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FHP Ventures, A Nevada Limited Partnership

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-689113-C Dept. No.: I **APPENDIX OF EXHIBITS TO OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE**

Exhibit No.	Document	Bates No.
A	CC&Rs	APP00001-91

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B	Design Guidelines	APP00092-483
C	Uniform Common Interest Ownership Act ("UCIOA")	APP00484-755

DATED this 22nd day of June, 2015.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **APPENDIX OF EXHIBITS TO OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE** to all parties on the e-service list.

An employee of Kemp, Jones & Coulthard

EXHIBIT A

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE FOOTHILLS AT MACDONALD RANCH

TABLE OF CONTENTS

Page

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE FOOTHILLS AT MACDONALD RANCH

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is dated as of the 31st day of July, 1997, by The Foothills Partners, a Nevada limited partnership ("Declarant") with reference to the following facts and purposes:

RECITALS

A. Declarant, Richard C. MacDonald, trustee of the 42145 Trust and C/T Nevada Holding Company, a Nevada corporation, trustee No. LV 868528 and Harry E. Brandise and Ellen Diane Brandise, husband and wife as joint tenants, are the owners of approximately 1,180 acres of real property, located in the City of Henderson (the "City"), Clark County, Nevada (the "County"), described in Exhibit A (the "Additional Properties") and in Exhibit B-1 (the "Initial Properties") and, together, commonly known as "The Foothills at MacDonald Ranch" (sometimes referred to herein as "The Foothills").

B. The exact phasing of The Foothills and the exact locations of (1) residential and commercial developments, and (2) custom homes and production detached and attached homes has not yet been finally determined. In general, however, it is intended that The Foothills be developed in a manner consistent with Resolution of Intent No. 1628 (formerly 1465) (as now or hereafter amended from time to time and including any extensions thereof, the "Master Plan") initially approved by the City on December 8, 1992, and that The Foothills constitute a first class master development, taking full advantage of the unique location and terrain of The Foothills in the development of such property, at the same time maintaining the natural beauty of its setting in the hillsides. There is, however, no guaranty nor obligation that The Foothills will be developed in its entirety or in the manner so approved by the City or intended by Declarant.

C. Declarant (as to Parcel 1 on Exhibit B-1) and Harry E. Brandise and Ellen Diane Brandise (as to Parcel 2 on Exhibit B-2), as the owners of the Initial Properties, desire to establish the Initial Properties and such portions of the Additional Properties as may hereafter be subjected to this Declaration as a common interest community under the provisions of the Nevada Uniform Common Interest Ownership Act, NRS 116.010 *et seq.*, (the "Act"). The Initial Properties and any Additional Properties hereafter made subject to this Declaration are collectively referred to as the "Properties." The name of the common-interest community is The Foothills at MacDonald Ranch Master Community; the common-interest community is a planned community.

D. By this Declaration, Declarant intends to: (1) impose upon the Initial Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of real property within the Properties; (2) provide a flexible and reasonable procedure for the overall development of the Properties; and (3) establish a method for the administration,

maintenance, preservation, use and enjoyment of such real property as is now or hereafter subjected to this Declaration.

E. Although Declarant is not obligated to do so, Declarant intends to add all or a portion of the Additional Properties to the lien and charge of this Declaration. There is no guarantee, however, that such annexation will occur. When completely developed, residential units within the Properties will not exceed 2,000.

F. Declarant has caused to be formed The Foothills at MacDonald Ranch Master Association, a Nevada nonprofit corporation (the "Association"), which is the master homeowners association for the overall development of the Properties. Each Unit in the Properties shall have appurtenant to it a membership in the Association and each Owner (as defined herein) will be a "Member" in the Association.

G. The Foothills includes real property that may be developed by Declarant or others for a privately-owned and operated resort hotel, a golf club, and/or other resort or recreational facilities. There is no guarantee, however, that such uses will be a part of The Foothills. If such uses are developed within The Foothills, ownership of a residence within the Properties will not entitle an Owner to membership in any private golf club or to use any resort or other facilities.

H. The Association will be given fee title to certain private streets within the Properties as well as landscaping easements to certain areas within the Properties or located outside the perimeter wall of the Properties. The easements to be owned by the Association on behalf of its Members, upon the conveyance to an Owner of the first Unit (as defined herein) in the Initial Properties, are described in Exhibit C-1.

I. In addition to property owned for the use of its Members, the Association may also become the owner, alone or with the owner(s) of any resort hotel and/or any golf course and/or other property in The Foothills, of facilities within The Foothills (the "Multi-Use Facilities"), intended for the joint use by any or all of the Members, resort hotel guests, golf club members, other residents or occupants of The Foothills or neighboring properties or their respective, tenants, guests, invitees or licensees.

J. Before selling or conveying any interest in the Initial Properties, Declarant desires to subject the Units in the Initial Properties in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant Harry E. Brandise and Ellen Diane Brandise and any and all present and future Owners of the Properties.

NOW, THEREFORE, Declarant and Harry E. Brandise and Ellen Diane Brandise hereby declare that the Initial Properties and any additional real property which is hereafter subjected to this Declaration by a Supplemental Declaration (as defined herein) shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions, servitudes and easements, which shall run with the real property subjected to this Declaration and each of which shall also be deemed to be and construed as equitable servitudes. This Declaration shall be binding on and inure to the benefit of all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, successors-in-title and assigns.

Article 1.
DEFINITIONS

Section 1.1. Defined Terms. Terms in this Declaration that are not defined herein and undefined terms in the exhibits and schedules to this Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms are defined as set forth below. Terms that are not capitalized but are defined in the Act shall have the meaning given those terms in the Act.

"**Additional Properties**" means those portions of The Foothills that may in the future be annexed into the jurisdiction of the Association as Properties as set forth in Article 9. The Additional Properties presently consist of the real property described in Exhibit A. Inclusion of property as Additional Properties shall not, under any circumstances, obligate Declarant or the owner(s) thereof to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit A from the Additional Properties bar its later annexation in accordance with Article 9.

"**Area of Common Responsibility**" means the Common Elements, together with those areas, if any, which, by the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contract or agreement with any Neighborhood or with the respective owners or operators of the Resort Properties, become the responsibility of the Association.

"**Articles of Incorporation**" or "**Articles**" means the Articles of Incorporation of The Foothills at MacDonald Ranch Master Association, as filed with the Nevada Secretary of State

"**Assessment**" means a Base Assessment, a Special Assessment or a Specific Assessment.

"**Assessment, Base**" means assessments levied on all Units subject to assessment under Article 10 for the purpose of funding Common Expenses for the general benefit of all Units, as more particularly described in Sections 10.1 and 10.2.

"**Assessment, Special**" means assessments levied in accordance with Section 10.5.

"**Assessment, Specific**" means assessments levied in accordance with Section 10.6.

"**Association**" means The Foothills at MacDonald Ranch Master Association, a Nevada non-profit cooperative corporation without stock, its successors or assigns.

"**Board,**" or "**Board of Directors**" means the board of directors of the Association, selected as provided in the Bylaws.

"**Building Envelope**" means the maximum allowable building area on a lot or parcel within the Properties. The Building Envelope includes both the surface area on a lot or parcel, the air space above it and the subsurface below it.

"**Bylaws**" means the Bylaws of the Association in effect from time to time.

"**Common Elements**" means all real and personal property which the Association now or hereafter owns or leases or in which the Association otherwise holds possessory or use rights, including easements, for the common use and enjoyment of all or some of the Owners. The term includes the Limited Common Elements. Common Elements include or may include: (A) perimeter walls, (B) entry monumentation for the Properties, (C) entry gates or other entry areas, (D) common area landscaping within private streets and along the outside of perimeter walls, (E) private streets within the Properties, (F) bike and jogging, exercise or other pedestrian pathways and trails, and (G) open spaces which may either be landscaped or preserved in their natural state. The initial Common Elements include the real property described in Exhibit C-1.

"**Common Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Owners, including a reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws or the Articles, but shall not include expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements or other original construction costs unless approved by members representing a majority of the total vote of the Association.

"**Common Interest Community**" means that portion of The Foothills, identified as the "Properties," subject to this Declaration.

"**Community-Wide Standard**" means the standard of conduct, maintenance or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors or the Design Review Committee.

"**Construction Activities**" means any construction (new, renovated or remodeled) activity, additions, alterations, staking, clearing, grading, filling, excavations and all other development and construction type activities. Construction Activities include exterior alterations, modification of existing improvements, planting and removal of plants, trees or shrubs, and construction or alteration of walls, fences, garages, pools and spas, patio covers and playground equipment.

"**Declarant**" means The Foothills Partners, a Nevada limited partnership, or any successor, successor-in-title or assign who takes title to any portion of the property described on Exhibit A or Exhibit B-1 for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. If there is ever more than one Declarant, the rights and privileges of the Declarant shall be exercised by the Person designated from time to time by all the Declarants in a written instrument recorded in the Official Records of the County Recorder, otherwise by those Persons owning two-thirds of the potential Units which may then be made subject to this Declaration.

"**Declarant Control Period**" means the period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors, as provided in Section 15.8(a).

"**Default Rate**" means a per annum rate equal to four percent (4%) above the "reference rate" as announced from time to time by Bank of America National Trust and Savings Association (or, if Bank of America ceases to publicly announce such reference rate, the highest of the "prime rates" as set forth in *The Wall Street Journal*), but not to exceed the maximum interest rate permitted by law.

"**Delegate**" means a representative selected, in accordance with the Bylaws, by the Members within one or more Neighborhoods to be responsible for casting all votes attributable to the Units within such Neighborhood(s) on all matters requiring a vote of the Members (except as otherwise specifically provided in this Declaration and in the Bylaws). The term "Delegate" shall include an alternative Delegates acting in the absence of the Delegate.

"**Developmental Rights**" means any rights or combination of rights reserved by Declarant hereunder or pursuant to a Supplemental Declaration to (i) add real estate to the Common Interest Community (including the right of Declarant to add all or any portion of the Additional Properties to the Common Interest Community as set forth in Article 9), (ii) create Units, Common Elements or Limited Common Elements within the Common Interest Community, (iii) subdivide Units or convert Units into Common Elements, (iv) withdraw land from the Common Interest Community or (v) exercise any other right or benefit now or hereafter constituting a "developmental right" under the Act.

"**Director**" means a member of the Board of Directors.

"**Golf Club**" means any portion of the Resort Properties operated or used as a private membership golf club or golf course and/or related amenities and facilities.

"**Governing Documents**" means this Declaration, any Supplemental Declaration, the Plats, the Bylaws and the Rules, all as they be amended from time to time. Any exhibit, schedule or certification accompanying a Governing Document is a part of that Governing Document.

"**Limited Common Elements**" means a portion of the Common Elements which the Association now or hereafter owns, leases or otherwise holds possessory or use rights in for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Section 2.3. The initial Limited Common Elements are described in Exhibit C-2.

"**Master Plan**" means the Master Plan as defined in Recital A. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit A from the Master Plan bar its later annexation in accordance with Article 9.

"**Member**" means a Person entitled to membership in the Association. A "**Member in Good Standing**" means a Member whose voting rights have not been suspended in accordance with Section 4.4.

"**Mortgage**" means an interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, security agreement, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

"**Mortgagee**" means the secured party under a Mortgage.

"**Mortgagor**" means the debtor under a Mortgage.

"**Multi-Use Facilities**" includes those Common Elements, if any, described in Exhibit C-3 the use of which is authorized by Members of the Association as well as members, guests, customers and/or other invitees of the Golf Club and/or the Resort or such other Persons as may be specified in a Supplemental Declaration.

"**Neighborhood**" means each separately developed residential area within the Properties in which the Owners may have common interests other than those common to all Members of the Association and which is established pursuant to Section 3.4. A Neighborhood may be represented by a Neighborhood Association or Neighborhood Committee. For example, and by way of illustration and not limitation: (1) each townhome or condominium development, custom lot development or single-family detached housing development may constitute a separate Neighborhood; or (2) a Neighborhood may be comprised of more than one housing type with other features in common. In addition, a parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

"**Neighborhood Assessments**" means assessments levied against the Units in a particular Neighborhood to fund Neighborhood Expenses, as more particularly described in Sections 10.1 and 10.3.

"**Neighborhood Association**" means an owners association having concurrent jurisdiction with the Association over a Neighborhood.

"**Neighborhood Committee**" means a committee or other group (other than a Neighborhood Association) representing all Owners within a Neighborhood and which is approved by Declarant or the Association in accordance with the Bylaws.

"**Neighborhood Expenses**" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners within a particular Neighborhood, which may include a reasonable reserve for capital repairs and replacements.

"**Notice and Hearing**" means the right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in the Bylaws.

"**Owner**" means one or more Persons who hold the record title to a Unit, including Declarant and a Participating Builder but excluding in all cases a Person holding an interest merely as security for the performance of an obligation. If a Unit 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.

"**Participating Builder**" means a Person who purchases one or more Units for the purpose of constructing improvements thereon for later sale to consumers or who purchases parcels of land within the Properties for further subdivision, development and/or resale in the ordinary course of such Person's business; provided, however, that the term "Participating Builder" shall not include Declarant or its successors.

"**Perimeter Strip**" means a five-foot strip located within the Resort Properties consisting of the area between the perimeter of the Resort Properties abutting the Common Elements or a Unit and a distance of five feet from the boundary of the applicable Common Elements or Unit.

"**Person**" means a natural person, a corporation, a partnership, joint venture, a limited liability company, an association, a trustee, government entity or any other entity.

"**Plat**" means a recorded final subdivision map of the real property constituting all or a portion of the Common Interest Community, as required by NRS Chapter 278, as such plat may be amended from time to time, and includes the map(s) referred to in Exhibit B-1.

"**Resort**" means any portion of the Resort Properties operated or used as a resort hotel, and/or related amenities and facilities and/or other resort or recreational amenities or facilities.

"**Resort Properties**" means all or any portion of the real property described in Exhibit D-1 or such other real property in The Foothills as may, from time to time, be designated on the Master Plan as (i) golf course property or developed as a Golf Club in accordance with City zoning and land use ordinances and/or (ii) as the hotel or resort property or developed as a Resort in accordance with City zoning and land use ordinances.

"**Rules**" means the Rules and regulations of the Association adopted from time to time by the Association in accordance with this Declaration and the Bylaws as such Rules and regulations may be amended from time to time.

"**Special Declarant Rights**" means rights reserved for the benefit of Declarant under Article 15 and such other special declarant rights as may be provided for in the Act.

"**Supplemental Declaration**" means an amendment or supplement to this Declaration filed pursuant to Article 9 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to an instrument filed by Declarant pursuant to Section 3.4(b) designating Voting Groups.

"**Unit**" means a portion of the Properties, whether improved or unimproved, that may be independently owned and conveyed and which is intended for development, use and occupancy as

an attached or detached residence for a single family. The term means the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include within its meaning, by way of illustration but not limitation, condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted lots, as well as vacant land intended for development as such, but shall not include Common Elements, common property of any Neighborhood Association or property dedicated to the public. In the case of a condominium building or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent, until such time as, in the case of single family housing, a Plat is filed of record on all or a portion of the parcel or, in the case of a condominium, townhome or other multifamily housing, a certificate of occupancy is issued for the building. Thereafter, the portion encompassed by such Plat or certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph.

"Unit Charges" means the sum of the following amounts levied or charged against a Unit or that Unit's Owner: (a) Base Assessments, Neighborhood Assessments, Special Assessments and Specific Assessments; (b) payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to an Owner; (c) charges for late payment of assessments, including interest at the Default Rate, reasonable late charges and costs of enforcement and collection (whether or not suit is brought), including all costs incident to the enforcement of the Association's lien rights and remedies; (d) reasonable fines for violations of the Governing Documents; (e) charges for the preparation and recordation of amendments to the Declaration, resale certificates required by NRS 116.4109 or statements of unpaid assessments; and (f) any other payments, fees or charges required or authorized to be charged against a Unit or that Unit's Owner pursuant to this Declaration or the Act, including, in the case of a Unit Charge consisting of a payment made by or expense incurred by the Association, interest on such payment or expense at the Default Rate from the date such payment or expense is made or incurred by the Association to the date the Association is repaid the full amount of the payment or expense.

"Voting Group" means Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Section 3.4(b) or, if the context so indicates, the group of Members whose Units are represented thereby.

Section 1.2. Other Definitions. The following terms are defined elsewhere in this Declaration:

Defined Term	Section Reference
"Act"	Recital C
"Affected Owners"	Section 5.5(b)
"Alleged Defect"	Section 16.1(a)

"City"	Recital A
"Claimant"	Section 16.1(a)
"County"	Recital A
"Declarant's Agents"	Section 16.1(a)
"Declarant's Improvements"	Section 16.1
"Design Guidelines"	Section 11.3(a)
"DRC"	Section 11.2(a)
"Eligible Holder"	Section 14.1
"The Foothills"	Recital A
"Initial Properties"	Recital A
"Leasing"	Section 12.23
"MC"	Section 11.2(b)
"Notice of Alleged Defect"	Section 16.1(b)
"Party Improvements"	Section 5.5(a)
"Private Facilities"	Section 2.4
"Properties"	Recital C

Section 1.3. Miscellaneous Terms. Unless the context otherwise requires a different interpretation, the term "herein" and "hereof" refers to this Declaration (and the exhibits and schedules) as a whole and not to any specific provision. The term "or" is disjunctive; the term "and" is conjunctive. The term "shall" is mandatory, the term "may" is permissive (i.e., "may, but is not obligated to"). A pronoun in the masculine, feminine or neuter gender includes all other genders. The term "including" is by way of example and not limitation. Defined terms may be used in the singular or plural, and shall include singular and plural if the context permits such an interpretation.

Section 1.4. Nevada Revised Statutes and Other Laws. References to the Act or any specific provision of Nevada Revised Statutes ("NRS") or any other provision of federal, state or local law includes any successor statute(s) or law(s).

Article 2.
PROPERTY RIGHTS IN COMMON ELEMENTS

Section 2.1. Common Elements. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Elements, subject to:

(a) This Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in the deed conveying such property to the Association or the agreement creating the Association's rights therein.

(b) The right of the Board to adopt Rules regulating the use and enjoyment of the Common Elements, including rules limiting the number of guests who may use the Common Elements.

(c) The right of the Board to suspend the right of an Owner to use the Common Elements (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) after Notice and Hearing, for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents. Notwithstanding the foregoing, the Board may not prohibit an Owner from using any vehicular or pedestrian ingress or egress to go to or from that Owner's Unit or from using any parking assigned to a Unit.

(d) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Elements pursuant to Section 4.8.

(e) The right of the Board to impose reasonable membership requirements and charge reasonable membership, admission or other fees for the use of any facility situated upon the Common Elements, including any Multi-Use Facilities.

(f) The right of the Association, acting through the Board, to 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 Section 14.2.

(g) The rights of certain Owners to the exclusive use of those portions of the Common Elements designated Limited Common Elements, as more particularly described in Section 2.3.

(h) The Special Declarant Rights, including the right of Declarant and Participating Builders to use Common Elements for sales, development and related activities, and the right of Declarant to transfer such rights to others.

(i) The obligation of the Association to allow authorized non-Owners to use any *Multi-Use Facilities. Such use shall be subject* to the Rules, which, except for any requirement that non-Owners pay reasonable use fees, shall not discriminate between Owner and non-Owner users of the Multi-Use Facilities.

(j) The right, for a five minute period commencing on the departure of any golf ball from any property within the Resort Properties developed as a golf course or driving range, of the owner of such property and all players and guests at the Golf Club to enter upon the Common Elements to search for and recover errant golf balls. This provision should not be interpreted to allow such owner or any of such players or guests to enter a Unit.

(k) The right of the owners and/or operators of the Resort Properties, and of their respective employees and contractors to enter upon the Common Elements for the purpose of maintaining and repairing water and irrigation lines and pipes which are located in or originate from the Resort Properties and are used in connection with the irrigation or sprinkling of the Resort

Properties or Resort Properties landscaping or landscaping on the Common Elements. This provision should not be interpreted to allow such owner(s) and/or operators and their respective employees and contractors to enter a Unit.

(l) The right of the Association, acting through the Board, and the owners and/or operators of the Resort Properties to stage golf tournaments and other special events and promotions and, in connection therewith authorize temporary use of the Common Elements.

Section 2.2. Delegation of Use. An Owner may delegate, in accordance with the Bylaws, its right of enjoyment to the Common Elements and facilities thereon to the members of that Owner's family, the Owner's tenants or contract purchasers who reside in that Owner's Unit; *provided*, however, that if an Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor the Owner's family shall be entitled to use such facilities by reason of ownership of that Unit during the period of delegation. Guests of an Owner may use such facilities only in accordance with the Rules, which may limit the number of guests who may use such facilities and limit the use of the Common Elements to one co-Owner and that co-Owner's immediate family with respect to any Unit in co-ownership.

Section 2.3. Limited Common Elements. Certain portions of the Common Elements may be designated as Limited Common Elements and reserved for the exclusive use or primary benefit of Owners and occupants of particular Units or Owners and occupants of Units within one or more particular Neighborhoods. By way of illustration and not limitation, Limited Common Elements may include entry features, recreational facilities, landscaped medians and cul-de-sacs and other portions of the Common Elements within particular Neighborhoods. All costs associated with maintenance, repair, replacement and insurance of Limited Common Elements reserved for the exclusive use or primary benefit of one or more Neighborhoods shall be assessed as a Neighborhood Assessment against the Owners of Units in those Neighborhoods to which the Limited Common Elements are assigned.

Initially, any Limited Common Elements shall be designated as such and the exclusive use thereof shall be assigned in the deed by which Declarant conveys the Common Elements to the Association or on the Plat relating to such Common Elements; *provided*, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Elements to additional Units and/or Neighborhoods so long as Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1. Thereafter, applicable portions of the Common Elements may be assigned as Limited Common Elements to one or more particular Neighborhoods and Limited Common Elements may be reassigned upon the vote of Members representing a majority of the total votes in the Association, including a majority of the votes within the Neighborhood(s) to which the Limited Common Elements are to be assigned. As long as Declarant owns any property described on Exhibit A or Exhibit B-1 for development and/or sale, any such assignment or reassignment shall also require the consent of Declarant.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or Board of Directors of the Neighborhood Association for the Neighborhood(s) to which certain Limited Common Elements are assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Elements upon payment of

reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited Common Elements.

Section 2.4. No Right to Use Golf Club or Resort Facilities. EACH OWNER ACKNOWLEDGES THAT, IF A GOLF COURSE OR A RESORT IS CONSTRUCTED AS A PART OF THE FOOTHILLS, THE PURCHASE OF A UNIT BY AN OWNER DOES NOT CONFER UPON AN OWNER THE RIGHT TO USE THE GOLF COURSE, THE RESORT OR ANY OTHER FACILITIES ON THE RESORT PROPERTIES (COLLECTIVELY, THE "PRIVATE FACILITIES"). IN ORDER TO USE THE PRIVATE FACILITIES, EACH OWNER WILL BE REQUIRED TO PAY SUCH FEES AND TO SATISFY SUCH OTHER CONDITIONS AS MAY BE IN EFFECT FROM TIME TO TIME WITH RESPECT TO THE USE OF THE PRIVATE FACILITIES.

Article 3.
ALLOCATED INTERESTS, MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Allocation of Interests. Each Unit in the Common Interest Community shall (i) bear a share of the liability for Common Expenses as set forth in Section 10.2 and (ii) be entitled to the voting rights set forth in Section 3.3. The same formulas are to be used in reallocating interests if Units are added to the Common Interest Community. The effective date for assigning the allocated interests to Units created after the date hereof shall be the date on which a Supplemental Declaration annexing those Units into the Common Interest Community is recorded in the official records of the County recorder.

Section 3.2. Membership Interests. Every Owner shall be deemed to have a membership in the Association.

No Owner, whether one or more Persons, shall have more than one membership per Unit owned. If a Unit is owned by more than one Person, all co-Owners shall be entitled to the privileges of membership, subject to the restrictions on voting set forth elsewhere in this Declaration and in the Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse.

Section 3.3. Voting. Each Member shall be entitled to one equal vote for each Unit in which the Member holds the required interest under Section 3.2; there shall be only one vote per Unit. Unless otherwise specified in this Declaration or the Bylaws, the vote for each Unit shall be exercised by the Delegate representing the Neighborhood of which the Unit is a part. The Delegate may cast all such votes as the Delegate, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for that Member's Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

Section 3.4. Neighborhoods and Voting Groups.

(a) **Neighborhoods.** Every Unit will be located within a Neighborhood. The Units within a particular Neighborhood may be subject to additional covenants and/or the Owners may all be members of a Neighborhood Association in addition to the Association. However, a Neighborhood Association shall not be required except as required by law. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in the Bylaws, to represent the interests of Owners in such Neighborhood.

Each Neighborhood may require that the Association provide a higher level of service or special services for the benefit of Units in that Neighborhood upon the affirmative vote, written consent or a combination thereof, of a majority of Owners within the Neighborhood. In such event, the Association shall provide the requested services. The cost of such services shall be assessed against the Units within that Neighborhood as a Neighborhood Assessment under Section 10.3.

Each Neighborhood Association or Neighborhood Committee shall be represented by a Delegate for that Neighborhood, who shall cast all votes attributable to Units in the Neighborhood on all Association matters requiring a membership vote, unless otherwise specified in this Declaration or the Bylaws. Delegates shall be selected in accordance with the Bylaws.

The Delegate of a Neighborhood may be removed, with or without cause, by a vote or written consent, or combination thereof, of a majority of the Owners in the Neighborhood, unless a Neighborhood Declaration provides otherwise.

Exhibit B-2 to this Declaration, and each Supplemental Declaration filed to subject additional property to this Declaration, shall initially assign the property described therein to a specific Neighborhood by name, which Neighborhood may be then existing or newly created. Declarant may unilaterally amend this Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries. Thereafter, two or more Neighborhoods shall not be combined without the consent of Owners of a majority of the Units in the affected Neighborhoods.

The Owner(s) of a majority of the total number of Units within any Neighborhood may at any time petition the Board of Directors to divide the property comprising the Neighborhood into two or more Neighborhoods. Such petition shall be in writing and shall include a plat or survey of the entire parcel which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units to be included within the proposed Neighborhood(s). Such petition shall be granted upon the filing of all required documents with the Board unless the Board of Directors denies such application in writing within thirty (30) days of its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) **Voting Groups.** A Voting Group covers a larger number of Units than a Neighborhood Committee or Neighborhood Association, and is intended to promote representation

on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which Members representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, thereby excluding representation of others. The establishment of more than one Voting Group is not required by this Declaration, and in the absence of the establishment of more than one Voting Group, all Units shall belong to one and the same Voting Group. Each Voting Group shall be entitled to elect the number of Directors specified in the Supplemental Declaration providing for the creation of Voting Groups. Any other members of the Board of Directors shall be elected at large by all Members without regard to Voting Groups.

Exhibit B-2 to this Declaration and each Supplemental Declaration filed to subject additional property to this Declaration may initially assign the property described therein to a specific Voting Group by name, which Voting Group may be then existing or newly created thereafter .

Declarant may establish Voting Groups not later than the date of expiration of the Declarant Control Period by filing with the Association and in the official records of the County recorder a Supplemental Declaration identifying each Voting Group and designating the Units within each group. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Declarant Control Period. Thereafter Voting Groups may only be established upon the vote of a majority of the Members. Until such time as Voting Groups are established by Declarant or, if Declarant or the Association fails to establish Voting Groups, all Units shall be assigned to the same Voting Group.

Section 3.5. Right to Notice and Hearing. Whenever the Governing Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed (in the absence of any more specific requirements set forth in the Bylaws): The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, a property manager, etc.) shall give written notice of the proposed action to (i) all Owners or occupants of Units whose interest would be significantly affected by the proposed action or, (ii) in the case of violations of the Governing Documents, the alleged violator. The notice shall include a general statement of the proposed action and the date, time and place of the hearing and any specific matters required by this Declaration, the Bylaws or by law. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 3.6. Appeals. Any Person having a right to Notice and Hearing shall have the right to appeal to the Board of Directors from a decision of persons other than the Board of Directors by filing a written notice of appeal with the Board of Directors within 10 days after being notified of the decision. The Board of Directors shall conduct a hearing within 60 days, giving the same notice and observing the same procedures as were required for the original hearing.

Section 3.7. Right to Notice and Comment. Before the Board of Directors amends the Bylaws or the Rules, whenever the Governing Documents require that an action be taken after "Notice and Comment" and at any other time the Board of Directors determines, the Owners have

the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than 10 nor more than 60 days before the proposed action is to be taken. It shall invite comment to the Board of Directors orally or in writing before the scheduled time of the meeting.

Section 3.8. Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws or the Rules, vesting the person with interest required to make him or her a Member. At the same time, the Member will provide the Association with the single name and address to which the Association will send any notices given pursuant to the Governing Documents. The Member will state in such notice the voting interest in the Association to which the Member believes he or she is entitled and the basis for that determination. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to the Association containing all of the information required to be covered in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

Section 3.9. Owners and Association's Addresses for Notice. All Owners of each Unit shall have one and the same registered mailing address to be used by the Association or other Owners for notices, demands, and all other communications regarding Association matters. The Owner or Owners of a Unit shall furnish such registered address to the Secretary of the Association within five days after transfer of title to the Unit to such Owner or Owners. Such registration shall be in written form and signed by all of the Owners of the Unit or by such persons as are authorized by law to represent the interests of all Owners of the Unit.

If no address is registered or if all of the Owners cannot agree, then the address of the Unit shall be deemed their registered address until another registered address is furnished as required under this Section.

If the address of the Unit is the registered address of the Owners, then any notice shall be deemed duly given if delivered to any person occupying the Unit or sent to the Unit by any other means specified for a particular notice in any of the Governing Documents, or, if the Unit is unoccupied, if the notice is held and available for the Owners at the principal office of the Association. All notices and demands intended to be served upon the Board of Directors shall be sent to the address of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

Unless applicable provisions of this Declaration or the Act expressly require otherwise, all notices given under this Declaration shall be sent by personal delivery, which shall be effective upon receipt, by overnight courier service, which shall be effective one business day following timely deposit with a courier service; or regular, registered or certified mail, postage prepaid, which shall be effective three days after deposit in the U.S. mail.

Article 4.
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 4.1. Common Elements. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Elements and all improvements thereon (including furnishings, equipment and common landscaped areas), and shall keep them in good, clean, attractive and sanitary condition and good order and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

Section 4.2. Personal Property and Real Property for Common Use. The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant may convey to the Association improved or unimproved real estate located within the properties described in Exhibit A or Exhibit B-1, personal property and leasehold and other property interests. Upon conveyance or dedication by Declarant to the Association, such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions or limitations set forth in the deed of conveyance. Declarant shall convey the initial Common Elements to the Association prior to the conveyance of a Unit to any Person other than a Participating Builder.

Section 4.3. Rules and Regulations. The Association may make and enforce reasonable rules and regulations governing the use of the Properties or for other purposes as otherwise provided in this Declaration or the Bylaws (the "Rules"), which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees and licensees, if any, until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Members representing a majority of the total votes in the Association and by the Declarant during the Declarant Control Period. The Rules shall be uniformly enforced.

Section 4.4. Enforcement. The Association shall be authorized to impose sanctions for violations of the Governing Documents. Sanctions may include, after Notice and Hearing, reasonable monetary fines and suspension of the right to vote and to use any Common Elements (other than necessary access and parking) or Multi-Use Facilities. In addition, the Association, through the Board, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or such Owner's Unit in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. Any person authorized by the Board of Directors shall have the right of access to all portions of the Properties for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Common Elements, *provided* that a request for entry into a Unit is made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time. The Board shall have the power to seek relief in any court for violations of the Governing Documents or to abate nuisances.

Section 4.5. Rights, Powers and Privileges. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Bylaws or the Articles as well as all rights, powers and privileges given to associations under the Act and all rights, powers and privileges given to a corporation organized under Chapter 82 of NRS. The Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Without limiting the foregoing, the Association may assign its future income, including its right to receive Common Expense assessments, upon the affirmative vote, at a meeting called for that purpose, of a majority of the Members and of Declarant, so long as it owns any land subject to this Declaration, and with the Eligible Mortgagee consent described in Article 14.

Section 4.6. Governmental Interests. For so long as Declarant owns any property described on Exhibit A or Exhibit B-1, the Association shall permit Declarant to designate sites within the Properties for fire, police, water and sewer facilities, public or private schools and parks and other public facilities. The sites may include Common Elements owned by the Association.

Section 4.7. Indemnification. The Association shall indemnify every officer, director and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director or committee member 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.

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, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers, directors or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein 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.

Section 4.8. Dedication of Common Elements. The Association, acting upon the vote of two-thirds of the Board of Directors, shall have the power to dedicate portions of the Common Elements to the City, County or to any other local, state or federal governmental entity, subject to such approval as may be required by Article 14.

Section 4.9. Security. The Association may, but shall not be obligated to, maintain, operate or support certain activities within the Properties designed to make the Properties safer than they otherwise might be, in accordance with the following provisions:

(a) **Operation by Association**. The Association may operate and maintain a security system within the Common Elements and/or Properties which may include a guard gate, security personnel and an alarm system to which the Units may be connected. The Association may require that Owners agree in writing to the terms and conditions upon which any security system is to be provided and for procedures upon which such terms and conditions may be modified. If a security system is maintained by the Association, the Association may later elect to terminate, materially modify or otherwise change such system.

(b) **Association Easement**. The Association is hereby granted the right and easement to enter any Unit (but not the residence improved thereon unless such authority is specifically given) in answer to an alarm or when circumstances reasonably causes security personnel to believe that a present security risk justifies such entrance.

(c) **Management of Security System**. The Association may manage and control a security gate and other amenities of the security system and the Board may promulgate reasonable rules and regulations regarding the usage by Owners and their guests of the security gate and the types of alarms and other equipment that may be connected to the system.

(d) **No Degradation of Systems**. No Owner shall do anything which shall degrade the effectiveness of any Association maintained or operated security system and each Owner shall exercise the greatest care to not lose any card key, remote control device or similar equipment which might be used with such a security system.

(e) **No Warranty of Effectiveness**. **NEITHER DECLARANT NOR THE ASSOCIATION WARRANTS THAT THE FOOTHILLS WILL BE A FULL SECURITY PROJECT, NOR DO THEY WARRANT THAT THE SECURITY SYSTEM WILL PREVENT CRIMINAL ACTIVITY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT NEITHER THE ASSOCIATION AND ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, NOR ANY SUCCESSOR DECLARANT REPRESENTS OR WARRANTS THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ASSOCIATION OR ITS BOARD OF DIRECTORS OR ANY COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP OR OTHERWISE; NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS AND**

INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DECLARANT OR ANY SUCCESSOR 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, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.

Section 4.10. Powers of the Association Relating to Neighborhoods.

(a) **Required Neighborhood Actions.** The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association or Neighborhood Committee 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, by written notice, specific action to be taken within a reasonable time by any Neighborhood Association or Neighborhood Committee in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Properties. Without limiting the generality of the foregoing, the Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association or Neighborhood Committee, and (b) require that a proposed budget include certain items and that expenditures be made therefor.

(b) **Costs of Compliance.** The applicable Neighborhood Association or Neighborhood Committee shall take the action required by the preceding paragraph within the time set by the Association. If the Neighborhood Association or Neighborhood Committee fails to comply with the requirements set forth in the written notice, the Association shall have the right to effect such action on behalf of the Neighborhood Association or Neighborhood Committee. To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess the Units in such Neighborhood for their pro rata share of any expenses incurred by the Association in taking such action in the manner provided in Section 10.5(b). Such assessments may be collected as a Special Assessment hereunder and shall be subject to all lien rights provided for herein.

(c) **Neighborhood Association Right to Delegate to Foothills Association.** If, and to the extent expressly so provided within a declaration affecting any Neighborhood or as agreed to in writing with any Neighborhood Association having jurisdiction thereof (and without intending to limit the functions of the Association with respect to the Common Elements), those functions that can be performed by the Association within a Neighborhood subject to a declaration are as follows:

(i) Perform security services, hire and employ security personnel, establish and maintain security devices and equipment. Undertake traffic control and parking enforcement duties.

(ii) Establish, develop, maintain, replace and repair landscape elements within, and within 25 feet of, private and public street rights-of-way lines, including the planting or locating and maintenance of street trees, shrubs, plants of any nature, drainage structures, sidewalks, drives, street lighting, signs, traffic control systems, bus stop shelters, street furniture, fences and other structures that, in the opinion of the Association, will integrate and aesthetically enhance the properties subject to its jurisdiction, create a unity of style and appearance and enhance the safety and welfare of the inhabitants and invitees of the Properties.

(iii) Develop a system of communications, including security and internal electronic communications, news letters, bulletin boards and flyers, that will develop the identity of The Foothills as a self-identified community and enhance the safety and welfare of its inhabitants and invitees.

(iv) Establish a system for the enforcement and permitting of changes to the external appearance of the buildings and structures within a Neighborhood under the architectural review covenants, in accordance with the standards established in the applicable declaration or under this Declaration.

Article 5.
MAINTENANCE

Section 5.1. Association's Responsibility.

(a) **Area of Common Responsibility**. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to:

(i) all landscaping and other flora, parks, structures, and improvements, including any private streets, bike and jogging, exercise and other pedestrian pathways and trails, situated upon the Common Elements;

(ii) landscaping within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easement within the Properties, subject, in each case, to the terms of any agreement relating thereto between the Association and the applicable governmental entity or utility;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any contract or agreement for maintenance thereof entered into by the Association or any deed conveying any Common Elements to the Association;

(iv) all areas within the Properties which serve as part of the drainage, flood control and storm water retention system for the Properties, including any hillsides, slopes and vegetation and any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

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

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.

(b) Neighborhood Property. 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 Units 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.

(c) Other Property. The Association may maintain other property which it does not own, including the Perimeter Strip and property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(d) Common Expense. Except as otherwise specifically provided herein or in the covenants, contract or agreement creating the Association's responsibility with respect to any particular Area of Common Responsibility, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) 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. All costs associated with maintenance, repair and replacement of Limited Common Elements shall either be a Neighborhood Expense assessed as a Neighborhood Assessment against the Units within the Neighborhood(s) to which the Limited Common Elements are assigned or a Specific Assessment against the Unit to which the Limited Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

(c) **Reclaimed Water**. The use of reclaimed effluent water to irrigate landscaping located in the Common Elements, in any Area of Common Responsibility or in the Resort Properties is hereby authorized.

Section 5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas and other improvements comprising the Unit, together with (i) all property comprising the Unit which is outside the Building Envelope and (ii) any Party Improvements in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration applicable to such Unit. In addition to any other enforcement rights available to the Association, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 10.5(b). However, 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.

Section 5.3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, 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 and/or private streets 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 the same.

Any Neighborhood Association whose common property is adjacent to any portion of the Common Elements upon which a wall, other than a wall which forms part of a building, is constructed shall maintain and irrigate that portion of the Common Elements between the wall and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the Common Elements or right-of-way between the property line and the nearest curb of such roadway.

Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within such Neighborhood pursuant to additional covenants applicable to that Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any Neighborhood Association fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Section 10.5(b).

Section 5.4. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable

declarations and covenants. Neither the Association, an Owner or a Neighborhood Association shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own (or, in the case of easement rights, control) except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

Section 5.5. Party Walls, Fences and Driveways.

(a) General Rules of Law to Apply. Each wall, fence, driveway or other improvements built as a part of the original construction on the Units which shall serve and or separate any two adjoining Units (as applicable, "Party Improvements") shall constitute a party wall, party fence or party driveway, as applicable, and the joint use and enjoyment thereof is hereby conferred on such adjoining Units and the Owners, occupants, invitees and licensees thereof. To the extent not inconsistent with the provision 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.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of Party Improvements shall be shared equally by the Owners entitled to the benefits of the Party Improvements (the "Affected Owners").

(c) Damage and Destruction. If any Party Improvements are destroyed or damaged by fire or other casualty, the Affected Owners or any of them may proceed to repair or reconstruct the Party Improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11. The costs of repair or reconstruction shall be the equal responsibility of all Affected Owners (and/or their respective insurers) and any Affected Owner(s) undertaking the repair or reconstruction of Party Improvements under this Section shall be entitled to the proceeds of any applicable insurance proceeds maintained by the Affected Owners for such purposes and, to the extent not covered by insurance, to contribution for the costs of such repairs and restoration from all other Affected Owners in the same proportions as are payable by the Affected Owners for repair and maintenance costs of the Party Improvements. If the Affected Owners do not promptly commence and thereafter diligently prosecute to its completion the repair and reconstruction of any damaged Party Improvements, the Association, shall have the right to commence and/or complete the necessary repairs and reconstruction and assess the costs thereof against the affected Units as provided in Section 10.5(b). No contribution to the cost of repair and restoration will prejudice the right to call for a larger contribution from any Affected Owner or any other Person under any rule of law regarding liability for negligent or willful acts or omissions.

(d) 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.

Section 5.6. Perimeter Walls. Walls and/or fences around the exterior boundary of the Project ("perimeter walls") constructed or to be constructed by Declarant or a Participating Builder, are Improvements all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Units. By acceptance of a deed to a Unit, each Owner on whose Unit a

portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to such portion of the perimeter wall ("unit wall"): to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the unit wall at all times in good repair; and, if and when reasonably necessary, to replace the unit wall to its condition and appearance as originally constructed. No changes or alterations (including, without limitation, temporary alterations, such as removal of the unit wall for construction of a swimming pool or other Improvements) shall be made to the perimeter walls, or any portion thereof, without the prior written approval of the DRC or MC. If any Owner shall fail to insure, or to maintain, repair or replace his or her unit wall within sixty (60) days when reasonably necessary, in accordance with this Section 5.6, the Association shall be entitled to insure, or to maintain, repair or replace such unit wall, and to assess the full cost thereof against the Owner as a Special Assessment which may be enforced as provided for in this Declaration. The foregoing notwithstanding, the Association, at its sole expense, shall be responsible for removing or painting over any graffiti from or on the exterior sides of the perimeter walls.

Article 6.
INSURANCE AND CASUALTY LOSS

Section 6.1. Association Insurance.

(a) **Property Insurance.** The Association shall have the authority to and shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Elements and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

In addition, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and continue in effect adequate blanket "all-risk" property insurance on common elements within such Neighborhood, *if reasonably available. If "all-risk" property* insurance is not generally available at reasonable cost, then fire and extended coverage may be substituted. Such coverage may be in such form as the Board of Directors deems appropriate. The face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment. All policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association and to the Neighborhood Association, if any.

(b) **Liability Insurance.** The Board also shall obtain a public liability policy covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents or contractors while acting on behalf of the Association. If generally available at reasonable cost, the public liability policy shall have at least a One Million ($1,000,000.00) Dollar combined

single limit as respects bodily injury and property damage and at least a Three Million ($3,000,000.00) Dollar limit per occurrence and in the aggregate.

(c) **Common Expense**. Except as otherwise provided above with respect to property within a Neighborhood and except as otherwise provided in the declaration, covenants, contract or agreement creating the Association's responsibility with respect to any particular Area of Common Responsibility, premiums for all insurance on the Area of Common Responsibility shall be a Common Expense and shall be included in the Base Assessment. However, premiums for insurance on Limited Common Elements may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

(d) **Deductibles**. Insurance policies maintained by the Association may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. 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 Hearing that the loss is the result of the negligence or willful conduct of one or more Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Unit(s) pursuant to Section 10.5(b).

(e) **General Policy Requirements**. All insurance coverage obtained by the Board of Directors, whether obtained on behalf of the Association or a Neighborhood, shall be governed by the following provisions:

(i) All policies shall be written with a company authorized to do business in Nevada which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(ii) All insurance shall be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Elements 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 Neighborhood Association, if any, the Owners of Units within the Neighborhood and their Mortgagees, as their interests may appear.

(iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, occupants or their Mortgagees.

(v) All property insurance policies shall have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the County.

(vi) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

A. a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, officers, committee members, employees and manager, the Owners and their tenants, servants, agents and guests;

B. a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

C. a statement that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

D. a statement that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Association, its manager, any Owner or Mortgagee;

E. a statement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration; and

F. a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification or non-renewal.

(f) **Fidelity Bonds**. The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The amount of fidelity coverage shall be determined in the Board of Directors's best business judgment but, if reasonably available, may not be less than one-sixth of the annual Base Assessments on all Units plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

(g) **Other Insurance**. In addition to other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, and directors' and officers' liability coverage, if reasonably available. The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association or the Owners.

Section 6.2. Owners Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" property insurance on its Unit and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible), unless either the Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures composing its Unit or any Party Improvements, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 11 and, in the case of Party Improvements, the requirements of Section 5.5. Alternatively (but subject to Section 5.5 and the requirements of Article 12), the Owner shall clear the Unit of all debris and ruins and thereafter shall maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

Additional recorded declarations or covenants applicable to any Neighborhood may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within such Neighborhood and the standards for clearing and maintaining the Units if the structures are not rebuilt or reconstructed.

Section 6.3. Damage and Destruction.

(a) **Repair Estimates.** Immediately after damage or destruction by fire or other peril to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) **Obligation to Repair.** Any damage to or destruction of the Common Elements shall be repaired or reconstructed unless the Members representing at least seventy-five percent (75%) of the total votes in the Association and the Declarant, during the Declarant Control Period, decide within sixty (60) days after the loss not to repair or reconstruct.

Any damage to or destruction of the common property of any Neighborhood Association shall be repaired or reconstructed unless the Owners representing at least seventy-five percent (75%) of the total vote of the Neighborhood Association decide within sixty (60) days after the damage or destruction not to repair or reconstruct.

If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within the required decision period, then the

period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements or common property of a Neighborhood Association shall be repaired or reconstructed.

(c) **Election Not to Repair**. If it is determined in the manner described above that the damage or destruction to the Common Elements or to the common property of any Neighborhood Association will not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of such property shall be cleared of all debris and ruins. Thereafter such property shall be maintained by the Association or the Neighborhood Association, as applicable, in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Section 6.4. Disbursement of Proceeds. Any insurance proceeds remaining after defraying the costs of repair or reconstruction or, if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association or the Neighborhood Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 6.5. Repair and Reconstruction. If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Elements or to the common property of a Neighborhood Association, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

Article 7.
NO PARTITION

Except as is permitted in this Declaration or amendments hereto, there shall be no judicial partition of the Common Elements or any part thereof. No Person acquiring any interest in the Properties or any part thereof shall seek or be entitled to any judicial partition unless the Properties or such portion thereof have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Article 8.
CONDEMNATION

Whenever all or any part of the Common Elements 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 sixty-seven percent (67%) of the total votes in the Association and of Declarant, as long as Declarant owns any property described on Exhibit A or Exhibit B-1) by any authority

having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Elements on which improvements have been constructed, then the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available, unless within sixty (60) days after such taking Declarant, so long as Declarant owns any property described in Exhibit A or Exhibit B-1 of this Declaration, and Members representing at least seventy-five percent (75%) of the total vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions in Article 6 regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

If the taking does not involve any improvements on the Common Elements or if there is a decision made not to repair or restore or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors shall determine.

Article 9.
ANNEXATION AND WITHDRAWAL OF PROPERTY

Section 9.1. Annexation Without Approval of Membership. Declarant shall have the unilateral right, privilege and option, from time to time at any time until all property described on Exhibit A has been subjected to this Declaration or December 31, 2012, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit B. Declarant shall have the unilateral right to transfer to any other Person, including a Participating Builder, the right, privilege and option to annex additional property, herein reserved to Declarant, *provided* that such transferee shall be the developer of at least a portion of the real property described in Exhibit A or Exhibit B-1 and such transfer is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a Supplemental Declaration annexing such property in the official records of the County recorder. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 9.2. Annexation With Approval of Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit A, and following the expiration of the right in Section 9.1, any property described on Exhibit A, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the votes of the Association represented at a meeting duly called for such purpose and the consent 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.

Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the official records of the County recorder. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

Section 9.3. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Common Interest Community pursuant to this Article 9, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by Declarant or its affiliates or the Association from the provisions of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

Section 9.4. Additional Covenants and Easements. Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by Supplemental Declaration to additional declarations, covenants, conditions, restrictions and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional declarations, covenants, conditions, restrictions and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant.

Section 9.5. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in Exhibit A or Exhibit B-1.

Article 10.
ASSESSMENTS

Section 10.1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time be authorized by the Board of Directors, to commence at the time and in the manner set forth in Section 10.8. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Units; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 10.5; and (d) Specific Assessments as described in Section 10.6. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest the Default Rate computed from the date the delinquency first occurs, late charges, reasonable attorney's fees and other costs of collection, shall be a charge on the land and, until paid, shall be a continuing lien upon each Unit against which the assessment is made, as more particularly provided in Section 10.7. Each such assessment, together with interest, late charges, reasonable attorney's fees and other costs of collection, also shall be the

personal joint and several obligation of the Person or Persons who was or were the Owner or Owners of such Unit at the time the assessment arose. In the event of a transfer of title to a Unit, the grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance if such grantee expressly assumes such obligation. No first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title, except to the extent otherwise provided in Section 10.7(b).

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. 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.

No Owner may waive or otherwise exempt itself from liability for the assessments, including by non-use of Common Elements or abandonment of the Unit. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board or any representative of either to take some action or perform some function required to be taken or performed by the Association or Board or such representative under the Governing Documents, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association are undertaken to comply with any law, ordinance or with any order or directive of any municipal or other governmental authority.

Section 10.2. Computation of Base Assessment. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in Section 10.4.

The Base Assessment shall be levied equally against all Units (subject, however, to the provisions of Section 10.14 with respect to Units acquired by the Association in the exercise of the Association's lien rights). The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves, *provided*, however that, in determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units subject to assessment under Section 10.8 on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as Declarant or any transferee of Declarant pursuant to Section 9.1 (including a Participating Builder) has the right unilaterally to annex additional property pursuant to Article 9, Declarant or such transferee may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy as provided in Section 10.9. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the Members. The payment of such subsidy in any year shall under no

circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment to be levied against each Unit for the following year to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least seventy-five percent (75%) of the total votes in the Association and seventy-five percent (75%) of the total number of Members and by the Declarant, during the Declarant Control Period. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members for a special meetings of the members in accordance with the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

Notwithstanding the foregoing, however, if the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a new budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 10.3. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set a Neighborhood budget only to the extent that this Declaration, any Supplemental Declaration or the Bylaws authorizes the Board to assess certain costs as a Neighborhood Assessment, unless a Neighborhood requests that additional services or a higher level of services be provided by the Association, and in such case, the Board may add any additional costs attributable to such services (including Association overhead costs) to the applicable Neighborhood budget. Each Neighborhood budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood. Neighborhood Expenses shall be allocated equally among all Units within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment; *provided*, if so specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by the Neighborhood in writing to the Board of Directors, 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 benefitted Units in proportion to the benefit received.

The Board shall cause a copy of each Neighborhood budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the affected Neighborhood for the coming year to be delivered to each Owner of a Unit in the affected Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. The budget and assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten percent (10%) of the Units in the affected 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 not to services mandated by the Board.

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

Section 10.4. Reserve Budget and Capital Contribution. The Board of Directors shall annually prepare reserve budgets for both general and Neighborhood purposes which 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 set any required capital contribution and the annual Base Assessments and Neighborhood Assessments in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 10.2 and 10.3.

Section 10.5. Special Assessments.

(a) Unbudgeted Expenses. In addition to other assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if the Special Assessment is for Common Expenses, or against the Units within a Neighborhood if the Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of Members (if a Common Expense) or Owners in the affected Neighborhood (if a Neighborhood Expense) representing at least sixty-seven (67%) percent of the total votes allocated to Units which will be subject to the Special Assessment and the affirmative vote or written consent of the Declarant, during the Declarant Control Period. 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, if the Board so determines.

(b) Costs to Cure Non-Compliance. The Association may levy a Special Assessment against any Unit or Neighborhood to reimburse the Association for costs incurred in bringing the Unit or Neighborhood into compliance with the provisions of the Governing Documents. Such Special Assessments may be levied upon the vote of the Board after Notice and Hearing.

Section 10.6. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items or services not provided to all Units within a Neighborhood or within the Properties that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees or guests.

Section 10.7. Liens for Unit Charges.

(a) **Creation of Lien.** The Association shall have a lien against any Unit to secure payment of all Unit Charges from the time the Unit Charge becomes due. Such lien, when delinquent, may be enforced by suit, judgment and judicial or nonjudicial foreclosure as hereinafter provided. Recording of this Declaration constitutes record notice and perfection of such lien. Further recording of a claim of lien for assessment under this Section is not required.

(b) **Lien Priority.** A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a liens and encumbrances recorded before the recordation of this Declaration; (2) a first Mortgage on a Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Mortgages described in clause (2) of this Section to the extent that the Common Expense assessments are based on the periodic budget adopted by the Association pursuant to Section 10.5 and would have become due in the absence of acceleration, during the six months immediately preceding institution of an action (including recordation of a notice of default) to enforce either the Association's lien or a Mortgage described in clause (2) of this Section. This Section does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision of NRS Chapter 115.

Section 10.8. Date of Commencement of Assessments. Subject to the provisions of Section 10.19, the obligation to pay the assessments provided for herein shall commence as to each Unit on the first day of the month after the later to occur of the following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Section 10.9. Failure to Assess. The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to 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 for the last year for which an assessment was made, if any, *until a new assessment is* made, at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 10.10. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof *other than Declarant or a Participating Builder*, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual Base Assessment per Unit for that year as determined by the Board. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the Bylaws.

Section 10.11. Exempt Property Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments, Neighborhood Assessments and Special Assessments:

(a) all Common Elements;

(b) all property dedicated to and accepted by any governmental authority or public utility, including public schools, public streets and public parks, if any; and

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

Section 10.12. Delinquent Assessments; Acceleration. Any assessment or installment thereof not paid within thirty (30) days after it is due, shall bear interest from the due date until paid at the Default Rate. The Board may require a delinquent Owner to pay a late charge in addition to the interest described above to compensate the Association for increased bookkeeping, billing and other administrative costs. No such late charge shall exceed the maximum amount allowable by law. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of acceleration to the Owner and to each Mortgagee of the Unit which has requested in writing a copy of the notice, specifying: (1) the fact that the assessment or installment thereof is delinquent, (2) the action required to cure the default, (3) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default may be cured and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of any installments of assessments for the then current fiscal year and sale of the Unit. The notice shall further inform the Owner of its right to cure after acceleration. If the delinquent installment and any charges thereon and any other installments thereafter becoming due are not paid in full on or before the date specified in the notice, the Board, at its option, may declare the entire unpaid balance of the assessment levied against such Owner and such Owner's Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessment and all charges thereon in any manner authorized by law and this Declaration.

Section 10.13. Enforcement of Lien by Sale. If an Owner of a Unit does not pay any Unit Charges in full, within thirty (30) days after notice from the Board of the amount due, then the Association may record, in the official records of the County recorder, a notice of delinquent assessment in the manner now or hereafter required by Nevada law. Such notice of delinquent assessment shall state the amount(s) of the Unit Charges, the name of the record Owner of the Unit and a description of the applicable Unit against which the Unit Charge has been made and shall be signed by an authorized representative of the Association. Upon payment or other satisfaction of Unit Charges described in the notice of delinquent assessment, together with all other Unit Charges thereafter becoming due, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien noticed by the notice of delinquent assessment.

If, after recording of the notice of delinquent assessment, the Owner of a Unit fails, within thirty (30) days, to pay or otherwise satisfy the unpaid Unit Charges, including all other Unit charges thereafter becoming due, then the Association may, at any time within three (3) years after

the notice of delinquent assessment was recorded, enforce the lien of the Unit Charges by sale of the applicable Unit. In exercising its power of sale, the Association shall have such rights, shall comply with such requirements and conditions and shall follow such procedures as are set forth in the Act, including the provisions of NRS 116.31162 and NRS 116.31164. Such a sale must be conducted in the County and may be conducted by the Association, its agent or attorney or a title insurance company or escrow agent licensed to do business in Nevada. A sale may be conducted at the office of the Association if the notice of sale so provides.

Section 10.14. Exercise of Power of Sale in Enforcement of Lien. The power of sale relative to the lien created pursuant to Article 10 and evidenced by the recorded notice of delinquent assessment may not be exercised until (i) the Board, its agent or attorney has first executed and caused to be recorded in the official records of the County recorder, a notice of default and election to sell in which the deficiency in payment is described and the intention to sell the Unit or cause its sale to satisfy the lien is noted and (ii) a period of sixty (60) days has expired following the later of: (A) the day on which the notice of default and election to sell is recorded, or (B) the day on which a copy of the notice of default and election to sell is mailed by certified or registered mail, return receipt requested, to the Owner or its successor in interest at its address, if known, otherwise to the Unit address.

If, upon expiration of said 60-day period, the amount of the Unit Charges (including Unit Charges subsequently becoming due) remains unpaid and unsatisfied, the Association or other person conducting the sale, before selling the Unit shall give notice of the time and place of the sale in the County in the manner provided by the laws of the State of Nevada for the sale of real property upon execution, except that a copy of the notice of sale must be mailed, on or before the first publication or posting, to the Owner or its successor in interest at its address, if known, otherwise to the Unit address.

The Association or other person conducting the sale may, from time to time, postpone such sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale. On the day and at the time of sale so advertised, or to which such sale is postponed, the person conducting the sale may sell the Unit at public auction to the highest cash bidder, at the place in the County specified in the notice of sale. The Association, through an officer authorized by the Board, is authorized to bid and purchase at such sale, and the amount of the Unit Charges shall be deemed "cash" for bidding purposes. The Association, acting on behalf of the Owners, shall have the power to hold, lease, mortgage and convey any Unit so purchased, *provided* that during the period in which a Unit 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 Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure.

The Board, its agent or attorney, may, after the recording of the notice of default and election to sell, waive or withdraw the same or any proceedings thereunder, in which event the Association shall be restored to its former position and have and enjoy the same rights as though such notice had not been recorded.

After the sale, the person conducting the sale make execute and, after payment is made, deliver to the purchaser or its successor or assign, a deed (without warranty) to the Unit so sold which shall convey to the grantee all the title of the Owner in the Unit, and shall apply the proceeds of the sale for the following purposes in the following order:

(a) The reasonable expenses of sale;

(b) The reasonable expenses of securing possession before sale, holding, maintaining and preparing the Unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and reasonable attorney's fees and other expenses incurred by the Association as provided for in this Declaration;

(c) Satisfaction of the Association's lien;

(d) Satisfaction in the order of priority of any subordinate claim of record; and

(e) Remittance of any excess to the Owner.

Upon the sale of the Unit conveyed and the execution of a deed or deeds therefor, the recital therein of default and of the mailing of the notice of delinquent assessment and of the recording of the notice of default and election to sell, of the lapsing of the 60-day period and of the giving of the notice of sale shall be conclusive proof of the matters recited and that the sale was regularly and validly made. Subject to the provisions of NRS 116.31166, any such deed or deeds with such recitals therein shall be effectual and conclusive against the Owner, its heirs and assigns and all other persons, and the receipt for the purchase money recited in a deed executed to the purchaser as aforesaid shall be sufficient discharge to such purchaser from all obligation to see to the proper application of the purchase money.

Every sale made under the provisions of this Section *10.14 shall vest in the purchaser* the title of the Owner without equity or right of redemption.

Section 10.15. Alternative Lien Enforcement Procedures. If any procedures for enforcement of a lien by sale as set forth in Article 10 should become or be determined to be invalid or ineffective by appropriate legislative or judicial action, the Board and the Association shall have such rights, shall comply with such requirements and conditions and shall follow such procedures as may be established under the laws of the State of Nevada relative to the enforcement of assessments for common expenses and other charges in common interest communities, whether by sale or otherwise. In the absence of any such laws, the Association's lien may be enforced and foreclosed upon by sale of the Unit conducted in accordance with the laws of the State of Nevada for judicial and/or non-judicial foreclosure of deeds of trust. The remedies set forth herein shall be in addition to any other remedies provided by law or in equity for the enforcement of such liens and obligations, including the institution of legal proceedings against the applicable Owner personally. Nothing herein shall require the Board or the Association to pursue any remedies set forth herein or otherwise available at law or in equity in any particular order or priority.

Section 10.16. Rights to Receive Notices of Default and Sale. The Person authorized to record the notice of default and election to sell shall within ten (10) days of recording such notice, cause to be deposited in the United States mail an envelope, registered or certified and with postage prepaid, containing a copy of such notice, addressed to each Person entitled to notice under NRS 107.090. In addition, the Person authorized to make the sale authorized by Section 10.14 at least twenty (20) days before the date of sale shall cause to be deposited in the United States mail, an envelope, registered or certified and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each Person entitled to notice under NRS 107.090. In addition, copies of such notices of default and notices of sale shall be given, within the time required by NRS 107.090 to each Mortgagee or its successor in interest, guarantor or insurer on the applicable Unit, that has submitted a written request for notice to the Association in accordance with Article 14 or is otherwise entitled to such notice under Article 14.

Section 10.17. Estoppel Certificate. Upon payment of a reasonable fee and upon a written request of an Owner, the Association shall furnish a written statement setting forth the amount of all Unit Charges, broken down by category, due or accrued and then unpaid with respect to such Owner and or its Unit, and the amount of the Assessments for the then current fiscal year payable with respect to the Unit, which statement shall, with respect to the Person to whom it is issued, be conclusive against the Association that no greater or other amounts are then due or accrued and unpaid as of the date of issuance of such statement.

Section 10.18. Resale and Other Certificates. Upon payment of a reasonable fee and upon a written request of an Owner, the Association shall furnish any certificate or other documents required by the Act, including any certificate required to be given under NRS 116.4109 upon the resale of a Unit.

Section 10.19. Subsidies and Like Kind Contributions. During the Declarant Control Period, Declarant or any transferee of Declarant's right, under Section 9.1, to annex additional property or, under Section 15.1, of the Developmental Rights, (including any *Participating Builder*) may annually elect either to pay Base Assessments on all of the Units which it owns, or to pay to the Association the difference between the amount of Base Assessments collected on all other Units subject to assessment and the amount of actual expenditures required to operate the Association during the fiscal year. Unless Declarant or such transferee otherwise notifies the Board of Directors in writing at least sixty (60) days before the beginning of each fiscal year, Declarant or such transferee shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Declarant's or such transferee's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or a combination of these.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials or a combination of services and materials with Declarant, a Participating Builder or other entities for the payment of some portion of the Common Expenses.

Article 11.
ARCHITECTURAL STANDARDS

Section 11.1. General. No structure shall be placed, erected or installed upon a Unit, and no Construction Activity shall take place except, in each case, in strict compliance with this Article, including obtaining approval of the appropriate committee pursuant to Section 11.2. All Construction Activities shall be based on guidelines that take into account the unique setting of the Properties in the hillside area, the requirements of applicable city ordinances and, if applicable, approved engineering plans.

Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of its Unit or to paint the interior of its Unit (not visible from outside the Unit) any color desired. However, modifications or alterations to the interior of a Unit, including screened porches, patios and similar portions of a Unit which are visible from outside the Unit shall be subject to the same approval or other Construction Activities under this section. No permission or 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 provided such Construction Activities are conducted in accordance with the provisions of this Declaration governing the activities themselves.

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 licensed building designer and, if required by the DRC or any other committee established by the Board of Directors pursuant to this Article, approved engineering plans. All structures shall be located within any applicable Building Envelope.

This Article shall not apply to the Construction Activities of Declarant, nor to Construction Activities with respect to the Common Elements by or on behalf of the Association.

This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

Section 11.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the DRC, as described in Section 11.2(a), subject to the right of the Board of Directors to exercise such DRC rights as it determines and subject to the right of the Board of Directors and the DRC to delegate additional functions or reviews to other committees. The members of the committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require fees to be paid in full prior to review of any application.

(a) Design Review Committee. The Design Review Committee ("DRC") shall consist of at least three (3), but not more than five (5), persons and shall have exclusive jurisdiction

over all original construction on any portion of the Properties. Until one hundred percent of the Additional Properties have been developed and conveyed to Owners other than Participating Builders, Declarant retains the right to appoint all members of the DRC who shall serve at the discretion of Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the DRC, who shall serve and may be removed at the discretion of the Board of Directors.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee ("MC") of at least three and no more than five (5) persons, all of whom shall be appointed by, and shall serve at the discretion of, the Board of Directors. In the absence of an MC, the powers of the MC shall be exercised by the Board of Directors or any committee to whom such authority is delegated by the Board. Members of the MC may include architects, engineers or similar professionals who are not Members of the Association. The MC, if established, shall have exclusive jurisdiction over Construction Activities consisting of modifications, additions or alterations made on or to existing structures on Units or containing Units and the open space, if any, appurtenant thereto. *Provided*, however, the MC may delegate its authority as to a particular Neighborhood to the appropriate board or committee of the Neighborhood, if any, subsequently created or subsequently subjected to this Declaration so long as the MC has determined that such board or committee has in force review and enforcement practices, procedures and appropriate standards at least equal to those of the MC. Such delegation may be revoked and jurisdiction reassumed at any time by written notice. Notwithstanding the above, the DRC shall have the right to veto any action taken by the MC which the DRC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the DRC.

Section 11.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all Construction Activities within the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics and intended use thereof.

The DRC shall adopt the Design Guidelines at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time to time, without the consent of the Owners.

The DRC shall make the Design Guidelines available to Owners and Participating Builders who seek to engage in development of or construction upon all of any portion of the Properties and all such Persons shall conduct their activities in strict accordance with the Design Guidelines. In the discretion of Declarant, the Design Guidelines may be recorded in the official records of the County recorder, in which event the recorded version, as it may unilaterally be amended from time to time by the DRC by recordation of amendments thereto, shall control in the event of any question as to which version of the Design Guidelines was in effect at any particular time.

Amendments to the Design Guidelines adopted from time to time in accordance with this Section shall only apply to Construction Activities commenced after the date of such amendment, and shall not require modifications to or removal of structures previously approved by the DRC or MC once the approved Construction Activities have commenced (as determined by the Board).

The MC may promulgate detailed application and review procedures and design standards governing its area of responsibility and practice. Any such standards shall be consistent with those set forth in the Design Guidelines and shall be subject to review and approval or disapproval by the DRC.

(b) Submission of Plans. Plans and specifications showing the nature, kind, shape, color, size, materials and location of the subject matter of the Construction Activities shall be submitted to the appropriate committee for review and approval (or disapproval). In reviewing each submission, the committee may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation, among other things.

In the event that the DRC or MC fails to approve or to disapprove any application within sixty (60) days after submission of all information and materials reasonably requested, the application shall be deemed approved. 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 in writing by the DRC pursuant to Section 11.5.

(c) Licensed Contractors, Architects. All Construction Activities shall be undertaken by contractors properly licensed under the laws of the State of Nevada. All plans and specifications applicable to the Construction Activities shall, to the extent required by law, be prepared by architects, engineers or other consultants properly licensed under the laws of the State of Nevada. The DRC and MC may require that all contractors, subcontractors, material suppliers, architects, engineers and others performing Construction Activities register with the Association.

(d) Representative. If anyone other than an Owner requests approval of Construction Activities, the DRC or MC may require that the owner designate such representative in writing.

(e) Interpretation. All questions or interpretation or construction of any of the terms or conditions in this Article shall be resolved by the DRC, and its decision shall be final, binding and conclusive on all of the parties affected.

Section 11.4. Deposit. When plans and specifications applicable to Construction Activities are submitted to the DRC or MC pursuant to these restrictions, the submission shall, at the request of the DRC or MC, be accompanied by a deposit of up to $1,000.00 (or such greater amount as the Board of Directors shall from time to time approve) to guarantee that the construction site during the course of Construction Activities will be maintained reasonably free of debris at the end of each working day and that the Construction Activities will be completed and the drainage sales and structures will correctly drain surplus water to the street or other approved locations, all

as shown on the plans and specifications submitted to, and approved by, the DRC or MC. In the event of any violation of the provisions of this Article, the DRC or MC may give written notice thereof to the Owner of the Unit in question and the registered architect, engineer or contractor in charge that if such violation is not cured or work commenced to cure the same within forty-eight (48) hours after the mailing of such notice, the DRC or MC may correct or cause to be corrected the violation and use the deposit or as much thereof as may be necessary to cover the cost of such correction work and, in such event, require that the deposit be restored or increased. If the cost of curing a violation exceeds the amount of the deposit, the excess cost shall be paid by the Owner of the Unit in question to the DRC or MC, as applicable. The deposit, or any part thereof remaining in the hands of the DRC or MC at the completion of the construction work, shall be returned by the DRC or MC, as applicable, to the Person who made the deposit.

Section 11.5. Inspection. Inspection of work and correction of defects therein shall proceed as follows.

(a) Upon the completion of any work for which approved plans are required under this Article, the Owner or the Owner's representative shall give written notice of completion to the DRC or MC.

(b) Within ninety (90) days thereafter, the DRC or MC or its duly authorized representative, may inspect such improvement. If the DRC or MC finds that such work was not done in substantial compliance with the approved plans, it shall notify the Owner or the Owner's representative in writing of such noncompliance within such ninety (90) day period, specifying the particulars of noncompliance and shall require the Owner to remedy the same.

(c) If, upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such noncompliance, the DRC or MC shall notify the Board in writing of such failure. After affording such Owner Notice and Hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of no more than thirty (30) days from the date of announcement of the Board ruling. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may either remove the noncomplying improvement or modification or remedy the noncompliance, and the Owner shall reimburse the Association upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board thereof may levy a Special Assessment against such Owner for reimbursement.

(d) If for any reason the DRC or MC fails to notify the Owner or Owner's representative of any noncompliance within ninety (90) days after receipt of the written notice of completion from the Owner or Owner's representative, the applicable improvements or modifications shall be deemed to be in accordance with the approved plans.

Section 11.6. Diligently Prosecute Work. Construction Activities shall be prosecuted diligently from the commencement thereof and the same shall be completed within a reasonable time, not to exceed twelve (12) months, in accordance with the requirements herein

contained; *provided*, however, that the time for completion shall be extended by the period of delays in construction caused by strikes, inclement weather or other causes beyond the control of the Owner. No outbuilding shall be completed prior to the completion of the dwelling, except that temporary storage and convenience facilities may be erected for workmen engaged in construction, but such temporary facilities shall be removed as soon as the construction is completed.

Section 11.7. No Waiver of Future Approvals. The approval of either the DRC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 11.8. Variance. The DRC 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 rules and 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 the restrictions set forth in this Declaration; or (c) stop the DRC 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.

Section 11.9. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the DRC nor the MC shall bear any responsibility of ensuring the structural integrity or soundness of approved Construction Activities, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, any committee or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

Section 11.10. Enforcement. Any Construction Activities performed in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Declarant, an Owner shall, at its own cost and expense, remove the nonconforming improvements, alteration or other work and shall restore the property to substantially the same condition as existed prior to the nonconforming Construction Activities. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the Unit or other property, remove the violation, and restore the property to substantially the same condition as existed prior to the nonconforming Construction Activities. All costs, together with the interest at the Default Rate, may be assessed against the offending Unit and collected as a Special Assessment pursuant to Section 10.5(b).

Any contractor, subcontractor, architect, engineer, agent, employee or invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in this Declaration. In such event, neither the Association, its officers or Board of

Directors member shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the DRC and MC.

Article 12.
USE RESTRICTIONS

The Properties shall be used only for residential, recreational and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association) consistent with this Declaration, any Supplemental Declaration and amendments to either. Any Supplemental Declaration or additional declaration or covenants imposed on property within any Neighborhood may impose stricter standards than those contained in this Article. The Association, acting through the Board of Directors, shall have standing and the power to enforce such standards.

Section 12.1. Signs. No sign of any kind shall be erected within the Properties without the prior written consent of the Board of Directors, except entry and directional signs installed by Declarant and such signs as the Association or this Declaration may not lawfully prohibit. If permission is granted to any Person to erect a sign within the Properties or if the placement of specified types of signs within the Properties may not lawfully be prohibited by this Declaration or the Association, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Except as provided above, no signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted within or outside the Properties shall be displayed or posted within the Properties.

Section 12.2. Parking and Prohibited Vehicles.

(a) Parking. Vehicles for Owners or the licensee of an Owner shall be parked in the garages or in the driveways, if any, serving the Units or in appropriate spaces or designated areas in which parking may or may not be assigned. Vehicles shall be subject to such reasonable rules and regulations as the Board of Directors or the Neighborhood Association, if any, having concurrent jurisdiction over parking areas within the Neighborhood, may adopt. Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules.

(b) Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board or by the Neighborhood Association, if any, having concurrent jurisdiction over parking areas within a particular Neighborhood. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the

Properties except within enclosed garages. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen consecutive days without the prior approval of the Board. Service and delivery vehicles may be parked in the Properties for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Elements. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed, following the giving of any notice required by this Declaration or the Bylaws.

Section 12.3. Occupants Bound. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Each Owner shall cause all occupants of his or her Unit to comply with the Governing Documents. An Owner shall be responsible for all violations and losses to the Common Elements caused by the occupants of such Owner's Unit, notwithstanding that the occupants of the Unit are fully liable and may themselves be sanctioned for a violation of the Governing Documents.

Section 12.4. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any portion of the Properties other than dogs, cats or other usual and common household pets in a number and of a type not in violation of city ordinances or other laws. However, those pets which are permitted to roam free, or, in the sole discretion of the Board, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties shall be removed upon request of the Board. If the pet owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred or maintained for any commercial purpose. All dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person. The Board also shall have the authority to restrict or prohibit the keeping of breeds of dogs or other usual and common household pets with a known history of dangerous or vicious behavior.

Section 12.5. Quiet Environment. Nothing shall be done or maintained on any part of a Unit which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort or serenity of the occupants and invitees of other Units. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties.

No noxious, illegal or offensive activity shall be carried on upon any portion of the Properties, if, in the reasonable determination of the Board, the activity tends to cause embarrassment, discomfort, annoyance or nuisance to Persons using the Common Elements or to the occupants and invitees of other Units. No outside burning shall be permitted within the Properties, other than customary household barbecues, fireplaces, fire pits, gas heaters and similar household devices used in compliance with City ordinances and owned and maintained in accordance with all applicable laws. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Properties.

Section 12.6. Unsightly or Unkempt Conditions. All portions of a Unit outside of enclosed structures shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored or kept outside of enclosed structures on a Unit which, in the determination of the Board of Directors, causes an unclean, unhealthy or untidy condition to exist or is obnoxious to the senses. Any structures, equipment or other items which may be permitted to be erected or placed on the exterior portions of Units shall be kept in a neat, clean and attractive condition and shall promptly be removed upon request of the Board if, in the judgment of the Board, they have become rusty, dilapidated or otherwise fallen into disrepair. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any part of the Properties. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve hours.

No Owner or occupant shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any street, open area, drainage ditch, stream, pond or lake, or elsewhere within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff.

Section 12.7. Antennas. No exterior antennas, aerials, satellite dishes, masts or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be installed or maintained on any Unit or upon any portion of the Properties except in conformity with the rules and regulations adopted by the Association applicable to the installation and maintenance of such devices and improvements, in effect from time to time, which the Association shall make available to all Owners.

Section 12.8. Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc. In addition to the applicable provisions of the Design Guidelines, all basketball hoops and backboards, clotheslines, garbage cans, above-ground storage tanks and structures, mechanical equipment and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets and property located adjacent to the Unit. All rubbish, trash and garbage shall be stored in appropriate containers approved pursuant to Article 11 and shall regularly be removed from the Properties and shall not be allowed to accumulate.

Section 12.9. Subdivision of Unit and Time Sharing. No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors. Declarant, however, for itself and any transferee of Developmental Rights pursuant to Section 15.1, hereby expressly reserves the right to subdivide, change the boundary line of, and replat any Unit(s) or other portion of the Project owned by Declarant or such transferee. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit 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 with respect to Units which it owns.

Section 12.10. 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. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

Section 12.11. Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties. However, Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating any Common Elements or Area of Common Responsibility. All sprinkler and irrigation systems serving Units shall draw upon public water supplies only and shall be subject to approval in accordance with Article 11. Private irrigation wells are prohibited on the Properties, unless maintained by the Association or Declarant. No sprinkler or irrigation systems on a Unit shall be permitted to irrigate the areas outside the Building Envelope on that Unit.

Section 12.12. Tents, Mobile Homes and Temporary Structures. Except as may be permitted by Declarant or the DRC during initial construction within the Properties, no tent, shack, mobile home or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties. Party tents or similar temporary structures may be erected on a Unit within the Building Envelope or on Common Elements designated for such purposes for a limited period of time for special events in accordance with the written policies of the Board or with prior written approval of the Board.

Section 12.13. Grading, Drainage and Septic Systems. No Person shall alter the grading of any Unit without prior approval pursuant to Article 11. Catch basins, drainage areas and landscaped areas on a Unit outside the Building Envelope are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant or, after the Declarant Control Period, the Association (or, if applicable, the DRC or MC) may obstruct or rechannel the drainage flows after location and installation of (i) landscaping outside of the Building Envelope or (ii) drainage swales, storm sewers or storm drains or channels. Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit within the Building Envelope without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of Declarant or, after the Declarant Control Period, except in strict compliance with the Design Guidelines and upon prior approval in accordance with Article 11, are prohibited within the Properties.

Section 12.14. Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except in strict compliance with the Design Guidelines and upon prior approval in accordance with Article 11. In the event of an intentional or unintentional violation of this Section, the violator may be required by the Board or other body having jurisdiction to replace the removed tree with one or more comparable trees of

such size and number and in such locations as the Board or such body determines, in its sole discretion, is necessary to mitigate the damage.

Section 12.15. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 12.16. Lighting. Except for traditional holiday decorative lights, which may be displayed for two months prior to and one month after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article 11.

Section 12.17. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation, permanent or temporary flagpoles, sculpture, fountains, flags, birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted except in accordance with the Design Guidelines and any approvals required under Article 11.

Section 12.18. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article 11, except as otherwise permitted by NRS 111.239. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any Unit.

Section 12.19. Playground. No jungle gyms, swing sets or similar playground equipment shall be erected or installed on any Unit without prior written approval of the MC in accordance with Article 11. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 12.20. Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article 11.

Section 12.21. Business Use. No business, trade, garage sale, moving sale, rummage sale or similar activity may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers or other business invitees or door-to-door solicitation of residents of the Properties; and (d) 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.

The terms "business" and "trade," as used in this provision, 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 provider's family and for which the provider 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.

Notwithstanding the above, the leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by Declarant or a Participating Builder approved by Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

Section 12.22. On-Site Fuel Storage. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Properties. However, up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 12.23. Leasing of Units. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, a fee, service, gratuity or emolument. (The defined term applies as well to all derivations of the word "lease.") Units may be leased only in their entirety. No fraction or portion may be leased. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. No transient tenants may be accommodated in a Unit. All leases shall be in writing and shall be for an initial term of no less than thirty (30) days, except with the prior written consent of the Board of Directors. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable rules regulating leasing and subleasing.

All leases and rental agreements shall be in writing and subject to the requirements of the Governing Documents and the Association. All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association and any applicable Neighborhood Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Governing Documents against the tenant, *provided* the Association or, if applicable, the Neighborhood Association gives the landlord notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

Section 12.24. Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees, shall comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties. Any violation may be considered a violation of this Declaration. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

Section 12.25. **Single Family Occupancy**. No Unit shall be occupied by more than a single family. For purposes of this restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than two persons who are not so related as a single household Unit, and the household employees of either such household unit.

Section 12.26. **Water and Mineral Operations**. No oil or water drilling, oil or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted on any Unit. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals shall be erected and maintained or permitted on any Unit.

Section 12.27. **Doors and Windows**. No "burglar bars," steel or wrought iron bars or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior of any windows or doors of any dwelling. No signs, numbers or other writing shall be written on or placed in the doors or windows of an occupied dwelling, either temporarily or permanently. All windows of an occupied dwelling on a Unit which are visible from the street or other Units shall have drapery, curtains, blinds or other permanent interior window treatments, and all portions which are visible from outside the dwelling shall be white or off-white in color, unless otherwise approved in writing by the Board. Sheets or similar temporary window treatments may be used for a short time after taking occupancy of a dwelling, provided they are removed and replaced with permanent window treatments within a reasonable time after taking occupancy of the dwelling, as determined in the sole discretion of the Board of Directors.

Section 12.28. **Residential Dwelling**. The primary structure constructed on each Unit shall be an attached or detached single family residential dwelling located within the Building Envelope; any other structure shall be constructed only after approval by the appropriate committee pursuant to Article 11

Article 13.
EASEMENTS

Section 13.1. **Easements of Encroachment**. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of the Governing Documents) 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, an Owner, occupant or the Association

Section 13.2. **Easements for Utilities, Etc.** There are hereby reserved unto Declarant, so long as Declarant owns any property described on Exhibit A or Exhibit B-1, the Association and the designees of each (which may include the City, the County and any utility) access and maintenance easements upon, across, over and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, jogging

and bicycle pathways, landscaping, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities, including water, sewers, meter boxes, telephone, gas and electricity, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. Notwithstanding anything to the contrary herein, this easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing dwelling on a Unit, and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

Without limitation of the generality of the foregoing, there are hereby reserved for the local sanitation district, water supplier, electric company, telephone company, cable television provider and natural gas supplier easements across all the Common Elements for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical, telephone or CATV lines, water lines or other utilities may be installed or relocated on the Properties, except as may be approved by the Board of Directors or as provided by Declarant.

Section 13.3. Easements to Serve Additional Property. Declarant and its duly authorized agents, representatives and employees, as well as its successors, assigns, licensees and mortgagees, shall have and hereby reserves an easement over the Common Elements for the purposes of enjoyment, use, access and development of the Property described in Exhibit A attached hereto and incorporated herein, 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 Elements 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 Elements 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 any of the property described in Exhibit A and such property or any portion thereof 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 maintenance of any access roadway serving such property. Such agreement shall provide for sharing of costs based on the ratio which the number of residential dwellings on that portion of such property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Properties and on the property which is served by the easement.

Section 13.4. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to Article 5, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by the Board of Directors, officers, agents, employees, managers and all police officers, fire and ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the

possibility of a fire or other hazard. In the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Section 13.5. Easement Over Resort Properties for Benefit of Association. Declarant expressly reserves for the benefit of the Association, its agents, employees and contractors, an easement over the Perimeter Strips, for the purpose of maintaining the planted landscaping on the Perimeter Strips in a condition substantially equal to the landscaping located on the Common Elements. Notwithstanding the Association's reservation of this easement, the respective owners and/or operators of the Resort Properties shall be responsible for maintaining their properties, including any Golf Club and Resort facilities and improvements, and all expenses associated with the maintenance, repair and upkeep of their respective properties, and neither the Association nor any Owner shall have any responsibility to maintain any portion of the Resort Properties including the Perimeter Strip. Complaints by the respective owners of the Resort Properties regarding the failure of an Owner to maintain his Unit or the failure of the Association or a Neighborhood Association to maintain the Common Elements under its control must be filed with the Board. The Association or Neighborhood Association shall respond to any such written complaint within thirty (30) days of receipt of the complaint.

Section 13.6. Grant of Easements. Every Unit is hereby burdened with an easement allowing golf balls hit by any golfers using the Golf Club to come over and on each such Unit. All golfers using the Golf Club shall have an easement to come on each Unit for the purpose of seeking and retrieving such golf balls, provided that golfers shall not have the right to use such easement to come on any fully fenced Unit. The foregoing easement shall not relieve golfers using the Golf Club of any liability they may have for property damage or personal injury resulting from the entry of golf balls or golfers on any Unit.

Section 13.7. Waiver of Liability. THE DECLARANT, THE ASSOCIATION AND ITS MEMBERS (IN THEIR CAPACITY AS MEMBERS), THE PARTICIPATING BUILDERS, THE OWNER AND OPERATOR OF THE GOLF CLUB, AND ANY SUCCESSOR IN TITLE TO THE GOLF CLUB, AND ANY AGENTS, SERVANTS, EMPLOYEES, DIRECTORS, OFFICERS, AFFILIATES, REPRESENTATIVES, RECEIVERS, SUBSIDIARIES, PREDECESSORS, SUCCESSORS AND ASSIGNS OF ANY SUCH PARTY, SHALL NOT IN ANY WAY BE RESPONSIBLE FOR ANY CLAIMS, DAMAGES, LOSSES, DEMANDS, LIABILITIES, OBLIGATIONS, ACTIONS OR CAUSES OF ACTION WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ACTIONS BASED ON (A) ANY INVASION OF AN OWNER'S USE OR ENJOYMENT OF THE UNIT, (B) IMPROPER DESIGN OF THE GOLF COURSE, (C) THE LEVEL OF SKILL OF ANY GOLFER (REGARDLESS OF WHETHER SUCH GOLFER HAS THE PERMISSION OF THE MANAGEMENT TO USE THE GOLF COURSE), OR (D) TRESPASS BY ANY GOLFER ON THE UNIT, THAT MAY RESULT FROM PROPERTY DAMAGE OR PERSONAL INJURY FROM GOLF BALLS (REGARDLESS OF NUMBER) HIT ON THE UNIT, OR FROM THE EXERCISE BY ANY GOLFER OF THE EASEMENTS GRANTED HEREBY.

Section 13.8. Other Easements. In addition to the easements set forth elsewhere in this Declaration or on the Plat, all other easements or licenses to which the Common Interest Community is presently subject are recited on Exhibit B-3. In addition, the Common Interest Community may be subject to other easements or licenses granted by Declarant pursuant to its powers reserved under Article 15 of this Declaration.

Article 14.
MORTGAGEE PROVISIONS

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

Section 14.1. Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage who provides 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 Unit 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 Unit 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 owned by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or Bylaws relating to such Unit by the Owner or occupant which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is, upon written request to the Association, entitled to written notice from the Association of any default in the performance by an Owner of a Unit of any obligation under the Declaration or Bylaws which is not cured within sixty (60) days;

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

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

Section 14.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of Section 14.1. Without the consent of Delegates representing at least sixty-seven percent (67%) of the votes and of Declarant, so long as it owns any land subject to this Declaration, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Common Elements which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subsection);

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner of a Unit, *provided* that a decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Properties regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Declaration;

(c) by act or omission change, waive or abandon any scheme of regulations of enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Elements, *provided* that the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision;

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Elements losses for other than the repair, replacement or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Elements and may pay overdue premiums on property insurance policies or secure new property insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 14.3. Other Provisions for First Lien Holders. To the extent possible under Nevada law:

(a) Any restoration or repair of the Properties after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Declaration and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

Section 14.4. Amendments to Governing Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage or condemnation pursuant to Section 14.3 (a) and (b), or to the addition of land in accordance with Article 9.

(a) The consent of Members representing at least sixty-seven percent (67%) of the votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of the Eligible Holders of first Mortgages on Units to which at least sixty-seven percent (67%) of the votes of Units subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Members representing at least sixty-seven percent (67%) of the votes and of Declarant, so long as it owns any land subject to this Declaration, and the approval of Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to a Mortgage appertain, shall be required to materially amend any provisions of the Governing Documents (other than the rules and regulations), or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of the Common Elements;

(iv) insurance or fidelity bonds;

(v) rights to use the Common Elements;

(vi) responsibility for maintenance and repair of the Properties;

(vii) expansion or contraction of the Properties or the addition, annexation or withdrawal of Properties to or from the Association;

(viii) boundaries of any Unit;

(ix) leasing of Units;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Unit;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors or insurers of first Mortgages on Units.

Section 14.5. **No Priority.** No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other Person priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

Section 14.6. **Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the Mortgagee encumbering that Owner's Unit.

Section 14.7. **Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of its

respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may record an amendment to this Article to reflect such changes.

Section 14.8. Applicability of Article 14. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or the Act for any of the acts set out in this Article.

Section 14.9. 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 thirty (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.

Section 14.10. FHA/VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of the Federal Housing Administration or the United States Department of Veterans Affairs, if either such agency (or any successor thereto) is insuring or guaranteeing the Mortgage on any Unit: annexation of additional property other than that described on Exhibit A, dedication of Common Elements, mortgaging of Common Elements or material amendment of this Declaration.

Article 15.
DEVELOPMENTAL RIGHTS AND SPECIAL DECLARANT RIGHTS

Section 15.1. Reservation of Developmental Rights. The right to exercise all Developmental Rights by Declarant with respect to all or any portion of the Properties and the Additional Properties is hereby reserved through and including December 31, 2012, subject only to *(a) the provisions of this Declaration and (b)* not more than a total of 2,000 Units may be created within the Common Interest Community. Developmental Rights may be exercised with respect to different parcels of real estate at different times, and no assurances are made by Declarant regarding whether Developmental Rights will be exercised or the order in which portions of the Common Interest Community or all of the Common Interest Community will be developed. The exercise of all or any Developmental Rights as to some portions of the Common Interest Community will not obligate Declarant to exercise all or any Developmental Rights as to other portions. Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred to other Persons, including a Participating Builder, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or in the Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the official records of the County recorder. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit A in any manner whatsoever.

Section 15.2. Reservation of Rights by Association. The following rights are reserved to the Association:

(a) The right by amendment to allocate as Limited Common Elements all or portions of any of the Common Elements which the Board of Directors unanimously determines exclusively benefits a Neighborhood. No assurance is given that such Common Elements will be allocated, and no such allocation may be made if a result thereof would be to deprive any portion of the Common Interest Community of necessary ingress, egress, access or utility easements or services.

(b) The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the private streets or any other Common Elements for the purpose of furnishing utility and other services to buildings or other improvements to be constructed on the Properties, and the right to withdraw and grant easements to public utility companies, other utility providers or Neighborhood Associations and to convey utility improvements within those easements for the purposes mentioned above.

(c) The right to contract with a Neighborhood Association, Declarant, the City or any governmental agency, the respective owners and/or operators of the Resort Properties, a property management firm or any other Person to provide the required maintenance or repair of the Common Elements or any portion thereof.

Section 15.3. Limitations on Developmental Rights. The Developmental Rights reserved in Section 15.1 and the Association rights reserved in Section 15.2 are subject to the limitation that the quality of construction of any improvements on the Properties shall be consistent with the quality of those constructed by Declarant or any Participating Builder pursuant to this Declaration as of the date it is recorded in the official records of the County recorder.

Section 15.4. Special Declarant Rights. Declarant reserves all special declarant rights permitted by the Act or otherwise described in this Declaration, including, notwithstanding any provisions contained in this Declaration to the contrary, the right of Declarant and any Participating Builder authorized by Declarant to maintain and carry on within the Properties, including the Common Elements, such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient or incidental to the construction or sale of Units or the development of the Common Interest Community. Without limiting the foregoing or any other provision contained in this Declaration, Declarant reserves the following Special Declarant Rights:

(a) To complete the roadway, utility, landscape, perimeter walls and irrigation, drainage or other improvements indicated on a Plat or within the land, easements and rights of way constituting the Common Elements.

(b) To exercise any Developmental Right.

(c) To maintain models, sales offices, management offices, signs and displays advertising the Common Interest Community within the Properties, including the right to use any clubhouse or community center owned by the Association, as sales or management offices and including the right to relocate such offices or models (nothing contained herein is intended to restrict the number or size of such facilities).

(d) To use easements through the Common Elements for the purpose of (i) constructing homes or making or building any other improvements within the Common Interest Community or within the Additional Properties or (ii) conducting any other activity permitted by Declarant under this Declaration.

(e) To make any common-interest community within The Foothills subject to a master association;

(f) To merge or consolidate the Common Interest Community with another common-interest community of the same form of ownership; and

(g) To appoint or remove an officer of the Association or an Board of Directors member during the Declarant Control Period.

Section 15.5. Construction; Declarant's Easements. Declarant reserves the right, on behalf of itself and each Participating Builder, to perform warranty work, repairs and construction work within that portion of the Properties in which it is constructing or has constructed Units and in any Units and Common Elements therein, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by Declarant or such Participating Builder without the consent or approval of the Board of Directors or any committee thereof. Declarant has, and hereby reserves, an easement through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's or such Participating Builder's obligations or exercising Special Declarant Rights, whether arising under the Act or reserved in this Declaration or any Neighborhood Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, the Association, a Neighborhood Association or other appropriate Persons owners to fulfill the plan of development.

Section 15.6. Sales. Declarant also reserves the right to conduct general sales within the Properties, with respect to Units located or to be located within the Common Interest Community.

Section 15.7. Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Properties unless it is the property of the Association. Declarant reserves the right to remove from the Properties (promptly after the sale of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 15.8. Declarant Control of the Association.

(a) **Declarant Control Period.** Subject to Subsection 16.9(b), there shall be a period of Declarant control of the Association ("Declarant Control Period"), during which Declarant, or persons designated by Declarant, may appoint and remove members of the Board of Directors and officers of the Association. The period of Declarant control terminates no later than the earlier of:

(i) 60 days after conveyance of 1,500 of the Units to Owners other than Declarant; or

(ii) 5 years after Declarant has ceased to offer Units for sale in the ordinary course of business; or

(iii) 5 years after any right to add new Units was last exercised

Declarant may voluntarily surrender the right to appoint and remove members of the Board of Directors and officers of the Association before termination of that period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(b) Actions After Declarant Control Period. For two (2) years after the expiration of the Declarant Control Period, certain actions of the Association, the Board and any committee require the approval of the Declarant, as follows:

No action, policy or program authorized by the Association, Board of Directors or any committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

(i) Declarant shall have been given written notice of the meeting of the Association, the Board or any committee thereof which proposes to institute, change or terminate an action, policy or program, and the proposed action(s) to be taken at that meeting;

(ii) Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof or the Association, and to make its concerns, thoughts, and suggestions known to the Members, the Board and/or the members of the subject committee; and

(iii) Declarant shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Association, the Board of Directors or any committee thereof if Association, Board or committee approval is necessary for such action. This right may be exercised by Declarant, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of the Association, the Board or any committee. Declarant *shall not use its right* to disapprove to reduce the level of services which the Association is obligated to provide nor to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Notice to Declarant under this provision shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, no less than ten (10) days prior to the meeting. The notice must, except in the case of the regular meetings held pursuant to the Bylaws, set forth in reasonable particularity the agenda to be followed at the meeting. The rights granted under this provision shall be

exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument.

(c) Member Rights to Elect Board Members During Declarant Control Period. Not later than 60 days after conveyance of 25% of the Units that may be created (i.e., 500) to Owners other than Declarant, at least one member and not less than 25% of the members of the Board of Directors shall be elected by Members other than Declarant. Not later than 60 days after conveyance of 50% of the Units that may be created (i.e., 1,000) to Owners other than Declarant, not less than 33⅓% of the members of the Board of Directors must be elected by Members other than Declarant.

(d) Election of Board Members After Termination of Declarant Control Period. Not later than the termination of the Declarant Control Period, the Members shall elect an Board of Directors of at least 7 members, at least a majority of whom shall be Owners. The Board of Directors shall elect the officers. The Board of Directors members and officers shall take office upon election.

(e) Removal of Board Members. Notwithstanding any provision of this Declaration or the bylaws to the contrary the Members, by a two-thirds vote of all persons present and entitled to vote at a meeting of the Members at which a quorum is present, may remove a member of the Board of Directors with or without cause, other than a member appointed by Declarant.

Section 15.9. Limitations on Special Declarant Rights. Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right hereunder may be exercised by Declarant so long as Declarant (a) is obligated under any warranty or obligation, (b) holds a Developmental Right to create additional Units or Common Elements, (c) owns any Units, or (d) owns any Mortgage in any Unit. Special Declarant Rights may be exercised with respect to all or any portion of the Properties and the Additional Properties.

Section 15.10. Interference with Special Declarant Rights. Neither the Association nor any Owner or Neighborhood Association may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

Section 15.11. Additional Rights Under Declaration. Subject to the applicable restrictions in this Declaration on the development of the Properties, this Declaration is not intended to limit the ability of a declarant under a Neighborhood Declaration to reserve such developmental rights and special declarant rights as that declarant deems appropriate. Developmental rights and special declarant rights reserved under a declaration shall be in addition to and not derivative of the Developmental Rights or Special Declarant Rights contained in this Declaration.

Section 15.12. Additional Declarations; Amendments. So long as Declarant continues to have rights under this Article, 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 recordation without compliance herewith shall result in such declaration of condominium or similar instrument

being void and of no force and effect unless subsequently approved by written consent signed by Declarant and recorded in the public records.

This Article may not be amended without the express written consent of Declarant. However, the rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all of its sales activity has ceased.

Article 16.
ALLEGED DEFECTS

Section 16.1. Intention. It is Declarant's intent that all Improvements of every type and kind which may be installed by Declarant as part of the Project, including, but not limited to, residences, sidewalks, driveways, streets, roads, parking areas, fences, walls, landscaping, signs, utility pipes, lines or wires, sewer and drainage systems and grading on all of the Units and Common Elements within The Foothills (collectively, the "Declarant Improvements") be of a quality that is consistent with construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, all Owners and the Association, the Board, DRC and MC shall be bound by the following claim resolution procedure:

(a) **Declarant's Right to Cure.** If the Association, the Board, ARC, MC or any Owner or Owners (collectively, "Claimant") claim, contend, or allege that any portion of a Unit and/or any Declarant Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors or subcontractors (collectively, "Declarant's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, cure, repair and/or replace such Alleged Defect as set forth herein.

(b) **Notice to Declarant.** If a Claimant discovers an Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at 2920 North Green Valley Parkway, Suite 212, Henderson, Nevada 89014, or such other address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(c) **Right to Enter, Inspect Cure and/or Replace.** Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of an Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit or the Common Elements, and/or any Declarant Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing and/or replacing the Alleged Defect. In conducting such inspection, cure,

repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect,(b) for the diminution in value of any real or personal property resulting from such Alleged Defect or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within one hundred twenty (120) days after its receipt of the Notice of Alleged Defect, either (1) failed to cure, repair or replace the Alleged Defect or (2) if the Alleged Defect cannot reasonably be cured, repaired or replaced within such one hundred twenty (120) day period, failed to commence such cure, repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair, or replacement of the Alleged Defect, Claimant shall not stop, restrict, hinder, interrupt or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents, or independent contractors, to inspect, cure, repair or replace the Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.

(e) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, cure, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units and or the Declarant Improvements constructed thereon, nor shall anything set forth in this Article constitute an express or implied representation, warranty or guarantee by Declarant concerning any Declarant Improvements, the Property, any Annexable Property or the Project. The right of Declarant to enter, inspect, cure, repair and or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of the County.

(f) Statutory remedies. The terms, conditions and procedures set forth in this Article 16 are in addition to the terms, conditions and procedures set forth in NRS Chapter 40, and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and or commencing an action under Chapter 40 for "constructional defects" as defined in Chapter 40, provided, however, the procedures set forth in this Article 16 shall not abrogate any of the requirements of Claimant under Chapter 40, inclusive of the requirement that Claimant, at the end of the foregoing 120 day period, notify Declarant in writing of any alleged constructional defects which Declarant failed to cure during that 120 day period at least 60 days prior to bringing an action under Chapter 40. Further, to the extent any provisions of this Article 16 are inconsistent with the provision of Chapter 40, the provisions of this Article 16 shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in NRS 40.645 until expiration of the 120 day period set forth in this Article 16. It is the express intent of Declarant to provide, by this Article 16, an initial 120 day period for Declarant to investigate and cure any constructional defects alleged by Claimant before the provisions of Chapter 40 are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Chapter 40. Each Owner, by accepting title to any portion of the Property, as

evidenced by Recordation of a deed to Owner describing that land, agrees to be bound by all of the provisions of this Article 16.

Article 17.
GENERAL PROVISIONS

Section 17.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Properties, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded. After such time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

Section 17.2. Amendment.

(a) **By Declarant**. Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as Declarant still owns property described in Exhibit A or Exhibit B-1 for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon right of any Owner.

(b) **By Owners**. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes in the Association, including Members other than Declarant, and the consent of Declarant, so long Declarant has an option to subject additional property to this Declaration pursuant to Article 9. In addition, the approval requirements set forth in Article 14 shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the percentage prescribed by such clause. Any amendment must be recorded in the official records of the County recorder

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to so consent, and no contrary provision

in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

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.

An action to challenge the validity of an amendment adopted by the Association pursuant to this Section may not be brought more than one year after the amendment is recorded.

Section 17.3. Litigation. Except as otherwise specifically provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the affirmative vote of Members representing a majority of the votes of the Association represented at a meeting duly called for such purpose and the consent of Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Article 9. In the case of such a vote, and notwithstanding anything contained in the Governing Documents to the contrary, a Delegate shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding seventy-five percent (75%) of the total votes attributable to Units in the Neighborhood represented by the Delegate. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents, including this Declaration (including the foreclosure, whether judicially or nonjudicially, of liens); (b) the imposition and collection of assessments as provided in Article 10; (c) proceedings involving challenges to *ad valorem* taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. 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.

Section 17.4. Cumulative Effect; Conflict. The covenants, restrictions and provisions of this Declaration shall be cumulative with those of any Neighborhood and the Association may, but shall not be required to, enforce the covenants, conditions and provisions of any Neighborhood; *provided*, however, in the event of conflict between or among the covenants and restrictions of the Association and those of any Neighborhood, and provisions of any articles of incorporation, by-laws, rules and regulations, policies or practices adopted or carried out pursuant thereto, the covenants and restrictions and related provisions of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for Assessments created in favor of the Association.

Section 17.5. Use of the Words "The Foothills" or "MacDonald Ranch". No Person shall use the words "The Foothills" or "MacDonald Ranch" or any derivative in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the terms "The Foothills" or "MacDonald Ranch" in printed or promotional matter where such term is used solely to specify that particular property is located within the Properties and the Association shall each be entitled to use the words "The Foothills" or "MacDonald Ranch" in its name.

Section 17.6. Compliance. Every Owner and occupant of any Unit shall comply with all lawful provisions of the Governing Documents. Failure to comply shall be grounds for an

action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by an aggrieved Owner(s). In addition, the Association may avail itself of any and all remedies provided in this Declaration or the Bylaws

Section 17.7. Notice of Sale or Transfer of Title. If any Owner desires to sell or otherwise transfer title to its Unit, such Owner shall give the Board of Directors 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 of Directors may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations, including Assessment obligations, of the Owner of the Unit coming due prior to the date upon which such notice is received by the Board of Directors notwithstanding the transfer of title to the Unit.

Section 17.8. Captions The paragraph headings and titles contained in the Governing Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Governing Documents or the intent of any provision thereof.

Section 17.9. Gender. The use of the feminine, masculine or neuter genders includes each other gender, and the use of the singular includes the plural, and vice versa, whenever the context of the Governing Documents so require.

Section 17.10. Waiver. No provision contained in the Governing Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 17.11. Invalidity. The invalidity, in whole or in part, of any provision of the Governing Documents does not impair or affect in any manner the validity, enforceability or effect of the remaining provision of the documents, including the provision itself, to the extent enforceable, and if a provision is invalid, all of the other provisions of the Governing Documents shall continue in full force and effect.

Section 17.12. Conflicts. The Governing Documents are intended to comply with those requirements of the Act applicable to common-interest communities and the Governing Documents shall be interpreted, if at all possible, so as to be consistent with the Act. If there is any conflict between the Governing Documents and the applicable provisions of the foregoing statutes, the provisions of the applicable statutes shall control. In the event of any conflict between this Declaration and any other Governing Document, this Declaration shall control.

Section 17.13. References to Articles, Sections; Exhibits. References to "Articles," "Sections" and "subsections" shall be to Articles, Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Unless the context otherwise requires, any of the terms defined in this Agreement may be used in the singular or the plural depending on the reference. References to "Exhibits" or "Schedules" shall be to the exhibits or schedules attached to this Declaration, as such exhibits or schedules may, from time to time be amended and each of which

exhibits or schedules is hereby incorporated by reference into this Declaration. The following Exhibits and/or Schedules are attached to and form a part of this Declaration:

Exhibit	Description
Exhibit A	Additional Property
Exhibit B-1	Initial Property
Exhibit B-2	Neighborhoods
Exhibit B-3	Easements
Exhibit C-1	Common Elements
Exhibit C-2	Limited Common Elements
Exhibit C-3	Multi-Use facilities
Exhibit D-1	Resort Properties

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the date first set forth above.

THE FOOTHILLS PARTNERS, a Nevada limited partnership

By: The Foothills Development Company, a Nevada limited liability company, its general partner

By: _____
Richard C. MacDonald, Manager

_____
Harry E. Brandise

_____
Ellen Diane Brandise

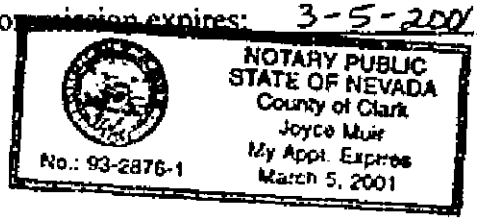
STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on JULY 30, 1997 by Richard C. MacDonald as _____ of The Foothills Partners.

Joyce Muir
Notary Public

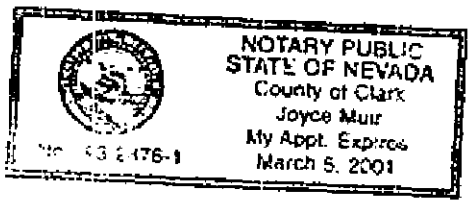
My commission expires: 3-5-2001



STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on this 1 day of AUGUST, 1997 by Harry E. Brandise.



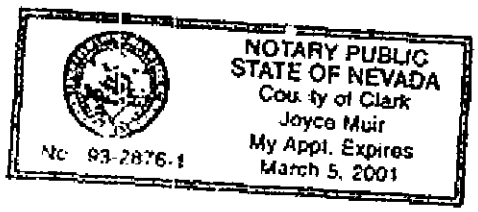
Joyce Muir
(Signature of notarial officer)

(My commission expires: 3-5-2001)

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on this 1 day of AUGUST, 1997 by Ellen Diane Brandise.



Joyce Muir
(Signature of notarial officer)

(My commission expires: 3-5-2001)

Exhibit A

The Additional Properties

All of The Foothills at MacDonald Ranch, as set forth on the map thereof recorded November 13, 1995 in Book 70, Page 66 of Plats of the Official Records in the office of the Clark County, Nevada Recorder.

EXCEPTING THEREFROM, the following described property:

All of The Foothills at MacDonald Ranch, Portions of Lots 5 and 6, a.k.a., The Highlands Unit One, as set forth on the map thereof recorded March 11, 1997 in Book 78, Page 53 of Plats of the Official Records in the office of the Clark County, Nevada Recorder.

Exhibit B-1

The Initial Properties

PARCEL 1:

Lots 1 and 45 in Block One (1), Lots 2 through 16, inclusive, in Block Two (2), Lots 19 through 25, inclusive, in Block Three (3), Lots 26 through 31, inclusive, in Block Four (4), and Lots 32 through 44, inclusive, in Block Five (5) of The Foothills at MacDonald Ranch, Portions of Lots 5 and 6, a.k.a. The Highlands Unit One, as set forth on the map thereof recorded March 11, 1997 in Book 78, Page 53 of Plats of the Official Records in the office of the Clark County, Nevada Recorder.

PARCEL 2:

Lots 17 and 18 in Block Three (3) of The Foothills at MacDonald Ranch, Portions of Lots 5 and 6, a.k.a. The Highlands Unit One, as set forth on the map thereof recorded March 11, 1997 in Book 78, Page 53 of Plats of the Official Records in the office of the Clark County, Nevada Recorder.

Exhibit B-2

Neighborhoods

Description of Units	Neighborhood	Voting Group
Initial Properties	The Highlands	None

Exhibit B-3

Easements

1. Mineral rights, reservations and exclusions in patent from the United States of America
   Recorded : June 2, 1965 in Book 631
   Document No. : 507212, Official Records.

2. Mineral rights, reservations and exclusions in patent from the United States of America
   Recorded : May 2, 1969 in Book 947
   Document No. : 760185, Official Records.

3. Mineral rights, reservations and exclusions in patent from the United States of America.
   Recorded : February 10, 1970 in Book 10
   Document No. : 07408, Official Records.

4. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 16 of Parcel Maps, Page 13, Official Records.

5. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 20 of Parcel Maps, Page 86, Official Records.

6. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 21 of Parcel Maps, Page 38, Official Records.

7. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 21 of Parcels Maps, Page 96, Official Records.

8. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 21 of Parcels Maps, Page 97, Official Records.

9. Dedications and Easements as indicated or delineated on the Plat of said Parcel Map on file in Book 21 of Parcels Maps, Page 98, Official Records.

10. Dedications and Easements as indicated or delineated on the Plat of said Subdivision on file in Book 70 of Plats, Page 66, Official Records.

11. An Easement affecting a portion of said land for the purposes stated herein, and incidental purposes
    In Favor of : Nevada Power Company
    For : power lines
    Recorded : March 19, 1996 in Book 960319
    Document No. : 01050, Official Records.
    Affects : A portion of Section 27

12. Dedications and Easements as indicated or delineated on the Plat of said Subdivision on file in Book 78 of Plats, Page 53, Official Records. (Affects Parcels 2 and 3)

13. An Easement affecting a portion of said land for the purpose stated herein, and incidental purposes

In Favor of	:	The City of Henderson, Clark County, Nevada, a Municipal Corporation
For	:	drainage purposes
Recorded	:	March 27, 1997 in Book 970327
Document No.	:	01642, Official Records
Affects	:	A portion of Parcel 1

Exhibit C-1

Common Elements

Common Elements A, B and C and private streets, and private drainage easements as set forth on the map of The Foothills at MacDonald Ranch, Portions of Lots 5 and 6, a.k.a., The Highlands Unit One, recorded March 11, 1997 in Book 78, Page 53 of Plats of the Official Records in the office of the Clark County, Nevada Recorder; and

[Describe any other (A) perimeter walls, (b) entry monumentation, (C) common area landscaping within private streets and along the outside of perimeter walls, and (D) private streets, etc. within the Properties].

Exhibit C-2

Limited Common Elements

None in the Initial Properties.

Exhibit C-3

Multi-Use Facilities

As of the date of this Declaration there are no Multi-Use Facilities.

Exhibit D-1

Resort Properties

Lots 11, 23, 24, 28, 30 and 31 of The Foothills at MacDonald Ranch, as set forth on the map thereof recorded November 13, 1995 in Book 70, Page 66 of Plats of the Official Records in the office of the Clark County, Nevada Recorder.

F:\USERS\MEB\FOOTHILL\DECLAR.WK4

When Recorded Mail To:

Richard C. MacDonald
2920 North Green Valley Parkway
Suite 212
Henderson, Nevada 89014

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:

R MACDONALD

08-20-97 15:19 EAH 84
OFFICIAL RECORDS
BOOK: 970820 INST: 01249

FEE: 90.00 RPTT: .00

(3)

APN: 178-28-515-013

WHEN RECORDED MAIL TO:

The Foothills Partners
1730 W. Horizon Ridge Parkway
Henderson, NV 89012

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

Inst #: 201210240002211
Fees: $19.00
N/C Fee: $0.00
10/24/2012 12:01:40 PM
Receipt #: 1356002
Requestor:
JUNES LEGAL SERVICES
Recorded By: COJ Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH

THIS AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH ("Amendment") is made effective as of date this Amendment is recorded in the Official Records of the Clark County, Nevada Recorder (the "Effective Date"), by THE FOOTHILLS PARTNERS, a Nevada limited partnership ("Declarant").

RECITALS

A. Declarant recorded that certain Master Declaration of Covenants, Conditions and Restrictions for The Foothills at MacDonald Ranch (as amended, the "Master Declaration") on August 20, 1997, in Book 970820 as Instrument 01249 in the Office of the Clark County, Nevada Recorder. Capitalized terms used in the Master Declaration and not otherwise defined herein, are used with the meanings given them in the Master Declaration.

B. Pursuant to Section 9.1 of the Master Declaration, Declarant reserved the unilateral right to amend the Master Declaration to annex into the Master Declaration any portion of the real property described on Exhibit A to the Master Declaration (the "Annexable Property") until such time as all of the Annexable Property has been annexed into the Master Declaration or December 31, 2012 ("Outside Date for Unilateral Annexation");

C. As of the date hereof, approximately 590 acres of real property within the Annexable Property have not yet been developed and have not been annexed into the Master Declaration, leaving up to an additional 1,500 lots to be annexed in the future into the Master Declaration; Declarant reasonably anticipates that such lots will not be annexed into the Master Declaration before the Outside Date for Unilateral Annexation occurs;

D. Declarant desires to extend the Outside Date for Unilateral Annexation from December 31, 2012 to December 31, 2042;

E. Pursuant to the Master Declaration (including, but not necessarily limited to, Sections 17.2(a) thereof), for so long as Declarant owns any of the property described on Exhibit A (the Annexable Property) or Exhibit B-1 to the Master Declaration for development as part of the Properties, Declarant is authorized and entitled to unilaterally amend the Master Declaration for any purpose that has no material adverse effect upon the right of any Owner; and

F. Declarant currently owns a portion of the property described on Exhibit A (the Annexable Property) to the Master Declaration for development as part of the Properties;

G. The extension of the Outside Date for Unilateral Annexation to December 31, 2042 has no material adverse effect upon the right of any Owner because the Master Declaration originally contemplated that the property described on Exhibit A (the Annexable Property) would be annexed into the Master Declaration over time, it is merely the timeframe for such annexation that must be extended as a result of unanticipated market conditions;

H. The extension of the Outside Date for Unilateral Annexation to December 31, 2042 is in the best interests of the Owners for the following reasons: (i) annexation of the unannexed Annexable Property before the Outside Date for Unilateral Annexation is not feasible or practical because much of that property has not been subdivided into residential lots and/or improved with Dwellings because of market conditions over which Declarant had no control; and (ii) the lots within the Annexable Property that are created and/or improved after the Outside Date for Unilateral Amendment must be annexed into the Project prior to the conveyance of each such lot to a third-party homebuyer in order to ensure that such lots are subject to the covenants, conditions and restrictions set forth in the Master Declaration to which the Properties are now subject; and (iii) unless the Outside Date for Unilateral Amendment is extended by this Amendment, then from and after December 31, 2012 any annexation of property may only occur with the approval not less than Owners representing a majority of the total votes in the Association, which is overly burdensome and unlikely to occur, particularly on an ongoing phased bases as such property is subdivided and developed;

I. Pursuant to the Master Declaration (including, but not necessarily limited to, Section 17.2(a) thereof), Declarant is authorized and entitled to unilaterally amend the Master Declaration to extend the Outside Date for Unilateral Annexation, and Declarant now desires to modify and amend Section 9.1 of the Master Declaration to extend the Outside Date for Unilateral Annexation from December 31, 2012 to December 31, 2042; and

J. This Amendment does not purport to affect the validity or priority of any Mortgage, or the rights or protections granted to any Beneficiary, insurer, or guarantor of a first Mortgage, as set forth in the Master Declaration.

NOW THEREFORE, in consideration of the foregoing premises, and the provisions herein contained, effective as of the Effective Date, the Master Declaration is modified and amended to extend the Outside Date for Unilateral Annexation in the first paragraph of Section 9.1 of the Master Declaration to December 31, 2042, so that the reference to December 31, 2012 in such Section 9.1 shall now and hereafter mean December 31, 2042.

Except as specifically amended herein, all other terms, conditions and provisions of the Master Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed as of OCTOBER 16, 2012.

"DECLARANT"

THE FOOTHILLS PARTNERS, a Nevada ~~limited~~ partnership.

By: _____
Name: RICHARD C. MACDONALD
Title: MANAGER

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on OCTOBER 16, 2012, by RICHARD C. MACDONALD as MANAGER of THE FOOTHILLS PARTNERS.

JOYCE MUIR
Notary Public-State of Nevada
APPT. NO. 93-2876-1
My App. Expires March 05, 2013

_____
Notary Public

My commission expires: 3-5-2013

Inst #: 201102090002780
Fees: $20.00
N/C Fee: $0.00
02/09/2011 02:59:00 PM
Receipt #: 672184
Requestor:
LEACH JOHNSON SONG & GRUCI
Recorded By: SUO Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Return To:

Leach Johnson Song & Gruchow
Attn: John E. Leach, Esq.
5495 S. Rainbow Blvd., Suite 202
Las Vegas, Nevada 89118
Phone: (702) 538-9074

APN Nos.: 178-27-117-002 through 178-27-117-023, inclusive
178-27-117-025 through 178-27-117-027, inclusive
178-27-117-029 through 178-27-117-040, inclusive
178-27-120-011 through 178-27-120-013, inclusive
178-27-218-001 through 178-27-218-003, inclusive
178-27-220-001 through 178-27-220-010, inclusive
178-28-221-001
178-28-223-001
178-28-314-001 through 178-28-314-002, inclusive
178-28-314-004
178-28-518-001 through 178-28-518-006, inclusive
178-28-621-001 through 178-28-621-007, inclusive
178-28-622-001 through 178-28-622-002, inclusive
178-28-716-001 through 178-28-716-007, inclusive

SPACE ABOVE LINE FOR RECORDER'S USE ONLY

FIRST AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH

RETREAT NEIGHBORHOOD: (continued)

1376 River Spey Avenue	178-27-117-026
1388 River Spey Avenue	178-27-117-025
569 River Dee Place	178-27-120-012
573 River Dee Place	178-27-117-023
581 River Dee Place	178-27-117-022
584 River Dee Place	178-27-117-021
592 River Dee Place	178-27-220-010

Exhibit C-2

Limited Common Elements

LAIRMONT NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Street Lights
Streets-overlay and slurring seal
Vehicle Gate Fencing
Landscaping-approximately 3,000 square feet along and adjacent to Entry

LIEGE NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Streets-overlay and slurry seal
Vehicle Gate Fencing
Landscaping-approximately 74,000 square feet

RETREAT NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Light Fixtures-Bollard Lights
Streets-overlay and slurry seal
Pavers
Wrought Iron Fencing
Recreation Equipment
- park furniture
- gazebo

Landscaping-approximately 30,000 square feet

EXHIBIT B

MACDONALD
HIGHLANDS

DESIGN GUIDELINES

Prepared:.....September 1, 1992

Revision Dates:.....September 24, 1998
May 12, 1999
December 13, 1999
April 27, 2000
September 1, 2000
May 1, 2002
January 7, 2003
July 7, 2003
March 1, 2004
December 1, 2005
September 1, 2006

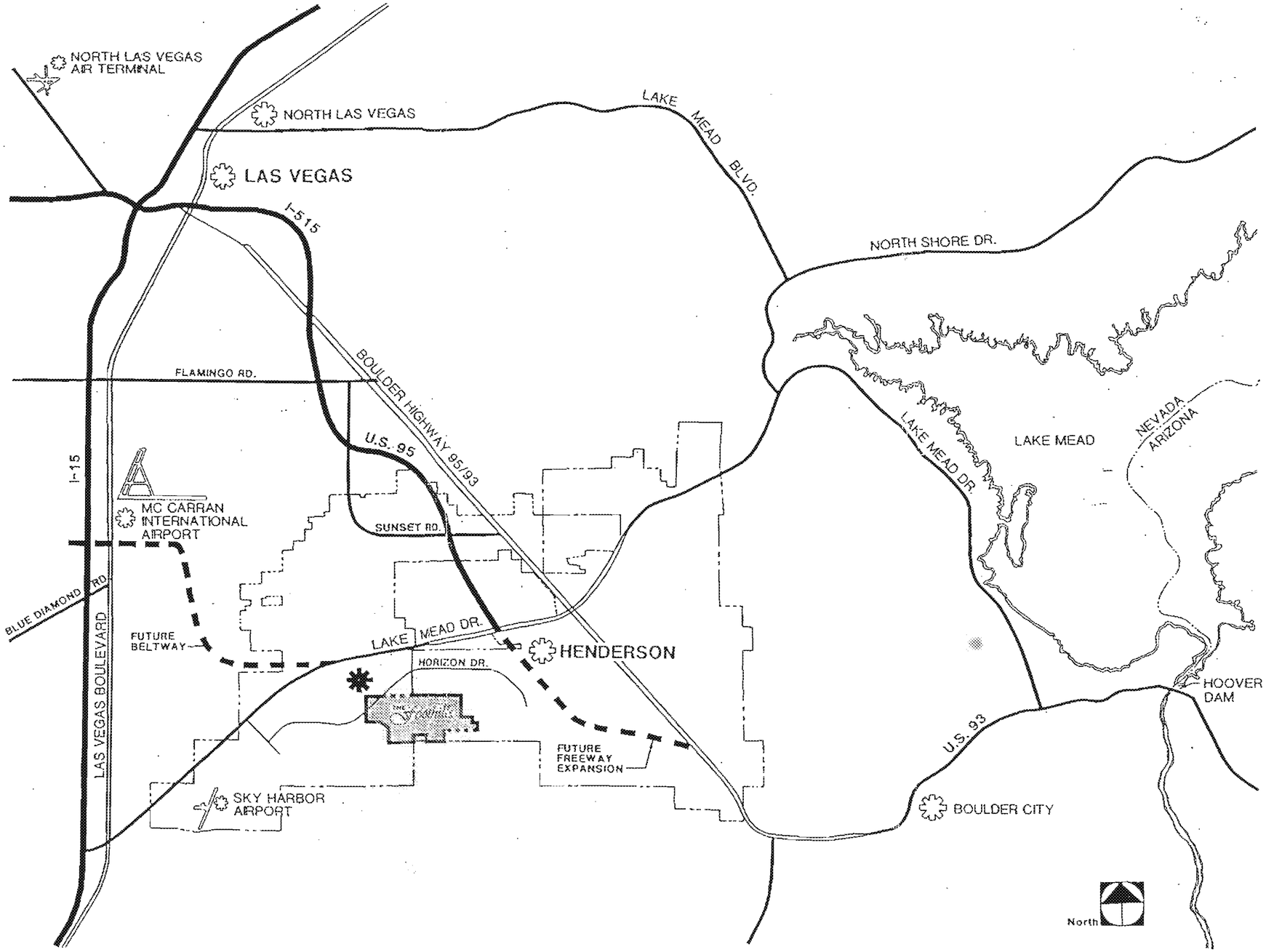
***** TO AVOID UNNECESSARY EXPENSE, PLEASE ADVISE YOUR ARCHITECT TO SCHEDULE A MEETING WITH THE DESIGN REVIEW COMMITTEE PRIOR TO PREPARATION AND SUBMITTAL OF ARCHITECTURAL PLANS *****

1730 West Horizon Ridge Parkway, Suite 100
Henderson, Nevada 89012
702.458.0001 • Fax 702.458-5570
www.macdonaldhighlands.com

TABLE OF CONTENTS

2.33 Landscape

4.A.0 SITE PLANNING CRITERIA – ATTACHED HOUSING



REGIONAL MAP

The Foothills at MacDonald Ranch

EXHIBIT INDEX

1.0 INTRODUCTION

1.1 MACDONALD HIGHLANDS

PHILOSOPHY

MacDonald Highlands is situated in a majestic mountain valley featuring a backdrop of rugged mountain peaks as well as spectacular city light views. The master plan for MacDonald Highlands is committed to the preservation of the site's inherent natural beauty, thus ensuring that the mountainous desert character of the site will always be symbolic of the community's identity. Because of this commitment, MacDonald Highlands will soon take its place as the crown jewel of southern Nevada master-planned communities.

A dedication to the preservation of nature's beauty, enhanced by the highest aesthetic standards of landscape design, MacDonald Highlands will set the stage for an uncompromising standard of residential living. Years of effort by a team of outstanding land planners, architects, and engineers will provide a project of enduring quality. Additionally, to protect and enhance owner value, a strict set of covenants and guidelines will be carefully monitored by a professionally advised design review committee.

The fundamental community concept of MacDonald Highlands is to preserve the natural character of the desert environment, particularly the rugged hillside areas. The residential neighborhoods are designed such that site development will blend harmoniously into the natural desert setting, creating a rural atmosphere of casual country estates. This design includes reducing the design speed of all of the site roadways to 20 M.P.H., thus allowing such roadways to conform to the natural contour and setting of the hillside environment. The community identity is

further enhanced by an 18-hole championship golf course and destination resort. The golf course fairways meander throughout the neighborhoods within MacDonald Highlands, with many of the individual homesites featuring direct frontage on the course. In addition, significant view corridors to the golf course are provided at key locations along the community street system.

Because each development within MacDonald Highlands will be unique in terms of its natural opportunities and constraints, it is expected that the design of each development be tailored to preserve, enhance, and protect those special features of each individual Lot or Parcel. Each development project must consider those approaches in design and construction, which will accentuate those unique attributes while preserving the natural features of each Lot or Parcel. The design of each Lot or Parcel within the MacDonald Highlands community shall support the overall philosophy of the community by carefully integrating the development into the topography.

Design standards and restrictions and a Design Review Committee have been developed to implement and enforce this philosophy. Minimum standards of design arising out of the environmental and climatic needs of the desert provide direction to Lot or Parcel owners and developers in the planning, design, and construction of their residences or projects to insure compatibility with the environment, harmonious architectural approaches, and compatibility with adjacent development within the community. The Design Review Committee will encourage creativity, innovative use of materials and design, and unique methods of construction so long as the final result is consistent with these Design Guidelines and the overall philosophy of MacDonald Highlands. No one residence, structure, improvement, or development should stand apart in its design or construction so as to detract from the overall environment and appearance of MacDonald Highlands.

The design and architectural standards and restrictions as set forth in these Design Guidelines should be viewed by each Owner as his assurance that the special environment of MacDonald Highlands will be preserved and enhanced over time.

1.2 DESIGN GUIDELINES

The purpose of these Supplemental Design Guidelines is to provide specific direction for the expression of the built environment within the Custom Home neighborhoods of MacDonald Highlands. They are intended to provide an overall framework for future development, achieving a sense of neighborhood identity, land use character, scale and sensitivity to the desert environment in the development of MacDonald Highlands' neighborhoods.

The purpose of these Design Guidelines is to implement the community design theme by addressing the architectural, landscape, and site planning design criteria for the development of MacDonald Highlands. These Guidelines are intended to set standards for the quality of design, to assure land use compatibility, to direct character and form, and to enhance the community's overall value. The Guidelines are intended first as an information source to Owner's builders, developers, architects, or investors interested in MacDonald Highlands; and second, as a regulatory mechanism to insure that all Improvements in the community are carried out in an environmentally sensitive manner. These Guidelines will thus insure a high standard of project-wide design consistency throughout the life of the community.

MacDonald Highlands Design Guidelines are intended to be a conceptual, dynamic guide to development and, as such, are subject to change when the Design Review Committee determines such

change is in the best interests of the community. In addition, the graphic illustrations in this document are intended to convey a concept, and not to portray specific plans for construction. ***EACH OWNER IS RESPONSIBLE FOR OBTAINING FROM THE DESIGN REVIEW COMMITTEE A COPY OF THE MOST RECENT DESIGN GUIDELINES BEFORE COMMENCING ON ANY IMPROVEMENTS TO THE OWNER'S LOT.***

These design standards are binding on any persons, company, or firm, which intends to construct, reconstruct, or modify any permanent or temporary Improvements in MacDonald Highlands community or in any way alter the natural setting of the desert environment.

Accompanying the Design Guidelines are Covenants, Conditions, and Restrictions (CC&Rs), which have been formally adopted and recorded to establish the Community Association and the Association Rules and Regulations, while guaranteeing long-term maintenance of all common facilities within the community. In the event of a conflict between the CC&Rs and the Design Guidelines, the CC&Rs will prevail.

1.3 DESIGN REVIEW PROCESS

In order to assist each Owner in the planning and design of the Residence, or Non-Residential Parcel and in the understanding of the unique opportunities of each particular Lot or Parcel, a comprehensive design review committee and process has been established pursuant to these Design Guidelines. The process provides an opportunity for the Owner to draw upon the expertise and knowledge, which has been acquired during the planning and development of MacDonald Highlands. Since the preservation and enhancement of the unique natural landscape of MacDonald Highlands are important principles, the Design Review Committee

is charged with the responsibility of insuring that these principles are carried out in all phases of development. It is encouraged that the designs are a result of the uniqueness of the site and are not transplanted designs.

The design review process was developed to provide adequate checkpoints along the way, so that time and money are not wasted on plans and designs, which do not adhere to the Design Guidelines or to the overall principles of MacDonald Highlands. Every attempt has been made to streamline this review process to eliminate excessive time delays. Nevertheless, each Owner is personally responsible for strictly complying with the Design Guidelines, and all other applicable provisions of the Declaration or rules and regulations of any governmental authority, in order to bring the design review process to a speedy and satisfactory conclusion.

It is necessary that the Owner(s) retains competent professional services for planning and design. *The Design Review Committee must approve all architects.* A thorough analysis and understanding of a particular Lot or Parcel and the Owner's special needs and living patterns, as well as the ability to convey to the Design Review Committee, through drawings and a model, the concept and design of the proposed Residence or other Improvement, are all important elements of the design review process. An Owner may not elect to do his own design or to retain non-professional services.

In general, the design review process is divided into four phases. The first phase includes a pre-design meeting(s) to permit each Owner to review his ideas and the natural aspects of his particular Lot or Parcel with a representative of the Design Review Committee before any plans are prepared. The second phase provides for the review of conceptual or preliminary plans by the conformance with the Design Guidelines. The third phase, the

final design review, insures that the final plans and construction drawings are consistent with the previously approved preliminary plans and the Design Guidelines. The final phase includes an inspection by a representative(s) of the Design Review Committee to determine whether actual construction has been completed in strict compliance with the approved plans and the Design Guidelines.

Approval of plans and specifications by the Design Review Committee is not, and should not be deemed to be, a representation or warranty that said plans and specifications comply with applicable governmental ordinance or regulations including, without limitation, City of Henderson zoning ordinances, subdivision regulation, and building codes.

1.4 BUILDING ENVELOPE

Within the Hillside Buildable Areas, the concept of a maximum allowable building area, called the Building Envelope, has been developed to ensure the preservation of views from each residence in MacDonald Highlands.

All Improvements on a Lot or Parcel within MacDonald Highlands must be designed to be within this Building Envelope, including the Residence, accessory buildings, outside patios and terraces, tennis courts and swimming pools, if permitted by the Design Guidelines, and any other Improvements or structures on the Lot or Parcel. Only approved plants may be planted within the Building Envelope, unless otherwise approved by the Design Review Committee. Outside of the Building Envelope, the natural desert must be undisturbed or revegetated with complementary desert plant material where possible. Moreover, it is not intended that the Owner design his Residence or other Improvements so as to completely fill the Building Envelope. Designs, which, in the

opinion of the Design Review Committee, overwhelm the Building Envelope and are, therefore, inconsistent with the philosophy of MacDonald Highlands, will not be approved.

Before any conceptual planning is done, an Owner should consult with the Design Review Committee to determine the location of the Building Envelope. Although the shape and location of the Building Envelopes are intended to be somewhat flexible, modifications to the Building Envelope can be made only by the Design Review Committee and only if the modifications do not result in a significant adverse impact upon the natural features of the Lot or Parcel, or upon neighboring Lots or Parcels, or the Project as a whole.

After the final design approval has been given by the Design Review Committee, a revised Building Envelope will be based on actual plans, which may differ in size and shape from the original conceptual Building Envelope. Thereafter, the Building Envelope may be changed only through an amendment process after obtaining the approval of the Design Review Committee. This process assures that the view corridor of the Building Envelope will be permanently protected from any future encroachment or development.

1.5 DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

"**Apartment Development**" shall mean a Parcel or portion thereof which is described in a Parcel Declaration, is limited by the Declaration to residential use, and contains Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City of Henderson, and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.

"**Architect**" means a person appropriately licensed to practice architecture or landscape architecture in the State of Nevada.

"**Association**" shall mean the non-profit corporation to be organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers, and duties set forth in this Declaration, its successors and assigns. Declarant hereby reserves the exclusive right to cause such Association to be incorporated and intends to name the Association "MacDonald Highlands Master Association," and hereby reserves the right to use any similar name if, for any legal or other reason, "MacDonald Highlands Master Association" cannot or should not be used.

"**Association Rules**" shall mean the rules for MacDonald Highlands adopted by the Board.

"**Builder**" means a person or entity engaged by an Owner for the purpose of constructing any Improvement within MacDonald Highlands. The Builder and Owner may be the same person or entity.

"**City**" shall mean the City of Henderson, Nevada.

"**Clubhouse Parcel**" shall mean the Clubhouse Parcel as shown on the Master Development Plan for MacDonald Highlands and/or described in a recorded Parcel Declaration. The Clubhouse Parcel shall be privately owned and may be operated in conjunction with the Golf Course. The Clubhouse Parcel shall not be transferable to the Association pursuant to the CC&Rs. The number of Memberships attributable to the Clubhouse Parcel shall be determined by the applicable Parcel Declaration.

"**Cluster Residential Development**" shall mean a Parcel subdivided into Lots with dwelling units intended for Single Family occupancy and may include those types of residential housing arrangements known as townhouses, clustered housing, "clubdominiums," zero-lot line housing, and similar arrangements, together with related areas intended for the use and enjoyment of the Owners and Residents of the Lots in the Cluster Development.

"**Commercial/Office Development**" shall mean a Lot or Parcel limited by a Parcel Declaration to be used for commercial and/or office use or related use as approved by the City of Henderson and the Design Review Committee and within the restrictions created by the Covenants.

"**Common Area and Common Areas**" shall mean (a) all Association Land and the improvements thereon; (b) all land within MacDonald Highlands which the Declarant, by this Declaration or other recorded instrument, makes available for use by Members of the Association and evidences its intent to convey to the Association at a later date; (c) all land within MacDonald Highlands, which the Declarant indicates on a recorded subdivision plat or Parcel Declaration is to be used for landscaping, water retention, drainage, and/or flood control for the benefit of MacDonald Highlands and/or the general public and is to be dedicated to the public or the City of Henderson upon the expiration of a fixed period of time, but only until such land is so dedicated; and (d) areas on a Lot, Parcel, or Golf Course within easements granted to the Association or its Members for the location, construction, maintenance, repair, and replacement of a wall, fence, sidewalk, landscaping, utility access, or other uses, which easement may be granted or created on a recorded subdivision plat or Parcel Declaration or by a Deed or other conveyance accepted by the Association, and all land within MacDonald Highlands, which is owned privately or by a

governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association benefits by limited use, full use, or aesthetic consistency, for the benefit of the Members.

"**Condominium Development**" shall mean a horizontal property regime established under the laws of the State of Nevada, which is limited by the Parcel Declaration therefor to residential use.

"**Condominium Unit**" shall mean an apartment or condominium unit, together with any appurtenant interest in all general and common elements, which is created by a horizontal property regime established under Nevada law. Such term shall not include a Rental Apartment in an Apartment Development.

"**Covenants**" shall mean the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.

"**Declarant**" shall mean The Foothills Partners, a Nevada limited partnership, or any successor, successor-in-title or assign who takes title to any portion of the property for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. If there is ever more than one Declarant, the rights and privileges of the Declarant shall be exercised by the Person designated from time to time by all the Declarants in a written instrument recorded in the Official Records of the County Recorder, otherwise by those Persons owning two-thirds of the potential Units.

"**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented from time to time.

"**Design Guidelines**" means the restrictions, review procedures, and construction regulations adopted and enforced by the Design Review Committee as set forth herein and as amended from time to time by the Design Review Committee.

"**Design Review Committee**" shall mean the committee of the Association to be created pursuant to the CC&Rs to perform the functions of an Architectural Design Review Committee.

"**Dwelling Unit**" shall mean any building or portion of a building situated upon a Lot or Parcel designed and intended for use and occupancy as a residence by a Single Family, but shall exclude any model home until such model home has been sold or leased as a residence of a Single Family.

"**General Commercial and/or Office Development**" shall mean a Parcel limited by a Parcel Declaration to be used for various commercial and/or office purposes within the restrictions created by the Covenants.

"**Golf Course**" and "**Golf Course Land**" shall mean the Golf Course real property and all improvements thereon (excluding the clubhouse and associated recreational and other facilities located on the Clubhouse Parcel) as shown on the Master Development Plan for MacDonald Highlands.

IT SHOULD BE NOTED THAT A REUSE WATER ALLOCATION NECESSARY FOR THE WATERING OF THE GOLF COURSE HAS BEEN OBTAINED.

"**Golf Course Lot**" shall mean a residential Lot which has a portion of its boundary immediately adjacent to the Golf Course, or a Condominium or Cluster Residential Development which has a portion of its common elements immediately adjacent to the Golf Course.

"**Hillside Residential**" shall mean those residential projects within the Hillside Buildable areas.

"**Improvement**" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, trails, tennis courts, sprinkler pipes, garages, swimming pools, spas, and other recreational facilities, the paint on all surfaces, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning, and water softener fixtures or equipment.

"**Landscape Easement Area**" shall mean the approximate foot portion of land adjacent to the public rights-of-way in MacDonald Highlands and the entryways to MacDonald Highlands, which is subject to an easement for landscaping, sidewalks, perimeter walls, and utility access as described in the CC&Rs.

"**MacDonald Highlands**" (also known as The Foothills at MacDonald Ranch and MacDonald Ranch Country Club) shall mean the real property described on Exhibit "A" attached to this Declaration, together with any additional real property, which may from time to time become subject to and covered by this Declaration, and the development to be completed thereon.

"**Master Development Plan**" shall mean MacDonald Highlands, also known as The Foothills at MacDonald Ranch and MacDonald Ranch Country Club, approved by the City of Henderson, Nevada, and described on Exhibit "A", as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Association.

"**Owner**" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot or Parcel including contract sellers, but excluding others who hold such title merely as security. In that case of Lots or Parcels, the fee simple title to which is vented of record in a trustee pursuant Nevada Revised Statutes, legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot or Parcel in joint ownership with any other person or holds an undivided fee interest in any Lot or Parcel.

"**Parcel**" or "**Parcel Description**" shall mean an area of real property within MacDonald Highlands limited to one of the following Land Use Classifications: Apartment Development, Condominium Development (but only until the horizontal property regime therefor is recorded), Shopping Center, Commercial Office, General Commercial, Resort Hotel, Casino, School, Church, Library, Fire Station, Golf Course, Commercial Recreational, Power Substation, or other use determined to be suitable by Declarant in accordance with the CC&Rs. The term parcel shall also include an area of land with MacDonald Highlands as to which a Parcel Declaration has been recorded designating the area for Single Family Residential Use or Cluster Residential Use but which has not yet been subdivided into Lots and related amenities and rights-of-way, but any such area shall cease to be a Parcel upon the recording of a subdivision plat or other instrument covering the area and creating Lots and related amenities. A Parcel shall not include a Lot, or any Exempt Property, but, in the case of staged

developments, shall include areas not yet included in a subdivision plat, horizontal property regime, or other recorded instrument creating Lots and related amenities.

"**Resident**" shall mean:

1. Each Owner under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each Tenant actually residing or conducting a business on any part of the Assessable Property; and

2. Members of the immediate family of each Owner and of each buyer and Tenant referred to in subparagraph (1) actually living in the same household with such Owner or Tenant.

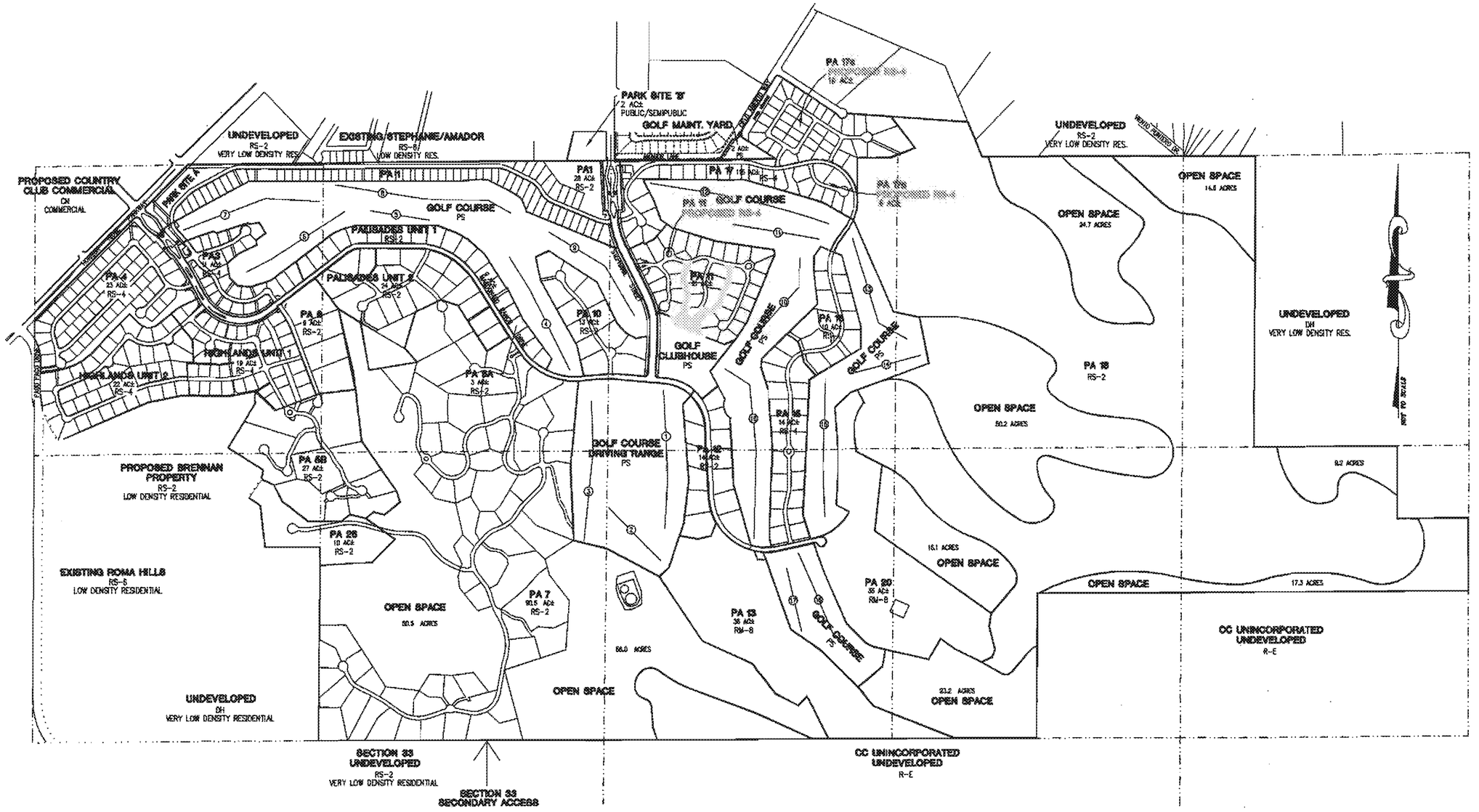
Subject to such rules and regulations as the Association may hereafter specify (including the imposition of special non-resident fees for use of the Association Land if the Association shall so direct), the term "Resident" also shall include the Guests of invitees of any such Owner, or Tenant, if and to the extent the Board in its absolute discretion by resolution so directs.

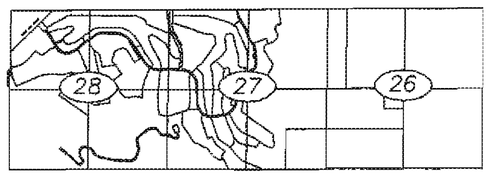
"**Single Family**" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

"**Single Family Residential Development**" shall mean a Parcel limited by a Parcel Declaration for use as a development of Single Family detached housing, each intended for use by a Single Family, and subject to restrictions contained in the Parcel Declaration recorded for any such specific development, and which shall be subject to the restrictions defined in the CC&Rs, and the entire Covenants as applicable.

"**Streets**" shall mean those areas of MacDonald Highlands, which are depicted as "Private Street" or "Public Street" or on any subdivision map recorded and filed by Declarant, or on any Master Development Plan.

"**Visible From Neighboring Property**" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.





PROJECT LOCATION
SECTIONS 26, 27, AND 28
TOWNSHIP 22 SOUTH, RANGE 62 EAST,
HENDERSON, CLARK COUNTY, NEVADA

MACDONALD HIGHLANDS

BY : FOOTHILLS DEVELOPMENT CO.
1700 HORIZON RIDGE PARKWAY, SUITE 200
HENDERSON, NEVADA 89012

UPDATED NOVEMBER 2002

REVISION	DATE	BY

APPROVED BY:

TITLE: SITE PLAN (REVISIONS TO MASTERPLAN)

PROJECT: MACDONALD HIGHLANDS

VICINITY

DESIGNING FOR THE FUTURE
PLANNING · CONSULTING ENGINEERS · SURVEYORS
10845 GRIFFITH PEAK DRIVE · LAS VEGAS, NEVADA 89135 · (702) 255-4335

W.O. # : 320-0820
BY: SRS
DATE : 9/15/99
SCALE : NONE
SHEETS 1 OF 1

2.0 COMMUNITY DESIGN & DEVELOPMENT GUIDELINES

2.1 DESIGN CONCEPT

The site planning criteria is meant to be utilized as a means to create a strong neighborhood fabric offering a visually appealing environment in and around the community.

MacDonald Highlands is envisioned as a unique community with amenities and activities designed to provide a living environment for a select number of residents. The residential areas will blend into the site's natural surroundings.

The focal point of the community is a private 18-hole golf course and country club, which creates a superlative backdrop for the community's residential component. The luxury resort will become an additional amenity for residents and act as a focus on social interaction in the community. The amenities offered within the private, gated community that is MacDonald Highlands create a lifestyle of incomparable luxury for full-time residents and the destination resort guests.

All of the residences will be designed to be consistent with the Desert Elegance theme of architecture. The Golf Course will be allowed to create its own individual identity and character more reflective of a Desert Elegance theme of architecture.

The hillsides of the MacDonald Highlands project are an invaluable resource. All construction and improvements shall be carefully planned to blend with the contour of the land. Most hillside lots offer unparalleled views of the entire Las Vegas valley.

In addition to the recreational amenities already described, bicycling and jogging paths will run along MacDonald Ranch Drive and provide an additional recreational attraction for the community.

2.2 LANDSCAPE THEME

MacDonald Highlands' landscape theme is based on a natural desert oasis concept. Through the development and implementation of its landscape program, MacDonald Highlands will introduce the desert oasis theme to the mountain coves and the undulating terrain of the community. Section 5.0 of these Development Guidelines addresses the specific landscape design concepts, criteria, and zones.

Great care will be taken to preserve the rock outcroppings and steep hillsides serving as a backdrop for the community.

2.3 STREETS & TRAIL SYSTEM

The hierarchy of roadways within the MacDonald Highlands community is designed to complement the overall quality of the MacDonald Highlands development. All roadways will be private. Access to the community will be from public roads such as Horizon Ridge Parkway and Stephanie Street through the project entry gates.

The roadways are to be designed to extend the overall community desert oasis theme throughout the community with the use of the project streetscape design concepts. Roadways are to conform as closely to natural grade as possible while maintaining compliance with the design parameters of the Henderson Hillside Ordinance.

Due to the nature of certain areas of the site, alternatives to horizontal alignments, cul-de-sacs, and roadway lengths may be modified with the approval of the City of Henderson City Council.

CIRCULATION MAP

MacDONALD HIGHLANDS

PROJECT

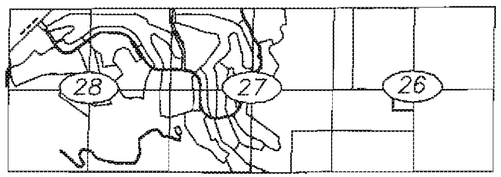
TITLE

REVISION	BY	DATE	APPR'd REV

PARK SITE 'A'
EXISTING STEPHENS/AMADOR
UNDEVELOPED
PARK SITE 'B'
GOLF MAINT. YARD
PROPOSED COUNTRY CLUB COMMERCIAL
PA 1
PARK
PA 17
GOLF COURSE
PALISADES UNIT 1
PALISADES UNIT 2
PA 3
PA 4
PA 6
PA 11
PA 10
PA 8A
GOLF CLUBHOUSE
PA 16
PA 15
PA 12
HIGHLANDS UNIT 1
HIGHLANDS UNIT 2
PROPOSED BRENNAN PROPERTY
PA 8B
PA 26
EXISTING ROMA HILLS
OPEN SPACE
PA 7
PA 13
PA 20
GOLF COURSE DRIVING RANGE
UNDEVELOPED
SECTION 33 UNDEVELOPED
SECTION 33 SECONDARY ACCESS
CC UNINCORPORATED UNDEVELOPED
PA 18
PA 19
CC UNINCORPORATED UNDEVELOPED
NOT TO SCALE

PARK AREA

PEDESTRIAN/BICYCLE ROUTES



PROJECT LOCATION
SECTIONS 26, 27, AND 28
TOWNSHIP 22 SOUTH, RANGE 62 EAST,
HENDERSON, CLARK COUNTY, NEVADA

MACDONALD HIGHLANDS

BY : FOOTHILLS DEVELOPMENT CO.
1700 HORIZON RIDGE PARKWAY, SUITE 200
HENDERSON, NEVADA 89012

UPDATED NOVEMBER 2002

VPOINT
DESIGNING FOR THE FUTURE

W.O. # :	320-0520
BY :	RAM
DATE :	11/02
SCALE :	NONE
SHEETS	1 OF 1

APP00139
EXHIBIT "B"
JA_1777

To minimize grading in the hillside areas, private driveways may be constructed from the roadway to serve one or more residences. Private driveways shall be constructed of concrete to avoid erosion onto the collector road. Gravel driveways are prohibited.

Designing streets and driveways in steep terrain must take into account several very important issues. Of primary importance is the ability to design a system that has the least impact on the native desert landscape. Sometimes this may require deviating from standard design procedures that are applicable to flatter areas. Minimizing pavement widths, while still providing adequate public health, safety, and welfare becomes a critical issue. In areas where guardrails will be required, public safety as well as architectural appeal must be considered. All proposed guardrail designs shall be approved by City staff. Special design considerations such as one-way streets and different ways of handling on-street parking are also important.

The street lighting systems must be carefully designed to prevent over-illumination of the hillside and to minimize visual impact from these systems. Lighting systems shall be designed to focus light downward as individual "pools of light," rather than dispersing it.

The maximum allowable grades for roadways must be considered in terms of driver comfort level as well as safety considerations. Fire trucks must be able to safely negotiate all proposed roads.

2.3.1 Stephanie Street is the major arterial serving the golf course and also acts as a primary entry for MacDonald Highlands. MacDonald Highlands is accessed by way of a 100- and 80-foot wide right-of-way from Lake Mead Drive,

to the MacDonald Highlands project boundary. Public access along Stephanie Street will extend into the project to the gated entry to the MacDonald Highlands private residential community. From the gated entry, Stephanie Street will continue south as a private collector boulevard to its intersection with MacDonald Ranch Drive. The median and property immediately adjacent to Stephanie Street from the gated entry to the intersection of MacDonald Ranch Drive will be landscaped using the Desert Oasis Zone intensity and plant materials palette with groups of palms being placed at areas of intersections, hilltops, or swales. The balance of the roadway will utilize mesquites, Palo Verdes and other desert foliage.

2.3.2 **MacDonald Ranch Drive** (formerly known as Foothills Village Drive), a private loop maintained by the MacDonald Highlands Master Association, will contain the project's major circulation. Gated for security and privacy, entries to this internal loop will be from Stephanie Street and Horizon Ridge Parkway. At the Horizon Ridge Parkway intersection, public access will extend several hundred feet inside the project, with adequate provisions for stacking and turnarounds. All residential development will accommodate emergency access while minimizing cut and fill areas to the other hillside development areas. The right-of-way width for MacDonald Ranch Drive will vary from 64 feet in the flatter terrain to 40 feet in the steeper hillside areas. Similarly, the landscaping zones for the medians, right-of-way, and property immediately adjacent to MacDonald Ranch Drive will vary from the Desert Oasis Zone in the flatter areas to the Enhanced Desert Zone in the steeper hillside areas. The southern portion of this

green belt area will contain a meandering jogging/cycling path, which will provide an opportunity for pedestrian and recreational pursuits.

2.3.3 **Roma Hills Drive** borders the Northwest property line of MacDonald Highlands. No direct access is provided to the community from this street, however, fire access is provided through the linear park, which divides Highlands Unit II and Planning Area 4 (also known at "Stonehaven").

2.3.4 **Private Residential Collectors:** The right-of-way widths for the private residential collector streets within the MacDonald Highlands community will vary depending on the topography and number of residences being served by the residential collector. On-street parking is prohibited on the private roads and streets within the MacDonald Highlands community. Many streets and roads will have turnouts, which allow emergency parking.

2.3.5 **Private Residential Streets:** Most residential roads within MacDonald Highlands will contain 24-foot paved surfaces and all prohibit on-street parking. The primary reason for this width is to preserve the hillside by eliminating the unnecessary disturbance of existing topography. Some roadways will serve smaller numbers of homes and thus may require smaller widths and one-way directions. Lengths of cul-de-sacs will conform to City of Henderson Hillside criteria.

2.3.6 **Private Residential Lanes:** Some roadways or lanes will serve smaller numbers of homes and thus may require smaller widths and one-way directions.

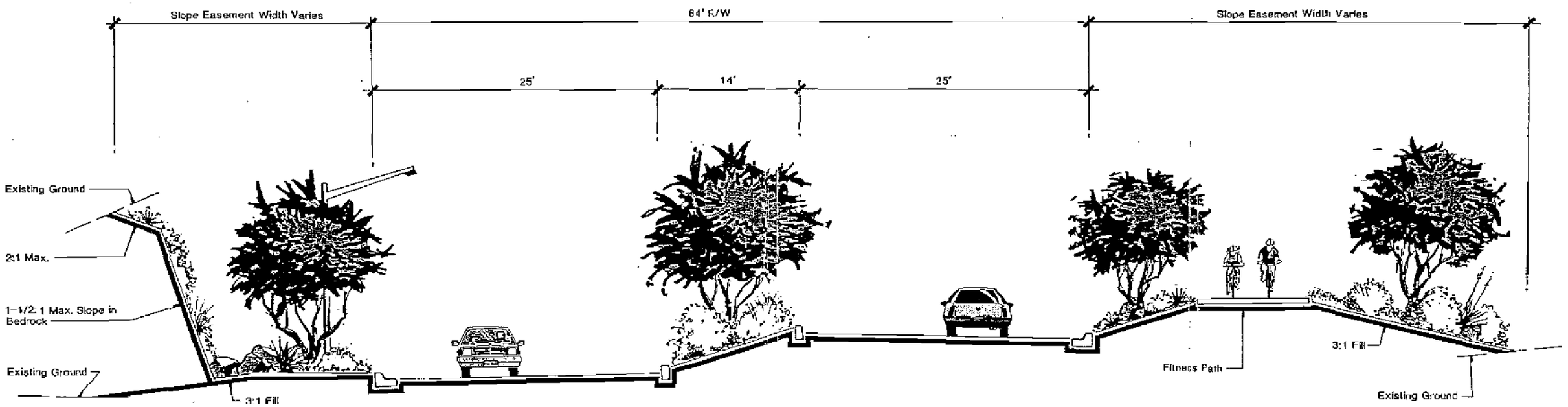
2.3.7 Bike and Pedestrian Trail System: MacDonald Highlands will have a private bike, trail, and park system for the use of its residents. The trail system will run along MacDonald Ranch Drive and along Stephanie Street, winding through canyons and connecting to the private parks within the community. The minimum width of the trail system easement will be 6-feet and the maximum will be 8'.

2.4 PROJECT ENTRIES

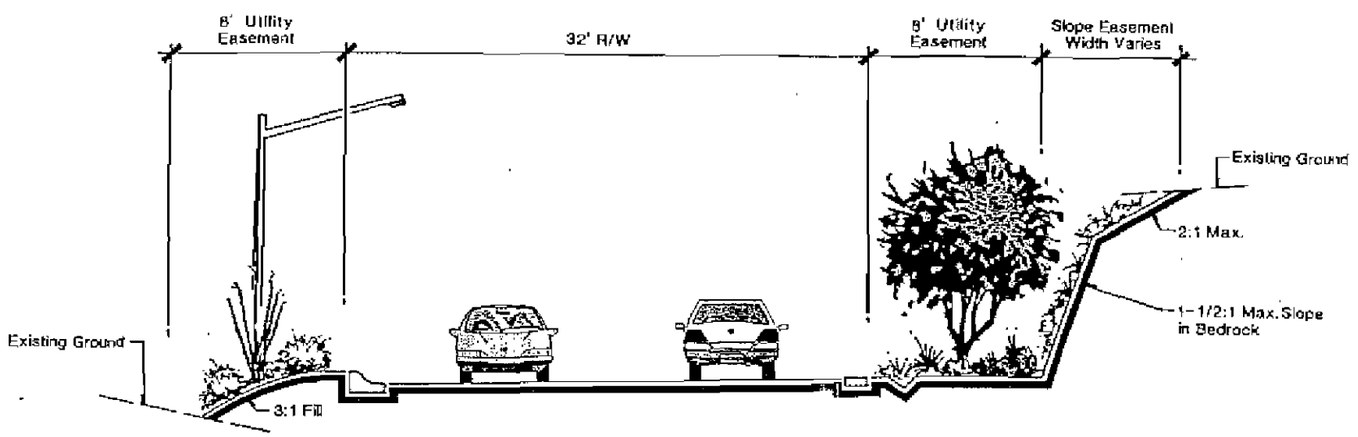
Project entries at Stephanie Street and Horizon Ridge Parkway will reflect the desert oasis theme and will make a statement of the special quality of what lies within. The oasis theme of the community will be evidenced at these entries by the stately palms, mountain springs rushing over volcanic boulders, and the lush fullness of the desert flowers and vegetation.

MacDonald Highlands' project entry program for all subdivisions and Parcels provides an integrated design of landscaping, monumentation, and signage, which maintains compatibility with the surrounding environment and is intended to impart a subtle and tasteful introduction to the overall community. A major aspect of life at MacDonald Highlands is the creation of a safe and secure living environment. A sophisticated security system, supported by a central guard gate, professional security guards and perimeter walls will provide the ultimate protection and privacy for residents and their guests.

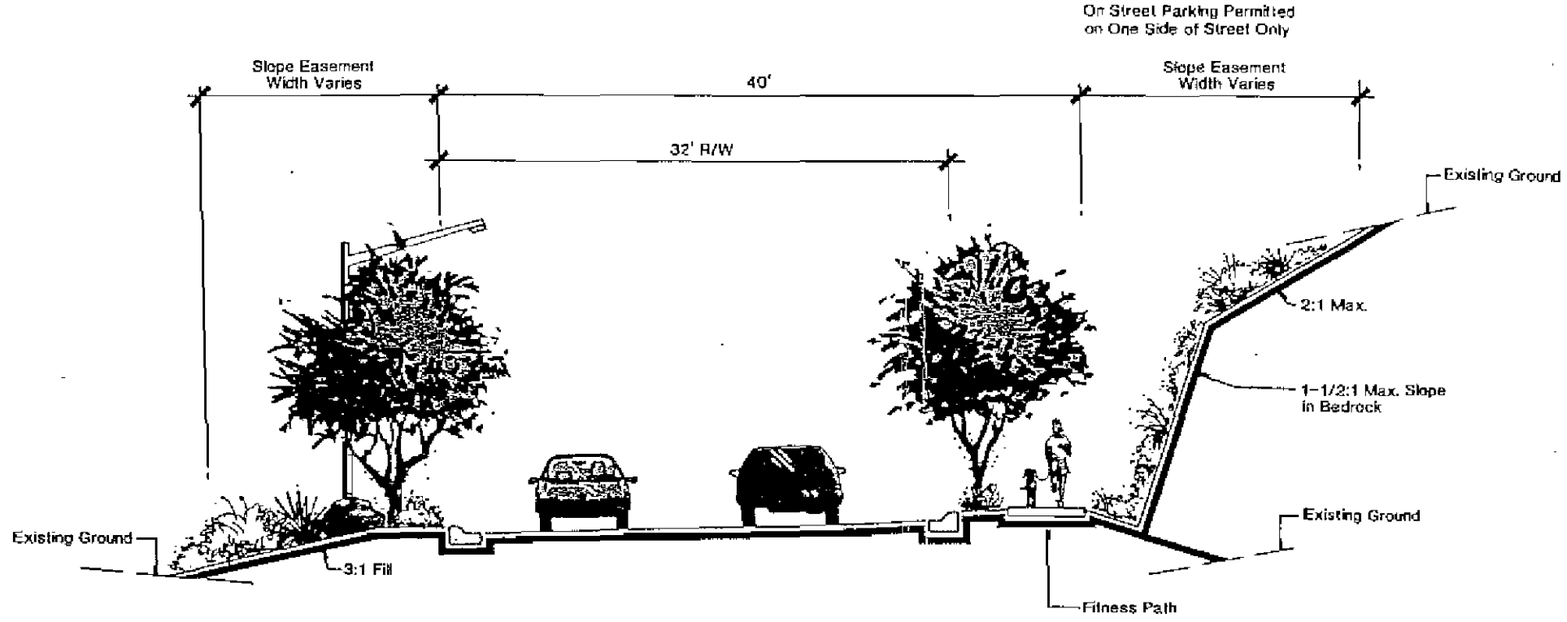
Special attention will be given to hardscape and landscape treatments as well as signage and lighting of all project entries to enhance the overall image of the MacDonald Highlands community.



Section – Stephanie St. & MacDonald Ranch Dr. (Horizon Dr. – Sta. 25+75)



Section - Typical Residential Street - Private Street



Section - MacDonald Ranch Dr. (Sta. 25+75 - Sta.65+60) - Private Street

Individual project entry areas will provide the resident and visitor with an overview of each project and will act to link the overall community design concepts together from project to project. Each project entry will be a continuation of the theme established by the main entries, only on a lesser scale.

Entries into residential neighborhoods and non-residential use areas occur at various locations throughout the community. These secondary entries consist of defined areas and may include such features as monumentation, signage, native and introduced vegetation, and enriched paving features.

Individuality for each of the neighborhood entries is also encouraged, but should remain within the overall guidelines established for signage and monumentation. Landscaping should enhance and compliment the design with colorful, drought-tolerant plant materials that are consistent with the appropriate plant palette.

2.5 SITE GRADING

The MacDonald Highlands project is situated on the northern slope of the McCullough Mountain range in Henderson, Nevada. Natural grades range from 3% in the northern portions of the project to 30% in the southern portions of the project. The main concept of this master-planned hillside community has been to preserve the natural characteristics of the hillside areas. In order to accomplish this, it is necessary for the community design concept to adopt grading criteria which limits the amount of discretionary grading that can be done in the hillside areas. In the development phase of the project, grading in the hillside areas will be limited to only that grading which is necessary to be able to construct the roadways, drainage facilities, and utilities necessary to serve and protect the planned hillside residences.

One objective of these development standards is to keep the necessary site development grading to a minimum in order to reduce impacts on the surroundings and to establish compatible relationships between buildings, landscape areas, and adjacent properties.

Any grading and all associated disturbances of the natural desert done for the purpose of constructing an individual residence on a lot or for the purpose of making improvements to an existing residence will be confined within the area designated as the "Building Envelope" for that particular lot.

Detailed grading plans prepared by a Nevada registered Civil Engineer will be required of every development in the MacDonald Highlands community. These grading plans will be reviewed by the Design Review Committee for compliance with MacDonald Highlands' Community Design Standards. No grading will be allowed within the MacDonald Highlands project without the review and approval of the Design Review Committee. In addition, City of Henderson permits are required per City regulations.

Where grading results in a disturbance of the existing desert surface, landscaping and resurfacing techniques will be used to restore a natural desert appearance to those areas or to create a new appearance which is compatible with, blends with, or enhances the natural desert appearance. Chemical treatment techniques such as "Permeon" and other forms of reestablishing a surface similar to the natural desert varnish are methods that can be used to treat disturbed areas. Other methods can include rock placement, landscaping, retaining walls, or a combination of the above for the purpose of reestablishing or enhancing the natural desert appearance. In the event that retaining walls are necessary to secure a slope only DRC-approved materials may be used.

Any grading should result in the re-contouring of land that reflects the natural landforms. Smooth, gradual transitions are encouraged where graded slopes meet natural terrain. Grading and siting techniques should respect natural drainage features, surface, and subsurface geological factors. In areas where large amounts of earthwork are unavoidable, the land should be reshaped with natural contours to provide a finished appearance, which duplicates the natural landscape.

2.6 DRAINAGE

The goals of the drainage design standards for the MacDonald Highlands project are consistent with the overall desire to maintain the natural integrity of the hillside community. As the purpose of the grading design standards is to keep the hillsides in their natural condition as much as possible so to is the purpose of the drainage design standards. Grading and drainage play critical roles in appropriate hillside development, since the handling of these issues will directly impact both the physical and the visual impact that is created by the development. Care must be taken to respect and preserve the natural drainage patterns, at the same time protecting the proposed developments.

Every development project in the MacDonald Highlands community will be required to submit a detailed drainage plan prepared by a registered Nevada Civil Engineer to the Design Review Committee, as well as obtaining approvals from the governing entities at the City of Henderson. The overriding principle behind the drainage design standards for the MacDonald Highlands project is to utilize the natural existing drainage ways as much as possible. It will be the responsibility of every

developer/builder whether of a single custom home or of a larger parcel to maintain or reestablish the natural drainage patterns where those patterns are interrupted by his development project.

It is intended that storm flows will be conveyed to the major drainage ways by allowing local storm runoff to sheet flow as much as possible overland and across roads to natural drainage ways. Where necessary, roadside ditches and storm sewers may be used to collect runoff and direct it to the natural channels. Plans and designs for all drainage facilities and improvements must be approved by the City of Henderson Public Works Department.

Storm drainage channels will either be lined or unlined depending upon the flow velocities of the specific channel or channel sections. Lined channels or channel sections will be constructed mostly with native materials to look more natural and to conform to the natural channel slopes. Where concrete aprons are required to deal with low flow, nuisance water, or other situations, these aprons shall be designed and constructed in such a fashion so as to conform to the natural channel slopes and treated with Permeon. Unlined channels, once graded to the necessary elevations and widths, shall be finished in such a fashion so as to resemble the natural unlined channels in the MacDonald Highlands community and to blend with the surrounding area.
Where roadways cross major channels within the MacDonald Highlands project, culverts and energy dissipation structures may be necessary. Once the required structures have been built and the necessary channelization completed, the disturbed areas will be addressed with native materials and landscaping treatments to establish the natural desert appearance as it applies to washes and the surrounding area.

2.7 PARKING

Each Single Family Residence shall contain parking spaces within the Lot or Parcel for at least two automobiles in an enclosed garage either attached to or detached from the main structure of the Residence. Where the approved zoning represents a density equal to or less than RS-4, a minimum of three additional spaces for guest parking will be required on each lot. Two additional parking spaces for guest parking will be required on lots where the approved zoning represents a single family density greater than RS-4. No on-street parking will be permitted except on certain streets and only for special conditions as granted by the Association. In all situations, garage doors will not front the street unless approved by the Design Review Committee.

For cluster housing, condominium, clubdominium, or multi-family residential development, the Design Review Committee may approve alternative parking including (a) a carport enclosed on not less than three sides, either attached directly to the main structure of the Residence or connected by a roof or major fence or (b) exterior parking areas which must be screened from view using landscaping, garden walls, or combinations of both. The minimum number of parking spaces required for condominiums or multi-family residential development shall conform to City of Henderson standards for the same type of product.

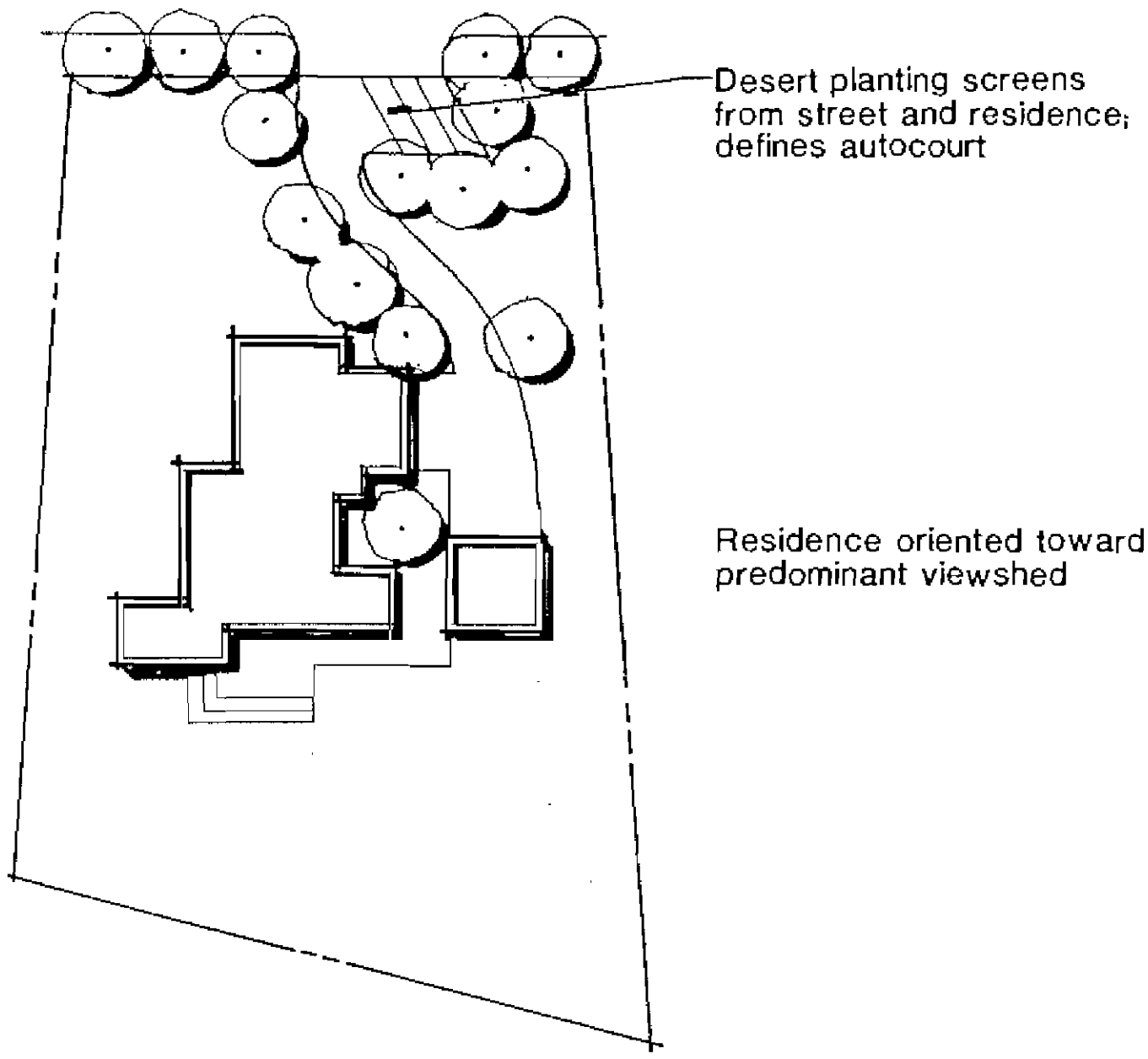
For Non-Residential Developments, open parking and covered areas shall be clustered in parking courts along internal private drives to enhance security. Pedestrian and automobile circulation shall be clearly defined. Special paving at parking court entries and landscape nodes between parking stalls is encouraged to soften the streetscape.

No boats, trailers, or other recreational vehicles shall be stored on-site unless they are parked inside an enclosed area, which is permanently attached to a main residence, or unless alternate storage plans are approved by the Design Review Committee.

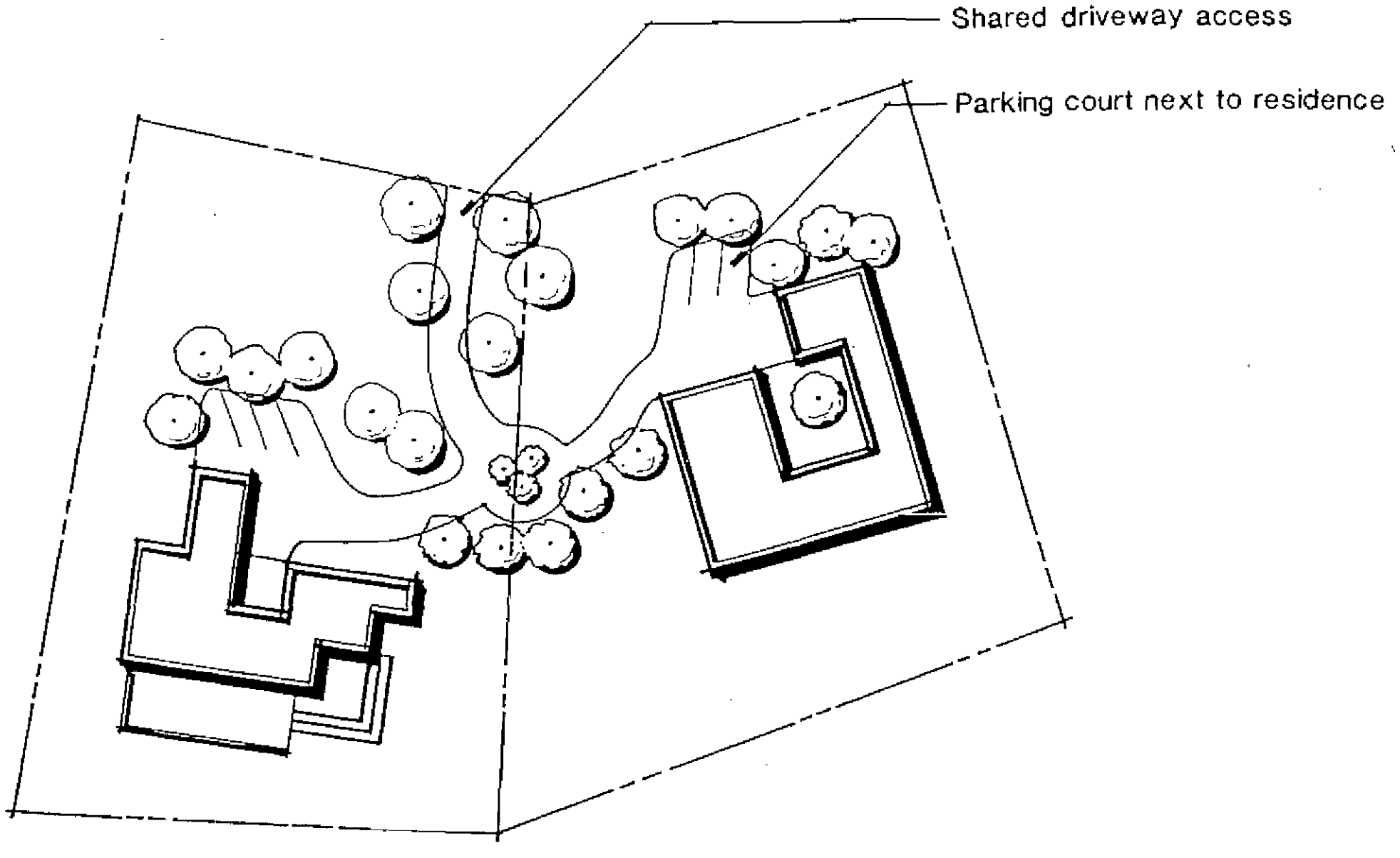
2.8 SETBACKS

All Developments within MacDonald Highlands shall maintain setbacks and easements consistent with the setback standards described in Section 3.0 of these Design Guidelines. Variation of setbacks will be encouraged in the residential areas of moderate density to distinguish individual identities and avoid formal redundancy.

Within the Non-Residential projects, no building or parking will be permitted closer than 15 feet to the right-of-way or as specified in the Henderson Development Code. This area shall be landscaped consistent with the design concepts set forth by these Guidelines.



Residential Offstreet Parking
One Residence



Residential Offstreet Parking
Two Residences
Non-Collector Streets Only

2.9 LIGHTING

The goal of an overall lighting plan for MacDonald Highlands is to provide a cohesive lighting theme throughout the entire site. The unified, natural effect desired will utilize up lighting of trees to enhance the beauty of the night at MacDonald Highlands. Lighting shall be utilized only as necessary to provide the functional requirements of safety, security, identification, and an aesthetically pleasing environment. Featured vistas and landmarks may be highlighted to provide dramatic accents. The design must balance the level of security with aesthetics without providing an over-lit or washed-out environment.

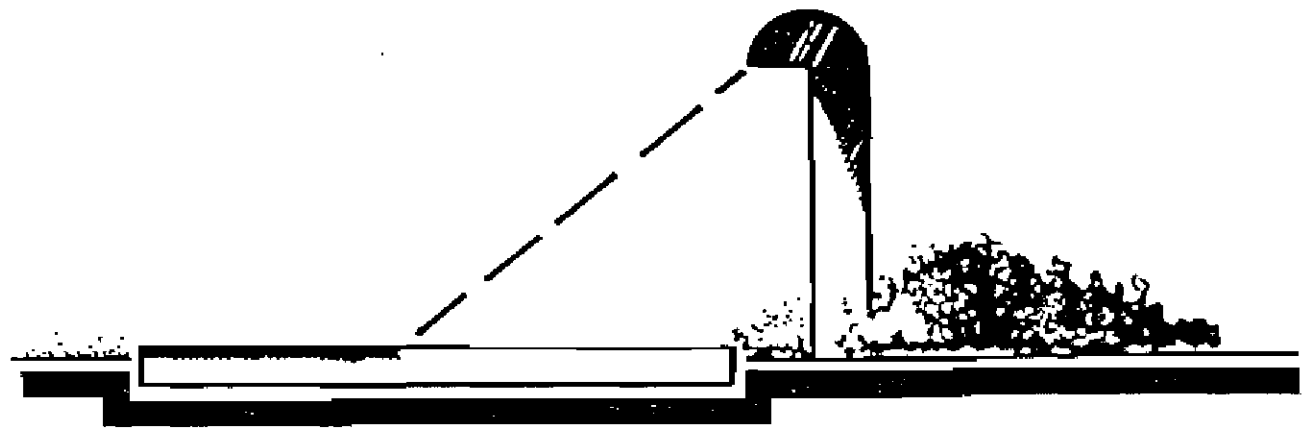
Vehicular and pedestrian movement within the project will be examined so that hazard points will be identified and properly illuminated.

We prefer to use the technique of minimal street lighting and maximum landscape lighting to enhance the aesthetic quality of the site. The lamp of choice, for the outer portion of the property, will be color-corrected High Pressure Sodium which will enhance the natural colors of the desert. In the more lush landscape areas, the lamps will be a warm color temperature (3000°K) Metal Halide and low wattage fluorescence for better color rendition. The overall feel should mimic the historical "gas light" quality with high color rendering properties. In all cases, the quality of the light shall be reviewed rather than just the quantity of light.

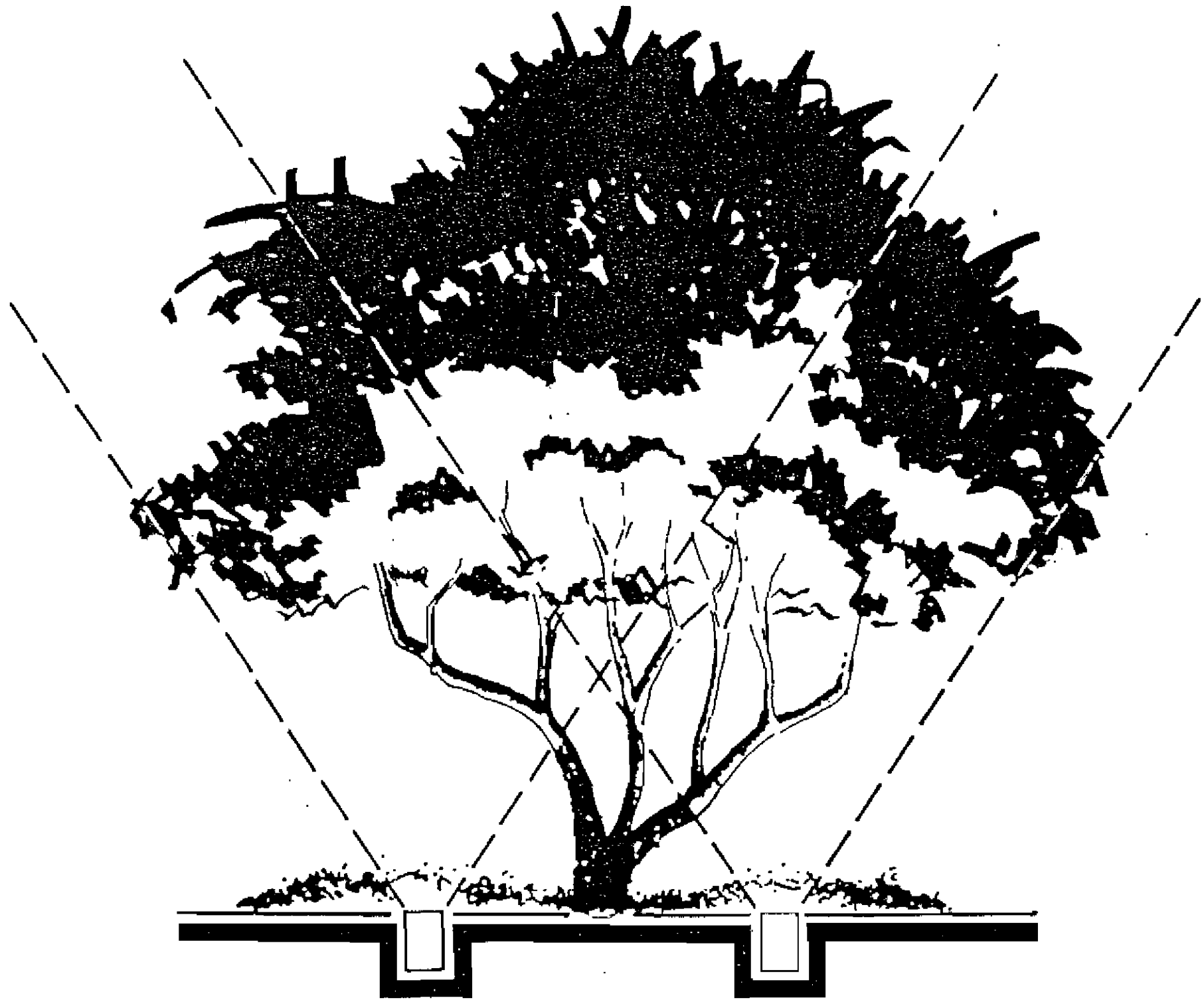
Where utilized within the community, light standards shall consist of a "bollard" type or other low profile design of masonry, concrete material, a fabricated metal, and ground cover such as

natural rock or pebble. The light source shall be shielded to reduce dispersal of ambient light in a skyward direction. The light shall be directed only down and onto the street in a limited radius. The standards shall be separated sufficiently to create isolated "pools of light" on the pavement, not a continuous, saturated condition. All light fixtures shall be shielded to prevent light trespass upon other properties. Pole fixtures for street, sports, and parking lots shall be of the cut-off variety, which will direct all light down on the horizontal surfaces. Horizontal distribution lights such as wall packs and floodlights are discouraged. If used, they must be shielded and baffled as not to be viewed from the edge of the property.

In keeping with this philosophy, the use of low-pressure sodium or incandescent fixtures is encouraged. Energy efficient low voltage lighting should be used in all landscaped areas. Other issues such as glare control and long-term maintenance will also be factored into the design process. Individual design cases shall be reviewed independently by the Design Review Committee.



Bollard Lighting
Along Fitness Paths & Bikeways



Landscape Uplighting of Trees From Ground

2.9.1 Architectural Lighting: Wherever monumental architectural elements occur within MacDonald Highlands, they will be enhanced with illumination. These would include entry gateways, gatehouses, and/or other architectural elements. The architecture of the buildings should suggest the type or style of lighting. All lights shall provide a soft-themed effect with a maximum foot-lambert of 5 foot-candles. Major identity elements will be illuminated to provide a site reference and project identity. Visible lamps are discouraged unless they are thematic and integrated with the design and are approved by the Design Review Committee. All visible lamps shall be steady-burning. The use of exposed neon is prohibited. Designs using integrated illuminated cavities with "glow from within" effect are encouraged. Sensitive lighting of the back-of-house areas shall be required to eliminate glare.

Highlighting the architectural icons is extremely important to the project. Care should be taken to minimize glare from visible lamps, but multiple techniques can be used to express these icons and further enhance the overall architectural continuity of the individual site. All architectural lighting (non-emergency and circulation) shall be on separate control circuits for maximum control. These lights throughout the entire complex shall be switched off at predetermined times.

Any back-of-house lighted areas shall be discreetly illuminated with non-visible light sources or glare-free optical units. Garage lighting equipment is to be shielded so as not to be viewed from the exterior of the garages. Poles

in parking lots also provide house-side shields to eliminate light from transmitting outside the parking lot boundaries. Any type of sport courts (basketball, tennis, volleyball, etc.) can be illuminated for nighttime use. However, cut-off fixtures must be used and the covers must only be illuminated to recreational lighting levels as established by the Illuminating Engineering Society of North America's Lighting Handbook. Light spillage onto adjacent property is strictly prohibited. All sports lights must be on a timer switch or occupancy sensor so they turn off when not in use. Additional safety and circulation lighting can remain on. Pole heights are limited to 20 feet. All fixtures shall also have house side glare shields. The reason for this stringent control is the uncontrollable spill light created by requirements of typical sports illumination.

2.9.2 Landscape Lighting: Landscape is of great importance to this project. Visual icons, views from interior spaces, and the overall site shall be coordinated to enhance views both during the day and evening. The use of appropriate light sources and concealed fixtures shall be required.

2.9.3 Graphics: The entry into MacDonald Highlands at Stephanie Street and MacDonald Ranch Drives will be illuminated with recessed Metal Halide ground-mounted wall wash up-lights. The light shall be placed and shielded in accordance with the Dark Sky standard. Signage brightness shall not exceed 20 foot-lamberts. Informational and directional signs need not be illuminated. Positive contrast between reflective letters or backgrounds is recommended for visibility with automobile headlights. When graphic illumination is

required, recessed floodlighting or cantilevered down-lights are recommended to provide even face illumination. Sign boxes and internally illuminated elements are discouraged.

2.9.4 **Pedestrian Lighting:** Whenever a pedestrian walkway intersects another path or a vehicular or service roadway, the intersection shall be illuminated. The use of cut-off fixtures or bollards and higher light levels shall be used to identify this area. In addition, a change in texture on the paving material is also recommended.

Low level path lighting is highly desired to support pedestrian activity along the landscaped areas of MacDonald Highlands. All major pedestrian paths shall be illuminated with cut-off optic poles, down-lights in trees, glare-free bollards, or low level landscape lighting. Areas of possible safety hazards including steps, grade changes, etc., shall be illuminated to a higher level of light through the use of bollards, poles, or recessed steplights. All fixtures shall be glare-free and direct the light down towards the ground.

2.9.5 **Roadway Illumination:** Major roads shall be illuminated with High Pressure Sodium cut-off fixtures. The recommended fixtures shall be either themed or shoe box fixtures mounted on poles. Pole height shall not exceed 20 feet. Foot-candle levels and uniformity levels as described by the IES will be met. Intersections and curbs shall be illuminated to a slightly higher level.

2.10 FENCES AND WALLS

Introduction & Philosophy: As a luxury, view-oriented community, MacDonald Highlands is designed to have a minimal amount of fences and walls. In order to preserve the spectacular scenery unique to MacDonald Highlands, the Design Review Committee reserves the right to approve the location, materials, color, columns, and design of all fences and walls.

MacDonald Highlands' development theme has been expressed as casual country estate and rural atmosphere. While there will be some parcels which will be developed in a more urbanized design pattern, the majority of the MacDonald Highlands project and especially the Hillside Estates areas will be developed with this rural country estate design theme. In order to establish and maintain this overall rural ambiance and to preserve the natural hillside terrain, the community will discourage and prevent the proliferation of walls.

In those areas identified as Hillside Estates, the construction of walls for the purpose of identifying property lines of an individual lot or for confining animals is prohibited. The construction of boundary walls and property line walls by the Master Developer of a parcel may be allowed upon review and approval of the design and purpose by the Design Review Committee. Types of walls used in the development of individual lots that will be considered for approval by the Design Review Committee in Hillside Estates areas are structural support walls, retaining walls, and security walls, which are designed and constructed as an integral part of the residential structure. Where security walls are necessary, they will be designed and constructed under the parameters for "view walls."

In those areas of the MacDonald Highlands community which are not identified as Hillside Estates areas, the use and construction of walls for the purpose of identifying individual lot property lines as well as security, screening, and retaining will be permitted as long as the design and construction is consistent with the standards established in these design guidelines and is approved by the Design Review Committee.

All walls within the MacDonald Highlands community shall be constructed of a solid masonry material except where the design standards call for metal components. Any walls that are not constructed entirely of native materials will, as a minimum, have exterior surfaces that are constructed of native materials, which complement the natural desert environment, colors, and materials.

All fences and walls desired on a shared property line will be per community-design standards and coordinated between the property Owners. For the portions of the wall that are exposed, double split-face block is required and the cost of the construction of said exposed wall ***will be shared*** by both adjacent Owners. For those walls or portions of walls that are needed or create a retaining situation, the cost of construction will be the sole responsibility of the Owner creating the retaining situation(s). Only one wall will be permitted on any property line.

All fences and walls along a roadway or common open space, where approved by the DRC, will be constructed per community-design standards.

The design and construction of all walls in the MacDonald Highlands community must be approved by the Design Review Committee. The following types of walls and their associated design criteria are further described in this section and in the appropriate Architectural Guidelines sections.

Chain link and/or perimeter fencing is not permitted, except during construction. Furthermore, exposed wall-top security devices such as concertina wire is prohibited. Because the site affords such dramatic view potential, it is strongly encouraged that open fencing be used predominantly within MacDonald Highlands.

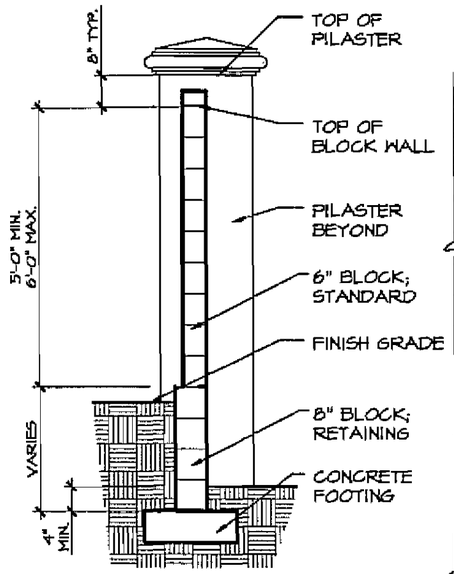
Pool fencing should follow the same standards for openness, visibility and design, but compliance with City, County, and State Ordinances is essential.

Special attention to waterproofing and location of irrigation spray heads will be necessary in order to eliminate leaking, staining, aesthetic, or structural problems.

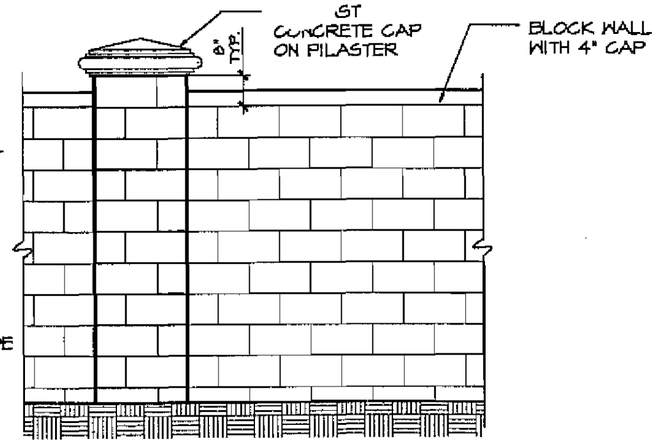
2.10.1 Perimeter or Boundary Walls

Within the MacDonald Highlands community, the term Perimeter Wall will be used to identify those walls used around the exterior perimeter of the MacDonald Highlands community. Typically, such perimeter walls will be 5 to 6 feet with the standard height being 6 feet, except for short sections where the wall steps up or down to transition a change in elevation.

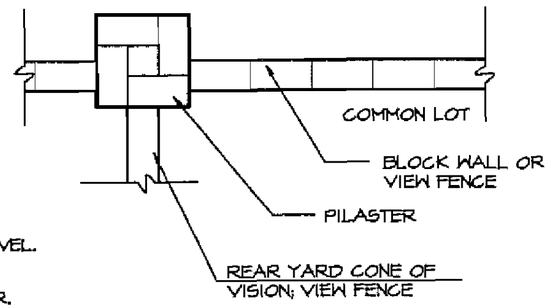
Certain situations may arise that necessitates the construction of a boundary wall between two parcels. Where this necessity has been reviewed, acknowledged, and approved by the Design Review Committee, the developer may construct such a wall. The design of such boundary walls is subject to the review and approval of the Design Review Committee. The use of open type view walls for these situations is encouraged. The Design Review Committee discourages the use of solid masonry walls that will block views.



SECTION



ELEVATION



PLAN VIEW

GENERAL WALL NOTES:

1. FOOTINGS SHALL BEAR ON COMPETANT UNDISTURBED NATURAL SOIL OR COMPACTED FILL. REMOVE ALL LOOSE MATERIAL BEFORE CONCRETE PLACEMENT. GRADE CHANGES SHALL BE MADE USING STEP FOOTING DETAIL. OTHERWISE TOP OF FOOTING SHALL BE APPROXIMATELY LEVEL. DO NOT CONSTRUCT WALL OVER HIGHLY EXPANSIVE OR COLLAPSABLE SOIL OR OVER SOIL FISSURES WITHOUT SOIL STABILIZATION AS DIRECTED BY A GEOTECHNICAL ENGINEER.
2. HOLLOW LIGHTWEIGHT CONCRETE MASONRY UNITS SHALL CONFORM TO ASTM C90, GRADE N, TYPE I WITH 1900 PSI MIN. COMPRESSIVE STRENGTH.
3. STEEL REINFORCING BARS SHALL BE ASTM A615, GRADE 40 FOR #4, GRADE 60 FOR #5 AND LARGER.
4. DO NOT SLOPE RETAINED SOIL TOWARD WALL. PROVIDE POSITIVE DRAINAGE AWAY FROM WALL ON BOTH SIDES.
5. VERTICAL EXPANSION OR CONTROL JOINTS SHALL BE MADE ON FENCE WALLS AT INTERVALS NOT TO EXCEED 25' O.C.. HORIZONTAL REINFORCING NEED NOT BE CONTINUOUS THRU JOINT WHERE PLASTER BLOCK IS USED.
6. VERTICAL EXPANSION OR CONTROL JOINTS ON RETAINING WALL ARE OPTIONAL. FOR BEST RESULTS, JOINTS ARE RECOMMENDED AT INTERVALS NOT EXCEEDING 25' O.C..
7. DO NOT LOCATE WITHIN DISTANCE "A, B, C, OR D" (WHICHEVER IS APPLICABLE) OF UPPER SIDE OF WALL, ANY BUILDING FOUNDATION, PARKING, ROADWAYS, LARGE TREES OR ADDITIONAL RETAINING WALLS.
8. INSPECTION OF CONSTRUCTION SHALL BE ACCOMPLISHED ACCORDING TO ALL DIRECTIVES GIVEN BY BUILDING DEPARTMENT OFFICIALS.

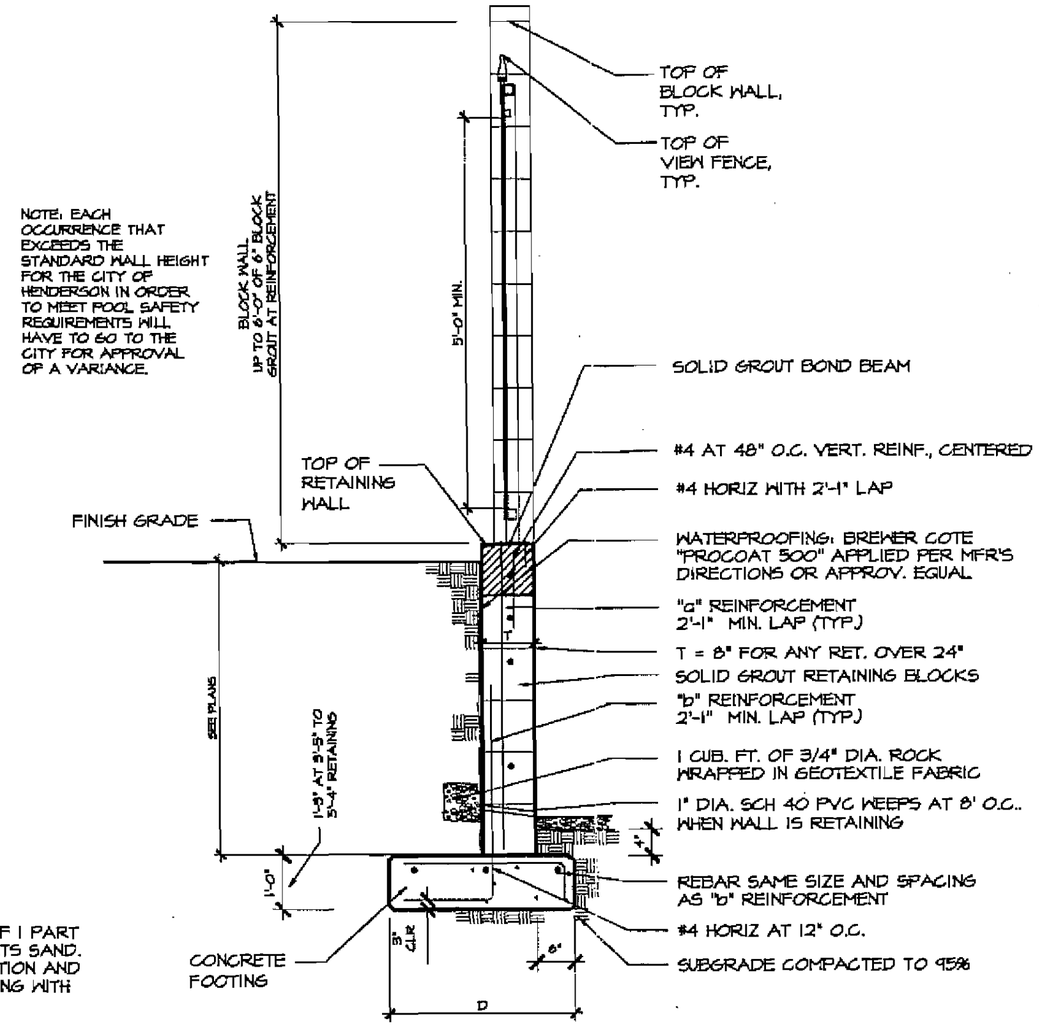
CONCRETE:
CONCRETE SHALL BE 5 SACK MINIMUM, TYPE V CEMENT WITH A 6" MAX. SLUMP. 28 DAY STRENGTH SHALL EXCEED 2500 PSI. PLACE CONCRETE TO MINIMUM DIMENSIONS SHOWN WITH 3 INCHES COVER TO ALL REINFORCING STEEL.
A GOOD CONCRETE MIXTURE FOR FOOTING IS BY VOLUME: 1 PART PORTLAND CEMENT, 2.75 PARTS SAND, 4 PARTS GRAVEL NOT LARGER THAN 1.5 INCHES, AND JUST ENOUGH WATER TO MAKE THE MIXTURE "MUSHY" AND WORKABLE, BUT NOT "SOUPY". THE WATER CONTENT SHOULD NOT BE MORE THAN 7.5 GALLONS PER SACK OF CEMENT FOR THE ABOVE MIX.

MORTAR:
MORTAR SHALL BE 2000 PSI TYPE S.
A GOOD MORTAR MIXTURE SHOULD BE IN PROPORTIONS OF 1 PART PORTLAND CEMENT, 1/3 PART LIME (HYDRATE), AND 3 PARTS SAND. THE WATER CONTENT SHOULD BE ACCORDING TO ABSORPTION AND SUCTION ABILITY TO ASSURE NORMAL FLOW AND SPREADING WITH A TROWEL.

GROUT:
GROUT SHALL BE 2000 PSI.
A GOOD GROUT MIXTURE SHOULD BE COMPOSED OF VOLUME OF 1 PART PORTLAND CEMENT, 2 PARTS SAND, AND 1 PART PEA GRAVEL. SUFFICIENT WATER SHALL BE ADDED TO PRODUCE CONSISTENCY FOR POURING WITHOUT SEGREGATION.

BLOCK:
CONCRETE BLOCK IS CSR BROWN #2 DOUBLE SPLITS.
STANDARD WALL BLOCK IS 6" x 8" x 16". IF RETAINING OVER 24" BLOCK IS 8" x 8" x 16". SOLID SMOOTH CAP IS 4" x 6" (or 8") x 16" FLUSH WITH BLOCK WALL, COLOR TO MATCH BLOCK.

PILASTER CAP:
PRECAST CAP AVAILABLE AT 'ARCHITECTURAL PRECAST, INC.' 702.643.7000, CONTACT IS KIRK. DIMENSIONS AS SHOWN. COLOR TO BE STANDARD MRCC PRECAST CAP COLOR.



8" TO 5'-4" RETAINING WALL WITH 6' SCREEN WALL

REINFORCING SCHEDULE

	T BLOCK THICKNESS	H RETAINED HEIGHT	D FOOTING WIDTH	"a" REINFORCEMENT	"b" REINFORCEMENT
0" to 8" RETAINING	6"	8"	2'-0"	#4 @ 48" O.C. VERT.	NA
9" to 24" RETAINING	6"	2'-0"	2'-0"	#4 @ 16" O.C. VERT.	NA
2'-1" to 3'-4" RETAINING	8"	3'-4"	2'-6"	NA	#4 @ 24" O.C. VERT. #4 @ 24" O.C. HOR.
3'-5" to 5'-4" RETAINING	8"	5'-4"	4'-0"	NA	#5 @ 8" O.C. VERT. #4 @ 24" O.C. HOR.

BLOCK WALL EXHIBIT

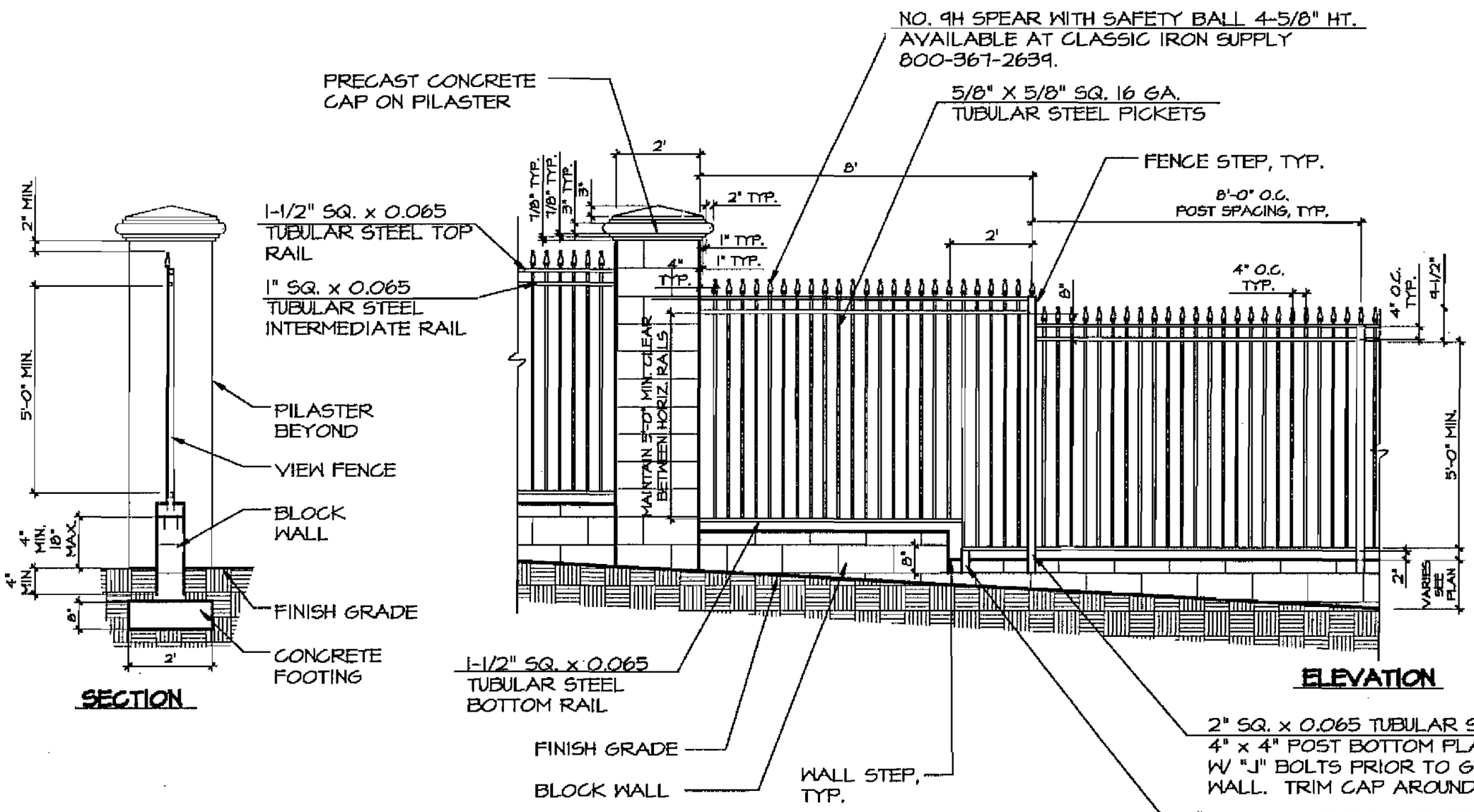
Exhibit "H"
Page 2.27

APP00143
MCDONALD HIGHLANDS
JA_1801

2.10.2 View Walls

The use of "view walls" for purposes other than to provide retaining or structural support is encouraged within the MacDonald Highlands community. Lots along the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. Where permitted, view walls will be used to delineate property lines, to provide security fencing, to enclose properties, etc. All architectural designs and colors are subject to compliance with the appropriate sections of these design guidelines and approval by the Design Review Committee.

The design of View Walls should promote the open view oriented characteristics of the MacDonald Highlands community. View walls shall be designed to minimize massing impacts on the community and to minimize any visible barriers to views that would result from the construction of such walls. The use of open distinctive ornamental metal materials for such walls is encouraged. A solid masonry base no higher than 18" may be approved by the Design Review Committee depending upon the architectural design and materials. Masonry pillars to support the metal sections may be approved by the Design Review Committee depending upon the architectural design and materials. All masonry components of view walls will have exterior surfaces that are constructed of native materials, which complement the natural desert environment and colors.



NOTES:

FENCE: PAINT WITH (1) COAT METAL PRIMER AND (2) FINISH COATS. PAINT COLOR TO BE AMERON 450HS "FOOTHILLS MAHOGANY".

BLOCK: CONCRETE BLOCK IS CSR BROWN #2 DOUBLE SPLITS. STANDARD WALL BLOCK IS 6" x 8" x 16". IF RETAINING OVER 24" BLOCK IS 8" x 8" x 16". SOLID SMOOTH CAP IS 4" x 6" (or 8") x 16" FLUSH WITH BLOCK WALL, COLOR TO MATCH BLOCK.

CONNECTIONS: HORIZONTAL RAILS ARE TO BE WELDED TO POSTS. WELDS SHALL BE CONTINUOUS AROUND RAILS AND GROUND SMOOTH PRIOR TO PAINTING.

PILASTER CAP:
PRECAST CAP AVAILABLE AT 'ARCHITECTURAL PRECAST, INC.' 702.643.7000, CONTACT IS KIRK. DIMENSIONS AS SHOWN. COLOR TO BE STANDARD MRCC PRECAST COLOR.

EACH OCCURRENCE THAT EXCEEDS THE STANDARD WALL HEIGHT FOR THE CITY OF HENDERSON IN ORDER TO MEET POOL SAFETY REQUIREMENTS WILL HAVE TO GO TO THE CITY FOR APPROVAL OF A VARIANCE.

Exhibit "I"
Page 2.29

VIEW WALL EXHIBIT

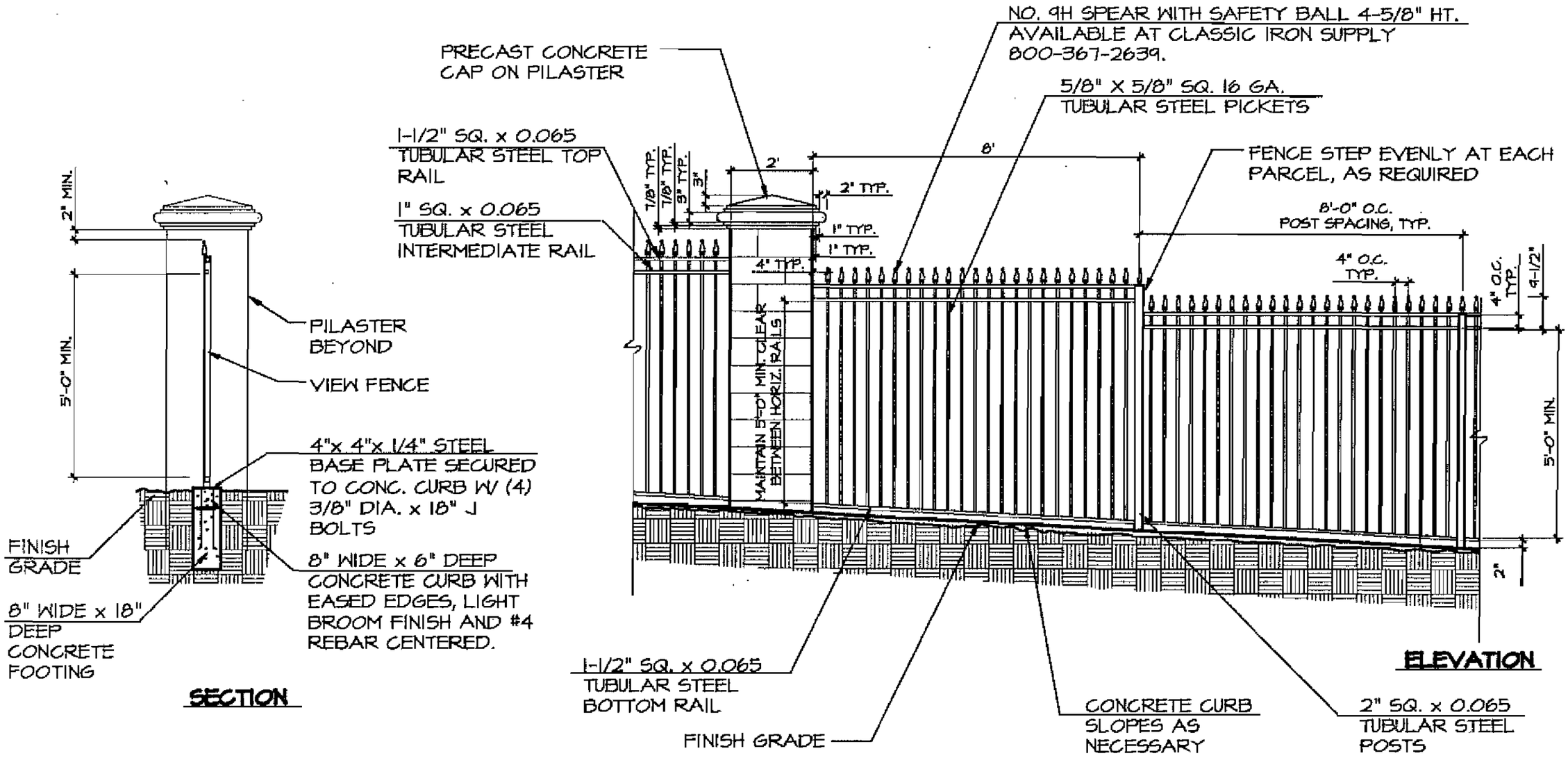


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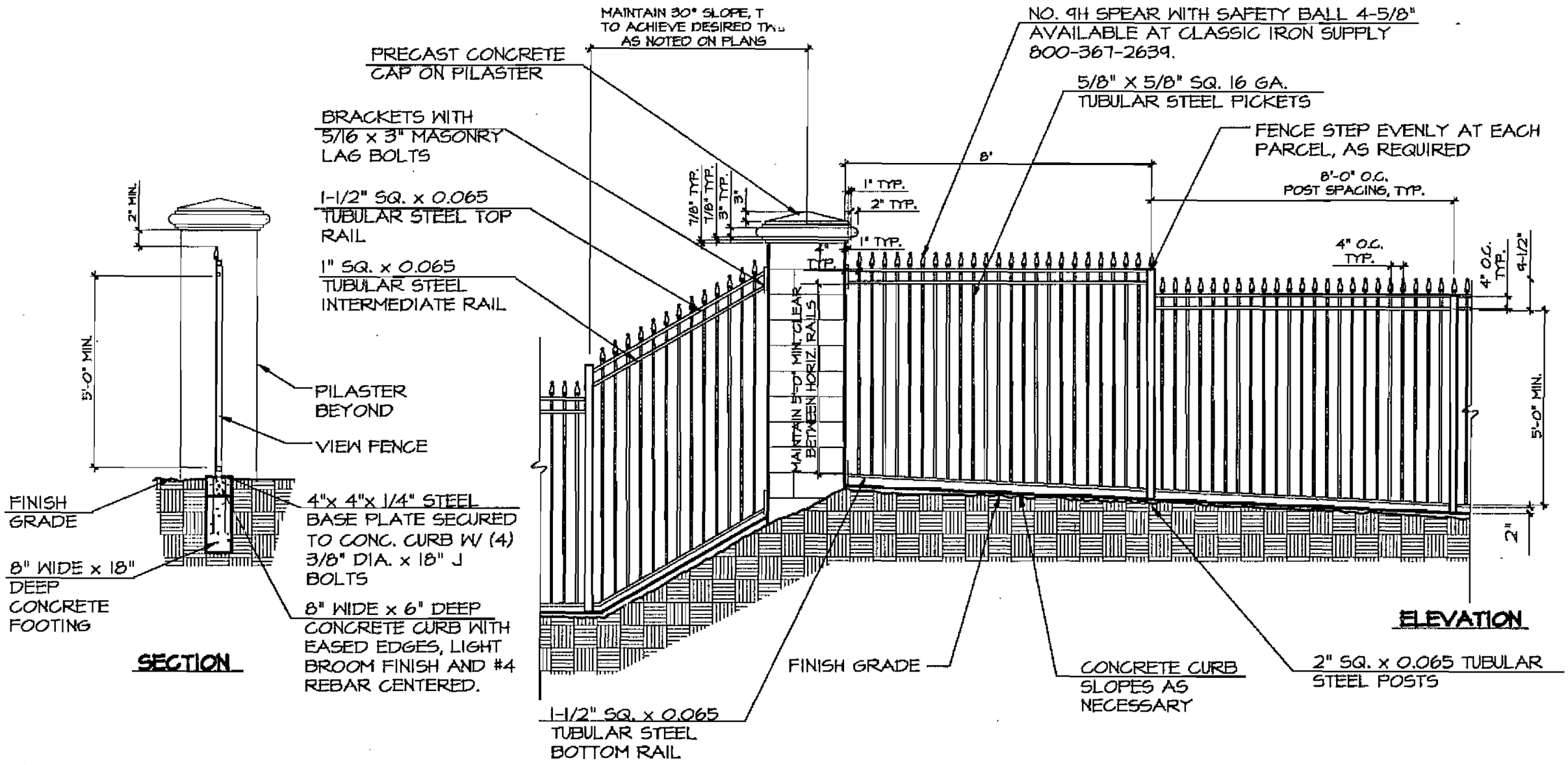
Exhibit "J" Page 2.30

VIEW FENCE EXHIBIT



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PILASTER: CONCRETE BLOCK IS CSR BROWN #2 DOUBLE SPLITS.

PILASTER CAP:
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Exhibit "K"
Page 2.31

SLOPING VIEW FENCE EXHIBIT

Netting, screens and excessive landscaping will not be permitted against view walls. However, in areas requiring pet containment, non-reflexive glass, wire mesh, expanded steel, tempered glass or invisible fencing may be allowed and will be reviewed and approved on a case-by-case basis by the Design Review Committee. Permitted material as specified above may not exceed a height greater than 24-inches as measured from the bottom rail of the view fence.

ALL view wall fencing shall consist of 2" posts, 1.5" top and bottom rail, 1" middle rail, 5/8" pickets and 217 WB arrowheads, which are to be fixed atop all posts and pickets. All view wall fence shall be fabricated in the 'inlay style' and be powder coated to match custom Frazee Paint Color # 11028CCL (450HS Foothills Mahogany) [Exhibit "L"]. All contracts and pricing agreements shall strictly be between the specific Lot Owner, Developer and/or Builder and his/her chosen contractor.

Stephen Poole
New Home Construction - Industrial
Nevada Area Manager

FRAZEE PAINT & WALLCOVERING

5280 S. Valley View
Las Vegas, NV 89118
702.895-9800
Fax 702.597-5200

Cell 702.604-3040
e-mail: spoole@frazee.com

Custom Color # : 11028CCL
Description : 450HS FOOTHILLS MAHOGANY
Formulated By :

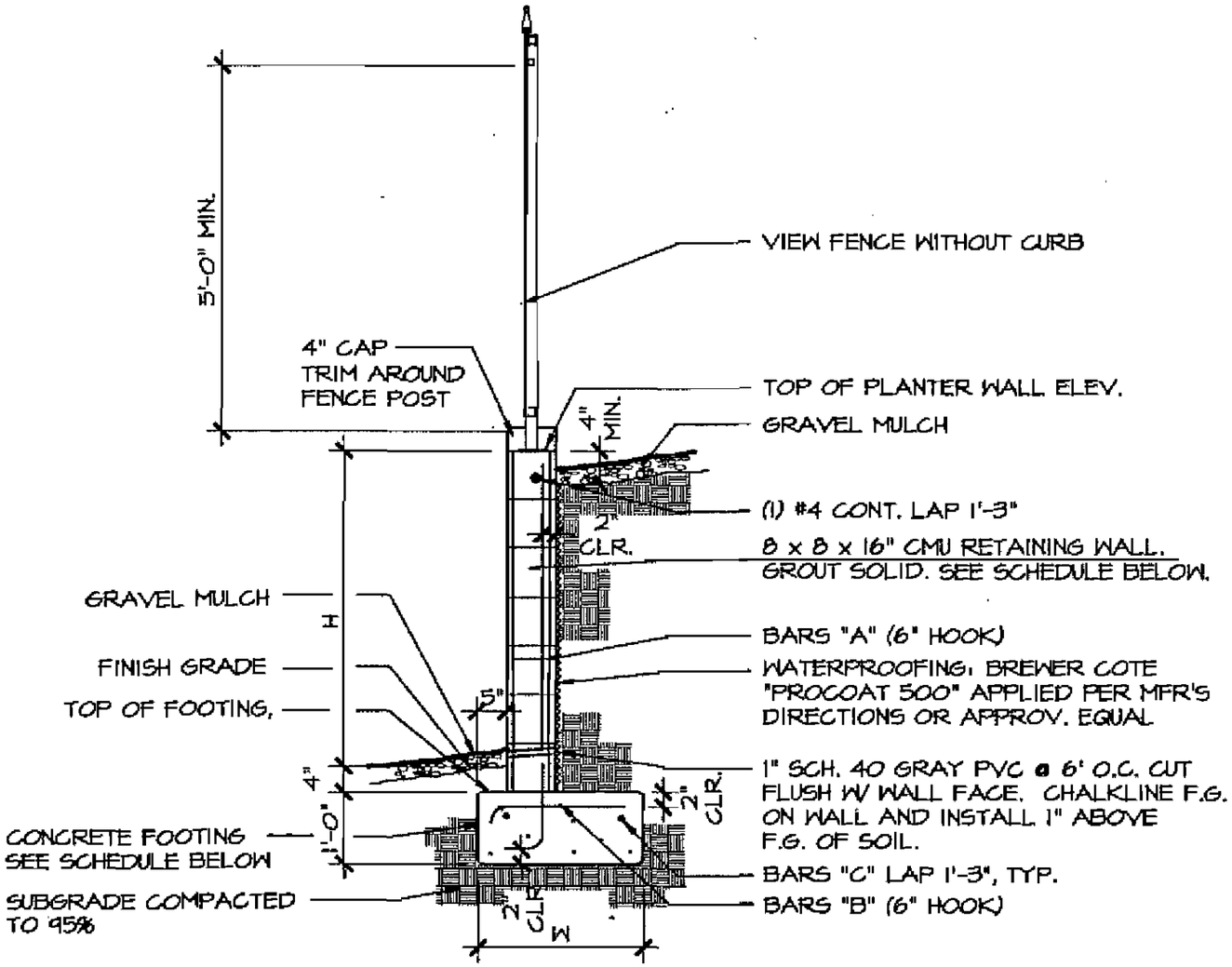
Version : 000
Series : 450HS
TintType: U
Instr :
Code :

Tint Base 450HSB00003 AMERCOAT 450HS NEUTRAL TINT

Ingredient	BL	TINT - LAMPBLACK UCD1625V	5	16.0/64	OZ.
Ingredient	RO	TINT - RED OXIDE UCD 6080V	1	16.0/64	OZ.
Ingredient	WT	TINT - TIO2 WHITE UCD-1106V	5	24.0/64	OZ.
Ingredient	YO	TINT - YELLOW OXIDE UCD5750V	3		OZ.

2.10.3 Retaining Walls

It is expected that there will be a significant need for retaining walls throughout the steeper sections of the MacDonald Highlands project. The use of retaining walls for the purpose of protecting and preventing unnecessary disturbance of the native desert environment is encouraged throughout the MacDonald Highlands community. Retaining walls may need to be stepped or terraced in some situations in order to prevent excessive concentrations of wall massing. Wall heights in excess of 8 vertical feet (measured from top of footing to top of wall) are discouraged. Where the topographic conditions necessitate retaining in excess of 8 vertical feet, the wall should be stepped or terraced so that no individual section has a height greater that 8 feet. The design and construction of all retaining walls must be submitted to the Design Review Committee for review and approval.



PLANTER WALL SCHEDULE

WALL	H	W	BARS "A"	BARS "B"	BARS "C"
W1	3'-4"	2'-6"	#4 @ 48"	#4 @ 48"	(2) - #4 CONT.
W2	4'-8"	3'-4"	#4 @ 24"	#4 @ 24"	(2) - #4 CONT.
W3	6'-0"	5'-0"	#5 @ 16"	#4 @16"	(3) - #4 CONT.

NOTES:

1. TOP OF WALL TO BE HELD LEVEL.
2. GROUT ALL OPEN JOINTS CREATED BY ANGLED WALLS TO A SMOOTH, EVEN FINISH. REPAIR CRACKS.
3. BLOCK: CONCRETE BLOCK IS CSR BROWN #2 SINGLE SPLIT ON PARK SIDE. SOLID SMOOTH CAP IS 4" X 8" X 16" FLUSH WITH BLOCK WALL, COLOR TO MATCH WALL.
4. EACH OCCURRENCE THAT EXCEEDS THE STANDARD WALL HEIGHT FOR THE CITY OF HENDERSON IN ORDER TO MEET POOL SAFETY REQUIREMENTS WILL HAVE TO GO TO THE CITY FOR APPROVAL OF A VARIANCE.

PLANTER WALL EXHIBIT

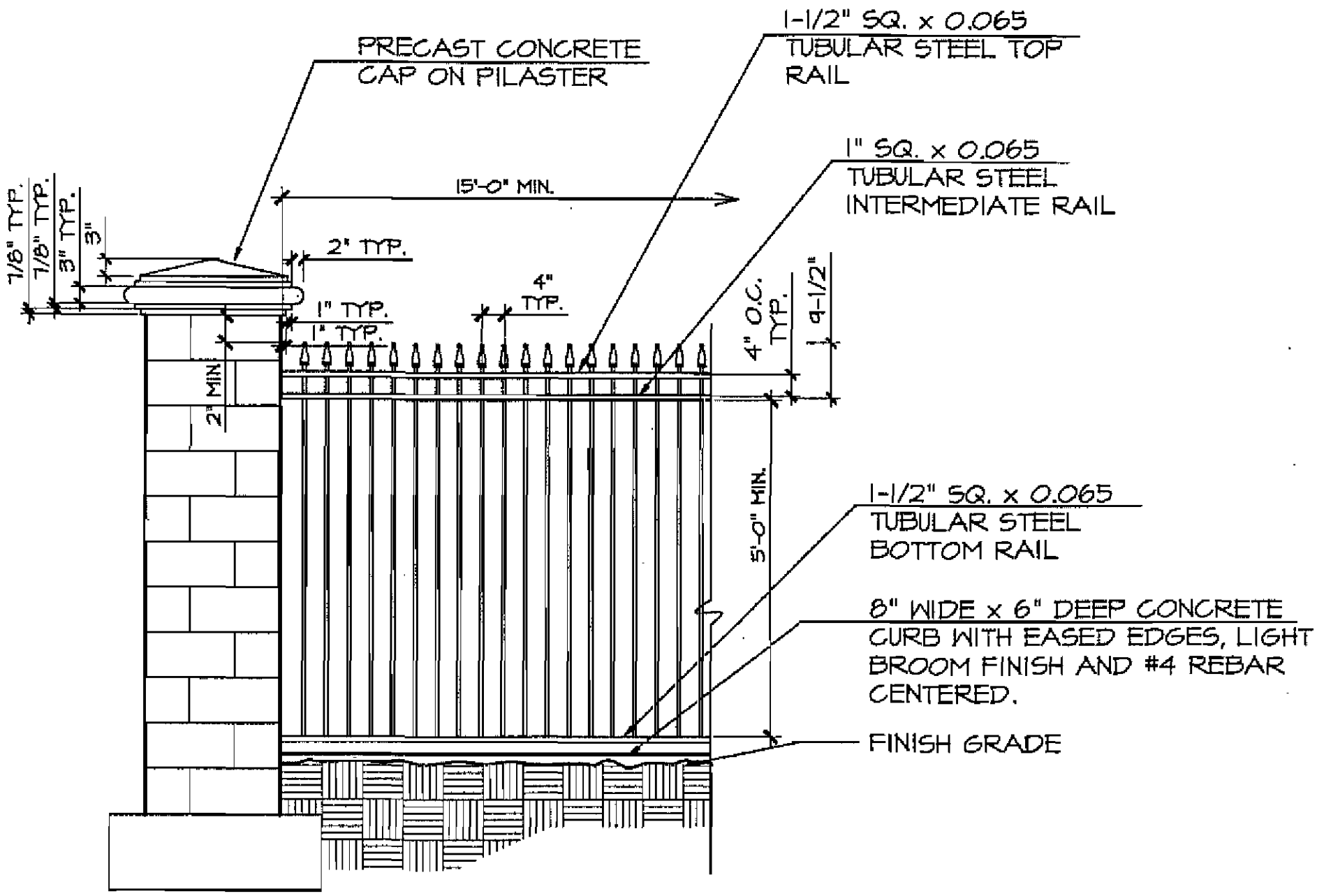
MACDONALD HIGHLANDS

2.10.4 Rear Yard Cone of Vision

In all site design and layout, careful attention to open space is important. Those lots that front on the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. If a solid wall is desired along the side property line(s), the solid side yard wall must end at a distance of 15 feet from the property corner. A single pilaster is required at each property line corner on both sides in the rear. In addition, those lots that require preservation of view corridors will not be permitted to install improvements, plant trees or other plant material that are taller than 4 feet within a distance of 15 feet from the rear yard property corner.

2.10.5 Security Walls

All security walls within the MacDonald Highlands project must be designed and constructed using the design criteria established for View Walls and incorporating those specific code requirements for providing the required protection (such as for swimming pools). The design and construction of all security walls must be submitted to the Design Review Committee for review and approval.



SIDE ELEVATION

NOTES:

FENCE: PAINT WITH (1) COAT METAL PRIMER AND (2) FINISH COATS. PAINT COLOR TO BE AMERON 450HS "FOOTHILLS MAHOGANY".

CONNECTIONS: HORIZONTAL RAILS ARE TO BE WELDED TO POSTS. WELDS SHALL BE CONTINUOUS AROUND RAILS AND GROUND SMOOTH PRIOR TO PAINTING.

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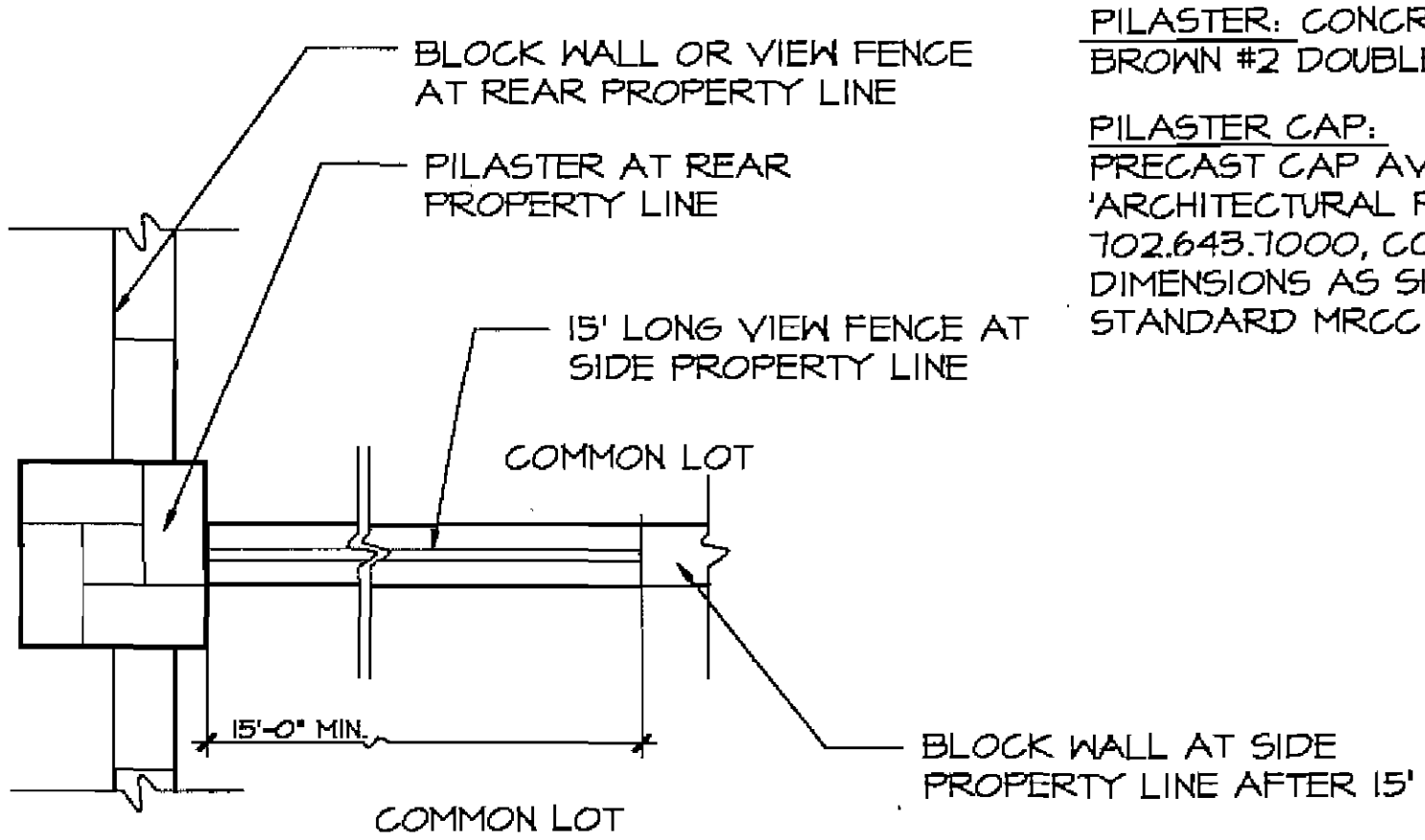
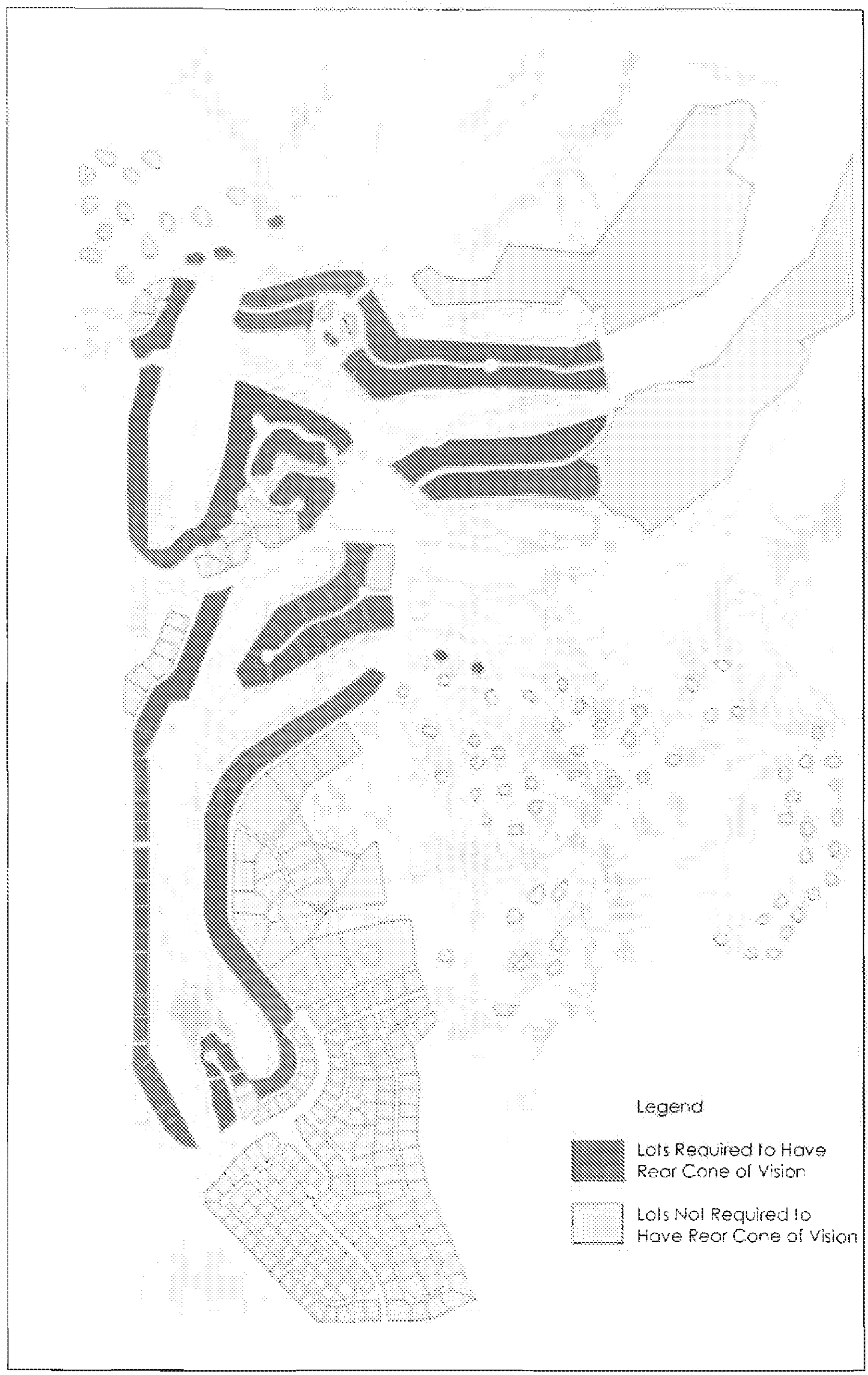


PLAN VIEW

REAR YARD CONE OF VISION EXHIBIT

MACDONALD HIGHLANDS



Rear Yard Cone of Vision Master Plan

2.10.6 Screening Walls

Where walls are necessary to provide screening for such things as parking courts, storage areas, etc. such walls shall be designed so as to minimize the impact on views of and from the community. Designing such walls in conjunction with the use of berming and other methods of landscape screening is encouraged. Designing such walls to simply be a solid vertical visual barrier is discouraged and it will be difficult to get approval of such from the Design Review Committee. The design and construction of all screening walls must be submitted to the Design Review Committee for review and approval.

2.10.7 Landscape Walls

The use of walls for the purpose of supporting native and imported landscape materials to reestablish, revegetate, and preserve the hillside areas is encouraged. Such walls may not be needed to provide retaining, screening, or other functions other than to support a particular landscape design. The construction of such walls entirely from native and on-site materials is also encouraged.

2.10.8 Windbreak Walls

In areas requiring wind protection, a glass or Plexiglass fence atop a low wall can help provide a windbreak while still preserving the drama of the hillside views.

2.10.9 Interior Wall Conditions

Alternate wall and fence designs *may be considered* for interior wall conditions (i.e., walls that are not located on a property line) subject to DRC review and approval. Please be advised standard gray CMU block is not permitted within the community. As a minimum, interior walls may be stuccoed and painted to match the residence, although the community-preferred CSR Brown #2 splits is favored.

2.11 FOUNDATIONS

All exterior wall materials must be continued down to finish grade thereby eliminating unfinished foundation walls. On hillside Lots or Parcels, open areas created by cantilevers or decks, shall be fully enclosed.

2.12 UTILITIES

All utility services shall be installed underground. Locate exterior transformers, utility pads, cable TV and telephone boxes out of view, or screen with architecturally integrated walls, fences, or vegetation. Electrical service shall also be located underground. All utility locations are to be closely coordinated with Declarant and must conform to the appropriate local authorities.

Case No. 69399 c/w 70478

IN THE SUPREME COURT OF NEVADA

FREDERIC AND BARBARA ROSENBERG LIVING TRUST,
Appellant/Cross-Respondent,

vs.

MACDONALD HIGHLANDS REALTY, LLC, a Nevada Limited Liability Company; MICHAEL DOIRON, an Individual; and FHP VENTURES, a Nevada Limited Partnership,
Respondent/Cross-Appellants.

FREDERIC AND BARBARA ROSENBERG LIVING TRUST,
Appellant,

vs.

SHAHIN SHANE MALEK,
Respondent.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable KENNETH CORY, District Judge
District Court Case No. District Court Case No. A-13-689113-C

JOINT APPENDIX VOLUME 8

Respectfully submitted by:

JACQUELINE A. GILBERT, ESQ.
Nevada Bar No. 10593

KAREN HANKS, ESQ.
Nevada Bar No. 9578

KIM GILBERT EBRON
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Attorneys for Frederic and Barbara Rosenberg Living Trust

ALPHABETICAL INDEX

Vol.	Tab	Date Filed	Document	Bates Number
1	5	10/29/13	Affidavit of Service - Michael Doiron	JA_0031
1	3	10/24/13	Affidavit of Service - Shahin Shane Malek	JA_0025
1	2	10/24/13	Affidavit of Service - BAC Home Loans Servicing, LP	JA_0022
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110
1	4	10/24/13	Affidavit of Service - Real Properties Management Group, Inc.	JA_0028
1	13	1/12/15	Amended Complaint	JA_0089
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
8/9/10/11	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
1	6	12/30/13	Bank of America N. A.'s Answer to Plaintiff's Complaint	JA_0034
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
1	1	9/23/13	Complaint	JA_0001
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497

12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
1	9	1/28/14	MacDonald Highland Reality's Answer to Plaintiff's Complaint	JA_0060
1	18	2/2/15	MacDonald Highland's and Michael Doriron's Answer to Amended Complaint	JA_0126
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805

8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
12/13	47	9/2/15	Motion for Attorney's Fees and Costs	JA_2526
7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
13	54	12/9/15	Notice of Appeal	JA_2801
13	62	5/23/16	Notice of Appeal	JA_2854
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
13	57	1/20/16	Notice of Entry of Order	JA_2817
1	8	1/13/14	Notice of Entry of Order Dismissing Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0055
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086

13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
1	7	1/10/14	Order Granting in Part DRFH Ventures, LLC; Dragonridge Golf Club, Inc. and MacDonald Properties, LTD.	JA_0052
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
4/5/6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13/14	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994

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1	10	2/20/14	Shahin Shane Malek's Answer and Counterclaim	JA_0072
1	11	3/20/14	Frederic and Barbara Rosenberg Living Trust's Answer to Shahin Shane Malek's Counterclaim	JA_0081
1	12	4/29/14	Notice of Voluntary Dismissal of Realty Property Management Group	JA_0086
1	13	1/12/15	Amended Complaint	JA_0089
1	14	1/16/15	Affidavit of Service – Paul Bykowski	JA_0110

1	15	1/16/15	Affidavit of Service – Foothills at MacDonald Ranch Master Association	JA_0112
1	16	1/16/15	Affidavit of Service – Foothill Partners	JA_0114
1	17	1/27/15	Shahin Shane Malek's Answer to Amended Complaint and Counterclaim	JA_0116
1	18	2/2/15	MacDonald Highland's and Michael Doriron's Answer to Amended Complaint	JA_0126
1	19	4/16/15	Frederic and Barbara Rosenberg Living Trust's Motion for Summary Judgment Against Shahin Shane Malek	JA_0139
1	20	4/16/15	MacDonald Highlands Motion for Summary Judgment	JA_0175
1	21	4/16/15	Shahin Shane Malek Motion for Summary Judgment	JA_0198
2/3	22	4/16/15	Appendix of Exhibits to Motion for Summary Judgment	JA_0229
4/5/6	23	4/16/15	Shahin Shane Malek's Statement of Undisputed Material Facts in Support of Motion for Summary Judgment	JA_0630
6	24	4/22/15	Notice of Voluntary Dismissal of Bykowski and Foothills at MacDonald Ranch Master Association	JA_1120
6	25	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1124
6/7	26	5/4/15	Frederic and Barbara Rosenberg Living Trust's Opposition to Shahin Shane Malek's Motion for Summary Judgment	JA_1215

7	27	5/4/15	Frederic and Barbara Rosenberg Living Trust's Response to Malek's Statement of Undisputed Facts	JA_1369
7	28	5/5/15	Shahin Shane Malek's Opposition to Motion for Summary Judgment	JA_1416
7	29	5/11/15	Frederic and Barbara Rosenberg Living Trust's Reply to Malek's Opposition to Motion for Summary Judgment	JA_1486
7	30	5/11/15	Errata to Motion for Summary Judgment	JA_1497
7	31	5/12/15	Reply to Opposition to Malek's Motion for Summary Judgment	JA_1517
7	32	5/12/15	Reply in Support of MacDonald Realty, Michael Dorion, and FHP Ventures' Motion for Summary Judgment	JA_1539
7/8	33	6/3/15	Motion to Amend Complaint to Conform to Evidence	JA_1553
8	34	6/19/15	Bank of America N.A.'s Opposition to Motion to Amend to Conform to Evidence and Countermotion for Dismissal	JA_1620
8	35	6/22/15	MacDonald Highlands' Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1627
8	36	6/22/15	Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1636
8/9/10/11	37	6/22/15	Appendix of Exhibits to Opposition to Motion to Amend Complaint to Conform to Evidence	JA_1646
12	38	6/29/15	Reply to Bank of America N.A.'s Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2404
12	39	6/29/15	Reply to Opposition to Motion to Amend Complaint to Conform on Evidence	JA_2413

12	40	6/29/15	Reply to Shahin Shane Malek's Opposition to Motion to Amend Complaint to Conform to Evidence	JA_2423
12	41	7/23/15	Order Denying Motion for Summary Judgment	JA_2432
12	42	7/28/15	Bank of America N.A.'s Answer to First Amended Complaint	JA_2439
12	43	8/13/15	Proposed Order, Findings of Fact and Conclusions of Law, and Judgement on Shahin Shane Malek's Motion for Summary Judgment	JA_2457
12	44	8/13/15	Findings of Fact and Conclusions of Law, and Judgement Regarding MacDonald Highlands Realty, Michael Doiron, and FHP Ventures' Motion for Summary Judgment	JA_2476
12	45	8/13/15	Notice of Entry of Findings of Fact, Conclusions of Law and Judgement	JA_2489
12	46	8/20/15	Notice of Entry of Order on Malek's Motion for Summary Judgment	JA_2504
12/13	47	9/2/15	Motion for Attorney's Fees and Costs	JA_2526
13	48	9/9/15	Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_2684
13	49	10/23/15	Opposition to Malek's Motion for Attorney's Fees and Costs	JA_2763
13	50	11/10/15	Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2774
13	51	11/10/15	Notice of Entry of Order Granting (1) Motion for Attorney's Fees and Costs (2) Motion to Re- Tax Costs	JA_2778
13	52	11/10/15	Notice of Entry of Order Granting Motion for Certification	JA_2784

13	53	11/19/15	Shahin Shane Malek's Reply in Support of Motion for Attorney's Fees and Costs	JA_2790
13	54	12/9/15	Notice of Appeal	JA_2801
13	55	12/11/15	MacDonald Highlands Realty, LLC, Michael Doiron and FHP Ventures Notice of Cross-Appeal	JA_2805
13	56	1/13/16	Order on Shahin Shane Malek's Motion for Attorney's Fees and Costs and Frederic and Barbara Rosenberg Living Trust's Motion to Re-Tax Costs	JA_2809
13	57	1/20/16	Notice of Entry of Order	JA_2817
13	58	3/10/16	Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2828
13	59	3/18/16	Notice of Entry of Order Stipulation and Order to Dismiss Bank of America N.A. with Prejudice	JA_2833
13	60	5/17/16	Stipulation and Order for Dismissal of Counterclaim without Prejudice	JA_2841
13	61	5/18/16	Notice of Entry of Order Stipulation and Order	JA_2846
13	62	5/23/16	Notice of Appeal	JA_2854
13/14	63	4/8/15	Transcript Re. FHP Ventures' Motion to Dismiss Amended Complaint	JA_2858
14	64	6/10/15	Transcript Re. Status Check: Reset Trial Date Motion for Summary Judgment	JA_2898
14	65	7/15/15	Recorder's Transcript Re: Status Check: Reset Trial Date	JA_2970

14	66	10/22/15	Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs; MacDonald Highlands Realty, LLC, and FHP Ventures Motion for Attorney's Fees and Costs; Motion to Re-Tax and Settle Memorandum of Costs and Disbursements	JA_2994
14	67	12/1/15	Recorders Transcript Re: Shahin Shane Malek's Motion for Attorney's Fees and Costs	JA_3048

ELEVENTH CLAIM FOR RELIEF
(Breach of Contract – FHP VENTURES)

132. Plaintiff repeats and re-alleges each and every allegation as contained above and Incorporates them by reference as if fully set forth herein.

133. Plaintiff and Defendant entered into a valid and existing contract commonly referred to as the CC&Rs and Design Guidelines.

134. Plaintiff performed all of its obligations under these contracts.

135. Defendant breached the contract by approving Malek's construction plans to permit construction on the Golf Parcel.

136. Plaintiff has sustained damages in an amount in excess of $10,000.

137. Plaintiff is entitled to specific performance by way of enforcement of the Design Guidelines in such a way as to limit the construction of Malek on the Golf Parcel.

138. Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

TWELFTH CLAIM FOR RELIEF
(Breach of the Implied Covenant of Good Faith and Fair Dealing – FHP VENTURES)

139. Plaintiff repeats and re-alleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

140. Every contract imposes an implied covenant of good faith and fair dealing in its performance or enforcement.

141. Plaintiff and Defendant FHP VENTURES were parties to a valid and enforceable contract.

142. Defendant FHP VENTURES owed a duty of good faith and fair dealing under the Contract.

143. FHP VENTURES breached the implied covenant of good faith and fair dealing by approving Malek's construction plans to permit construction on the Golf Parcel.

144. Plaintiff was justified in its expectations under the contract and, as a result of the breach, those expectations were denied.

145. As a direct and proximate result of the breach, Plaintiff has been damaged in an amount in excess of $10,000 that shall be proven at trial.

146. Plaintiff has been required to engage the services of an attorney to prosecute this action and Plaintiff is entitled to costs and reasonable attorney's fees incurred therefore.

THIRTEENTH CLAIM FOR RELIEF
(Breach of Fiduciary Duty – FHP VENTURES)

147. Plaintiff repeats and re-alleges each and every allegation as contained above and incorporates them by reference as if fully set forth herein.

148. Defendant owed a fiduciary duty to Plaintiff in the enforcement of the Design Guidelines and CC&Rs.

149. Defendant breached that duty by approving Malek's construction plans to permit construction on the Golf Parcel.

150. As a direct and proximate result of the breach, Plaintiff has been damaged in an amount in excess of $10,000 that shall be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

a) For judgment against Defendants, and each of them in an amount in excess of $10,000.00, which amount shall be proven at trial;

b) For judgment against Defendants, and each of them, for an award of pre-judgment and post-judgment interest on all amounts due and owing to Plaintiff;

c) For judgment against Defendants, and each of them, for attorney's fees and costs;

d) For Declaratory Judgment;

e) For Injunctive Relief;

f) For Specific Performance; and

g) For such other further relief as deemed appropriate by this Court.

DATED this ___ day of June, 2015.

Respectfully submitted by:

HOWARD KIM & ASSOCIATES

Karen L. Hanks, Esq.
Nevada Bar No. 009578
Melissa Barishman, Esq.
Nevada Bar No. 12935
1055 Whitney Ranch Drive, Suite 110
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff,
The Fredric and Barbara Rosenberg Living Trust

EXHIBIT 2

(A)

MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE FOOTHILLS AT MACDONALD RANCH

"Bylaws" means the Bylaws of the Association in effect from time to time.

"Common Elements" means all real and personal property which the Association now or hereafter owns or leases or in which the Association otherwise holds possessory or use rights, including easements, for the common use and enjoyment of all or some of the Owners. The term includes the Limited Common Elements. Common Elements include or may include: (A) perimeter walls, (B) entry monumentation for the Properties, (C) entry gates or other entry areas, (D) common area landscaping within private streets and along the outside of perimeter walls, (E) private streets within the Properties, (F) bike and jogging, exercise or other pedestrian pathways and trails, and (G) open spaces which may either be landscaped or preserved in their natural state. The initial Common Elements include the real property described in Exhibit C-1.

"Common Expenses" means the actual and estimated expenses incurred or anticipated to be incurred by the Association for the general benefit of all Owners, including a reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws or the Articles, but shall not include expenses incurred during the Declarant Control Period for initial development, original construction, installation of infrastructure, original capital improvements or other original construction costs unless approved by members representing a majority of the total vote of the Association.

"Common Interest Community" means that portion of The Foothills, identified as the "Properties," subject to this Declaration.

"Community-Wide Standard" means the standard of conduct, maintenance or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors or the Design Review Committee.

"Construction Activities" means any construction (new, renovated or remodeled) activity, additions, alterations, staking, clearing, grading, filling, excavations and all other development and construction type activities. Construction Activities include exterior alterations, modification of existing improvements, planting and removal of plants, trees or shrubs, and construction or alteration of walls, fences, garages, pools and spas, patio covers and playground equipment.

"Declarant" means The Foothills Partners, a Nevada limited partnership, or any successor, successor-in-title or assign who takes title to any portion of the property described on Exhibit A or Exhibit B-1 for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. If there is ever more than one Declarant, the rights and privileges of the Declarant shall be exercised by the Person designated from time to time by all the Declarants in a written instrument recorded in the Official Records of the County Recorder, otherwise by those Persons owning two-thirds of the potential Units which may then be made subject to this Declaration.

"Declarant Control Period" means the period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors, as provided in Section 15.8(a).

Ex. 3

EXHIBIT 3

Ex. 3

Inst #: 201210240002211
Fees: $19.00
N/C Fee: $0.00
10/24/2012 12:01:40 PM
Receipt #: 1356002
Requestor:
JUNES LEGAL SERVICES
Recorded By: COJ Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN: 178-28-515-013

WHEN RECORDED MAIL TO:

The Foothills Partners
1730 W. Horizon Ridge Parkway
Henderson, NV 89012

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH

THIS AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH ("Amendment") is made effective as of date this Amendment is recorded in the Official Records of the Clark County, Nevada Recorder (the "Effective Date"), by THE FOOTHILLS PARTNERS, a Nevada limited partnership ("Declarant").

RECITALS

A. Declarant recorded that certain Master Declaration of Covenants, Conditions and Restrictions for The Foothills at MacDonald Ranch (as amended, the "Master Declaration") on August 20, 1997, in Book 970820 as Instrument 01249 in the Office of the Clark County, Nevada Recorder. Capitalized terms used in the Master Declaration and not otherwise defined herein, are used with the meanings given them in the Master Declaration.

B. Pursuant to Section 9.1 of the Master Declaration, Declarant reserved the unilateral right to amend the Master Declaration to annex into the Master Declaration any portion of the real property described on Exhibit A to the Master Declaration (the "Annexable Property") until such time as all of the Annexable Property has been annexed into the Master Declaration or December 31, 2012 ("Outside Date for Unilateral Annexation");

C. As of the date hereof, approximately 590 acres of real property within the Annexable Property have not yet been developed and have not been annexed into the Master Declaration, leaving up to an additional 1,500 lots to be annexed in the future into the Master Declaration; Declarant reasonably anticipates that such lots will not be annexed into the Master Declaration before the Outside Date for Unilateral Annexation occurs;

D. Declarant desires to extend the Outside Date for Unilateral Annexation from December 31, 2012 to December 31, 2042;

E. Pursuant to the Master Declaration (including, but not necessarily limited to, Sections 17.2(a) thereof), for so long as Declarant owns any of the property described on Exhibit A (the Annexable Property) or Exhibit B-1 to the Master Declaration for development as part of the Properties, Declarant is authorized and entitled to unilaterally amend the Master Declaration for any purpose that has no material adverse effect upon the right of any Owner; and

F. Declarant currently owns a portion of the property described on Exhibit A (the Annexable Property) to the Master Declaration for development as part of the Properties;

G. The extension of the Outside Date for Unilateral Annexation to December 31, 2042 has no material adverse effect upon the right of any Owner because the Master Declaration originally contemplated that the property described on Exhibit A (the Annexable Property) would be annexed into the Master Declaration over time, it is merely the timeframe for such annexation that must be extended as a result of unanticipated market conditions;

H. The extension of the Outside Date for Unilateral Annexation to December 31, 2042 is in the best interests of the Owners for the following reasons: (i) annexation of the unannexed Annexable Property before the Outside Date for Unilateral Annexation is not feasible or practical because much of that property has not been subdivided into residential lots and/or improved with Dwellings because of market conditions over which Declarant had no control; and (ii) the lots within the Annexable Property that are created and/or improved after the Outside Date for Unilateral Amendment must be annexed into the Project prior to the conveyance of each such lot to a third-party homebuyer in order to ensure that such lots are subject to the covenants, conditions and restrictions set forth in the Master Declaration to which the Properties are now subject; and (iii) unless the Outside Date for Unilateral Amendment is extended by this Amendment, then from and after December 31, 2012 any annexation of property may only occur with the approval not less than Owners representing a majority of the total votes in the Association, which is overly burdensome and unlikely to occur, particularly on an ongoing phased bases as such property is subdivided and developed;

I. Pursuant to the Master Declaration (including, but not necessarily limited to, Section 17.2(a) thereof), Declarant is authorized and entitled to unilaterally amend the Master Declaration to extend the Outside Date for Unilateral Annexation, and Declarant now desires to modify and amend Section 9.1 of the Master Declaration to extend the Outside Date for Unilateral Annexation from December 31, 2012 to December 31, 2042; and

J. This Amendment does not purport to affect the validity or priority of any Mortgage, or the rights or protections granted to any Beneficiary, insurer, or guarantor of a first Mortgage, as set forth in the Master Declaration.

NOW THEREFORE, in consideration of the foregoing premises, and the provisions herein contained, effective as of the Effective Date, the Master Declaration is modified and amended to extend the Outside Date for Unilateral Annexation in the first paragraph of Section 9.1 of the Master Declaration to December 31, 2042, so that the reference to December 31, 2012 in such Section 9.1 shall now and hereafter mean December 31, 2042.

Except as specifically amended herein, all other terms, conditions and provisions of the Master Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed as of OCTOBER 16, 2012.

"DECLARANT"

THE FOOTHILLS PARTNERS, a Nevada ~~limited~~ partnership.

By: _____
Name: RICHARD C. MACDONALD
Title: MANAGER

STATE OF NEVADA
COUNTY OF CLARK

This instrument was acknowledged before me on OCTOBER 16, 2012, by RICHARD C. MACDONALD as MANAGER of THE FOOTHILLS PARTNERS.

JOYCE MUIR
Notary Public-State of Nevada
APPT. NO. 93-2878-1
My App. Expires March 05, 2013

_____
Notary Public

My commission expires: 3-5-2013

Inst #: 201102090002780
Fees: $20.00
N/C Fee: $0.00
02/09/2011 02:59:00 PM
Receipt #: 672184
Requestor:
LEACH JOHNSON SONG & GRUCH
Recorded By: SUO Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded Return To:

Leach Johnson Song & Gruchow
Attn: John E. Leach, Esq.
5495 S. Rainbow Blvd., Suite 202
Las Vegas, Nevada 89118
Phone: (702) 538-9074

APN Nos.: 178-27-117-002 through 178-27-117-023, inclusive
178-27-117-025 through 178-27-117-027, inclusive
178-27-117-029 through 178-27-117-040, inclusive
178-27-120-011 through 178-27-120-013, inclusive
178-27-218-001 through 178-27-218-003, inclusive
178-27-220-001 through 178-27-220-010, inclusive
178-28-221-001
178-28-223-001
178-28-314-001 through 178-28-314-002, inclusive
178-28-314-004
178-28-518-001 through 178-28-518-006, inclusive
178-28-621-001 through 178-28-621-007, inclusive
178-28-622-001 through 178-28-622-002, inclusive
178-28-716-001 through 178-28-716-007, inclusive

SPACE ABOVE LINE FOR RECORDER'S USE ONLY

FIRST AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE FOOTHILLS AT MACDONALD RANCH

RETREAT NEIGHBORHOOD: (continued)

1376 River Spey Avenue	178-27-117-026
1388 River Spey Avenue	178-27-117-025
569 River Dee Place	178-27-120-012
573 River Dee Place	178-27-117-023
581 River Dee Place	178-27-117-022
584 River Dee Place	178-27-117-021
592 River Dee Place	178-27-220-010

Exhibit C-2

Limited Common Elements

LAIRMONT NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Street Lights
Streets-overlay and slurring seal
Vehicle Gate Fencing
Landscaping-approximately 3,000 square feet along and adjacent to Entry

LIEGE NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Streets-overlay and slurry seal
Vehicle Gate Fencing
Landscaping-approximately 74,000 square feet

RETREAT NEIGHBORHOOD:

Entry Gate
Telephone Entry System
Vehicle Gate Operators and Hinges
Light Fixtures-Bollard Lights
Streets-overlay and slurry seal
Pavers
Wrought Iron Fencing
Recreation Equipment
- park furniture
- gazebo

Landscaping-approximately 30,000 square feet

EXHIBIT 4

MACDONALD
HIGHLANDS

DESIGN GUIDELINES

Prepared:.....September 1, 1992

Revision Dates:.....September 24, 1998
May 12, 1999
December 13, 1999
April 27, 2000
September 1, 2000
May 1, 2002
January 7, 2003
July 7, 2003
March 1, 2004
December 1, 2005
September 1, 2006

***** TO AVOID UNNECESSARY EXPENSE, PLEASE ADVISE YOUR ARCHITECT TO SCHEDULE A MEETING WITH THE DESIGN REVIEW COMMITTEE PRIOR TO PREPARATION AND SUBMITTAL OF ARCHITECTURAL PLANS *****

1730 West Horizon Ridge Parkway, Suite 100
Henderson, Nevada 89012
702.458.0001 • Fax: 702.458-5570
www.macdonaldhighlands.com

1.0 INTRODUCTION

1.1 MACDONALD HIGHLANDS

PHILOSOPHY

MacDonald Highlands is situated in a majestic mountain valley featuring a backdrop of rugged mountain peaks as well as spectacular city light views. The master plan for MacDonald Highlands is committed to the preservation of the site's inherent natural beauty, thus ensuring that the mountainous desert character of the site will always be symbolic of the community's identity. Because of this commitment, MacDonald Highlands will soon take its place as the crown jewel of southern Nevada master-planned communities.

A dedication to the preservation of nature's beauty, enhanced by the highest aesthetic standards of landscape design, MacDonald Highlands will set the stage for an uncompromising standard of residential living. Years of effort by a team of outstanding land planners, architects, and engineers will provide a project of enduring quality. Additionally, to protect and enhance owner value, a strict set of covenants and guidelines will be carefully monitored by a professionally advised design review committee.

The fundamental community concept of MacDonald Highlands is to preserve the natural character of the desert environment, particularly the rugged hillside areas. The residential neighborhoods are designed such that site development will blend harmoniously into the natural desert setting, creating a rural atmosphere of casual country estates. This design includes reducing the design speed of all of the site roadways to 20 M.P.H., thus allowing such roadways to conform to the natural contour and setting of the hillside environment. The community identity is

further enhanced by an 18-hole championship golf course and destination resort. The golf course fairways meander throughout the neighborhoods within MacDonald Highlands, with many of the individual homesites featuring direct frontage on the course. In addition, significant view corridors to the golf course are provided at key locations along the community street system.

Because each development within MacDonald Highlands will be unique in terms of its natural opportunities and constraints, it is expected that the design of each development be tailored to preserve, enhance, and protect those special features of each individual Lot or Parcel. Each development project must consider those approaches in design and construction, which will accentuate those unique attributes while preserving the natural features of each Lot or Parcel. The design of each Lot or Parcel within the MacDonald Highlands community shall support the overall philosophy of the community by carefully integrating the development into the topography.

Design standards and restrictions and a Design Review Committee have been developed to implement and enforce this philosophy. Minimum standards of design arising out of the environmental and climatic needs of the desert provide direction to Lot or Parcel owners and developers in the planning, design, and construction of their residences or projects to insure compatibility with the environment, harmonious architectural approaches, and compatibility with adjacent development within the community. The Design Review Committee will encourage creativity, innovative use of materials and design, and unique methods of construction so long as the final result is consistent with these Design Guidelines and the overall philosophy of MacDonald Highlands. No one residence, structure, improvement, or development should stand apart in its design or construction so as to detract from the overall environment and appearance of MacDonald Highlands.

The design and architectural standards and restrictions as set forth in these Design Guidelines should be viewed by each Owner as his assurance that the special environment of MacDonald Highlands will be preserved and enhanced over time.

1.2 DESIGN GUIDELINES

The purpose of these Supplemental Design Guidelines is to provide specific direction for the expression of the built environment within the Custom Home neighborhoods of MacDonald Highlands. They are intended to provide an overall framework for future development, achieving a sense of neighborhood identity, land use character, scale and sensitivity to the desert environment in the development of MacDonald Highlands' neighborhoods.

The purpose of these Design Guidelines is to implement the community design theme by addressing the architectural, landscape, and site planning design criteria for the development of MacDonald Highlands. These Guidelines are intended to set standards for the quality of design, to assure land use compatibility, to direct character and form, and to enhance the community's overall value. The Guidelines are intended first as an information source to Owner's builders, developers, architects, or investors interested in MacDonald Highlands, and second, as a regulatory mechanism to insure that all Improvements in the community are carried out in an environmentally sensitive manner. These Guidelines will thus insure a high standard of project-wide design consistency throughout the life of the community.

MacDonald Highlands Design Guidelines are intended to be a conceptual, dynamic guide to development and, as such, are subject to change when the Design Review Committee determines such

final design review, insures that the final plans and construction drawings are consistent with the previously approved preliminary plans and the Design Guidelines. The final phase includes an inspection by a representative(s) of the Design Review Committee to determine whether actual construction has been completed in strict compliance with the approved plans and the Design Guidelines.

Approval of plans and specifications by the Design Review Committee is not, and should not be deemed to be, a representation or warranty that said plans and specifications comply with applicable governmental ordinance or regulations including, without limitation, City of Henderson zoning ordinances, subdivision regulation, and building codes.

1.4 BUILDING ENVELOPE

Within the Hillside Buildable Areas, the concept of a maximum allowable building area, called the Building Envelope, has been developed to ensure the preservation of views from each residence in MacDonald Highlands.

All Improvements on a Lot or Parcel within MacDonald Highlands must be designed to be within this Building Envelope, including the Residence, accessory buildings, outside patios and terraces, tennis courts and swimming pools, if permitted by the Design Guidelines, and any other Improvements or structures on the Lot or Parcel. Only approved plants may be planted within the Building Envelope, unless otherwise approved by the Design Review Committee. Outside of the Building Envelope, the natural desert must be undisturbed or revegetated with complementary desert plant material where possible. Moreover, it is not intended that the Owner design his Residence or other Improvements so as to completely fill the Building Envelope. Designs, which, in the

opinion of the Design Review Committee, overwhelm the Building Envelope and are, therefore, inconsistent with the philosophy of MacDonald Highlands, will not be approved.

Before any conceptual planning is done, an Owner should consult with the Design Review Committee to determine the location of the Building Envelope. Although the shape and location of the Building Envelopes are intended to be somewhat flexible, modifications to the Building Envelope can be made only by the Design Review Committee and only if the modifications do not result in a significant adverse impact upon the natural features of the Lot or Parcel, or upon neighboring Lots or Parcels, or the Project as a whole.

After the final design approval has been given by the Design Review Committee, a revised Building Envelope will be based on actual plans, which may differ in size and shape from the original conceptual Building Envelope. Thereafter, the Building Envelope may be changed only through an amendment process after obtaining the approval of the Design Review Committee. This process assures that the view corridor of the Building Envelope will be permanently protected from any future encroachment or development.

1.5 DEFINITIONS

The following words, phrases, or terms used in this Declaration shall have the following meanings:

"Apartment Development" shall mean a Parcel or portion thereof which is described in a Parcel Declaration, is limited by the Declaration to residential use, and contains Rental Apartments and surrounding area which are intended, as shown by the site plan therefor approved by the City of Henderson, and the Design Review Committee or otherwise, as one integrated apartment operation under the same ownership.

"**Golf Course Lot**" shall mean a residential Lot which has a portion of its boundary immediately adjacent to the Golf Course, or a Condominium or Cluster Residential Development which has a portion of its common elements immediately adjacent to the Golf Course.

"**Hillside Residential**" shall mean those residential projects within the Hillside Buildable areas.

"**Improvement**" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to buildings, outbuildings, walkways, trails, tennis courts, sprinkler pipes, garages, swimming pools, spas, and other recreational facilities, the paint on all surfaces, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning, and water softener fixtures or equipment.

"**Landscape Easement Area**" shall mean the approximate foot portion of land adjacent to the public rights-of-way in MacDonald Highlands and the entryways to MacDonald Highlands, which is subject to an easement for landscaping, sidewalks, perimeter walls, and utility access as described in the CC&Rs.

"**MacDonald Highlands**" (also known as The Foothills at MacDonald Ranch and MacDonald Ranch Country Club) shall mean the real property described on Exhibit "A" attached to this Declaration, together with any additional real property, which may from time to time become subject to and covered by this Declaration, and the development to be completed thereon.

"**Streets**" shall mean those areas of MacDonald Highlands, which are depicted as "Private Street" or "Public Street" or on any subdivision map recorded and filed by Declarant, or on any Master Development Plan.

"**Visible From Neighboring Property**" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

No boats, trailers, or other recreational vehicles shall be stored on-site unless they are parked inside an enclosed area, which is permanently attached to a main residence, or unless alternate storage plans are approved by the Design Review Committee.

2.8 SETBACKS

All Developments within MacDonald Highlands shall maintain setbacks and easements consistent with the setback standards described in Section 3.0 of these Design Guidelines. Variation of setbacks will be encouraged in the residential areas of moderate density to distinguish individual identities and avoid formal redundancy.

Within the Non-Residential projects, no building or parking will be permitted closer than 15 feet to the right-of-way or as specified in the Henderson Development Code. This area shall be landscaped consistent with the design concepts set forth by these Guidelines.

2.10 FENCES AND WALLS

Introduction & Philosophy: As a luxury, view-oriented community, MacDonald Highlands is designed to have a minimal amount of fences and walls. In order to preserve the spectacular scenery unique to MacDonald Highlands, the Design Review Committee reserves the right to approve the location, materials, color, columns, and design of all fences and walls.

MacDonald Highlands' development theme has been expressed as casual country estate and rural atmosphere. While there will be some parcels which will be developed in a more urbanized design pattern, the majority of the MacDonald Highlands project and especially the Hillside Estates areas will be developed with this rural country estate design theme. In order to establish and maintain this overall rural ambiance and to preserve the natural hillside terrain, the community will discourage and prevent the proliferation of walls.

In those areas identified as Hillside Estates, the construction of walls for the purpose of identifying property lines of an individual lot or for confining animals is prohibited. The construction of boundary walls and property line walls by the Master Developer of a parcel may be allowed upon review and approval of the design and purpose by the Design Review Committee. Types of walls used in the development of individual lots that will be considered for approval by the Design Review Committee in Hillside Estates areas are structural support walls, retaining walls, and security walls, which are designed and constructed as an integral part of the residential structure. Where security walls are necessary, they will be designed and constructed under the parameters for "view walls."

Chain link and/or perimeter fencing is not permitted, except during construction. Furthermore, exposed wall-top security devices such as concertina wire is prohibited. Because the site affords such dramatic view potential, it is strongly encouraged that open fencing be used predominantly within MacDonald Highlands.

Pool fencing should follow the same standards for openness, visibility and design, but compliance with City, County, and State Ordinances is essential.

Special attention to waterproofing and location of irrigation spray heads will be necessary in order to eliminate leaking, staining, aesthetic, or structural problems.

2.10.1 Perimeter or Boundary Walls

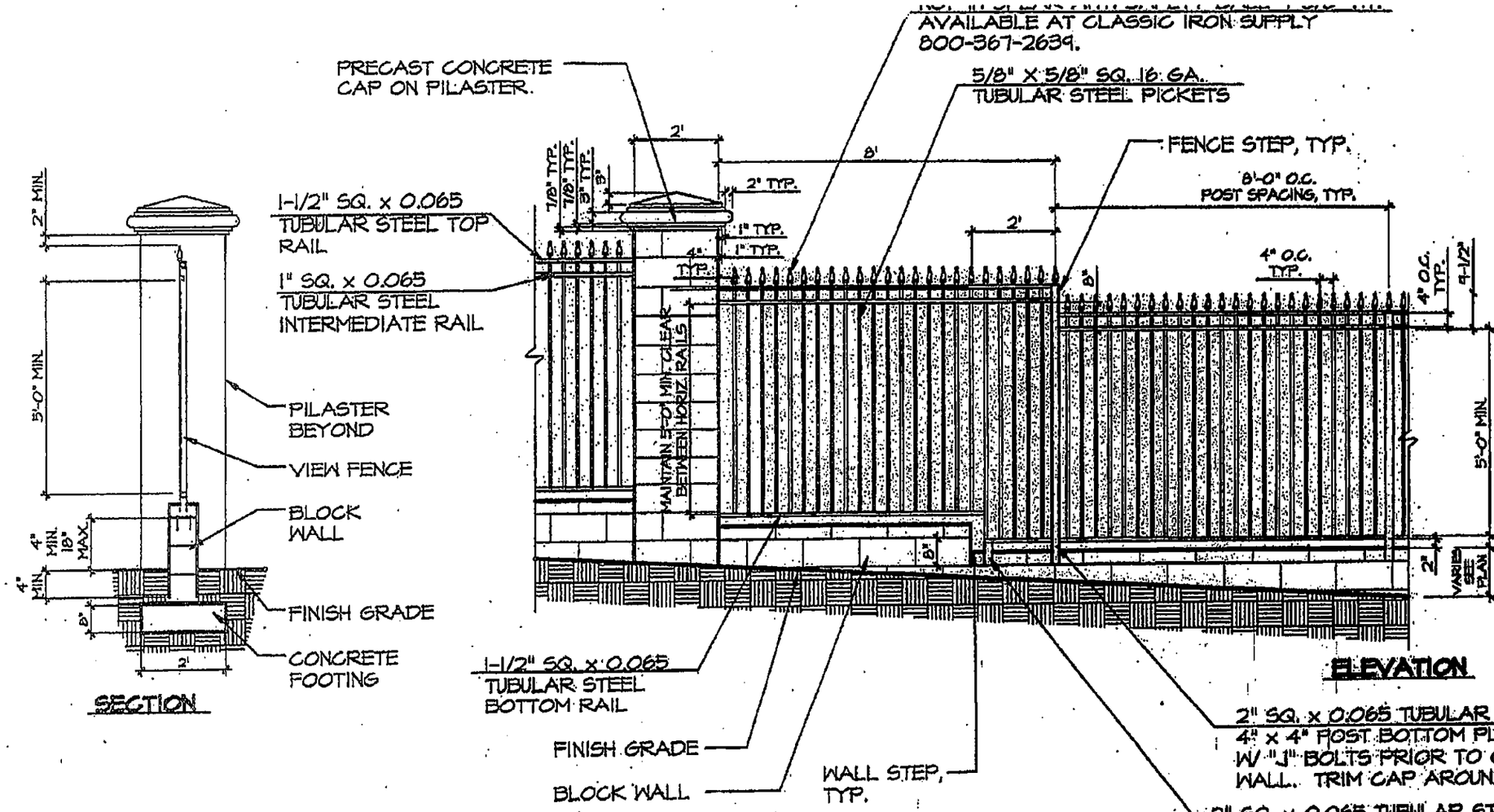
Within the MacDonald Highlands community, the tem Perimeter Wall will be used to identify those walls used around the exterior perimeter of the MacDonald Highlands community. Typically, such perimeter walls will be 5 to 6 feet with the standard height being 6 feet, except for short sections where the wall steps up or down to transition a change in elevation.

Certain situations may arise that necessitates the construction of a boundary wall between two parcels. Where this necessity has been reviewed, acknowledged, and approved by the Design Review Committee, the developer may construct such a wall. The design of such boundary walls is subject to the review and approval of the Design Review Committee. The use of open type view walls for these situations is encouraged. The Design Review Committee discourages the use of solid masonry walls that will block views.

2.10.2 View Walls

The use of "view walls" for purposes other than to provide retaining or structural support is encouraged within the MacDonald Highlands community. Lots along the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. Where permitted, view walls will be used to delineate property lines, to provide security fencing, to enclose properties, etc. All architectural designs and colors are subject to compliance with the appropriate sections of these design guidelines and approval by the Design Review Committee.

The design of View Walls should promote the open view oriented characteristics of the MacDonald Highlands community. View walls shall be designed to minimize massing impacts on the community and to minimize any visible barriers to views that would result from the construction of such walls. The use of open distinctive ornamental metal materials for such walls is encouraged. A solid masonry base no higher than 18" may be approved by the Design Review Committee depending upon the architectural design and materials. Masonry pillars to support the metal sections may be approved by the Design Review Committee depending upon the architectural design and materials. All masonry components of view walls will have exterior surfaces that are constructed of native materials, which complement the natural desert environment and colors.



NOTES:

FENCE: PAINT WITH (1) COAT METAL PRIMER AND (2) FINISH COATS. PAINT COLOR TO BE AMERON 450HS. "FOOTHILLS MAHOGANY".

BLOCK: CONCRETE BLOCK IS CSR BROWN #2 DOUBLE SPLITS. STANDARD WALL BLOCK IS 6" x 8" x 16". IF RETAINING OVER 24" BLOCK IS 8" x 8" x 16". SOLID SMOOTH CAP IS 4" x 6" (or 8") x 16" FLUSH WITH BLOCK WALL, COLOR TO MATCH BLOCK.

CONNECTIONS: HORIZONTAL RAILS ARE TO BE WELDED TO POSTS. WELDS SHALL BE CONTINUOUS AROUND RAILS AND GROUND SMOOTH PRIOR TO PAINTING.

PILASTER CAP:
PRECAST CAP AVAILABLE AT 'ARCHITECTURAL PRECAST, INC.' 702.643.7000, CONTACT IS KIRK. DIMENSIONS AS SHOWN. COLOR TO BE STANDARD MRCC PRECAST COLOR.

EACH OCCURRENCE THAT EXCEEDS THE STANDARD WALL HEIGHT FOR THE CITY OF HENDERSON IN ORDER TO MEET POOL SAFETY REQUIREMENTS WILL HAVE TO GO TO THE CITY FOR APPROVAL OF A VARIANCE.

VIEW WALL EXHIBIT

MACDONALI HIGHLANDS

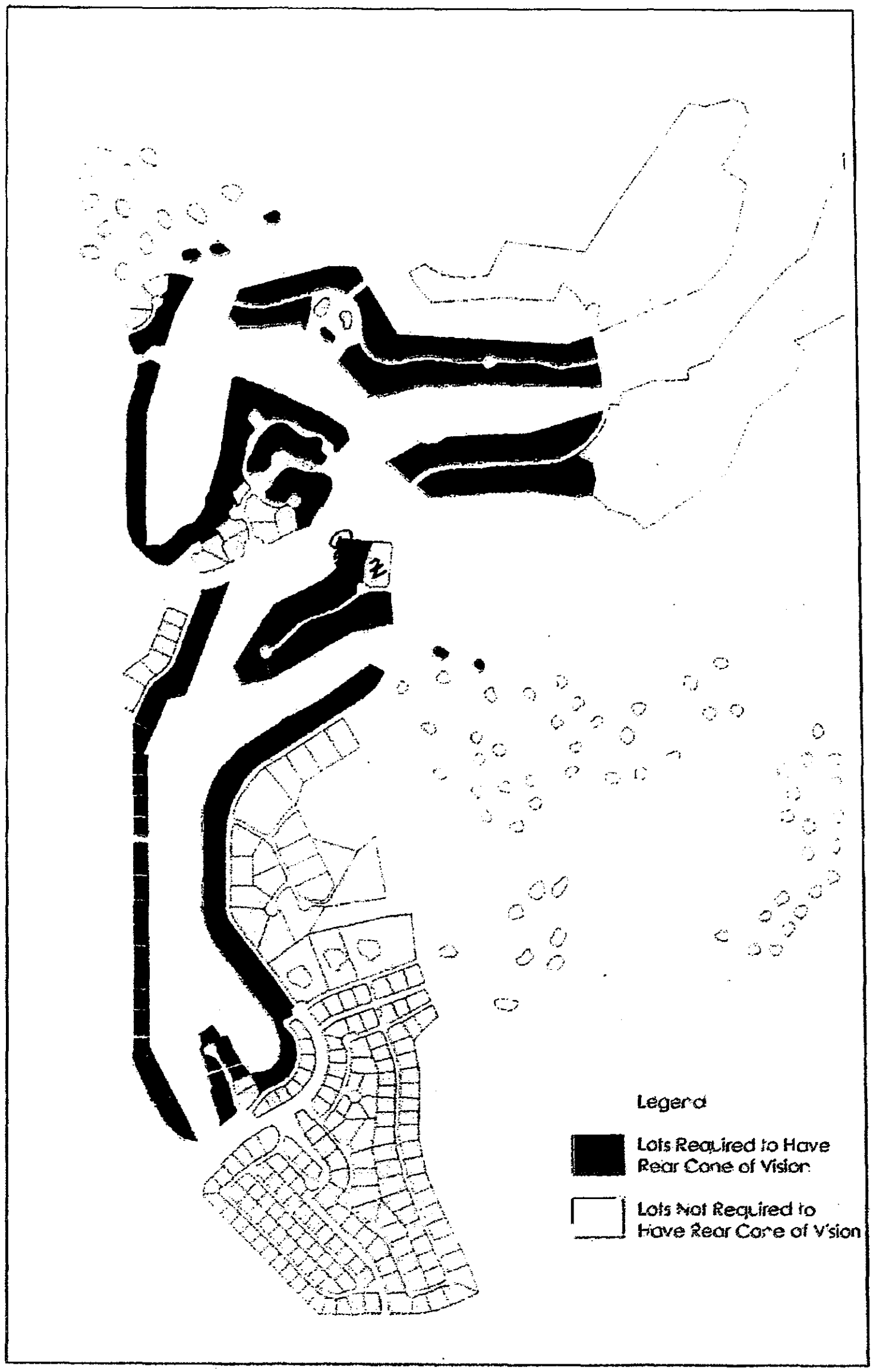
Exhibit "I"
Page 2.29

2.10.4 Rear Yard Cone of Vision

In all site design and layout, careful attention to open space is important. Those lots that front on the golf course, open space or possess strong view orientations may install a community-designed view wall on the rear property line. If a solid wall is desired along the side property line(s), the solid side yard wall must end at a distance of 15 feet from the property corner. A single pilaster is required at each property line corner on both sides in the rear. In addition, those lots that require preservation of view corridors will not be permitted to install improvements, plant trees or other plant material that are taller than 4 feet within a distance of 15 feet from the rear yard property corner.

2.10.5 Security Walls

All security walls within the MacDonald Highlands project must be designed and constructed using the design criteria established for View Walls and incorporating those specific code requirements for providing the required protection (such as for swimming pools). The design and construction of all security walls must be submitted to the Design Review Committee for review and approval.



Rear Yard Cone of Vision Master Plan

Exhibit "O"
Page 2.38

2.13 SERVICE AREAS

All above-ground garbage and trash containers, clotheslines, mechanical equipment, and other outdoor maintenance and service facilities must be screened by walls, berms, or landscape from other Lots or Parcels, streets, or public spaces.

2.14 GOLF COURSE LOTS OR PARCELS

Golf Course Lots or Parcels may be required to have fences or walls along the Golf Course boundaries if required by the Design Review Committee. All fencing on Golf Course Lots or Parcels along the boundaries adjacent to the Golf Course shall be located, constructed, and maintained in accordance with specifications established by the Design Review Committee for the purpose of preserving and protecting the views of adjoining land from the Golf Course.

These fences shall be low masonry walls with wrought iron fencing, in a combination approved by the Design Review Committee. Owners of Golf Course Lots or Parcels, prior to installing fences or walls, or prior to modifying fences or walls existing on a Golf Course Lot or Parcel, shall obtain written approval regarding the location thereof and any such construction of modification from the Design Review Committee.

Any portion of a Golf Course Lot or Parcel, which is visible from Neighboring Property, shall be kept neat, clean, and free of weed and residue. All Golf Course Lots or Parcels shall be landscaped and maintained in accordance with the rules and regulations established by the Declarant or the Design Review Committee. Such landscaping shall not be modified without prior approval of

the Design Review Committee, which Committee shall determine that such modification will not interfere with the view from Neighboring Property of that Lot or Parcel thus landscaped or of other Golf Course Lots or Parcels.

No temporary storage facilities, storage sheds, or any other temporary or permanent structures may be placed on any Golf course Lots or Parcels so as to be Visible from Neighboring Property or the Golf Course without the prior consent of the Design Review Committee.

2.15 SWIMMING POOLS

Swimming pools should be designed as being visually connected to the residence through walls or courtyards, and screened or separated from the Natural Areas or direct view of the Street or of neighboring properties. They must be constructed according to the City of Henderson Regulations.

2.16 TENNIS COURTS

Tennis courts are not allowed except in certain situations on large Lots or Parcels as approved by the Design Review Committee. Tennis courts should be fenced and sited for minimal visual impact from the street or from neighboring properties. The construction of tennis courts below grade helps to reduce the need for fencing. Lighting from tennis courts will not be permitted to spill onto adjacent property, and no tennis court lighting shall be installed without the approval of the Design Review Committee.

2.17 LOT OR PARCEL RESTRICTIONS

No more than one Residence may be constructed on any Lot or Parcel.

The MacDonald Highlands design guidelines permit one accessory structure per design-accepting lot (i.e., larger lots) provided it complies with design requirements and restrictions per City of Henderson building code. Please be advised that a detached guesthouses, guest suites and/or cabana that includes a kitchen is not permitted in the City of Henderson (City of Henderson Ordinance No. 1295, Section 1.BN.2, adopted March 17, 1992). Any approved accessory structures should be designed as a single visual element, compatible with and complimentary to the design and form of the main residence, and should be visually connected by walls, courtyards, or other major landscape elements. The accessory structure must be contained within the building setbacks, shall be located to respect the views, privacy, and other aspects of adjacent properties, and the use of mature landscaping is encouraged to soften the appearance of these structures. No accessory structure may be leased or rented separately from the main residence. Requests for accessory structures must first be submitted to the Design Review Committee for review and approval, prior to submission to the City of Henderson for plans check and permit issue.

3.2 DESIGN CRITERIA - CUSTOM HOMES
[Planning Areas 1-Phase I, 3, 4, 5A (Highlands I), 5B, 5C (Highlands II), 6, 7, 8A, 10, 12, 15, 16, 18, 26, Palisades Unit I & Palisades Unit II]

Introduction

The goal for developing the architectural theme of MacDonald Highlands is to project a harmonious image and a distinctive identity. This should be achieved not by dictating a particular style but encourage a blending of styles emphasizing simple, strong masses and forms.

The purpose of these Architectural Standards is to provide guidance for the Lot Owner and architect. The maintenance of high architectural standards protects and enhances real estate values at MacDonald Highlands. The restriction of unsightly construction also helps to ensure that the image of a prestigious community is maintained. All proposed construction shall comply with the following general criteria:

- Is the residence compatible with a prestigious, high-quality image?
- Will the proposed residence maintain the character of the community?
- Does the residence seem appropriate to the concept of the community?

MacDonald Highlands is planned as one of the premier luxury communities in the United States. The community's incomparable setting, featuring majestic and rugged topography with expansive golf course amenities, and proximity to one of the country's most unique destination resorts, require an unparalleled unity and excellence in design, architecture, and landscape.

3.3 SITE PLANNING CRITERIA – CUSTOM HOMES [Planning Areas 1-Phase I, 3, 4, 5A (Highlands I), 5B, 5C (Highlands II), 6, 7, 8A, 10, 12, 15, 16, 18, 26, Palisades Unit I & Palisades Unit II]

Introduction

The natural topography, vegetation and setting of MacDonald Highlands create a unique environment, which requires careful attention throughout the site design and development process. The integrated design of site and residence is crucial to ensure that the dwelling blends harmoniously into the surrounding desert landscape. The design must fully analyze the unique physical characteristics of the lot, including topography, slope, view, drainage, vegetation, and access.

The desert landscape is a fragile environment, and may take many years to naturally recover from the impacts of disturbances related to site development. In order to minimize these impacts, MacDonald Highlands along with the City of Henderson, have developed the criteria within this Supplemental Design Guidelines manual to protect the natural desert character of the community.

3.3.1 Building Envelope

The Building Envelope is the portion of the lot, exclusive of any setbacks, easements or other encumbrances, upon which lot improvements may be located. All lot improvements, including residential structures, accessory buildings, outside patios and terraces, tennis courts, swimming pools, and other site elements, must be designed within the Building Envelope.

A maximum Building Envelope has been established for each custom lot to foster creative solutions to the massing of building components and to ensure the preservation of views from each residence in MacDonald Highlands. The Building Envelope is based upon the minimum setbacks as outlined in Table 3.9, and the building height limit as described in Section 3.4.

It is not intended that the design of the residence completely fill the Building Envelope. Although the shape and location of the Building Envelope are intended to be somewhat flexible, only the Design Review Committee can make modifications to the Building Envelope only if the modifications do not result in a significant adverse impact upon the natural features of the lot, adjacent lots or the MacDonald Highlands community as a whole. Designs, which in the opinion of the Design Review Committee overwhelm the Building Envelope, will be considered inconsistent with the philosophy of MacDonald Highlands and will not be approved.

3.3.1.a Combined Lots

If an Owner owns two contiguous Lots and wants to combine the two Lots into a single homesite, the Owner may do so only with the prior consent of the DRC and only if the change, in the DRC's opinion, does not materially impair views and/or privacy from neighboring Lots or Common Areas. When considering combining Lots, the Owner must recognize that combining two Lots or Building Envelopes may be beneficial, as it could provide more Open Space between adjacent Lots and improve view corridors; it may also have an adverse impact on the views and privacy of other nearby Lots or Common Areas, and should be reviewed carefully by the DRC. An Owner may apply for a variance on a front yard setback based on specific Lot configurations subject to DRC approval. The Owner or his representative is urged to submit a proposed revised Building Envelope for Combined Lots as early in the design process as is reasonable prior to preliminary submittal. Specific focus will be placed on, but not limited to the following:

SITE PLANNING CRITERIA – CUSTOM HOMES

MINIMUM SETBACKS*

	LOT SIZE	FRONT	SIDE	REAR
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Manor Estate: Planning Areas: 5B and 12	1 Ac.	25'	15'	35'
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Manor Estate: Planning Area 10	1/2 to 1 Ac.	25'	15'	35'
Hillside Estate: Planning Areas: 6, 7, 18, 26, Palisades Units I and II	1/2 Ac.	25'	15'	30'
Golf Estate: Planning Areas: 1-Phase 1, 8A, 15/16	1/2 Ac.	25'	15'	30' **
Executive Estate: Planning Areas: 3, 5A and 5C (Highlands Units I and II)	1/3 Ac.	25'	10' Corner Side One-Story: 15' Corner Side Two-Story: 20'	30' **

* Accessory structures provided on interior lots must be setback a minimum of five feet (5') from all property lines. While accessory structures provided on lots along the golf course and/or common open space must be setback a minimum of ten feet (10') from all property lines, [redacted]

** Single-story elements, including but not limited to patios, sundecks and "open" balconies may encroach 10'-0" maximum into the rear setback on Executive and Golf Estates, however, must comply with minimum side setbacks.

- Adjustments in Building Envelope
- Preservation of view corridors
- Building height restrictions
- Architectural massing

The plat for a newly configured single Lot must be approved by the City of Henderson, Nevada and must be recorded. All expenses associated with recording the new Lot and pursuing any required governmental approvals are the responsibility of the Owner.

3.3.2 Natural Area

The natural area is the portion of the lot that lies outside of the Building Envelope, and must remain in its natural desert condition. Additional plant material may be added in the Natural Area subject to approval by the Design Review Committee. If approved, only plants indigenous to the general area of development may be used, and the density and mix should approximate that of the surrounding desert landscape. Irrigation of the Natural Area is not permitted since the indigenous vegetation does not require additional water. Irrigation of the Natural Area can lead to disease and demise of the native plants, and contribute to the spread of undesirable plant species or weeds.

Lot Owners in Planning Area 7 and Planning Area 5B shall be required to prepare a legal description of Natural Area that cannot be amended without Design Review Committee approval.

Any slope area adjacent to the golf course and not a part of the area of home development or construction shall be landscaped as a "Natural Desert Zone" or "Natural Area".

3.3.3 Private Area

The Private Area is the portion of the Building Envelope that has limited visibility from neighboring properties because it is screened from view by plant materials, walls or other structures. The Private Area is the least restrictive in terms of plant selection, and may include any plant material listed on the Approved Plant List, or subject to Design Review Committee approval, any other plant material not included on the Prohibited Plant List.

3.3.4 Building Orientation

The custom lot areas within MacDonald Highlands have been designed to provide a sense of exclusivity to each of the neighborhoods. This exclusivity is further achieved through the ample sizing of individual lots to enable the creation of a pleasant neighborhood character with an emphasis on one-story homes and significant space between residences. The siting of individual structures on the lot should consider the following three primary factors: 1) Solar Orientation; 2) View Orientation; and 3) Relationship to adjacent lots and the overall community. The Design Review Committee will consider each lot independently, and will give extensive consideration to view corridors, impacts on adjacent homes, solar orientation, drainage patterns, impacts to existing site conditions, and driveway access.

3.3.4.a Solar Orientation: The desert climate is characterized by extreme conditions ranging from intense heat in the summer to very cold temperatures in winter. Passive solar design techniques are encouraged in order to minimize summer heat gain while maximizing heat gain during winter months. The placement of windows is of particular importance in relationship to solar orientation. Windows with direct sun exposure should

be shielded by covered patios, wide overhangs, shade structures, tinted glass or other similar devices, to minimize the effects of the sun.

The use of solar panels, hot water storage systems, or other similar devices shall not be visible from any street or community open space, and are subject to approval by the Design Review Committee.

3.3.4.b View Orientation: The hillside character of MacDonald Highlands provides spectacular view opportunities for most of the lots throughout the community. The orientation of the residence's major rooms, patios and terraces should be designed to take advantage of these dramatic views. The use of large picture windows and corner glass are especially effective in capturing the views offered by the site, and are characteristic of the Desert Elegance style of architecture.

With the golf course orientation of MacDonald Highlands, there is an inherent risk that golf balls and the play of golf may impact lots or residences with golf course frontage. The Design Review Committee strongly recommends that, during the planning of site improvements on your lot, careful consideration be given to the possibility of errant golf balls, particularly regarding the orientation of windows or other breakable surfaces of the dwelling. Netting, screens, excessive landscaping, fences or large blank walls will not be allowed. Evaluation of the proper siting, orientation, massing and setbacks should provide for maximum golf or view orientation with minimal adverse impact from the play of golf. Design consideration should also be given to the noise generated by golfers, golf carts and maintenance vehicles.

3.3.4.c Relationship To Adjacent Lots & The Overall Community: Residential structures should be designed to blend into the overall character of the desert environment as much as possible, minimizing any negative visual impact from surrounding areas. The design of individual homes should carefully consider the scale, proportion, and massing of building elements to ensure the resulting structure is compatible with the overall philosophy of MacDonald Highlands.

It is the intent of these guidelines to ensure that not only are the architectural designs consistent with community standards but that each new home compliments and enhances those homes that already exist. An important aspect of the MacDonald Highlands philosophy is the goal of having the home fit within the existing terrain and not reconfigured the terrain to fit within the home. Careful consideration of the surrounding site conditions should be designed as an integral element of the lot's development. Therefore, the Design Review Committee will require all Lot Owners to provide the Design Review Committee with lot cross-sections as shown in Exhibit "V". In addition to presenting the proposed elevations of the home, the cross-section must depict the proposed contours carried out to the lot lines.

Furthermore, if adjacent lots have existing homes, the Lot Owner is to show the existing homes and its elevation in relation to his/her proposed design. Elevation data from adjacent lots will be made available to the Lot Owner by the Design Review Committee upon request. Cross-sections are to be included in the Schematic Plan Review Submittal.

3.3.7.g **View Preservation:** The hillside character of MacDonald Highlands provides spectacular view opportunities for most of the lots throughout the community. The orientation of the residence's major rooms, patios and terraces should be designed to take advantage of these dramatic views.

While views should be maximized from individual homesites, the residence should be designed and sited such that view opportunities from surrounding lots are not obstructed.

5.10.a Rear Yard Cone of Vision / Dedicated View Corridors

Those lots that require preservation of view corridors will not be permitted to install improvements, plant trees or install other plant material that are taller than 4 feet (i.e., at *maturity,* not with maintenance) within a distance of 15 feet from the rear yard property corner (Exhibit "O", Page 2.38).

TAB 34

OPPC
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-689113-C
Dept. No.: I

BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE AND COUNTERMOTION FOR DISMISSAL BASED ON NRS 38.310(2)

Bank of America, N.A. (**BANA**) opposes plaintiff's motion to amend and countermoves for dismissal of this "civil action" based on NRS 38.310(2).

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This Court should deny plaintiff's motion. **First**, Rule 15(b) is inapplicable since we are not yet at trial. There is no evidence for the pleadings to conform to, yet. **Second**, plaintiff's proposed amendment based on common interest communities CC&Rs is *void ab initio*. Plaintiff must first mediate any claim that relates to a common interest community's CC&Rs, rules, or regulations under NRS 38.310. The remedy for violating the mediation precondition is dismissal of the "civil action." This Court should therefore dismiss this civil action, *if* the Court grants plaintiff leave to pursue any claim relating to the CC&RS, rules, or regulations of the common interest community governing the property.

II.

LEGAL DISCUSSION

A. This Court should Deny Amendment.

NRCP 15(b)'s express text demonstrates that this rule is not applicable until trial:

> Amendments to Conform to the Evidence. When issues not raised by the pleadings are **tried by express or implied consent of the parties**, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; **but failure so to amend does not affect the result of the trial of these issues**. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

NRCP 15(b) (Emphasis added). Indeed, this is how Nevada has interpreted Rule 15(b). *University & Cmty. Coll. Sys. v. Sutton*, 120 Nev. 972, 103 P.3d 8 (2004) ("NRCP 15(b) allows a party to move to amend its pleadings to conform to the evidence presented at trial").

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Here, there is no trial date, yet. There is no evidence, yet. There is no evidence to try by consent of the parties, which could possibly be the basis for an amendment. Plaintiff must rely on Rule 15(a), which they ignore.

After a responsive pleading is filed, a party may amend his or her pleading "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." NRCP 15(a). Sufficient reasons to deny a motion to amend a pleading include undue delay, bad faith or dilatory motives on the part of the movant. *Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105-106, 507 P.2d 138, 139 (1973). Plaintiff fails to explain its delay. The CC&Rs are not new evidence. There is no justifiable reason for bringing this motion to amend now.

B. This Court Must Dismiss this Case under NRS 38.310(2).

Plaintiff, through its motion to amend, is now stating that it has a claim that relates to the interpretation of the common interest communities' CC&Rs, rules, and design guidelines. (Motion, at 4:18-22). Plaintiff ignores the legislative command of mediating this claim prior to bringing any civil action that relates to the CC&RS, rules, and design guidelines. NRS 38.310 provides:

> 1. No civil action based upon a claim relating to:
>
> (a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or
>
> (b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property, may be commenced in any court in this State unless the action has been submitted to mediation or, if the parties agree, has been referred to a program pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.
>
> 2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

The phrase "civil action" means an action for money damages or equitable relief. NRS 38.300(3).

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Courts must dismiss any civil action commenced in violation of section 38.310. *Hamm v. Arrowcreek Homeowners' Ass'n*, 124 Nev. 290, 295, 183 P.3d 895, 900, (2008). Plaintiff's proposed amendment is futile because it requires this court to dismiss the entire complaint.

The *McKnight Family* case is instructive. The court found the former property owner's post-foreclosure claims for injunctive relief, negligence, breach of contract, violations of the Nevada Administrative Code (**NAC**), violations of the good faith provision of the Uniform Common Interest Ownership Act (**CIOA**) found at NRS § 116.1113, slander of title and wrongful foreclosure were all within NRS § 38.310. The court focused on whether the claims were civil actions within NRS 38.300, and it performed little analysis of whether the claims related to "interpretation, application or enforcement" of the CC&Rs, other than to note that the breach of contract claim "is related to obligations and duties set forth in the CC&Rs." *McKnight Family, LLP v. Adept Mgmt.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 558-59 (2013). It concluded its analysis by stating that the claims for "NAC and NRS violations required the district court to interpret regulations and statutes that contained conditions, covenants and restrictions applicable to residential property." *Id.* If this Court grants plaintiff's motion to amend, then this Court is required to dismiss the entire case.

III.

CONCLUSION

Plaintiff is seeking leave of court to file a void complaint. Plaintiff's motion is also procedurally improper. Rule 15(b) does not govern a case until trial. Plaintiff's motion should be brought under Rule 15(a), but plaintiff failed to demonstrate any rationale for failing to timely seek leave to amend, or an extension of the scheduling order. If this Court grants leave to amend, then this Court must dismiss this civil action under the plain language of NRS 38.310(2).

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DATED this 19th day of June, 2015.

AKERMAN LLP

/s/ *Steve Shevorski, Esq.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of June, 2015 and pursuant to NRCP 5(b), I served and deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE AND COUNTERMOTION FOR DISMISSAL BASED ON NRS 38.310(2)**, postage prepaid and addressed to:

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A Nevada Limited Partnership

DISTRICT COURT

CLARK COUNTY, NEVADA

THE FREDRIC AND BARBARA ROSENBERG LIVING TRUST,

Plaintiff,

vs.

BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-13-689113-C
Dept. No.: I

OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE

Hearing Date: July 6, 2015

Hearing Time: In Chambers

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I.

INTRODUCTION

Presumably because it realizes that it will likely not prevail on the pending motion for summary judgment filed by Defendants FHP Ventures,[1] Plaintiff has now brought a motion to amend its complaint to allege additional contract and fiduciary-duty-based claims against FHP Ventures. This motion should be denied for both procedural and substantive reasons.

First, Nevada Rule of Civil Procedure 15 provides that Plaintiff is only permitted to bring a motion to amend the pleading to conform with the evidence where there has been trial by consent on the issues in question. Of course, there has not yet been a trial in this action. Plaintiff attempts to get around this requirement by pointing out that its counsel has asked questions regarding CC&Rs and the Design Guidelines in depositions. Of course, counsel is entitled to ask whatever questions in discovery she wishes, subject to objections and eventual rulings by this Court at trial; that does not mean that Plaintiff is now entitled to amend the complaint based on whatever Plaintiff's counsel said in discovery. Statements by counsel are not evidence. See, e.g., State v. Varga, 205 P.2d 803, 811 (Nev. 1949). Discovery questions, or even formal requests, are not the same thing as trying an issue by consent.[2]

Furthermore, Plaintiff's proposed amendment is futile because the new claims Plaintiff wishes to assert depend on novel and unsupportable legal theories. Plaintiff first incorrectly characterizes the CC&Rs and/or Design Guidelines of the Foothills community as a contract between FHP Ventures and Plaintiff. Second, Plaintiff misinterprets Nevada law to mean that a declarant on CC&Rs is somehow a fiduciary to every homeowner bound by those CC&Rs. As demonstrated infra, these assertions are actually contrary to the prevailing legal authorities and, even if Plaintiff could get past its insurmountable procedural hurdles,

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[1] The motion for summary judgment was filed by FHP Ventures along with Defendants MacDonald Highlands Realty, LLC and Michael Doiron.

[2] Plaintiff may argue later, but does not in motion, that those legal claims against FHP Ventures correlate to the currently existing equitable claims. That argument, however, does not excuse the lateness of the instant motion; nor does it fix Plaintiffs more immediate problem that these claims are unsupportable as a matter of law.

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these authorities render the proposed additional claims futile. There is therefore no basis upon which this Court can properly grant the instant motion.[3]

II.

ARGUMENT

A. No issues have been tried by consent because there is yet to be a trial in this matter. The fact that Plaintiff's counsel asked certain questions in depositions does not entitled Plaintiff to amend its complaint so late in the case.

Nevada Rule of Civil Procedure 15(b) provides as follows:

> **When issues not raised by the pleadings are tried by express or implied consent of the parties**, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. **If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits.** The court may grant a continuance to enable the objecting party to meet such evidence.

"A motion for leave to amend pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its action in denying such a motion will not be held to be error in the absence of a showing of abuse of discretion." Connell v. Carl's Air Conditioning, 634 P.2d 673, 675 (Nev 1981). Where a plaintiff waits until the eve of trial to move to amend a complaint, a trial court does not abuse its discretion in denying the motion. Id.

Here, first and foremost, there has been no trial and therefore no evidence taken upon which to conform the pleadings as Plaintiff requests. Second, Plaintiff's entire basis for amending the complaint at this late hour is that "Plaintiff's counsel spent considerable time

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[3] Given that Plaintiff's motion is based on something that has not yet happened (i.e., "[t]o the extent an implied restrictive covenant is not found to exist on the Golf Parcel"), the instant motion is also unripe because it assumes facts that have not yet been established. Motion, on file herein, at 3:19-23. Plaintiff therefore seeks relief on an issue not currently before the Court, and her motion ought to be denied on that basis.

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addressing the CC&Rs and the Design Guidelines' impact of Malek's potential and approved construction on the Golf Parcel." Motion at 5:17-19. Setting aside the fact that those questions have nothing to do with contract or fiduciary duty claims, there is zero authority for the idea that, just because a lawyer asks a question regarding certain topics in a deposition, those questions now constitute trying of evidence that may serve as the basis for amending a complaint. In fact, the contrary is true. See Varga, supra; see also Jain v. McFarland, 851 P.2d 450, 457 (Nev. 1993) (recognizing that "[a]rguments of counsel are not evidence and do not establish the facts of the case") and Nevada Ass'n Servs., Inc. v. Eighth Jud. Dist. Ct., 338 P.3d 1250, 1255-56 (Nev. 2014), reh'g denied (Mar. 23, 2015) (citing Jain).

Simply, there is no evidence to which the new complaint is designed to conform. In reality, Plaintiff simply has new legal theories that it would desperately like to assert in the face of a pending motion for summary judgment in order to keep the complaint alive. But that desire has nothing to do with any "evidence" that has been uncovered in discovery, nor has any evidence been presented to the Court that would justify allowing amendment of the complaint at this late hour.

B. Plaintiff's proposed amendment is futile because Plaintiff's contract and fiduciary duty theories cannot survive as a matter of law.

The proposed amended complaint is targeted at one of the three parties that is set to potentially exit this case on a motion for summary judgment: FHP Ventures. Specifically, Plaintiff wants to assert claims for (1) breach of contract, (2) breach of the implied covenant of good faith and fair dealing, and (3) breach of fiduciary duty. Motion at 5:10-12.

It is well-settled law in Nevada that, despite a liberal policy in favor of amendment, a motion for leave to amend a complaint should be denied where it is futile. See Halcrow, Inc. v. Eighth Jud. Dist. Ct., 302 P.3d 1148, 1152 (Nev. 2013), as corrected (Aug. 14, 2013). "A proposed amendment may be deemed futile if the plaintiff seeks to amend the complaint in order to plead an impermissible claim." Id. Here, the three brand-new theories proposed against FHP Ventures are all impermissible claims that cannot be asserted at this late date because the facts and prevailing law simply do not support them.

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1. Breach of contract

With regard to the first claim, "[a] breach of contract may be said to be a material failure of performance of a duty arising under or imposed by agreement." See Calloway v. City of Reno, 993 P.2d 1259, 1263 (Nev. 2000). A breach of contract has a four essential elements: "(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff." Reichert v. Gen. Ins. Co. of Am., 442 P.2d 377, 381 (Cal. 1968). A contract is defined as"[a]n agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law." CONTRACT, Black's Law Dictionary (10th ed. 2014).

Plaintiff wants to allege for the first time in its amended complaint that the CC&Rs and Design Guidelines for the MacDonald Highlands Community constitute a binding contract between Plaintiff and FHP Ventures. See Exhibit 1 to Motion at ¶ 133. Neither the CC&Rs, attached hereto as Exhibit A, nor the Design Guidelines, attached hereto as Exhibit B, have any indication that they constitute agreements between Plaintiff and FHP Ventures. Legally speaking, the CC&Rs are more correctly viewed as restrictive covenants against the property, and FHP Ventures was simply the declarant. See Exhibit 1. Indeed, these documents appear to be declarations under NRS 116.037. Declarations are defined as "any instruments, however denominated, that create a common-interest community, including any amendments to those instruments." NRS 116.037; see also Uniform Common Interest Ownership Act ("UCIOA")[4] at 1-103(15) (defining declaration in the same manner). Comment 14 to section 1-103 of the UCIOA expressly states that a CC&R is a declaration. Nevada's Legislature, along with the UCIOA's drafters, intentionally chose to not define a CC&R as an agreement. There is no legal authority cited, then, for the novel idea that Plaintiff can somehow convert the CC&Rs and Design Guidelines, after their creation, into a contractual agreement and relationship between Plaintiff and FHP Ventures. Accordingly, a breach of contract action is impressible and therefore futile.

There is no legal authority cited for the novel idea that Plaintiff can somehow convert

[4] A copy of the UCOIA with prefatory statement and comments is attached hereto as Exhibit C.

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the CC&Rs and Design Guidelines, after their creation, into a contractual agreement and relationship between Plaintiff and FHP Ventures.

2. Breach of the implied covenant of good faith and fair dealing

As with the breach of contract action, this claim is premised upon there being a valid and enforceable contract between Plaintiff and FHP Ventures, which there demonstrably is not. If the CC&Rs and/or Design Guidelines do not constitute a contract, then a claim for breach of the implied covenant of good faith and fair dealing cannot be maintained. See, e.g., Perry v. Jordan, 900 P.2d 335, 338 (Nev. 1995); Hilton Hotels Corp. v. Butch Lewis Prods., Inc., 808 P.2d 919, 922-23 (Nev. 1991). Because the amendment of the complaint to include this claim would therefore be futile, it should also be disallowed.

3. Breach of fiduciary duty

The tort of breach of fiduciary duty was articulated by the Nevada Supreme Court as follows:

> Under the Restatement (Second) of Torts, a "fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation." Restatement (Second) of Torts § 874 cmt. a (1979). Thus, a breach of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the fiduciary relationship. Id.

Stalk v. Mushkin, 199 P.3d 838, 843 (Nev. 2009). The question presented by the proposed claim for relief, then, is whether a fiduciary relationship can actually exist between FHP Ventures and Plaintiff. The authorities on this point answer unequivocally in the negative.

Under Nevada law, a fiduciary relationship arises when one party has the right to "expect trust and confidence in the integrity of another party" and that party is or should be aware of the confidence such that he or she is bound to act for the benefit of the confidant. Powers v. United Services Auto Ass'n., 979 P.2d 1286, 1288 (Nev. 1999); Hoopes v. Hammargren, 725 P.2d 238, 242 (Nev. 1986). Accordingly, in order for a fiduciary duty to arise outside of specifically recognized categories of relationships, e.g., doctor-patient, a confidential relationship must exist. Giles v. General Motors Acceptance Corp., 494 F.3d

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865, 881 (9th Cir. 2007). A confidential relationship arises "where one party gains the confidence of the other and purports to act or advise with the other's interests in mind." Id. (internal quotes omitted, citing Perry, supra, 900 P.2d at 338). A confidential relationship "is particularly likely to exist when there is a family relationship or one of friendship. Id. The Perry case, for example, was based on a business deal between friends where the buyer trusted the seller to run a store for a year and the seller failed to follow through. Perry, 900 P.2d at 337. In Franchise Tax Bd. of Cal. v. Hyatt, 335 P.3d 125 (Nev. 2014), reh'g denied (Nov. 25, 2014), the plaintiff "argue[d] for a broad range of relationships that can meet the requirement under Perry, but [the Court] reject[ed] this contention." See id. at 143. This narrow reading of the "confidential relationship" language in Perry, then, excludes everything that is a not a close personal relationship based on trust between the parties.

If the Court looks to these decades of authorities, right up to the Nevada Supreme Court's narrow reading of Perry last year, it should be clear that Nevada does not support the idea that a declarant on CC&Rs can be a fiduciary to every homeowner that later buys a piece of property subject to those CC&Rs. Furthermore, the existence of Design Guidelines does not entail any element of trust or a personal relationship as required by Perry and Franchise Tax Board; accordingly, no fiduciary or confidential relationship can exist as a matter of law. If no fiduciary of confidential duty exists as a matter of law, then there cannot be a breach of that duty. Accordingly, any attempt to assert such a claim is futile and should be denied by this Court.

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III.

CONCLUSION

The instant motion is little more than a transparent attempt to circumvent a dispositive motion by making Plaintiffs' claims into a moving target. All discovery has been completed and there are no actual facts that support Plaintiff's bid to assert all-new claims against FHP Ventures. Accordingly, and for all the foregoing reasons, FHP Ventures respectfully requests that this court deny the instant motion to amend in its entirety.

DATED this 22nd day of June, 2015.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of June, 2015, pursuant to NRCP 5(b), I e-served via the Eighth Judicial District Court electronic service system the foregoing **OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE** to all parties on the e-service list.

An employee of Kemp, Jones & Coulthard

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE FREDERIC AND BARBARA ROSENBERG LIVING TRUST, Plaintiff, vs. BANK OF AMERICA, N.A.; BAC HOME LOANS SERVICING, LP, a foreign limited partnership; MACDONALD HIGHLANDS REALTY, LLC, a Nevada limited liability company; MICHAEL DOIRON, an individual; SHAHIN SHANE MALEK, an individual; PAUL BYKOWSKI, an individual; THE FOOTHILLS AT MACDONALD RANCH MASTER ASSOCIATION, a Nevada limited liability company; THE FOOTHILLS PARTNERS, a Nevada limited partnership; DOES I through X, inclusive; and ROE BUSINESS ENTITY I through XX, inclusive, Defendants.	CASE NO.: A-13-689113-C DEPT NO.: I **DEFENDANT SHAHIN SHANE MALEK'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE**

I. Introduction

The Trust now seeks the Court's leave to amend its complaint after the close of discovery, and only after the Defendants' pending motions for summary judgment had been fully briefed. Although there is not even a trial date set in this action, the Trust moved for leave to amend under Nevada Rule of Civil Procedure 15(b), contending that certain evidence had been "tried by express or implied

consent of all parties." Nothing has been "tried" in this case, and amendment under Rule 15(b) is improper. Even an extremely liberal reading of the Trust's motion under Rule 15 leads to the same result: The Trust's motion is untimely, futile, and should be denied.

II. Statement of Relevant Facts

The Trust filed this lawsuit on September 23, 2013, and faced a raft of motions to dismiss. The Court ruled on those motions and the parties commenced discovery, which continued throughout 2014 and ended in March of 2015. During this time, the Trust filed an unopposed motion to amend its complaint on the November 24, 2014, the deadline for seeking leave to amend its pleadings. The Court entered its order granting that motion on January 9, 2015.

By April 16, 2015, MacDonald Highlands Realty, FHP Ventures, and their related defendants (collectively, the "MacDonald Defendants"), Malek, and the Trust filed their respective motions for summary judgment. A hearing on these motions was scheduled for May 19, 2015, and each of the pending motions were fully briefed by then. On May 18, the Court rescheduled its arguments on those motions to June 10, 2015. Once the Trust had the benefit of several weeks to fully analyze Malek and the MacDonald Defendants' arguments, it moved for leave to file its second amended complaint and salvage its claims on June 3, 2015—more than six months after the deadline to do so had passed.

III. Argument

The Trust seeks to amend its complaint under an inapplicable section of Nevada Rule of Civil Procedure 15. No part of this case has been "tried" in any sense of the word, rendering Rule 15(b) an improper basis for amendment at this time. Instead, Rule 15(a) and the timing requirements of Rule 16 govern the Trust's proposed amendment. The Trust's motion still fails under those rules, too.

In addition to these procedural defects, the Trust's stated rationale for further amending its complaint is unsupported by Nevada law. Any amendment to the Trust's claims against Malek would fail for futility. The only harm the Trust claims to suffer from Malek's potential construction on the golf parcel is impairment of its "views, privacy and otherwise open feeling." (Mot. at 3:12)

This is an impermissible basis for the Court to impose an easement on Malek's property. Nevada law has repeatedly and directly refused to acknowledge easements to protect view, light, and privacy. *Probasco v. City of Reno*, 85 Nev. 563, 564, 459 P.2d 772, 773 (1969) ("Nevada has

expressly repudiated the doctrine of implied negative easement of light, air and view for the purpose of a private suit by one landowner against a neighbor"), *citing Boyd v. McDonald*, 81 Nev. 642, 651, 408 P.2d 717, 722 (1965). While the Trust seeks to amend its complaint to conform to the evidence, its reasoning is curious, as the evidence only demonstrates that its claims against Malek are untenable.

A. The Trust's Motion is Procedurally Improper and Substantively Flawed; Thus the Court Should Deny It.

The Trust invokes the wrong rule in moving for leave to amend its complaint. Its motion fails on that basis alone. Even if the Court were to apply the correct rules in evaluating the Trust's motion, it would still fail.

1. Nevada Rule of Civil Procedure 15(b) is the Wrong Rule for the Trust's Motion and Does Not Support Amendment.

The Trust's motion glosses over Rule 15(b) and assumes that it applies here. It does not. Rule 15(b) allows for amendment to conform to evidence "when issues not raised by the pleadings *are tried by express or implied consent of the parties*" (emphasis added). *Branda v. Sanford*, 97 Nev. 643, 647 n.2, 637 P.2d 1223, 1226 n.2 (1981) (noting that motion for leave to amend complaint under Rule 15(b) was improper where issue raised at trial was not consented to by all parties). Other courts have interpreted Federal Rule of Civil Procedure 15(b), the analogue to Nevada's rule, to apply to matters raised at trial—not merely in the course of discovery. *Anand v. Nat'l Republic Bank (In re Anand)*, Case No. 95 C 3940, *1996 U.S. Dist. LEXIS 15242* at *10-11 (N.D. Ill. Bankr. Oct. 10, 1996) ("The critical inquiry under Rule 15(b) is whether the opposing party had notice of the issue and consented to its *trial*" (emphasis added)).

Nevada Rule of Civil Procedure 15(b)'s language indicates that it is a tool for use once a matter has gone to trial, or been "tried" in some manner. *See Johnson v. United States*, 860 F. Supp. 2d 663, 711 (N.D. Iowa 2012) (discussing the adversarial nature of proceedings, involving determinations of fact, needed to invoke Rule 15(b)). That has not happened in this case. By the Trust's own admission, its basis for seeking amendment is that "Plaintiff's counsel spent considerable time addressing" the issues in depositions. (Mot. at 5:17-18) This does not constitute an issue being "tried" as required by Rule 15(b) or any precedent interpreting it (or the corresponding federal rule).

Finally, while Rule 15(b) allows amendment to conform with the evidence "at any time," it is still predicated on an issue first being "tried." The United States District Court for the District of Nevada denied a similar motion for leave to amend to conform to the evidence when it was filed months after the deadline for such amendments, and after the Court decided the parties' dispositive motions, but before any issue in the case had been put to trial. *Carrillo v. Las Vegas Metro. Police Dep't*, Case No. 2:10-cv-02122-JAD-GWF, *2014 U.S. Dist. LEXIS 19409* at *13-15 (D. Nev. Feb. 14, 2014). As in *Carrillo*, Rule 15(b) is the wrong mechanism for amendment in this case, and the Trust's motion should be denied.

2. The Trust's Proposed Amendment is Untimely and Should Be Denied on That Basis Alone.

Because none of the issues in this case have been "tried" in any sense of the word, the Trust's motion would be properly analyzed under Nevada Rule of Civil Procedure 15(a), and within the time for amendment established by Rule 16(b) and this Court's orders. *See Ennes v. Mori*, 80 Nev. 237, 241, 391 P.2d 737, 739 (1964). The Trust's motion fails to address either rule. Under Rule 16(b)(1), the Court limits the time in which pleadings may be amended; the Court will only modify its schedule only upon a showing of good cause.

Despite this requirement, the Trust's motion makes no such showing. In fact, the phrase "good cause" does not appear even once in the Trust's legal argument. (Mot. at 5) While the Trust wishes to amend the complaint to conform to the evidence, it does not provide the Court with any justification for doing so. Nor does the Trust attempt to explain why it waited so long after the November 24, 2014 deadline to amend its complaint before filing this motion. The Trust's silence precludes it from showing any good cause for delay, and weighs favor of the Court denying the motion. *Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999); *Slagowski v. Cent. Wash. Asphalt, Inc.*, Case No. 2:11-cv-00142-APG-VCF, *2014 U.S. Dist. LEXIS 141144* at *13 (D. Nev. Sept. 30, 2014).

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B. Even if the Trust's Motion Were Procedurally Proper, the Proposed Amendment is Futile as to Malek.

The liberal standard for amendment under Rule 15(a) "does not mean the absence of all restraint. Were that the intention, leave of court would not be required." *State v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 20 (2004), *quoting Ennes*, 80 Nev. at 243, 391 P.2d at 739. As discussed above, the Court may deny leave to amend where it is sought for a dilatory purpose or causes undue delay. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000), *citing Stephens v. Southern Nevada Music Co.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (1973). Additionally, the Court may deny leave to amend where the proposed amendment is futile, or seeks to plead an impermissible claim. *Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. ___, ___, 302 P.3d 1148, 1152 (2013); *Allum v. Valley Bank of Nev.*, 109 Nev. 280, 287, 849 P.2d 297, 302 (1993). Such is the case here, and is detailed in Malek's motion for summary judgment. The Trust's attempt to amend the complaint is futile, as "conforming" to the evidence will not suddenly change the case's underlying facts to support a claim against Malek.

1. The Evidence Shows That No Easement Exists over Malek's Property, Rendering the Trust's Claim for Easement Futile.

The evidence provided in Malek's motion for summary judgment need not be repeated here, as Malek incorporates it by reference, but it shows that the Trust's attempt to amend its complaint is futile. Indeed, the Trust's stated rationale for amending its complaint—due to the enlargement of Malek's property "significantly impair[ing] Plaintiff's views, privacy and otherwise open feeling" (Mot. at 3:11-16)— seeks a remedy that Nevada law prohibits. *Probasco*, 85 Nev. at 564, 459 P.2d at 773; *Boyd*, 81 Nev. at 651, 408 P.2d at 722. Despite the unambiguous holdings of *Probasco* and *Boyd*, the Trust admits that its purported loss of privacy and view are its bases for seeking an easement prohibiting Malek from building on his property. (Mot. at 3:11-16) It further concedes that the City of Henderson amended its master plan and re-zoned Malek's property for residential use, and even sent notice of the change to the prior owner of the Trust's property. (*Id.* at 3:6-10) The Trust's own admissions show that its claims are futile and prohibited by Nevada law.

The Trust's proposed amended complaint does nothing to change this outcome. In it, the Trust tacitly concedes that a restrictive covenant is a kind of easement, and styles its easement claim against

Malek as one for "Easement/Restrictive Covenant." (Mot. Exh. 1 at 14:22-25) The Trust's proposed easement claim alleges only that Malek's plans "do not comply with the Golf Course Deed Restriction and Construction Deed Restriction," (Mot. Exh 1 ¶ 80) which the Trust claims serves to "preserve the unique views of each property and neighboring properties" (*id.* ¶ 70). Other concerns the Trust articulates include the "prime views of the Las Vegas Valley" in MacDonald Highlands (*id.* ¶ 58), the "view corridors" of properties there (*id.* ¶ 78), and the "unique setting of the Properties" in the community (*id.* ¶ 65).

These allegations fall squarely within the categories of view, light, and privacy that cannot support an easement prohibiting Malek from building a home on his property. *Probasco*, 85 Nev. at 564, 459 P.2d at 773; *Boyd*, 81 Nev. at 651, 408 P.2d at 722. The Trust's proposed changes would certainly add more pages of exhibits to its complaint. They would not, however, create any basis for the Court to find an easement exists over Malek's property—least of all to protect the Trust's view, light, and privacy.

2. The Trust's Claim for Implied Restrictive Covenant Is Duplicative of Its Claim for Easement and Fails for the Same Reasons; Moreover, Nevada Law Does Not Recognize It as an Independent Cause of Action.

The Trust's proposed amended complaint creates confusion, instead of clarity, as to the relief it seeks against Malek. While the Trust proposes amending its easement claim to one for "Easement/Restrictive Covenant," it continues to assert a claim for "Implied Restrictive Covenant." (Mot. Exh. 1 at 14:22-25, 16:4-5) The Trust's inclusion of "Restrictive Covenant" as part of its claim for easement effectively admits the two claims are identical. Thus, the Trust's separate claim for "Implied Restrictive Covenant" is duplicative of its "Easement/Restrictive Covenant" cause of action and fails for the same reasons.[1]

To the extent the Trust claims "Implied Restrictive Covenant" as an independent cause of action, Nevada law has not previously recognized it. As detailed at length in Malek's motion for summary judgment and incorporated here by reference, such a claim is inconsistently and sparingly applied in other states. The Trust cannot satisfy Nevada's standards to adopt a new cause of action set

[1] These reasons are discussed in more detail above and in Malek's motion for summary judgment.

forth in *Badillo v. American Brands*, 117 Nev. 34, 16 P.3d 435 (2001) and *Greco v. United States*, 111 Nev. 405, 893 P.2d 345 (1995), and thus the Court should deny the proposed amendment as futile. It is the norm for Nevada law to eschew novel causes of action. *See Brown v. Eddie World, Incorporated*, 131 Nev. Adv. Rep. 19 (2015). The Trust's claim for "Implied Restrictive Covenant" is no exception.

3. The Trust's Request for Declaratory Relief Is Improper as a Cause of Action and Duplicative of its Claim for Easement.

As detailed in Malek's motion for summary judgment, the Trust's claim for declaratory relief is duplicative of its other claims. The Trust itself admits that its proposed amended complaint seeks declaratory relief against Malek—acknowledging that this Court's declaration of rights is a remedy, rather than a cause of action itself. (Mot. at 3:13-16) Declaratory relief cannot exist on its own, independent of another cause of action. *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007); *Ozawa v. Bank of N.Y. Mellon*, *2012 U.S. Dist. LEXIS 120354* at *8 (D. Nev. Aug. 24, 2012). To the extent the Trust asserts it as a claim against Malek, the proposed amended complaint is futile.

4. Injunctive Relief is Exactly that—Relief—and Not a Cause of Action.

On June 9, 2015, the United States District Court for the District of Nevada reaffirmed that "injunctive relief is not a cause of action, but rather a type of remedy." *Cohen v. Hansen*, Case No. 2:12-cv-01401-JCM-PAL, *2015 U.S. Dist. LEXIS 74468* at *42 (D. Nev. June 9, 2015), *citing In re Wal-Mart Wage & Hour Emp't Practices Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007). Nevertheless, the Trust impermissibly attempts to style this form of relief as a cause of action. (Mot. Exh. 1 ¶¶ 117-119) This proposed amendment is futile as a matter of law and the Court should deny it.

C. Malek Joins in Bank of America, N.A.'s Opposition to the Trust's Motion on the Grounds that NRS 38.310 Would Require Dismissal of this Action.

Malek joins in Bank of America's opposition to the Trust's motion as it pertains to NRS 38.310. The Trust alleges that an easement and implied restrictive covenant prohibiting Malek from building on his property arise from the Covenants, Conditions and Restrictions ("CC&R's") that govern the MacDonald Highlands community. (Mot. Exh. 1 ¶¶ 60-70, 77, 79-80) As such, the Trust's claims against Malek go to the heart of "interpretation, application or enforcement" of "covenants,

conditions or restrictions" that allegedly exist under MacDonald Highlands' CC&R's. Consistent with Bank of America's argument, the Trust's pursuit of these claims against Malek through its proposed amended complaint will require dismissal of this action under NRS 38.310.

IV. Conclusion

By seeking to amend its complaint at this late juncture, the Trust is calling for a mulligan in this case. As no part of this case has been tried, the Trust cannot avail itself of Rule 15(b), and also cannot show amendment is proper under Rule 15(a). Much as how a general cannot declare a "do-over" of a battle once he sees how it will be fought, the Trust cannot now seek to amend its complaint months after the deadline to do so has passed, after the close of discovery, and after dispositive motions have been fully briefed. The Court should deny the Trust's motion.

DATED this 22nd day of June, 2015.

THE FIRM, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that one this 22nd day of June, 2015, pursuant to NRCP 5(b), I served via the Eighth Judicial District Court electronic service system and to be placed in the United States Mail, with first class postage prepaid thereon, and addressed the foregoing **OPPOSITION TO MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE** to the following parties:

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