurance industry

12.6 Community Association Risk Management

Risk management is the process of making and carrying out decisions that minimize the adverse effects of accidental losses. It involves five steps:

1. Identifying exposures to loss
2. Examining alternative techniques
3. Selecting the best techniques
4. Implementing the chosen techniques
5. Monitoring and improving the risk management program

This guide examines each phase of the risk management process. It also helps board members and managers identify risks and implement a plan that will safeguard association assets.

12.7 Preventing Fraud and Embezzlement

Community association boards should consider implementing ten practices and procedures to safeguard association funds.

12.8 Energy Efficiency [FCAR Best Practices]

CAI and the Department of Energy (DOE) are dedicated to educating the community association industry—and the significant portion of the U.S. population it represents—on the many ways to increase the energy efficiency of their homes and thereby reduce both energy consumption and costs.

12.9 Financial Operations [FCAR Best Practices]

The board of directors, particularly the treasurer, is ultimately responsible for the association's funds and may not abdicate their fiduciary responsibility. Given the reality that community association boards are made up of diverse individuals with varied degrees of financial knowledge, this report contains basic guidelines that should be followed to ensure sound financial operations.

12.10 Green Communities [FCAR Best Practices]

This report explores "greenness" in communities, in their varied forms. It considers the concept of sustainability through better designs, new technologies and social innovations. Sustainable communities are developed to meet the "needs of the present without compromising the ability of future generations to meet their own needs." They are regenerative, meaning they have "processes that restore, renew or revitalize their own sources of energy and materials, creating sustainable systems that integrate the needs of society with the integrity of nature."

12.11 Reserve Studies Management [FCAR Best Practices]

There are two components of a reserve study—a physical analysis and a financial analysis. During the physical analysis, a reserve provider evaluates information regarding the physical status and repair/replacement cost of the association's major common area components. To do so, the provider conducts a component inventory, a condition assessment, and life and valuation estimates. A financial analysis assesses only the association's reserve balance or fund status (measured in cash or as percent funded) to determine a recommendation for an appropriate reserve contribution rate (funding plan).

13. Community Associations In Other Countries

13.1 Introduction

The U.S. is the only county with three basic types of community associations – condominiums, planned communities and cooperatives. While terminology varies in other parts of the world, many countries have cooperative housing and over 30 countries have some version of condominium housing. This latter fact is not too surprising since the condominium concept was first developed in Europe and not under Roman law. Australia and South Africa have something similar to U.S. planned communities.

Typically, housing legislation needs to be researched country-by-country which sometimes means that English translations are not readily available. Certain international organizations such as the following maintain data on a variety of topics including housing:

- World Bank
- Organization for Economic Development & Cooperation (OECD)
- United Nations Housing Statistics Division
- UN-Habitat
- Eurostat
- European Network for Housing Research
- CECODHAS Housing Europe

In most cases, however, these organizations do not present community association data in any recognizable form that might be used as a possible comparison to similar U.S. associations. The community association data and information presented next will focus on housing cooperatives and then on condominiums in selected geographic areas.

Selected Summary Statistics for the countries cited:

Country	Size (sq.km.)[a]	Population	All Housing Units
Australia	7,741,220	22,500,000	8,600,000
Belgium	30,528	10,500,000	5,000,000
Canada	9,984,670	34,800,000	13,300,000
China	9,596,960	1,355,700,000	460,000,000
Dubai[b]	4,110	3,300,000	472,000
England[c]	130,400	57,500,000	23,400,000
Germany	357,022	81,000,000	39,300,00
Hungary	93,028	9,900,000	4,300,000
Italy[d]	301,340	61,700,000	24,600,00
Japan	377,915	127,100,000	60,600,000
Russia	17,098,242	142,500,000	33,600,000
South Africa[e]	1,219,090	48,400,000	14,450,000
Spain	505,370	47,700,000	2,500,000
United States	9,826,675	318,900,000	133,100,000
Wales[c]	20,800	3,100,000	1,400,000

(a) Conversion Factor: 1 km = 0.62 miles
Country Size and Population: All cites from **CIA World Factbook** as of July, 2014. Population rounded by Treese.
Housing Units: Australia, 2011 **Australian Bureau of Statistics, Household**; Canada, as cited; **Housing Europe Review 2012** citing Belgium 2009, citing Germany 2011, citing Hungary 2009, citing Spain 2009; China as cited; Japan **Statistics Bureau Chapter 18**; Russia in 2011, calculated from **Transformation in Russian Housing**;
(b) Dubai, sq.km. from Wiki, Dubai population, includes 1,100,000 non-permanent residents, 2013. Dubai is part of the **United Arab Emirates**.
(c) England and Wales together with Scotland and Northern Ireland constitute the **United Kingdom**. Data from various sources. England **dwelling stock** and Wales **dwelling stock** and **population**.
(d) Italy, 2008 number of private households, **Housing Statistics in the European Union 2010**
(e) South Africa, number of households **Census 2011** with the cautionary note that in 2011 it was estimated that **50% of housing was not in deeds of registry**.

13.2 Housing Cooperatives

Despite the early use of condominiums in Europe, housing cooperatives have remained a popular choice for ownership housing. Just recently, during the **2012 U.N. Year of the Cooperatives**, there were several publications detailing the use of cooperatives around the world including in the U.S.

Profiles of a Movement: Co-operative Housing Around the World presents a brief history and selected data for cooperative housing in 22 countries.

Cooperative Housing: A Key Model for Sustainable Housing in Europe comments on the fact cooperative housing "represents an important part of the housing market in many countries in Europe. For instance, housing cooperatives manage over 3.5 million dwellings in Poland (about 27% of the total housing stock in the country in 2009), about 17% of the total housing stock in the Czech Republic and Sweden, 15% in Norway."

CECODHAS Europe, sited above, presents studies of cooperative housing in several countries. For example see: **Italy** **Spain** **Germany** **Hungary** **Belgium**

13.3 Eastern Europe and Russia: Condominiums

In addition to the language/translation problems mentioned in the Introduction, the OECD, in Chapter 5 of its **Guidelines for Micro-Statistics on Household Wealth**, points to another set of problems arising from housing definitions. For example, see this Note in Chapter 5:

> "Owner-occupied residences are usually houses or flats/apartments/condominiums. Sometimes owner-occupied apartments/condominiums are owned as part of a co-operative, without occupants having separate title to the individual dwelling in which they live. However, tenants and lodgers do not fulfil the condition for owning their own residence."

The **Urban Institute** has excellent studies on the privatization of housing in Eastern Europe and Russia which generally meant conversion to condominium. See **Condominium Housing and Mortgage Lending in Emerging Markets** indicates that across "Central and Eastern Europe (CEE) and the former Soviet Union, large-scale privatization of state-provided and owned apartment buildings in the early 1990s resulted in mass owner-occupied housing markets. The new owners acquired ownership in the form known throughout the world as condominium—individual ownership of a unit and an interest in the common property (the entrance, stairways, roof, etc.). In addition to the hundreds of thousands of formerly state-owned apartments that have been privatized, construction of new apartments in more recent years has added to the stock of condominiums in these countries. There are now 9 countries from the former Soviet bloc that are members of the European Union; in most of them owner occupancy rates reach 90 percent or above, and at least 75 percent of the urban populations live in owner-occupied apartments (Schweinichen 2006)."

There have been other studies on the privatizing housing in Russia, see **A Model of Housing Privatization Decision: The Case of Russia** "This study addresses the issue of housing privatization in Russia in the course of the 1990s. Privatization was started to create a housing market in order to efficiently allocate resources in the use and production of housing, and to phase out the state budget financing of housing. The dwellings were offered to their residents free of payment. The objective of this study is to offer a better understanding of the structural components of privatization by formally modeling housing privatization decision from the household point of view. The model is based on a trade-off between certain value of renting and uncertain value of owning. Using the results of the theoretical model, an empirical model of the privatization decision from the point of view of the household is formulated." As of 2013, even after the massive privatization of housing **municipalities in Russia owned 11%** of all housing and more in some regions.

13.4 England and Wales: Commonhold and Cooperatives

Commonhold law became the first major change in English real estate law since 1925. It was introduced in the England and Wales in 2002 and became law 2004. Commonhold is a mix of Australian strata title law and U.S. condominium law. It was created as an alternative to leasehold real estate law, a predominate form in England and Wales. For a variety of reasons, commonhold has not been successful.

It is best understood in Professor Katharine Rosenberry's paper, **Commonhold Law: Problems and Potential Solutions**. Professor Rosenberry is a past president of CAI and she was instrumental in the initial development of California's Davis-Stirling Act.

England, of course, was the home to the first modern cooperative founded by the **Rochdale Society of Equitable Pioneers** in 1844. The **Confederation of Co-operative Housing** is a primary umbrella organization for a variety of current housing cooperatives.

According to the **Office for National Statistics**, in 2011, there "were 23.4 million households in England and Wales. The majority, 15 million (64 per cent) were owner occupied, bought either outright or through a mortgage. The remaining 8.3 million (36 per cent) were rented, either privately from a landlord or letting agency, or from a social landlord such as local authorities, housing associations, housing co-operatives or charitable trusts.

Of the 15 million owner occupied households, 7.2 million homes were owned outright while the remaining 7.8 million were being bought with a mortgage. Of the 8.3 million households renting, there were similar numbers renting privately to those renting from social landlords at 4.2 million and 4.1 million respectively. Among those households in socially rented homes, 2.2 million were renting from local authorities, and 1.9 million from other social landlords"

For a longer view of housing see **A Century of Home Ownership and Renting in England and Wales**.

13.5 Australia: Strata Title, Community Title and Cooperatives

The best way to understand strata title and community title in the 7 states and 1 territory in Australia is through the information provided by the primary trade/profession organization **Strata Community Australia**.

Strata title "title allows individual ownership of part of a property (called a 'lot' and generally an apartment or townhouse), combined with shared ownership in the remainder (called 'Common Property' e.g. foyers, driveways, gardens) through a legal entity called the owners corporation — or body corporate, strata company or community association, depending on your state or territory of residence and the type of scheme.
The concept only came into being 50 years ago and there are now more than 270,000 such schemes encompassing more than two million individual lots across Australia. In Sydney strata now accounts for more than half of all residential sales and leases because of its popularity with investors. An increasing number of commercial and retail properties are also strata titled. In Western Australia there are even strata-titled vineyards."

Community title "is structured as property which has been divided into individual lots. This may include strata schemes and/or Torrens Title lots, with common areas and shared services. In some States, additional sub-classes of communities may also be included, for example in NSW, neighbourhood associations and precinct associations can also exist within a community association. Developers are increasingly opting to use community title as a means of establishing market differentiation and consumer appeal. Part of this means creating designer lifestyles that include tennis courts, swimming pools, country clubs and parks."

With the exception of the use of Torrens Title which is seldom used in the U.S., Community Title is very much like a planned community while Strata Title is very much like a condominium.

In 2012, according to research by Strata Community Australia, there were 277,001 strata and community title associations with 1,944,125 lots. See *Appendix Four: Australia Strata and Community Title Data 2012.* Based on the *Data*, the typical residential association is between 10 to 20 lots.

As part the U.N. 2012 Year of the Cooperative, the Australian Bureau of Statistics presented **Cooperatives in Australia - An Overview**. One section of the Overview dealt with a special report on housing cooperatives in the State of Victoria:

"In the early 1980s, co-operative housing in Victoria started to become mainstream, with a proposal for a Rental Housing Co-operative program submitted to the State Housing Commission for consideration. By 2011, Victoria had 117 housing co-operatives, with approximately 2,400 rental homes across the state. These co-operatives primarily manage long-term rental housing portfolios. There are generally two types of housing co-operatives, Common Equity Rental Cooperatives (CERCs) and Rental Housing Cooperatives (RHCs). Both are made up of tenant members who contribute to the management of their rental properties."

13.6 Canada: Condominiums and Cooperatives

The **Canadian Condominium Institute** is the best place to start for understanding condominiums in Canada. CCI was organized in 1982 and it has 17 Chapters across Canada. There is an excellent summary of CCI's activities in its first 25 years in this Deborah Howes' publication **Canadian Condominium Institute, 25th Anniversary**. Recently the **2013 Canadian Housing Observer - Condominiums** published data on condominiums providing these summary facts.

- The term "condominium" ("strata" in British Columbia) describes a type of tenure that combines elements of both private and shared ownership.
- Condominiums are not limited to any single type of structure: condominiums in 2011 comprised high-rise apartments (31%), low-rise apartments (36%), row houses (23%), single-detached houses (4%), and other dwelling types (6%).
- From 1981 to 2011, the number of owner-occupied condominiums [units] in Canada increased from about 171,000 to 1,154,000, more than nine times faster than other owner-occupied homes. There were 461,000 rented condominiums in 2011, bringing the total number of occupied condominium units in Canada to 1,615,000.
- Condominiums nearly quadrupled their share of the homeownership market to 12.6% of owner-occupied dwellings in 2011 from 3.3% in 1981.

FIGURE 2-4

Occupied dwellings by tenure, Canada, 1981-2011

	All occupied dwellings	Owner-occupied condominiums	Other owner-occupied dwellings	Rented dwellings
		Number		
1981	8,281,535	171,090	4,970,845	3,139,595
1986	8,991,670	234,520	5,346,355	3,368,485
1991	10,018,265	367,765	5,905,265	3,718,525
1996	10,820,050	514,720	6,363,060	3,905,145
2001	11,562,975	670,530	6,939,860	3,907,170
2006	12,437,470	915,725	7,594,055	3,878,500
2011	13,319,250	1,153,585	8,032,260	4,078,225

The Co-operative Housing Federation of Canada is the primary organization for housing cooperatives. "Across Canada, over 2,100 non-profit housing co-ops are home to about a quarter of a million people in over 90,000 households. There are housing co-operatives in every province and territory."

Region	Number of Co-ops	Number of Units
British Columbia	264	14,698
Prairies	127	6,892
Ontario	557	44,287
Quebec	1,129	22,445
Atlantic Provinces	138	3,362
Yukon, Northwest Territories and Nunavut	5	162
	2,220	**91,846**

13.7 South Africa: Sectional Title Schemes and Home Owners Associations

According to one **commentator**, there are two types of community association arrangements in South Africa. The Sectional Title Scheme is very much like a U.S. condominium whereas the other arrangement – Home Owners' Association – is very much like a U.S. planned community. Both are described next.

For Sectional Title Schemes see **Sectional Titles Act No. 95 of 1986** and for Home Owner Associations see **Companies Act No. 71 of 2008**

Sectional Title Scheme: Under Sectional Titles Act No 95 of 1986, in a sectional title scheme the Act confers on an owner the right to the ownership of the interior of the section measured from the median line of the floor, external walls and ceiling and an undivided share in the common property. This could also include a patio, balcony or other projection which is permitted by the Act to be sectionalized. The owner's share in the common property is determined by the participation quota of the unit.

The owner is issued with a title deed in his/her name which is registered in the Deeds Office. An owner therefore owns the section and an undivided share in the common property. The common property therefore consists of the land and those parts of buildings not held by an owner. Part or parts of the common property may be held by an owner as an exclusive use area or areas such as a parking bay, garden, patio or other permitted use which the owner would hold by way of a notarial deed or in terms of the Rules.

Home Owners' Association (HOA): Under Companies Act No. 71 of 2008, in a HOA, the owner has full ownership of the plot of land and the buildings thereon. No part of his plot or building is common property. The owner likewise is issued with title deeds in his or her name and registered in the Deeds Office. The owner would have a right in common with other owners as set out in the rules to the use and enjoyment of any land owned by the HOA on which exists the infrastructure services such as streets, walkways, parking, lighting, golf course, and other recreational amenities. The owner is solely responsible for the maintenance, upkeep, repairs, insurance, rates and other outgoings in connections with his or her land and buildings thereon.

The **Association of Residential Communities** (ARC) is a Chapter of CAI. According to data collected by ARC:

- There are 3 000 Home Owners Associations in South Africa.
- There are 56 000 Sectional Title Schemes in South Africa.
- 5 million people reside in organized communities.
- There are 1.9 million homes in organized communities.
- Organized communities take up 8.7 percent of developed land.
- Community managers manage assets in excess of R800 billion.
- Annual levies collected are in excess of R11 billion.
- Value of property in organized communities is 27 percent of total residential property in South Africa.

13.8 Dubai: Jointly Owned Property

The basic law dealing with joint property is **Law No. (27) of 2007 Concerning Ownership of Jointly Owned Properties in the Emirate of Dubai**. Jointly owned properties are modeled on Australia strata and community titles and they are similar to condominiums and HOAs respectively. Because Dubai operates under a Civil Law system, the details of Law 27 are set forth in Regulations, Guidelines and Directions Real estate transactions, in general, are handled by the **Dubai Real Estate Regulatory Agency (RERA)**. See also the Regulatory Agency for **Jointly Owned Property (JOP)**. The Official Government Portal provides **housing information**.

In 2005, Dubai had **205,518 housing units of all types**. By 2014, according to the **Dubai Statistics Center and other sources**, the country contains nearly 460,000 housing units of all types which includes **120,000 units that are freehold**. By Q1 2015, it is estimated that Dubai had **379,000 units** that would be categorized as flats.

The government, however, has **not really started the process to register** jointly owned properties (i.e., associations). It has only registered the land titles at this stage.

The "Owners Associations" operate in a de facto way although they are professionally managed and the Courts recognize them under the Civil Code. There is a distinction in Dubai between the terms "apartment" (or flat) and villa. Single family homes are simply called villas. In practice, of the over **74,401 private villas in 2013** many are not exactly single family because 2 to 3 generations usually occupy a villa and some are even located within family compounds with multiple out-villas.

Links to various details on the laws follows:

Dubai Real Estate Regulations	Direction for General Regulation
About Owners Associations	Direction for Association Constitution
Law 27 of 2007	Direction for Jointly Owned Property Regulation

Housing Unit by Type 2013 – Emirate of Dubai

Type of Housing Unit	Units 2013
Flat	376,812
Villa	74,401
Villa Supplement	158
Arabic House	8,898
Part of the Arabic House	182
Room/Rooms	6,807
Collective Residents	3,467
Other	865
Total	471,590

Dubai is the home to **Burj Khalifa**, the world's tallest building (828 m or 2,716.5 ft.). The 900 residential units are on floors 19-108. One of the world's prime examples of a mixed-used building, housing residential, commercial, hospitality and retail units within it, the Burj Khalifa is often used as a case study of how super tall structures operate in a cohesive manner complying with both local and international best practices and safety standards. There are many ways to view this building, but the **life safety and crisis planning aspects** are surely among the most interesting.

In 2012, the CAI signed an agreement with the government-sponsored Dubai Real Estate Institute (DREI) to customize the internationally respected community association manager education course 'M100 - Essentials of Community Management' as the basic educational program for community managers in the region.

CAI member instructors have taught several CAI professional development courses in Dubai during the past few years, however now there are Dubai-resident trainers accredited by the CAI who continue to teach the professional training programs.

*The 2014 revisions to the Dubai information for the Fact Book were provided by:

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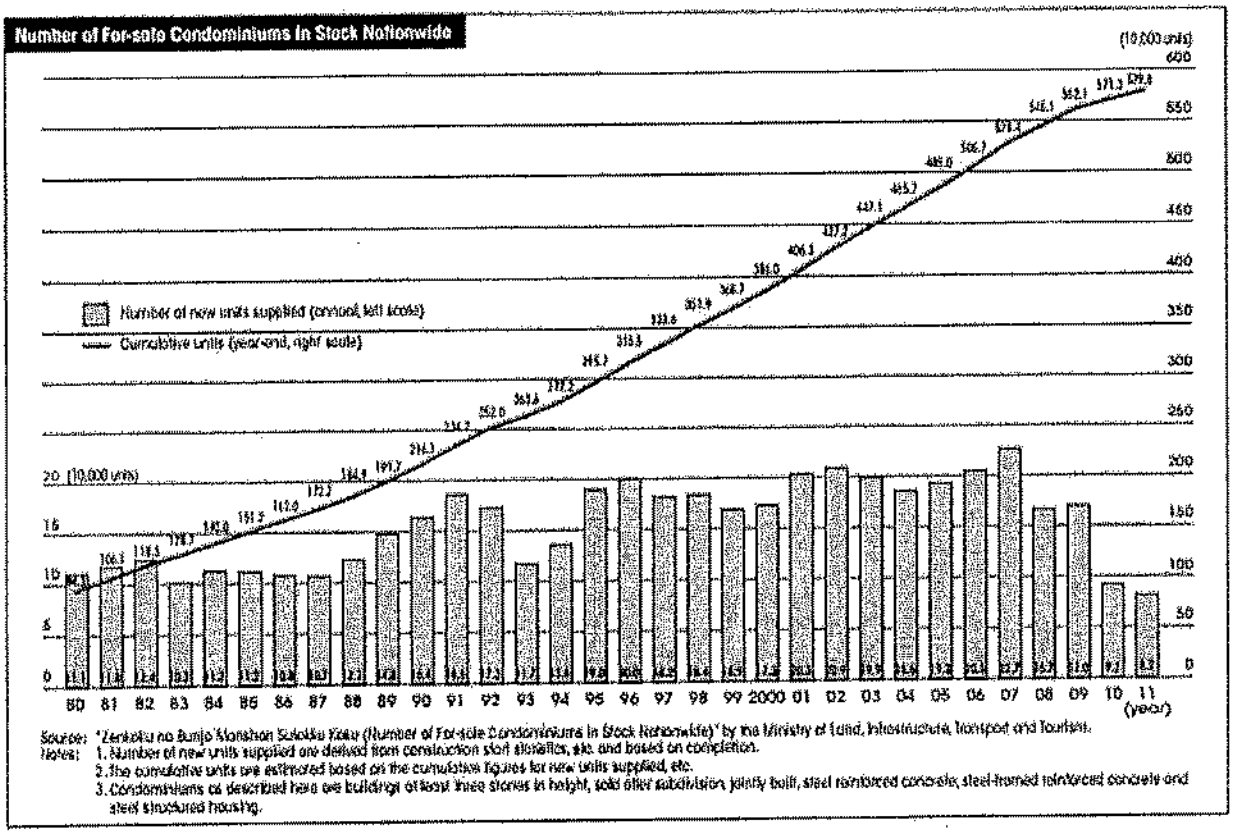
T + 971 4 3673 333 | Direct T + 971 4 3673 520 | F + 971 4 3673 750
ECM HQ | Level 1, Yansoon 9, Old Town, Downtown Dubai
P.O.Box 9440, Dubai, United Arab Emirates | ecm.ae

13.9 Japan: Condominiums

In 2011, there were 5,790,000 condominium units in Japan that housed about 14 million people (one in eight people). The **Act on Building Unit Ownership** (for condominiums) was established with reference to legislation in Germany (WEG) in 1962. At that time, condominiums were becoming common with about 10,000 condominium units. Major revisions were made in 1983 and in 2002.

According to a Ministry of Land, Infrastructure, Transport and Tourism (MLIT) **2008 Report**, there is a significant need to renovate or reconstruct older units. In particular, the Report indicated that "as many as 730,000 condominium apartments were 30 years old or older as of the end of 2008, and the number will rapidly increase to 2 million by the end of 2020. To utilize existing apartment buildings as high-quality housing stock, the Ministry supports condominium association boards and other parties concerned that work hard for the maintenance and rehabilitation of existing apartments. The ministry also offers support to apartment building rehabilitation projects to meet residents' needs, including the incorporation of more barrier-free features and seismic upgrades."

The growth pattern of Japanese condominiums is detailed **Real Estate in Japan 2013 Report**.



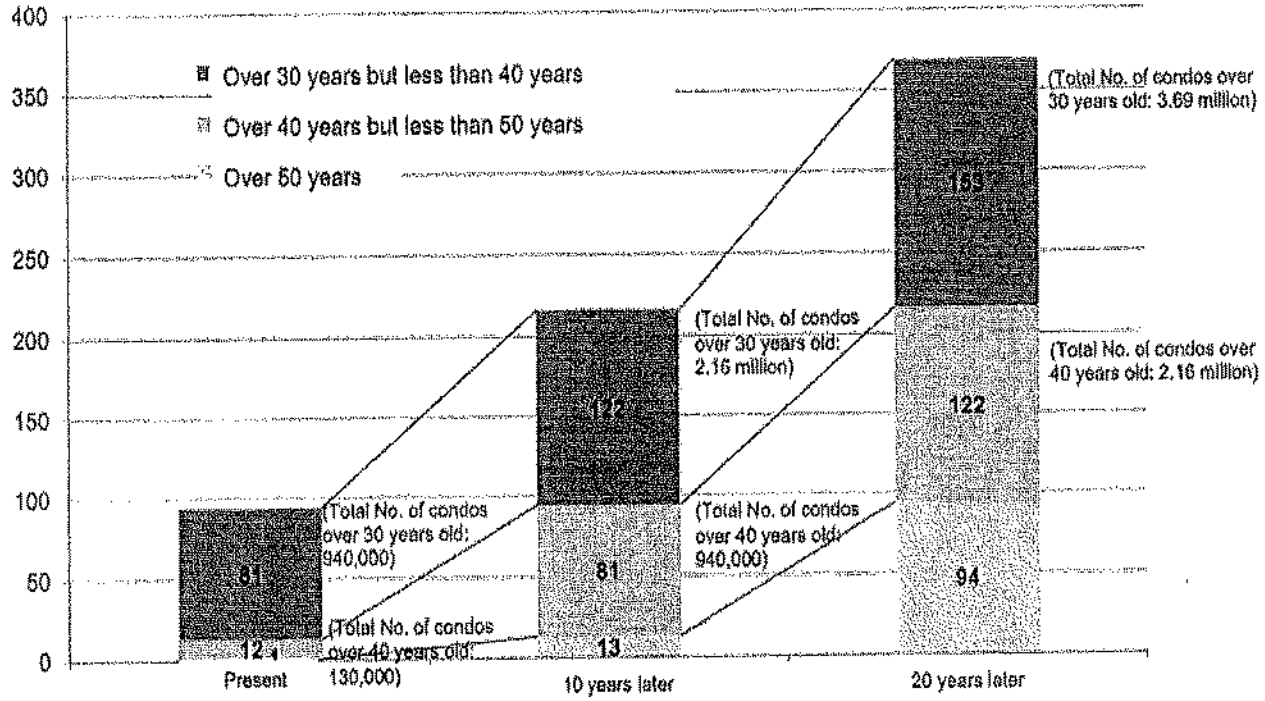
Source: "Zenkoku no Bunjo Manshon Sokoritsu Kosu (Number of For-sale Condominiums in Stock Nationwide)" by the Ministry of Land, Infrastructure, Transport and Tourism.
Notes: 1. Number of new units supplied are derived from construction start statistics, etc. and based on completion.
2. The cumulative units are estimated based on the cumulative figures for new units supplied, etc.
3. Condominiums as described here are buildings of at least three stories in height, sold after subdivision, jointly built, steel reinforced concrete, steel-framed reinforced concrete and steel structured housing.

Concern over the aging condominium housing stock has continued to be a major issue, see this MLIT 2010 Report **Japanese Reconstruction Issues in Condominiums** and the **Real Estate in Japan Report 2013.**

Increase in the Number of Condominiums

- As aging of condominiums continues, those built 50 years ago are estimated to increase from about 10,000 today to about 940,000 in 20 years from now. The condo stock is estimated to be about 5.71 million as of the end of 2010.

(10,000 units) [Number of condominiums built 30, 40 and 50 years ago]



* The present number of 50-plus years old condos is the estimate based on the data of housing units by the Public Housing Corporation and the Housing Supply Corporation recorded by MLIT.

13.10 China: Condominiums

In his March 8, 2007 **Report** entitled, "Explanation on the Draft Property Law of The People's Republic of China," Wang Zhaoguo, Vice-Chair of the Standing Committee of the National People's Congress, set forth the key elements of the Basic Property Law that went into effect in China on October 1st of that year. This new law, an ambitious effort based on many years of formulation and over 10,000 comments, aimed, in part, to help create a "harmonious society." He further explained that the protection of "private ownership...[and the] condominium right" will also assist in "promoting social harmony."

The **Property Law of the People's Republic of China**, as adopted, is approximately 39 pages long with the condominium section found in Part Two, Chapter VI, Articles 70-83. The Property Law itself and the role of condominium associations in China has been the subject of **comparative analysis**, **direct analysis** and from the perspective of the **urban commons**. Recently the evolving pattern of property rights has been examined in urban China by **reviewing condominium governance**.

Given China's huge population, rapid growth in many **sectors** as well as its **sheer immensity**, Chinese condominiums and construction, also, have been the subject of **fringe unit owner behavior**, **poor construction** and **ghost cities**.

In 2013 and then again in 2014, China has made substantial plans to increase its urban population with some **estimates** suggesting that nearly 300,000,000 will relocate to cities from rural areas by 2030. According to the **National Bureau of Statistics China**, in 2012, "the newly started construction of affordable housing projects in urban areas amounted to 7.81 million units (households), and the affordable housing projects in urban areas basically completed were 6.01 million units."

China has an estimated 460+ million housing units. In an **OECD 2013 China Working Paper**, the gross floor area of all types of housing was 39 billion sq. meters. By 2012, 85% of Chinese housing was owner occupied. Between 2009 -2011 residential fixed capital formation averaged 14% of GDP only one other OECD country (Chile) has had such a high level of sustained investment in housing.

Table A2.4. House tenure nationally and by area

	In % of all tenure types			
	Nationwide	Cities	Towns	Rural
Rental	12.4	25.8	13.6	2.7
Public rental	1.5	2.7	2.1	0.4
Private rental	10.9	23.2	11.4	2.3
Owner-occupied	84.9	69.7	82.9	96.1
Self built	61.0	16.3	55.4	93.9
First owner	11.8	26.1	15.0	0.6
Second or later owner	2.8	5.0	4.1	0.8
Subsidised purchase	2.3	5.1	2.5	0.2
Formerly public sector	7.0	17.2	5.8	0.5
Other forms of tenure	2.7	4.5	3.5	1.2
Total	100.0	100.0	100.0	100.0

Source: Tabulations of the 2010 Census.

Unfortunately, at this time, it is not possible to determine what percent of the housing stock is in a condominium form.

14. Community Associations – Additional Resources

14.1 Organizations Related by Content and Purpose

AARP
601 E Street, NW
Washington DC 20049
Toll-Free Nationwide: 1-888-OUR-AARP (1-888-687-2277)
http://www.aarp.org/

American Institute of Architects
The American Institute of Architects
1735 New York Ave., NW
Washington, DC 20006-5292
Phone: 800-AIA-3837
http://www.aia.org/

American Institute of Certified Public Accountants
New York, New York
1211 Avenue of the Americas
New York, NY 10036-8775
P: +1.212.596.6200
F: +1.212.596.6213
http://www.aicpa.org/Pages/default.aspx

American Planning Association
American Planning Association
205 N. Michigan Ave., Suite 1200
Chicago, IL 60601
Phone: 312-431-9100
Fax: 312-786-6700
http://www.planning.org/

Appraisal Institute
200 W. Madison
Suite 1500
Chicago, IL 60606
7:00 a.m. - 6:00 p.m. CT
888-7JOINAI (756-4624)
http://www.appraisalinstitute.org/

Cohousing Association of the United States
Po Box 13254
Mill Creek, WA 98082
USA
Phone: (812) 618-2646
http://cohousing.org/

Communal Studies Association
P.O. Box 122, Amana, Iowa 52203
319.622.6446
info@communalstudies.org
http://www.communalstudies.org/

Council of New York Condominiums & Cooperatives (CNYC)
250 West 57th Street, Suite 730
New York, NY 10107-0730
Tel: (212) 496-7400
Fax: (212) 580-7801
E-mail: info@cnyc.coop
http://www.cnyc.com/

Federation of New York Housing Cooperatives and Condominiums (FNYHC)
61-20 Grand Central Parkway, Suite C1100,
Forest Hills, NY 11375,
info@fnyhc.co-op,
(718) 760-7540
Fax (718) 699-5618
http://www.fnyhc.org/

Institute for Real Estate Management (IREM)
430 N. Michigan Ave.
Chicago, IL 60611
Phone: 800-837-0706
Fax: 800-338-4736
E-mail: custserv@irem.org
https://www.irem.org/

Manufactured Housing Institute
2111 Wilson Blvd., Suite 100
Arlington, VA 22201
Tel: (703) 558-0400
Fax: (703) 558-0401
info@mfghome.org
http://www.manufacturedhousing.org/default.asp

National Association of Homebuilders® (NAHB)
1201 15th Street NW
Washington, D.C. 20005
Toll free: 1-800-368-5242
Washington, D.C.: 202-266-8200
Fax: 202-266-8400
https://www.nahb.org/

National Association of Housing Cooperatives (NAHC)
1441 I Street NW Suite 700
Washington D.C.2005-6542
Tel: (202) 737-0797
Fax: (202) 216-9646
Email: info@nahc.coop
http://www.coophousing.org/

National Association of Realtors® (NAR)
Headquarters:
430 North Michigan Avenue, Chicago, IL 60611
DC Office:
500 New Jersey Avenue, NW, Washington, DC 20001-2020 |
1-800-874-6500
http://www.realtor.org/

National Recreation and Park Association
22377 Belmont Ridge Road
Ashburn, VA 20148-4501
703.858.0784 (local)
800.626.NRPA (6772)
customerservice@nrpa.org
https://www.nrpa.org/

National Society of Accountants for Cooperatives
136 South Keowee Street
Dayton, Ohio 45402
tel: 937-222-6707
fax: 937-222-5794
info@nsacoop.org
http://www.nsacoop.org/

North American Lake Management Society (NALMS)
PO Box 5443
Madison, WI 53705
P (608) 233-2836
F (608) 233-3186
info@nalms.org
http://www.nalms.org/

Urban Land Institute (ULI)
1025 Thomas Jefferson Street, NW, Suite 500 West
Washington DC 20007
202.624.7000
http://uli.org/

14.2 Other Housing and Related Organizations

American Seniors Housing Association
https://www.seniorshousing.org/

Brookings
http://www.brookings.edu/

Habitat for Humanity
http://www.habitat.org/

Local Initiatives Support Corporation (LISC)
http://www.lisc.org/

National Apartment Association (NAA)
http://www.naahq.org/Pages/welcome.aspx

National Housing Conference (NHC)
http://www.nhc.org/

National Multi-Housing Council (NMHC)
http://www.nmhc.org/

National Housing Preservation Database
http://www.preservationdatabase.org/

National Low Income Housing Coalition
http://nlihc.org/

NeighborWorks
http://www.nw.org/network/index.asp

Urban Institute
http://www.urban.org/

U.S. Department of Agriculture – Rural and Development
http://www.usda.gov/wps/portal/usda/usdahome?navtype=SU&navid=RURAL_DEVELOPMENT

U.S. Housing Market Conditions
http://www.huduser.org/portal/ushmc/home.html

14.3 Selected Financial Services, Risk Management and Insurance

American Bankers Association
http://www.aba.com/default.htm

Consumer Finance Protection Bureau
http://www.consumerfinance.gov/

Federal Housing Finance Agency
http://www.fhfa.gov/

Independent Community Bankers of America
http://www.icba.org/

Mortgage Bankers Association of America
https://www.mba.org/

CPCU Society and **American Institutes of CPCU**
http://www.cpcusociety.org/
http://www.aicpcu.org/

Certified Insurance Counselor
http://www.sclc.com/

Independent Insurance Agents & Brokers of America
http://www.independentagent.com/default.aspx

Insurance Institute for Business & Home Safety
https://www.disastersafety.org/

International Risk Management Institute
http://www.irmi.com/

University of Colorado Natural Hazards Center
http://www.colorado.edu/hazards/

14.4 Selected Research Centers

Lusk Center for Real Estate
University of Southern California
331 Ralph and Goldy Lewis Hall
Los Angeles, CA 90089-0626
phone: 213.740.5000

Fisher Center for Real Estate and Urban Economics
F602 Haas School of Business
University of California
Berkeley, CA 94720-1900
phone: 510.643.6105

Center for Real Estate and Urban Economic Studies
University of Connecticut School of Business
2100 Hillside Road, Unit 4041
Storrs, CT 06269-1041
phone: 860.486.3227

Yale Program for Nonprofits
Program on Nonprofit Organizations
Yale School of Management
135 Prospect Street
New Haven, CT 06511

Shimberg Center for Housing Studies
M.E. Rinker, Sr. School of Building Construction
College of Design, Construction & Planning
University of Florida
203 Rinker Hall
P.O. Box 115703
Gainesville, Florida 32611-5703
Phone: 352-273-1192
Fax: 352-392-4364
Email: fhdc-comments@shimberg.ufl.edu

University of Georgia Risk Management & Insurance Program
Terry College of Business
Brooks Hall
310 Herty Drive
Athens, GA 30602-6269
Tel: 706-542-8100
Fax: 706-542-3835

Joint Center for Housing Studies
Harvard University
1033 Massachusetts Ave., 5th Floor
Cambridge, MA 02138
phone: 617.495.7908

State of the Nation's Housing (Harvard University - Joint Center for Housing Studies) -***Appendix tables*** *include useful historic data on homeownership.*

Lincoln Institute of Land Policy
113 Brattle Street
Cambridge, MA 02138-3400
phone: 800.526.3873

Furman Center for Real Estate and Urban Policy
New York University School of Law
40 Washington Square South
Ste. 314-H
New York, NY 10012-1099
phone: 212.998.6713

University of North Carolina Center for Community Capital
The University of North Carolina at Chapel Hill
1700 Martin Luther King Jr. Blvd, Suite 129
CB# 3452
Chapel Hill NC 27599-3452
Phone: 919.843.2140
Toll Free: 877.783.2359
Email: communitycapital@unc.edu
Web: www.ccc.unc.edu

Wharton Risk Management & Decision Processes Center
500 Jon M. Huntsman Hall
3730 Walnut Street
Philadelphia, PA 19104
(215) 898-5688
Fax: (215) 573-2130

Real Estate Center
Mays Business School
Texas A&M University
2115 TAMU
College Station, TX 77843
phone: 979.845.2031

James A. Graaskamp Center for Real Estate
University of Wisconsin
975 University Avenue
Madison, WI 53706-1323
phone: 608.262.3531

University of Wisconsin Center for Cooperatives
427 Lorch Street
Madison, Wisconsin 53706-1503
Phone: (608) 262-3981
Fax: (608) 262-3251
info@uwcc.wisc.edu

Appendix One: Basic Types of Associations By Selected Characteristics

Notes: There are links to many of the topics below in the body of the *Fact Book*.

1. Condominium: Key features and terms as follows:

(1) Statutory Basis
Creating a condominium requires a state enabling statute. The condominium is the entity or the association. The unit is the home. Some states have adopted the Uniform Common Interest Ownership Act (UCIOA) which allows for the creation of all three types of community associations (condominium, cooperative and planned community) in a single statute.

(2) Common Elements
This is everything that is not the unit. You cannot have a condominium without common elements. Each unit owner has an undivided interest in the association's common elements as a tenant in common. Unlike a housing cooperative, with a single title holding entity, condominium common elements cannot be mortgaged because they have no separate existence. Nevertheless, a condominium association can borrow money usually by pledging the assessment (fee) revenue as collateral. The exact scope of the interface between the units and the common elements, however, varies by enabling statute requirements and the plan of development as detailed by the governing document drafter. See **(9)** following for a brief discussion of condominium insurance.

(3) Unit Owner's Legal Interest, Mortgages & Equity
The owner is referred to as a unit owner or a homeowner. Unit ownership is a real property interest and hence long term amortized mortgages are available. The association may have a right of first refusal coupled with the obligation to purchase the unit if it objects to the owner's buyer as long as this objection does not interfere with a mortgagee's interest, and other state and federal regulations. Condominium associations in manufactured housing are subject to specialized underwriting. The vast majority of condominium units are not subject to equity restriction on resale unless special development funding has been secured.

(4) Key Allocations
The unit owner's allocation for expenses, liability and voting are usually tied to a unit's percentage ownership in the common elements although other measures are used. In most states, the amount of an owner's liability for uninsured losses is limited to the owner's percentage interest in the common elements – a single measure. In terms of flood insurance issues a notable exception to percentage ownership allocation is the manner in which the National Flood Insurance Program (NFIP) views the calculation of flood insurance limits.

(5) Governing Documents & Governance
The governing documents are the *Declaration of Condominium* and the *Bylaws* which are recorded in the land records. Other terms and documents such as *Trust* (only in Massachusetts), *Condominium Plan* (California) and *Master Deed* are sometimes used. The condominium comes into existence when the declaration is recorded in the land records. The association usually is incorporated under some type of nonprofit or non-business state statute. The *Plat*, depicting the units and the common elements, historically, has been a Metes & Bounds survey.

A *Public Offering Statement* (POS) may be required as well as an *Engineering Report* for either new construction or a conversion. Most states require that an election among the owners to turn over control from the developer be held when either (or both) a percentage of units is sold or after a specified period of time.

(6) Owner's Federal Tax Deductibility
Federal tax deductibility is provided for the unit owner's payment of their own mortgage interest and real estate taxes. If there is an overlay of a Special Tax District (STD), then the STD assessments paid by the owner usually are tax deductible.

(7) Condominium Tax Status
Federal taxes for the association generally are paid under either Section IRC 528 using form 1120-H or under Section IRC 277 using form 1120. Condominiums are not eligible for classification under IRC 501(c). For the most comprehensive discussion of the taxation of all types of community associations, see the **Homeowners' Association Tax Library**. State taxation also will apply. Generally, real estate taxes attach only to the unit unless the common elements produce significant revenue, say, from club house rentals, a golf course and so forth.

(8) Condominium Finances
95-98% of condominium revenue comes from assessments with the balance from interest on reserve funds and related collections. Condominiums can and do borrow from lenders primarily by pledging their assessments as an account receivable. Except for Florida and California, few states require that association financial reports be subjected to an independent review or audit. The Financial Accounting Standards Board (FASB) consolidated certain financial reporting requirements in 2009 in Section 972 of its Standards. Generally Accepted Accounting Principles (GAAP) require accrual accounting and recommend fund accounting – at a minimum, an Operating Fund and a Reserve Fund. With the exception of a few states, most associations are not subjected to detailed reserve funding requirements. Recently, Fannie Mae and FHA have stipulated certain reserve requirements. New Jersey is the only state that provides broad relief from what is termed "double taxation" – the payment for a municipal-type service both in association assessments and property taxes. Several municipalities provide relief for scavenger/garbage collection if paid for by the assessment and by property taxes.

(9) Condominium Insurance
Insuring the condominium is required by statute in every state. The specifics of the required insurance, however, vary considerably. Regardless of the state statutory requirement, the governing condominium declaration for every condominium typically requires levels of insurance, at a minimum, specified by Fannie Mae, Freddie Mac, FHA and/or VA. In terms of property protection, the critical issues typically involve the degree to which both common elements and units are insured. This is discussed in the publications, **Community Association Insurance** and **Community Association Risk Management**. A unit owner would purchase an HO-6. Until recently, an HO-6 was not required at closing for a mortgage.

(10) FHA Programs
FHA programs involving condominiums and unit owners include Section 8, Section 203(b) and Section 203(k). Section 234(c), and Section 234(d) have been withdrawn and effectively are now part of Section 203(b). State housing authorities often have their own programs. The FHA Condominium Processing Guide released on 06-30-2011 requires more detailed specifications if an association can be approved by FHA such that a buyer can obtain FHA mortgage insurance. See also **FHA Production Reports**, **FHA Single Family Loan Performance**, **FHA Single Family Origination Trends Report** and **HUD/FHA Handbooks**

(11) Primary Trade/Professional Organization
This is the Community Associations Institute (CAI).

(12) Note: Site Condominium is comprised of detached single family homes submitted to a state's condominium enabling statute. Site condominiums typically are created to accommodate zoning and similar land use regulations.

2. Cooperative: Key features and terms as follows:

(1) Statutory Basis
Creating a cooperative does not require a state enabling statute and, in fact, there usually is no such statute. Cooperatives are created by conventional real estate transactions although New York state (the location of probably 85% of all housing cooperatives), certain other states, and states with the Uniform Common Interest Ownership Act (UCIOA) provide an enabling framework for cooperatives. A single title holding entity typically owns the common elements and the unit.

(2) Common Elements
This is everything that is not in the unit. The exact scope of the interface between the units and the common elements varies primarily by the plan of development as detailed by the governing document drafter unless FHA mortgage insurance, a regulatory agreement and a recognition agreement is involved. Because there is a single title holding entity, the cooperative itself usually pays for the blanket mortgage on the building and for blanket real estate taxes for the building.

(3) Unit Owner's Legal Interest, Mortgages & Equity
The unit owner is sometimes called a shareholder, cooperator or member. The owner usually has a personal property interest in their unit although UCIOA permits enabling a real property cooperative. As a personal property interest, long term amortized mortgages are not available. The individual cooperators may have their own separate mortgages, sometimes called *Share Loans* which are obtained by pledging shares as security. If there is a blanket building mortgage and individual cooperator mortgages, then there also is usually a *Recognition Agreement* to ensure that both lender's and the cooperative's rights and interests are detailed. Typically, a shareholder has stock while a member has a membership certificate. The cooperative association usually has a right of first refusal on admitting a new member without an obligation to purchase the unit if the right is exercised (unlike in a condominium). Cooperatives in manufactured housing are subject to specialized underwriting. Of the nearly 1,200,000 housing cooperative units, around 36% are limited or fixed equity in their resale structure which means that the owner's ability to capture equity at resale is restricted. In New York, cooperative unit sales also are subject to so-called "**flip taxes**" whereby the association takes some percentage of the resale proceeds. See also **Shared Equity Housing Cooperatives**.

See also **Fannie Mae Share Loan Requirements**

(4) Key Allocations
The cooperator's allocation for expenses and voting are usually tied to the number of shares owned or some stated membership interest. Allocation of liability may be governed by state law or the governing documents.

(5) Governing Documents & Governance
These are usually called the *Proprietary Lease* (or *Occupancy Agreement*) with *Bylaws* although, if FHA mortgage insurance (or a state housing authority) is involved, there will be a *Regulatory Agreement* and an *Information Bulletin*. The cooperative always is incorporated. New York has extensive disclosure and regulatory requirements for both cooperatives and condominiums. Turnover from developer control may be subject to FHA or state/local requirements (if any).

(6) Owner's Tax Deductibility
Federal tax deductibility is provided for the shareholder's payment of their own (share loan) mortgage interest and real estate taxes (if any) plus the allocable amount of the blanket mortgage interest and blanket real estate taxes. Until 2008, a cooperator's tax deductibility hinged on the cooperative meeting an 80/20 test – if more than 20% of the cooperative's revenue came from commercial sources, then the cooperator lost deductibility for their portion of the blanket mortgage interest and real estate taxes. The tax rules have now changed such that this possibility is significantly reduced.

(7) Cooperative's Tax Status
Housing cooperatives are taxed under IRC Section 216 subject to Sub-chapter T rules and they file a form 1120-C. State taxation also will apply. Cooperatives are not eligible for treatment under IRC 501(c). See the *Homeowner's Association Tax Library* cited earlier and the National Association of Accountants for Cooperatives.

(8) Cooperative Finances
Most revenue is from assessments and interest on reserves. If the cooperative has a FHA insured mortgage, then there are specific financial reporting and reserve funding requirements. If the cooperative is in New York (and not FHA insured), then other standards apply. New York cooperatives also are funded by flip-taxes. New York cooperatives long have required a "flip tax" when a unit is sold, i.e., a percentage of the sale price has to be paid by the seller at closing although some cooperatives require the "tax" from the buyer.

(9) Cooperative Insurance:
Cooperatives are insured much like condominiums. A major exception is the area of business income insurance where cooperatives, like rental buildings, need Loss of Rents coverage. A cooperator would purchase an HO-6 if required by the association.

(10) FHA Programs
FHA programs involving housing cooperatives and cooperators include **Section 8**, **Section 202**, **Section 203(n)**, **Section 213**, **Section 221(d)(3) and 221(d)(4)** as well as **Section 221(d)(3) BMIR**, **Section 236 and other Subsidized Multi-family programs**. State housing authorities may have their own programs. See also **FHA Production Reports**, **FHA Single Family Loan Performance**, **FHA Single Family Origination Trends Report** and **HUD/FHA Handbooks**.

(11) Primary Trade/Professional Organization
The primary national organization for housing cooperatives is the National Association of Housing Cooperatives. New York has two large cooperative housing organizations, the Council of New York Cooperatives and Condominiums and the Federation of New York Cooperatives and Condominiums. Also, the National Cooperative Bank is influential in many ways besides lending to cooperatives.

3. Planned Community: Key features and terms as follows:

Note: A planned community is everything that is not a condominium or cooperative. Alternative names include homeowner association (HOA), property owner association (POA), planned unit development (PUD), and townhouse association. As with all types of community association, however, a visual inspection can be misleading and one must look at the governing documents.

Key terms and features:

(1) Statutory Basis
In most states, creating a planned community does not require a state enabling statute. To the extent that there is legal guidance or legal constraints on planned community development and operations, it comes from Fannie Mae and Freddie Mac requirements. Some planned communities undertake exterior maintenance of the homes and some 10% to 20% of planned communities are insured like a condominium or cooperative.

(2) Common Area
This is everything that is not the home. A separate corporation owns the common area and the homeowner's deed requires mandatory membership in the planned community as detailed in the governing documents that are recorded in the land records. The scope of the common area and the homes is usually quite direct in that there is no real property/building interface, as in a condominium or cooperative, between what is common and what is owned by the association. Two homes with a common wall typically are bound by a party wall agreement. Leaving that aside, however, some planned communities have assumed certain exterior maintenance responsibilities while others assumed common area insurance obligations (like a condominium or cooperative).

(3) Unit Owner's Legal Interest, Mortgages & Equity
It is a real property interest and, hence, similar to a condominium. Generally, there is no right of first refusal when an owner sells their home. Planned communities in manufactured housing are subject to specialized underwriting. Owner's equity at resale is subject to market forces unless special funding is involved. In some master planned communities with high-valued homes, there are equity recapture formulas similar to New York flip taxes payable to either the association or a related entity.

(4) Key Allocations
The homeowner's allocation for expenses, liability and voting can be divided in different ways especially under UCIOA.

(5) Governing Documents & Governance
Governing documents are typically the Declaration of Covenants, Conditions & Restrictions (CC&Rs) and the Bylaws with the association incorporated under some type of non-business state statute. The planned community comes into existence when the declaration is recorded. The Plat depicts the common area. A Public Offering Statement may be required. Turnover is patterned after condominiums, but it usually is not subject to statute. In most states, the main pressure for governance criteria comes indirectly from either Fannie Mae or Freddie Mac requirements.

(6) Owner's Federal Tax Deductibility
Deductibility is provided for the unit (home) owner's payment of their own mortgage interest and real estate taxes. If there is an overlay of a special tax district (STD), then assessments paid to the district usually are tax deductible.

(7) Planned Community's Tax Status
Federal taxes for the association generally are paid under either Section IRC 528 using form 1120-H or under Section IRC 277 using form 1120. Under certain circumstances, planned communities are eligible for classification under IRC 501(c) typically as 501(c)(4) or 501(c)(7). For the most comprehensive discussion of the taxation of all types of community associations, see the *Homeowner's Association Tax Library*. State taxation also will apply. Generally, real estate taxes attach only to the unit unless the common areas produce significant revenue, say, from club house rentals, golf courses and so forth.

(8) Planned Community Finances
Like condominiums, assessments account for most of the revenue. Since most planned communities have little common property (with amenities), reserve funds vary substantially and therefore so does interest income. While FASB 972 has financial reporting requirements for planned communities, there is little if any kind of state regulation.

(9) FHA Programs
Basically, there are no FHA programs involving the planned community per se although homeowners may benefit from FHA Section 8, Section 203(b), and Section 203(k). State housing authorities often have their own programs for home mortgages which can be used in planned communities. See also **FHA Production Reports**, **FHA Single Family Loan Performance**, **FHA Single Family Origination Trends Report** and **HUD/FHA Handbooks**

(10) Primary Trade/Professional Organization
This is the **Community Associations Institute** (CAI).

Appendix Two: Comparing Community Associations to Other Entities

				Category Total	% of Category	% of All Entities	Data Year
1. Private Non-Profit Organizations							
	1.1 501(c)(3) Public Charities			1,050,318	69.05%		2014
	1.2 501(c)(3) Private Foundations			101,558	6.68%		2014
	1.3 501(c) Other			369,176	24.27%		2014
	Total			**1,521,052**	100.00%		
			As a Percentage of All Entities			**5.36%**	
2. Governmental Units							**2012**
	2.1 U.S.			1			
	2.2 States			50			
	2.3 Local						
	1. County		3,031		3.40%		
	2. Municipal		19,522		21.92%		
	3. Township & Town		16,364		18.38%		
	4. School District		12,884		14.47%		
	5. Special District		37,203		41.78%		
	Total for Local		89,004	89,004			
			Total	**89,055**	100.00%		
			As a Percentage of All Entities			***0.31%***	
3. Businesses							**2012**
	3.1 Corporations			5,840,821	22.10%		
	3.2 Partnerships			3,388,561	12.82%		
	3.3 Nonfarm Proprietorships			23,553,850	89.10%		
			Total	**26,435,000**	100.00%		
			As a Percentage of All Entities			***93.15%***	
4. Community Associations				**333,600**			**2014**
			As a Percentage of All Entities			***1.18%***	
		Total Entities		***28,378,707***		***100.00%***	

Sources:

1. **National Center for Charitable Statistics**
2. IRS 2012 various tax return reports
3. Treese, Association Data, Inc., private files
4. **FCAR, 2014 Statistical Brief**
5. **2012 Census of Government**

Appendix Three: Comparing Association Financial Management to For-Profit & Tax-Exempt Entities

Characteristic	Type of Entity		
	For-profit Business	*Nonprofit/Tax Exempt*	*Community Association* [1]
Organizational Purpose	Profit or private inurement of owners and/or shareholders	Mission that is related to exempt types of activities	Three core services: • Business (maintenance, reserves, budgets, expense reduction) • Governance (board meetings, elections) • Community (newsletters, recycling)
Legal Structure	Corporation, partnership, nonfarm proprietorship	Usually a corporation organized under nonprofit state corporation acts, also a trust	Usually a corporation organized under nonprofit state corporation acts
Governance	Owner(s) and/or Board & shareholders	Board of Directors (as stewards)	Board of Directors, standards of care vary by state, sometimes as fiduciaries; tort immunity for boards varies by state
Management	Owners or corporate staff	Board of directors or staff	Board of Directors, self-management, may have staff or contract management
Tax Status (3)	Taxable	Tax exempt under a section of IRC 501(c) Condominiums and cooperatives can never be tax exempt under IRC 501(c) while certain Planned Communities can be exempt under 501(c)(4)	Condominiums & Planned Communities are Tax protected under IRC 528. Alternatively, they are taxed as a membership organization under IRC 277 [2] Cooperatives are tax protected under IRC 216 and usually file under Sub-Chapter T
Typical Tax Form	1120	990	1120-H or 1120 for condominiums and planned communities; 1120-C (co-ops)
Revenue Source-Primary	Sale of products or services	Donors, grants, memberships	95-98% from assessments levied on owner members for most associations

Appendix Three: Comparing Association Financial Management to For-Profit & Tax-Exempt Entities

Characteristic	Type of Entity[1]		
	For-profit Business	*Nonprofit/Tax Exempt*	*Community Association*
Distribution of Assets at Dissolution	Creditors, shareholders, owners	Another nonprofit and/or tax-exempt entity	Mortgagees and Owners; other lien holders; in some instances, a public entity may be involved
Classification of revenue (or assets)	Operating or those reserved for capital items	Restricted, temporarily restricted, unrestricted	Operating fund and replacement fund
Audited Financial Statements	1. Balance sheet 2. Statement of income and expense 3. Statement of changes in owners' equity 4. Statement of cash flows 5. Notes to financial statements	1. Statement of financial position 2. Statement of activities 3. Statement of functional expenses* 4. Statement of cash flows 5. Notes to financial statements *for voluntary health and welfare organizations	1. Balance sheet 2. Statement of revenues and expenses 3. Statement of changes in fund balances 4. Statement of cash flows 5. Notes to financial statements 6. Required supplemental information for reserves - unaudited See [4] below

Notes:

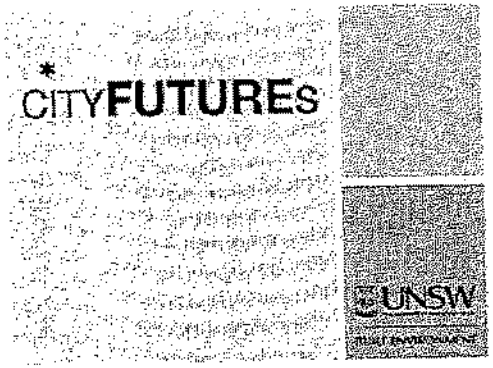
(1) Community Associations: condominium, cooperative and planned community. This definition excludes timeshares, commercial associations and special tax districts.

(2) Under IRC 277, all the association's income is potentially taxable unlike under IRC 528 which provides "tax protection." A primary distinction between IRC 277 and IRC 528 is the tax rate with IRC 528 is a flat rate of 30% while IRC 277 has a graduated corporate rate beginning at 15%. The IRC 277 form, however, is more complicated.

(3) The personal tax issues for homeowners living in a community association are best reviewed by obtaining IRS Publication #530, "Tax Information for Homeowners For Use in Preparing Returns."

(4) Financial Accounting Standards Board (FASB) codified accounting standards for common interest realty associations (CIRAs) in 2009 in FASB ASC #972.

Appendix Four: Australia Strata and Community Title Data 2012



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Data compiled by City Futures Research Centre at the University of New South Wales with the support of Strata Community Australia.

Disclaimer: This data was provided to the City Futures Research Centre by the relevant Land Titles agencies in each state and territory. Please note the limitations to the validity of the data outlined in this document. The figures presented should be considered a best estimate, rather than a definitive count of strata and community lots around Australia.

Table 1: Number of strata and community schemes by scheme type by state/territory

Scheme type[a]	NSW[1]	VIC[2]	WA[3]	QLD[4]	SA[5]	TAS[6]	ACT[7]	NT[8]	Australia
Commercial	4,903		559		1,015	421	320	185	
Industrial	2,975		906		132	30	147	148	
Mixed use	2,200		56		-	233	-	10	
Residential	64,621		26,475		16,625	6,596	2763	2,005	
Other (includes rural)	991		30,086		1,002	189	27	31	
Total	75,690	71,286	58,082	40,064	18,774	7,469	3,257	2,379	277,001
Date	Jul / Aug '11	Jul '11	Jun '11	Nov '11	Sep '11	Aug '11	Dec '11	Jul '11	

Table 2: Number of strata and community lots(b) by scheme type by state/territory

Scheme type[a]	NSW[1]	VIC[2]	WA[3]	QLD[4]	SA[5]	TAS[6]	ACT[7]	NT[8]	Australia
Commercial	94,405		3,521		7,415	2,184	9854	3,527	
Industrial	25,391		4,633		783	43	1039	1,263	
Mixed use	54,907		529		-	1,434	-	239	
Residential	539,482		102,007		85,489	10,938	26,527	13,161	
Other (includes rural)	14,595		130,436		5,657	521	955	910	
Total	728,780	419,289	241,126	382,991	99,344	15,120	38,375	19,100	1,944,125
Date	Jul / Aug '11	Jul '11	Jun '11	Nov '11	Sep '11	Aug '11	Dec '11	Jul '11	

Note:

(a) These are aggregate definitions collated by the City Futures Research Centre based on interpretation of the multiple zoning definitions provided by each state and territory.

(b) For all states and territories, total lot figures exclude any lots identified as common property (where applicable).

Notes by state:

(1) New South Wales
Figures presented include community title schemes and strata schemes.

(2) Victoria
Figures presented are estimations only. Number of schemes presented are numbers of schemes registered as 'strata plan', 'lodged plan'; 'registered plan', 'cluster subdivision' and 'plan of subdivision' which have one or more lots flagged as common property. Number of lots presented are the average number of lots for each registration type (all schemes, not only those with common property lots) multiplied by the number of schemes of each registration type with one or more lots identified as common property. One lot was then and then subtracted for each scheme identified as having one or more common property lots (this means that the number of lots is more likely to be an over-estimation, rather than an underestimation). For strata schemes only, an estimate can be made of the number of schemes and lots by registration type (see table below).

Table 3: Number of strata schemes by scheme type, Victoria

Scheme Type	All lots	Percentage of all strata lots	Lots excluding common property (estimate)
Commercial	14,129	12.27%	12,584
Industrial	11,534	10.02%	10,272
Mixed use	2,677	2.32%	2,385
Residential	85,419	74.18%	76,080
Other (includes rural)	1,392	1.21%	1,240
Total	115,151		102,561

Note: Number of strata schemes by registration type were not available (only number of lots). Total lot figures include 12,590 lots flagged as common property. When these are subtracted, the lot total is 102,561.

(a) **Western Australia**

Figures presented are for strata surveys. The 'other' figure here is high largely because 29,557 schemes and 126,274 lots did not have a registration type specified in the data provided.

(b) **Queensland**

Figures presented include Building Unit plans and Group Title plans. Figures are not readily available in Queensland regarding the type of scheme (commercial, residential etc.). This data is not held by Queensland Valuation and Sales (QVAS). Zoning information can be obtained at a Council level. Determining the number of schemes by type would require collection of this information from each of the Local Councils in Queensland.

(c) **South Australia**

Figures presented include strata schemes and community title schemes.

(d) **Tasmania**

Figures presented are for strata schemes.

(e) **Australian Capital Territory**

Figures presented include community title schemes and (Class A and Class B) unit title schemes.

Sense checking the data against the Australian Bureau of Statistics Census of Population and Housing (2006)

To sense check the numbers of properties under various forms of Strata Title across Australia the figures collected can be compared with the 2006 Census records of the total number of attached properties (Flats, units, apartments, semi-detached, townhouse etc.).
There are a number of limitations to this approach (outlined below), however, it does provide some indication as to the likelihood that the figures presented for strata and community properties are approximately correct for each state and territory.

Limitations to this sense checking approach include:

(a) Some attached properties will not be under strata or company title (including Torrens titled terraces and company titled apartments).
(b) Some properties under community title will be separate houses (including houses in master-planned estates under community title).
(c) The figures are for residential properties only, and do not provide any indication of the approximate number of non-residential strata and community title schemes.
(d) The census figures are for 2006, while the figures for strata and community title schemes are for 2011.

Table 4: Number of separate houses and attached residential properties by state and territory, 2006 compared with reported strata and community title lots by jurisdiction, 2011

State / Territory	Total attached properties ABS Census 2006	Total strata and community title lots	Difference
New South Wales	811,214	728,780	-10%
Victoria	483,170	419,289	-13%
Queensland	365,207	382,991	+5%
South Australia	137,293	99,344	-28%
Western Australia	163,403	241,126	+48%
Tasmania	28,290	15,120	-47%
Northern Territory	19,379	19,100	-1%
Australian Capital Territory	33,964	38,375	+13%
Other Territories	256		
Total	2,042,176	1,944,125	-5%

About the Foundation for Community Association Research
The Foundation provides authoritative research and analysis on community association trends, issues and operations. Our mission is to inspire successful and sustainable communities. We sponsor needs-driven research that informs and enlightens all community association stakeholders—community association residents, homeowner volunteer leaders, community managers and other professional service providers, legislators, regulators and the media. Our work is made possible by your tax-deductible contributions.

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About Community Associations Institute (CAI)
Community Associations Institute (CAI) is an international membership organization dedicated to building better communities. With more than 33,000 members, CAI works in partnership with 60 chapters, including a chapter in South Africa, as well as with housing leaders in a number of other countries, including Australia, Canada, the United Arab Emirates and the United Kingdom. CAI provides information, education and resources to the homeowner volunteers who govern communities and the professionals who support them. CAI members include association board members and other homeowner leaders, community managers, association management firms and other professionals who provide products and services to associations.

CAI serves community associations and homeowners by:

- Advancing excellence through seminars, workshops, conferences and education programs, most of which lead to professional designations for community managers and other industry professionals.
- Publishing the largest collection of resources available on community association management and governance, including website content, books, guides, *Common Ground* magazine and specialized newsletters.
- Advocating on behalf of common-interest communities and industry professionals before legislatures, regulatory bodies and the courts.
- Conducting research and serving as an international clearinghouse for information, innovations and best practices in community association development, governance and management.

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For suggestions, additions, or updates to this Community Association Fact Book State Page, please e-mail foundation@caionline.org.

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EXHIBIT D

Residential Community Associations:
Private Governments in the Intergovernmental System?

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