

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

SEPTEMBER TRUST, DATED MARCH
23, 1972; GERRY R. ZOBRIST AND
JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST FAMILY TRUST; RAYNALDO
G. SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992; and DENNIS A. GEGEN AND
JULIE S. GEGEN, HUSBAND AND
WIFE, AS JOINT TENANTS,

Respondents .

Supreme Court No.: 77007

District Court Case No.: A-17-765372-C

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Appeal

From the Eighth Judicial District Court, Clark County
Honorable Mark Bailus

Appellants' Appendix to Opening Brief – Volume 5

(Docket 77007)

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1. Opposition to Motion for Summary Judgment (AA000332 – AA000389)

CERTIFICATE OF SERVICE

1. Electronic Service:

I hereby certify that on this date, the 16th day of May 2019, I submitted the foregoing **Appellant's Appendix for Opening Brief – Volume 5 (Docket 77007)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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SHARA BERRY

1 The statutory construction of NRS Chapter 116 and principles of common-interest
2 community law provide a judgment creditor with the right to record a lien against all units in the
3 Association because such units, whether they be owned or unowned, are defined as a physical
4 portion of the common-interest community. Thus, the Association includes all units therein. NRS
5 116.021, NRS 116.093.

6 Second, at all times during the underlying litigation from which the monetary judgment was
7 awarded, the Association operated as a unit owners' association and enjoyed all of the rights and
8 benefits of NRS Chapter 116 and also undertook the Chapter's burdens and obligations. Indeed, in
9 one of the lawsuits, the parties stipulated that the amended governing documents and the entirety of
10 Chapter 116 applied and defined the rights, duties and obligations of the parties.

11 Simply stated, the Lytles are judgment creditors against the Association. Nevada common-
12 interest community law (as discussed herein) provides such creditors with the right to lien property
13 in the Association, whether that property belongs exclusively to the Association or to third parties
14 who were not litigants but still members of the Association. As a judgment creditor, the Lytles have
15 the right to lien Plaintiffs' properties and pursue collection.

16 **II. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

17 The essential facts in this case are undisputed. Thus, summary judgment is appropriate in
18 favor of the Lytles. Once more, Plaintiffs' request for summary judgment should be denied.

19 **A. Rosemere Estates**

20 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider
21 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las
22 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,
23 Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, Request for Judicial Notice
24 ("RJN"), Exhibit A. The Lytles purchased their property, Lot 163-03-313-009 (the "Lytle
25 Property") on November 6, 1996, from the original buyer who first purchased it from the Developer
26 on August 25, 1995.

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1 **B. The Original CC&Rs and Formation of the Association**

2 Of note to the instant controversy, the Original CC&Rs, in the first paragraph, defines
3 Rosemere Estates as “Lots 1 through 9 of Rosemere Court, a subdivision...” Original CC&Rs,
4 Exhibit A. The document adds that “it is the desire and intention of the Subdivider to sell the land
5 described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under
6 a general plan or scheme of improvement for the benefit of all of the land described above and the
7 future owners of the lots comprising said land.” *Id.* Thus, the Association includes each and every
8 lot therein.

9 Sometime after the Lytles purchased their property, a group of homeowners formed the
10 Association. In 1997, Linda Lamothe and Marge Boulden, two homeowner acting on behalf of all
11 owners, filed Non-Profit Articles of Incorporation (the “Articles”) pursuant to Nevada Revised
12 Statutes (“NRS”) 82, which formalized the property owners’ committee and named it “Rosemere
13 Estates Property Owners Association.” Articles of Incorporation, Exhibit B.

14 **C. The Amended CC&Rs**

15 Without warning or consult with the homeowners, the Board for the Association, on July 2,
16 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the “Amended
17 CC&Rs”) to the Association membership. Order Granting Summary Judgment in NRED 1
18 Litigation, FOF Nos. 23, 24, Exhibit D. The proposed Amended CC&Rs were far more restrictive
19 than the Original CC&Rs and changed the very nature of property ownership within Rosemere
20 Estates. *Id.* at FOF No. 25. The Amended CC&Rs contained numerous and onerous new use
21 restrictions including the drastic expansion of the powers, rights, and duties of the Association, a
22 section entitled “Restrictions on Use, Alienation, and Occupancy,” pet restrictions, parking
23 restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered
24 discretion, and a new and expansive definition of “nuisance.” *Id.* The Amended CC&Rs also
25 contained a morality provision. *Id.* at FOF Nos. 26. Finally, the Amended CC&Rs contained a
26 construction timeline that would require the Lytles, and only the Lytles, to complete the construction
27 of a custom home on the lot within a mere 60 days of receipt of approval from the proposed *Design*
28 *Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere

1 to. *Id.* at FOF No. 28. Failure to comply would cost the Lytles \$50.00 per day. *Id.* at 30. Despite
 2 failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended
 3 CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos.
 4 34, 35, *see also* Amended CC&Rs, Exhibit B.

5 Important to the case at hand, the Amended CC&Rs provide as follows:

6 Section 1.1. "'Act' shall mean and refer to the State of Nevada's version
 7 of the Uniform Common-Interest Ownership Act, codified in NRS
 8 Chapter 116, as it may be amended from time to time, or any portion
 9 thereof."

10 Section 1.14(e). "...the Property is a common interest community
 11 pursuant to the Act."

12 Section 1.38. "'Property' shall refer to the Property as a whole, including
 13 the Lots and Common Elements, as restricted by and marketed and sold to
 14 third parties in accordance with this Declaration."

15 Section 1.24. "'Governing Documents includes the Amended CC&Rs.

16 Article 2: "The Association is charged with the duties and vested with the
 17 powers prescribed by law and set forth in the Governing Documents."

18 Section 10.2(c). "An Assessment to pay a judgment against the
 19 Association may be made only against the lots in the Property at the time
 20 the judgment was entered, in proportion to the respective Liability for
 21 Common Expense."

22 Amended CC&Rs, Exhibit C.

23 **D. The Association Records Unlawful Liens Under the Amended CC&Rs and**
 24 **Chapter 116 and Initiates Foreclosure Against the Lytles**

25 After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting
 26 of the Association, the Association's membership voted to approve a Board proposal that, first, each
 27 member of the Association should be assessed \$10,000.00 "in conjunction with [the Lytles']
 28 actions" in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for
 unarticulated and nebulous reasons, and, second, that "the Association should bring foreclosure
 proceedings against any lots with outstanding assessments due the Association." Order Granting
 Summary Judgment in NRED 2 Litigation, FOF No. 10, Exhibit L. The Association then initiated
 non-judicial foreclosure proceedings against the Lytles. *Id.* at FOF Nos. 11, 20. In addition to
 instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended

1 CC&Rs, the Board recorded additional, unlawful liens without right against the Lytles. *Id.* at FOF
 2 Nos. 12 – 18, 22. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF
 3 Nos. 25, 26

4 **E. NRED 1 Litigation**

5 In 2007, the Lytles filed an NRS 38.310 mandated non-binding arbitration before the Nevada
 6 Real Estate Division (“NRED”), naming the Association as respondent. The Lytles sought a
 7 declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the
 8 Association against the Lytles.

9 After the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in
 10 this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in
 11 Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court,
 12 prevailed, and the matter was then remanded back to the District Court.

13 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles
 14 summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation,
 15 COL No. 11, Exhibit D. The court made the following pertinent findings:

- 16 • The Association was formed by the homeowners on February 25, 1997. Order
 17 Granting Summary Judgment in NRED 1 Litigation, COL No. 11, Exhibit D.
- 18 • The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at
 19 COL Nos. 13, 19.
- 20 • The Amended CC&Rs were improperly recorded, were invalid, and the Amended
 21 CC&Rs were ordered released. *Id.* at COL Nos. 25, 26.
- 22 • From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the
 23 Association and its members. *See generally id.*

24 The matter was once again appealed, and the Nevada Supreme Court affirmed the district
 25 court’s Order granting the Lytles summary judgment. The Supreme Court remanded the case to the
 26 District Court for redetermination of costs, attorneys’ fees and damages on October 19, 2015.
 27 Supreme Court Order in NRED 1 Litigation, Exhibit U.

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1 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the
2 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and
3 NRS 116.4117. Order Awarding Attorneys' Fees in NRED 1 Litigation, Exhibit E.

4 On June 17, 2016, the Court awarded the Lytles damages, after a prove-up hearing, in the
5 amount of \$63,566.93. Order Awarding Damages in NRED 1 Litigation, Exhibit F. These
6 damages included amounts expended by the Lytles in the design, engineering, and other costs
7 associated with the construction of their home for Rosemere Estates, all of which were now stale and
8 useless.

9 Finally, on July 22, 2016, the Court awarded the Lytles costs in the amount of \$599.00.
10 Order Awarding Costs in NRED 1 Litigation, Exhibit G. Previously, the Court had awarded
11 \$1,962.80 in costs.

12 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property
13 within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1
14 Litigation, Exhibit R.

15 **F. NRED 2 Litigation**

16 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding
17 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The
18 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the
19 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See*
20 Complaint in NRED 2 Litigation, Exhibit I. The Lytles also sought an order from the Court directing
21 the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association
22 had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all
23 parties stipulated that the Amended CC&Rs were valid and enforceable for the purpose of the NRED
24 2 Litigation. Stipulation, Exhibit H.

25 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly
26 and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2
27 Litigation, Exhibit I. The Association filed a counterclaim, seeking to enforce the assessments the
28 Association levied against the Lytles property.

1 The Lytles included the following language in their Complaint:

2 Pursuant to a stipulation and/or agreement between the Plaintiff TRUST
3 and the Defendant ASSOCIATION in the NRED action, the parties to the
4 NRED action agreed that the Amended CC and R's and Bylaws of the
5 Defendant ASSOCIATION [were] valid and enforceable only for the
6 purpose of the NRED action and because this is a trial de novo of the
7 NRED action the Plaintiff TRUST once again agrees that for the purpose
8 of this litigation only that the Amended CC and R's and bylaws of the
9 defendant ASSOCIATION are valid and enforceable.

10 Complaint in NRED 2 Litigation, ¶ 11, Exhibit I.

11 On November 14, 2011, the Court granted the Association's Motion for Summary Judgment.
12 *See* Order Granting Summary Judgment in NRED 2 Litigation, Exhibit L. The Court also awarded
13 the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended
14 CC&Rs, with an amount to be determined at a subsequent hearing. *Id.* The Court then entered two
15 orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the
16 Amended CC&Rs. Order Granting Assoc. Fees in NRED 2 Litigation, Exhibit J. Thereafter, the
17 Court awarded an additional \$7,068.00 in attorneys' fees to the Association pursuant to NRS
18 116.4117 and the Amended CC&Rs. *See* Order Granting Supplement Fees in NRED 2 Litigation,
19 Exhibit K.

20 On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada
21 Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this
22 Court for determination. Specifically, the Supreme Court held that the

23 Lytles' actions during the NRED arbitration were sufficient to 'submit'
24 their slander of title claim to the NRED arbitrator for the purposes of NRS
25 38.330(5). We also conclude that the Lytles did not need to establish that
26 they suffered monetary damages for their remaining claims to be viable.

27 Supreme Court Order Re: NRED 2 Litigation, Exhibit T. The Supreme Court also vacated the order
28 awarding attorneys' fees, costs, and damages to the Association. *Id.* In the second footnote of the
foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that
its ruling was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity." *Id.*

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1 Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016,
2 the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action
3 and against the Association's Counterclaim. *See* Order Granting Summary Judgment in NRED 2
4 Litigation, Exhibit L. The district court then awarded the Lytles the following: \$274,608.28 in
5 attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005.
6 *See* Order Granting Attorneys' Fees and Costs in NRED 2 Litigation, Exhibit M; *see also* Order
7 Granting Punitive Damages in NRED 2 Litigation, Exhibit N. Pursuant to the foregoing, the total
8 amount of the judgment against the Association and in favor of the Lytles in the NRED 2 Litigation,
9 including attorneys' fees and costs, is \$1,103,158.12.

10 **G. NRED 3 Litigation**

11 On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial
12 District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an
13 election, as it has not held such an election since March 24, 2010, despite the legal obligation to do
14 so. *See* Complaint in NRED 3 Litigation, Exhibit O. On September 13, 2017, the Court granted the
15 Lytles' Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take
16 place before a neutral third party. *See* Order Granting Summary Judgment in NRED 3 Litigation,
17 Exhibit P.

18 On November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and
19 \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, Exhibit Q.

20 All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal,
21 and all monetary orders are accruing interest.

22 **H. Recording Of The Abstracts**

23 Pursuant to authority cited herein, the Lytles recorded various abstracts of judgment all
24 stemming from the judgment issued in the NRED 1 Litigation against each unit (property) within the
25 Association, including Plaintiffs' properties. *See* Abstracts of Judgment from NRED 1 Litigation,
26 Exhibit R.

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1 The Lytles obtained an Abstract of Judgment in the NRED 2 Litigation as well, but at this
 2 time have only recorded that Abstract against the Association. See Abstract of Judgment from
 3 NRED 2 Litigation, Exhibit S.

4 **III. LEGAL ARGUMENT**

5 As set forth below, the Lytles rightfully recorded the Abstracts of Judgments, including those
 6 against Plaintiffs, pursuant to the Original CC&Rs, Amended CC&Rs and the Common-Interest
 7 Community Act, specifically NRS 116.3117.¹

8 **A. Summary Judgment Standard**

9 Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions,
 10 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
 11 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
 12 matter of law. NRCP Rule 56(c). "Summary Judgment is appropriate and shall be rendered
 13 forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any
 14 material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood*
 15 *v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005) (quoting NRCP 56(c)). In *Wood*,
 16 the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary
 17 judgment jurisprudence, *Id.* at 1037, and adopted the summary judgment standard which had been
 18 articulated by the United States Supreme Court in its 1986 Trilogy: *Celotex Corp. v. Catrett*, 477
 19 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electrical*
 20 *Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574 (1986). The application of the
 21 standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts
 22 demonstrating existence of a genuine issue for trial." *Wood*, 121 p.3d at 1031. This obligation
 23 extends to every element of every claim made, and where there is a failure as to any element of a
 24 claim, summary judgment is proper. *Barmettler v. Reno Air, Inc.*, 114 Nevada 441, 447, 956, P2d.
 25 1382, 1386 (1998).

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27 _____
 28 ¹ Plaintiffs do not appear to dispute that such a recording would be appropriate pursuant to the
 Amended CC&Rs.

The Nevada Supreme Court held that “Rule 56 should not be regarded as a “disfavored procedural shortcut” but instead as an integral important procedure which is designed “to secure just, speedy and inexpensive determination in every action.” *Wood*, 121, p.3d at 1030 (*quoting Celotex*, 477 U.S. at 327). In *Liberty Lobby*, the U.S. Supreme Court noted that:

“Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Id. (*quoting Liberty Lobby*, 477 U.S. at 247-48).

B. The District Court’s Order In Case No. A-16-747800-C Is Interlocutory, Not Final, And Not Binding On This Court

Plaintiffs argue that the Order Granting Partial Summary Judgment and entering an injunction in Case A-16-747800-C, by Judge Timothy C. Williams, is res judicata and necessarily binding on this Court. Plaintiffs, however, are incorrect as the referenced order is not final, rather it is partial and interlocutory.

The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.” *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final determination** by a court of competent jurisdiction. *Id.* An order granting partial summary judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v. Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final judgment under NRCP 54(b).

A “final order” resolves all claims against all parties, leaving nothing for further consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229 (2014). The Order Granting Partial Summary Judgment is not a final order as claims remain in that case. *See generally* Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law, Exhibit V.

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1 **C. The Distinction Between The Various NRED Litigation**

2 Plaintiffs attempt to group all of the Lytles' litigation against the Association into two
3 primary arguments, specifically (1) that the Amended CC&Rs do not provide the Lytles with relief
4 because they were declared *void ab initio*, and (2) that NRS 116.3117 does not apply because the
5 Association was declared a *limited purpose association*. While the Lytles disagree that these rulings
6 prohibit them from exercising the lien rights, as more fully set forth herein, there is a key distinction
7 between the litigation, however, that cannot be ignored - in the NRED 2 Litigation, the Lytles and
8 the Association stipulated that the Amended CC&Rs were valid and enforceable. *See* Stipulation,
9 Exhibit H, *see also* Complaint in NRED 2 Litigation, ¶ 11, Exhibit I. Thus, in issuing an order in the
10 NRED 2 appeal that was seemingly inconsistent with its affirmation of the district court's order in
11 the NRED 1 Litigation declaring the Amended CC&Rs *void ab initio*, the Nevada Supreme Court
12 explained the parties' stipulation to the Amended CC&Rs as binding and authoritative. Supreme
13 Court Order Re: NRED 2 Litigation, Fn. 2, Exhibit U.

14 The distinction provides a qualitative difference in facts. Specifically, there is no declaration
15 that the Amended CC&Rs were *void ab initio* in NRED 2 Litigation. Indeed, for the purposes of that
16 litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of
17 the parties. The Lytles obtained a judgment in the NRED 2 Litigation in the total amount of
18 \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter
19 116.

20 While the Lytles contend, as set forth herein, that all the rights provided to creditors of the
21 Association under the Amended CC&Rs and NRS 116.3117 apply in each of the NRED Litigation
22 matters, the stipulation in the NRED 2 Litigation alleviates any argument to the contrary.

23 **D. NRS 116.3117 Provides That Defendants Can Record Abstracts Of Judgment**
24 **Against Plaintiffs' Properties Within The Association**

25 The Lytles are within their rights, as judgment creditors of the Association, to record a lien
26 against each unit within the Association because (1) NRS 116.3117 provides this specific right to
27 judgment creditors of a unit owners' association, (2) the Lytles may invoke all of the rights set forth
28 in the entirety of Chapter 116 because the Association invoked such rights during the underlying

litigation (and prior thereto), (3) Chapter 116's statutory mechanism provides such rights to the
 Lytles as judgment creditors against the Association, and (4) in the case of the NRED 2 Litigation,
 all parties stipulated that the Amended CC&Rs governed and were valid and enforceable.

**1. NRS 116.3117 Permits a Judgment Creditor to Record a Lien Against All
 Units Within an Association**

When a statute is facially clear, the Court should give effect to the statute's plain meaning.
D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I), 123 Nev. 468, 476, 168 P.3d 731,
 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any
 definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters.,
 LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and
 terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those
 sections." *Id.*

NRS 116.3117 provides, in pertinent part:

1. In a condominium or planned community:

(a) Except as otherwise provided in paragraph (b), **a judgment for money
 against the association**, if a copy of the docket or an abstract or copy of the
 judgment is recorded, is not a lien on the common elements, but **is a lien in
 favor of the judgment lienholder against all of the other real property of
 the association and all of the units in the common-interest community at
 the time the judgment was entered**. No other property of a unit's owner is
 subject to the claims of creditors of the association.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in
 Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest
 community at the time the judgment was entered." NRS 116.3117(1)(a).

The comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) —
 the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from
 the plain language of the statute: "the Act makes the judgment lien a direct lien against each
 individual unit . . ." See UCIOA § 3-117, cmt. 2, see also, e.g., *Ensberg v. Nelson*, 320 P.3d 97, 102
 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment
 lienholder against all of the units in the condominium."); *Summit House Condominium v. Com.*, 523
 A.2d 333, 336 (Pa. 1987) ("[A] judgment against the Council would have constituted a lien against

each individual condominium unit owner.”); *Interlaken Service Corp. v. Interlaken Condominium Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by [the plaintiff as against the association] would result in a lien against each of the condominium units.”).

The purpose of the statute, however, is not to provide a remedy to creditors. This remedy exists regardless of this subsection (as explained below). Rather, it protects unit owners within an association and limits the extent to which a creditor can collect on a judgment against an association as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

2. The Association is Afforded All Rights and Remedies of NRS, Chapter 116, Because Prior to Final Determination in the NRED Litigation, the Association Enjoyed Such Benefits to the Detriment of Defendants

For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords the Plaintiffs the right to lien Plaintiffs’ properties.

a. Background on the Different Types of Common Interest Communities

The term “homeowners’ association” is often misused and, indeed, in the State of Nevada has no true statutory definition. Rather, a “homeowners’ association” is more of an informal, catch-all term for all types of common interest communities.

Chapter 116 applies to all types of governing bodies of residential common interest communities created in Nevada. NRS 116.1201. A “common-interest community” is defined as “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.021. The types of common interest communities include: (1) unit owners’ association, (2) limited purpose associations (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums (NRS 116.027).

Chapter 116 applies to “all common interest communities” created within Nevada, with defined limitations for limited purpose associations, small planned communities, and nonresidential planned communities. NRS 116.1201.

b. **From July 3, 2007 Through July 29, 2013, the Association Was a Unit Owners’ Association, for Which the Entirety of NRS, Chapter 116 Applied**

While the district court in the NRED 1 Litigation held that the Association was a limited purpose association, the district court in that case found that the Amended CC&Rs were recorded on July 3, 2007, in the office of the Recorder for Clark County, Nevada, and from July 3, 2007, through July 29, 2013, when the court granted the Lytles summary judgment in that case, the Association was a full-blown unit owners’ association, subject to and taking advantages of all rights, privileges and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the Association did to the Lytles. *See generally* Order Granting Summary Judgment in NRED 1 Litigation, Exhibit D. Further, in the NRED 2 Litigation, the parties stipulated to the enforceability of the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, Exhibit I; *see also* Stipulation, Exhibit H.

The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. Amended CC&Rs, at Article I, Exhibit C. The Amended CC&Rs define the Association pursuant to the Uniform Common-Interest Ownership Act. *Id.* at 1.1. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116). Finally, the Amended CC&Rs prescribe a remedy equal to NRS 116.3117 within Section 10.2, specifically, that any judgment against the Association is a judgment against each unit within the Association on a pro rata basis. Amended CC&Rs, § 10.2(e).

In the NRED 2 Litigation, the Lytles and the Association stipulated that Amended CC&Rs were valid and enforceable. Stipulation, Exhibit H, *see also* Complaint in NRED 2 Litigation, Exhibit I.

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1 In granting the Lytles' Motion for Attorneys' Fees in the NRED 1 Litigation, the court cited
 2 *Mackintosh*, 113 Nev. at 405-406, 935 P.2d at 1162, and held that the Lytles could recover
 3 attorneys' fees under the Amended CC&Rs because that document, while declared *void ab initio* by
 4 the district court, was in effect and enforced by the Association against the Lytles at all times during
 5 the underlying litigation. *See generally*, Order Granting Attorneys' Fees in NRED 1 Litigation,
 6 Exhibit E.

7 In *Mackintosh*, *supra*, the purchasers of real property sued a savings and loan association for
 8 rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d
 9 at 1157. The Supreme Court upheld a district court's granting of summary judgment and
 10 determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406,
 11 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the
 12 purchasers' request for attorneys' fees, which request was based on the attorney fee provision in the
 13 rescinded agreement. *Id.* The district court, in denying attorneys' fees stated that the rescinded
 14 agreement was "void from its date of inception, just as if the contract had never existed." *Id.* The
 15 Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d
 16 1047 (Fla. 1989), which held:

17 We hold that when parties enter into a contract and litigation later ensues over
 18 that contract, attorney's fees may be recovered under a prevailing-party
 19 attorney's fee provision contained therein even though the contract is
 20 rescinded or held to be unenforceable. The legal fictions which accompany a
 21 judgment of rescission do not change the fact that a contract did exist. It
 22 would be unjust to preclude the prevailing party to the dispute over the
 23 contract which led to its rescission from recovering the very attorney's fees
 24 which were contemplated by that contract.

25 *Id.* at 1049.

26 Similarly, in the present case, the "legal fictions" that accompany the court's determination
 27 in the NRED 1 Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that
 28 they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against the
 Lytles. Once more, in the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs were
 valid and enforceable, so the "legal fiction" did not even exist, rather enforceability was actual.

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1 The foregoing is akin to the evidentiary “sword and shield” doctrine. Therein, it is held that
 2 a party may not use a privilege as both a sword to assert a claim and a shield to protect the content
 3 related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party
 4 attempting to enforce a contract against another cannot argue that a court’s determination that it was
 5 void shields the party from the provisions that would be detrimental, *e.g.* an attorneys’ fee provision.
 6 Or, in the present case, members of the Association should not be permitted to shield themselves
 7 from certain provisions of Chapter 116, namely NRS 116.3117, once the court in the NRED 1
 8 Litigation declared the Amended CC&Rs void after years of those same Amended CC&Rs being
 9 recorded and enforced against the Lytles. In fact, the Amended CC&Rs’ restrictions were so severe
 10 that they prevented the Lytles from building their dream home in the Rosemere Estates community
 11 and thrust the Lytles into years of litigation that exhausted the Lytles’ retirement savings and created
 12 emotional turmoil. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 25 – 31,
 13 Exhibit D. Indeed, the Lytles, as the only undeveloped lot, were the only targets of the Amended
 14 CC&Rs and the prohibitive building restrictions. *Id.*

15 There are other instances during which the Association took clear advantage of the entirety of
 16 Chapter 116 during this operative time period despite a subsequent finding that the Association is a
 17 limited purpose association and the Amended CC&Rs are void. For example, the Association filed a
 18 countersuit against the Lytles in the NRED 2 Litigation, something a limited purpose association is
 19 not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from
 20 enforcing restrictions against unit owners). The Association moved to dismiss and had the
 21 Complaint dismissed in the NRED 1 Litigation, purportedly as a result of a failure to timely file
 22 under Chapter 38, which does not apply to limited purpose associations. The Association was
 23 initially awarded attorneys’ fee in the NRED 2 Litigation pursuant to the Amended CC&Rs and
 24 provisions of Chapter 116. *See* Order Awarding Attorneys’ Fees in NRED 2 Litigation, Exhibit J;
 25 *see also* Supplemental Order Awarding Attorneys’ Fees in NRED 2 Litigation, Exhibit K.

26 The Lytles obtained judgments against the Association due to the Association’s actions taken
 27 in order to both defend and impose its position as a unit owners’ association. During the entire
 28 pendency of the NRED Litigation (and indeed well before), the Association operated pursuant to the

1 statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not
 2 the Lytles, prevailed in the NRED Litigation, the Association would enjoy all of the benefits as a
 3 judgment creditor against the Lytles, including the right to lien the Lytles' property and foreclose
 4 thereon.

5 A ruling in favor of Plaintiffs in the instant case would provide the Association with
 6 forgiveness to utilize NRS Chapter 116 and the Amended CC&Rs as swords to impose the
 7 Association's will during the NRED Litigation and prior thereto, but as shields from liability and
 8 collection once the Association's position was declared invalid. The public policy underlying
 9 *Mackintosh* and its progeny is that such two-faced positions cannot stand the test of equities.

10 **c. NRS 116.3117 Applies To Limited Purpose Associations**

11 As set forth in Chapter 116 and explained above, the Association is a common interest
 12 community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a
 13 limited purpose association. Order Granting Summary Judgment in NRED 1 Litigation, FOF No. 6,
 14 COL Nos. 7 – 19, Exhibit D, *see also* NRS 116.021, NRS 116.093. NRS 116.1201(2)(a)(4)
 15 provides, in pertinent part, that Chapter 116 does not apply to a limited purpose association, "except
 16 that a limited purpose association shall comply...with the provisions of NRS 116.4101 to 116.412."
 17 Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for
 18 damages for failure or refusal to comply with provisions of Chapter 116 or an association's
 19 governing documents. NRS 116.4117(2) provides:

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

(a) By the association against:

- 23 (1) A declarant;
- (2) A community manager; or
- 24 (3) A unit's owner.

(b) By a unit's owner against:

- 25 (1) The association;
- (2) A declarant; or
- 26 (3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the
 27 total number of voting members of the association against a
 community manager.

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Thus, an owner in a limited purpose association may pursue a civil action against an association as set forth in NRS 116.4117, as the Lytles did in the NRED Litigation.

Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3) provides, among other things, that “[l]iens resulting from judgments against the association are governed by NRS 116.3117.” NRS 116.3117 then provides:

a judgment for money against the association, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but is a lien in favor of the judgment lienholder against all of the other real property of the association and all of the units in the common-interest community at the time the judgment was entered. No other property of a unit’s owner is subject to the claims of creditors of the association.

As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117, the Lytles have a lien on all units in the Association, a common interest community. Pursuant to this right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, the Lytles recorded the abstracts of judgment

E. General Common-Interest Community Principles Define The Association As Including Each Unit Therein, and Defendants May Record a Lien/Abstract Against Each Unit Within the Association

NRS 17.150(2) provides, in pertinent part:

A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, **and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county**, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

In recording the abstracts of judgment against the units within the Association, the abstracts became a lien upon all the real property of the Association, as the judgment debtor. Each unit, owned or unowned, within the Association is property of the Association, as set forth in Chapter 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single statute.

1 NRS 116.021 defines a “common interest community” as all “real estate described in a
 2 declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated
 3 to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or
 4 services or other expenses related to, common elements, other units or other real estate described in
 5 that declaration.” NRS 116.093 defines a “unit” as the “physical portion of the common-interest
 6 community designated for separate ownership or occupancy...” Thus, an association, or common
 7 interest community, includes each unit in the community, including those owned by third parties.

8 This Nevada Supreme Court concluded as much in granting standing to homeowners’
 9 associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc.*
 10 *v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that
 11 “provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest
 12 community includes individual units...” *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Supreme
 13 Court concluded that a homeowners’ association has standing to file representative actions on behalf
 14 of its members for construction defects of units.

15 NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a
 16 special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against
 17 the common-interest community can be recorded against all property within that community,
 18 including units defined as being included in the community. These definitions are echoed in the
 19 Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

20 a. **The Original CC&Rs Define the Association as Including Each**
 21 **Lot Therein**

22 Pursuant to the Original CC&Rs, a lien or judgment against the Association established
 23 under the Original CC&Rs attaches to each lot within the Association. As a result, the individual
 24 property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

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1 The Original CC&Rs provide as follows:

2 WHEREAS, it is the desire and intention of Subdivider to sell the land
3 described above and to impose on it mutual, beneficial covenants,
4 conditions and restrictions under a general plan or scheme of improvement
for the benefit of all the land described above and the future owners of the
lots comprising said land.

5 Original CC&Rs, ¶2, Exhibit A. (referring to the “Lots 1 through 9 of Rosemere Court” in the
6 definition above, thereby including Respondents lots, which Respondents do not dispute).

7 A breach or violation of these CC&R’s or any re-entry by reason of such breach or any liens
8 established hereunder shall not defeat or render invalid or modify in any way the lien of
9 any mortgage or deed of trust made in good faith and for value as to said lots or
10 PROPERTY or any part thereof; that these CC&R’s shall be binding and effective against
any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee’s sale
or otherwise.

11 *Id.* at ¶ 4 (emphasis added).

12 The Original CC&Rs were recorded against each of the nine (9) lots within the Association,
13 and each owner, or prospective owner, including Respondents, purchased property with record and
14 actual notice of the foregoing rights and remedies.² Order Granting Summary Judgment in NRED 1
15 Litigation, FOF No. 1, Exhibit D.

16 The second provision cited above specifically attaches liens established under the Original
17 CC&Rs “to said lots or Property.” The attorneys’ fee award in both the NRED 1 and NRED 2
18 Litigation, in relevant part, specifically find the Lytles’ lien or judgment is established under the
19 Original CC&Rs. Order Granting Attorneys’ Fees in NRED 1 Litigation, at 2:1-15, Exhibit E; *see*
20 *also* Order Granting Attorneys’ Fees in NRED 2 Litigation, at 2:6-19, Exhibit M. If liens under the
21 Original CC&Rs could not attach to the lots, there would be absolutely no need to include this
22 provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien could not
23 extinguish the first deed of trust or any other mortgage. Again, the Association has no property to
24 even secure any loan as the only property that exists is Lots 1 through 9, which includes Plaintiffs’

25 ² While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz*
26 *v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive
27 covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass’n*,
28 2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing
contracts apply to the CC&Rs). “A court should not interpret a contract so as to make meaningless
its provisions.” *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

1 properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by the
2 Association or subject to the Original CC&Rs other than "Lots 1 through 9."

3 Nothing under this provision distinguishes the Lytles' liens or judgment pursuant to the
4 attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The
5 Original CC&Rs simply state "any liens established hereunder." RJN, Original CC&Rs. This
6 necessarily includes the Lytles' liens.

7 **2. The Fact That Plaintiffs Were Not Parties To The NRED Litigation Is**
8 **Irrelevant**

9 Plaintiffs make exceptional note that they were not named parties to any NRED Litigation.
10 The Lytles readily admit this; however, the argument is the proverbial red herring. The Lytles assert
11 herein, and in recording the Abstracts of Judgment, that the basis for asserting a lien against each
12 unit (property) within the Association is a prescribed right and remedy afforded to creditors by NRS
13 116.3117, the Amended CC&Rs, and general common-interest community principles as argued
14 herein. Neither NRS 116.3117 nor Section 10.2(e) of the Amended CC&Rs mandate that an
15 individual unit owner must be a party to the underlying litigation. Indeed, quite the opposite is true.
16 Each unit, not each owner of the unit, is liable up to a pro rata share of any judgment obtained
17 against the Association. NRS 116.3117, *see also* Amended CC&Rs, § 10.2(e).

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1 **IV. CONCLUSION**

2 For the reasons set forth herein, the Lytles respectfully request that the Court deny Plaintiffs'
3 Motion for Summary Judgment, or in the alternative, for Judgment on the Pleadings. The Lytles
4 also respectfully request that the Court grant summary judgment in favor of the Lytles on the
5 grounds that the Abstracts of Judgment are lawfully recorded pursuant to the Amended CC&Rs and
6 NRS, Chapter 116, and that the Lytles be permitted to record abstracts of judgment obtained in the
7 NRED 2 and NRED 3 Litigation. The Lytles also request an award of attorneys' fees and costs and
8 such other relief as the Court deems proper.

9 DATED: February 9, 2018

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

11 By: _____

12 Richard E. Haskin, Esq.
13 Nevada State Bar # 11592
14 1140 N. Town Center Drive, Suite 300
15 Las Vegas, Nevada 89144
16 Attorneys for Defendants
17 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
18 TRUSTEES OF THE LYTLE TRUST
19
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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on February 9, 2018, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST (1) OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR , IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS; AND (2) COUNTERMOTION FOR SUMMARY JUDGMENT** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
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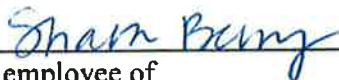

An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT “A”

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of Jan, 1994 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 38, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereof is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinances.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

§ 4 . 1 . 2 . 4 . 1

4. No rubbish, brush, weeds, undergrowth or debris of any kind or character shall ever be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.
5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.
6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.
7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.
8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.
9. Driveways for Lots 1 and 9 must enter the cul-de-sac and not the entrance street.
10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.
11. Basements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.
12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.
13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.
14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, "natural" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

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15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and its related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

EXHIBIT “B”

FILED
IN THE OFFICE OF THE
SECRETARY OF STATE OF THE
STATE OF NEVADA

FEB 25 1997

Non-Profit
Articles of Incorporation
(PURSUANT TO NRS 82)

Filing Fee: \$25.00

Receipt #:

By:

1-NF-956

2-14-97
9:50 AM
Paid
\$25.00

No. C23721 97
DEAN HELLER, SECRETARY OF STATE

STATE OF NEVADA
Secretary of State

(For filing office use)

IMPORTANT: Read instructions on reverse side before completing this form.
TYPE OR PRINT (BLACK INK ONLY)

1. NAME OF CORPORATION: ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION non-profit corporation
2. RESIDENT AGENT: (designated on first page and his STREET ADDRESS in Nevada where process may be served)

Name of Resident Agent: MARJORIE BOULDEN

Street Address: 1960 ROSEMERE COURT LAS VEGAS NV 89117

3. PURPOSE: HOMEOWNERS ASSOCIATION
4. GOVERNING BOARD: (shall be typed in (check one) ☒ Directors ☐ Trustees

The FIRST BOARD OF DIRECTORS shall consist of 2 members. The names and addresses are as follows (attached additional pages if necessary):

LINDA LAMOTHE Address: 1930 ROSEMERE COURT LAS VEGAS, NV 89117

MARJORIE BOULDEN Address: 1960 ROSEMERE COURT LAS VEGAS, NV 89117

5. OTHER MATTERS: This form includes the minimal statutory requirements to incorporate under NRS 82. You may attach additional information if it pertains to NRS 82.091 or any other information you deem appropriate. If any of the additional information is contradictory to this form, it cannot be filed and will be returned to you for correction. Number of pages attached 0
6. SIGNATURES OF INCORPORATORS: Indicate the names and addresses of each incorporator signing the articles. (Each signature is to be typed.) Attach additional pages if more are pages than two incorporators.)

MARJORIE B. BOULDEN
Address: 1960 ROSEMERE CT. LAS VEGAS, NV 89117

MARJORIE B. BOULDEN
Signature

State of NEVADA County of CLARK

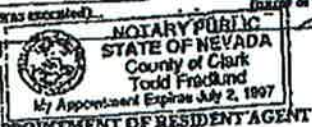
This instrument was acknowledged before me on FEBRUARY 6, 1997, by MARJORIE B. BOULDEN

MARJORIE B. BOULDEN
Name of Person

to incorporate or
(name of party on behalf of whom instrument was executed)

Notary Public Signature

(affix notary stamp or seal)



7. CERTIFICATE OF ACCEPTANCE OF APPOINTMENT OF RESIDENT AGENT

MARJORIE B. BOULDEN

MARJORIE B. BOULDEN
Signature of Resident Agent

hereby accept appointment as Resident Agent for the above named corporation on 2/6/97

Date

LINDA LAMOTHE
Name (print) 1930 ROSEMERE CT City/State/Zip
Linda Lamotte
Signature

State of NEVADA County of CLARK

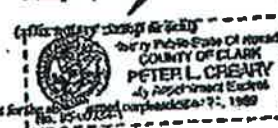
This instrument was acknowledged before me on FEBRUARY 11, 1997, by LINDA LAMOTHE

Linda Lamotte
Name of Person

to incorporate or

(name of party on behalf of whom instrument was executed)

Notary Public Signature



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EXHIBIT “C”

(39)

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Fee: \$52.00
H/C Fee: \$0.00

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Requestor:
S KEARL

Debbie Conway
Clark County Recorder

STW
Pgs: 39

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RETURN TO:
SHERMAN L. KEARL
1861 ROSEMERE CT.
LTS VEGA & DEYDA
89117

AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR ROSEMERE ESTATES

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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR ROSEMERE ESTATES**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ROSEMERE ESTATES (the "Amended Declaration") is made as of this _____ day of June, 2007, by Rosemere Estates Property Owners Association, a Nevada non-profit corporation (the "Association").

RECITALS

WHEREAS, on January 4, 1994, Baughman & Turner Pension Trust (the "Declarant") recorded the Declaration of Covenants, Conditions and Restrictions for Rosemere Estates (the "Original Declaration") in the Office of the County Recorder, Clark County, Nevada in Book No. 940104, as Instrument No. 01241;

WHEREAS, the Declaration applies to that certain real property described more particularly on Exhibit "A" attached hereto,

WHEREAS, the Board of Directors (the "Board") has made certain changes to the Original Declaration in order to bring the same into compliance with the provisions of Nevada Revised Statutes ("NRS") Chapter 116;

WHEREAS, the Original Declaration does not specify the percentage of votes necessary to amend the same;

WHEREAS, NRS 116.2117 requires that a majority vote or agreement of the owners within the Association vote in favor of any proposed amendments in order for them to be adopted;

WHEREAS, all the changes contained in this Amended Declaration have been approved by more than fifty-one percent (51%) of the owners in accordance with NRS 116.2117.

NOW, THEREFORE, the Association hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the limitations, restrictions, reservations, rights, easements, conditions, and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, and improvement, of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including, without limitation, the easements, uses, obligations, covenants, conditions, and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons, as hereinafter defined, having or acquiring any right, title, or interest in the Property, or any part thereof, and their successors in interest and assigns. The development plan of the Property shall be consistent with the overall development plan, if any, submitted to the VA and/or FHA, as hereinafter defined.

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ARTICLE 1

DEFINITIONS

1.1 **Act:** "Act" shall mean and refer to the State of Nevada's version of the Uniform Common-Interest Ownership Act, codified in NRS Chapter 116, as it may be amended from time to time, or any portion thereof.

1.2 **Allocated Interests:** "Allocated Interests" shall mean the fraction or percentage of the Common Expenses and the portion of the votes in the Association allocated to each Lot as set forth in Article 12, Section 12.1 and Article 18, Section 18.1 of this Declaration.

1.3 **Articles of Incorporation or Articles:** "Articles of Incorporation" or "Articles" shall mean the articles of incorporation of the Association, as they may be amended from time to time.

1.4 **Assessment:** "Assessment" shall mean Capital Improvement Assessments, Common Expense Assessments, and Special Assessments that may be charged against each Owner and Owner's Lot in accordance with the provisions of this Declaration.

1.5 **Assessment, Capital Improvement:** "Capital Improvement Assessment" shall mean a charge against each Owner and the Owner's Lot representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to Article 12, Sections 12.5 of this Declaration.

1.6 **Assessment, Common Expense:** "Common Expense Assessment" shall mean the annual charge against each Owner and the Owner's Lot representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements or any Improvements thereon or other Common Expenses, which are to be paid by each Owner to the Association as provided in Article 12 of this Declaration, or as otherwise authorized by the Act or this Declaration.

1.7 **Assessment, Special:** "Special Assessment" shall mean a charge against a particular Owner and the Owner's Lot, directly attributable to or reimbursable by the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration (including, if applicable, the amount of any deductible payable in connection with an insured loss), or levied by the Board as a reasonable fine or penalty for non-compliance with the restrictions contained in this Declaration, plus interest and other charges on such Special Assessment that will be imposed in the manner described in Article 12 of this Declaration, or as otherwise authorized by the Act or this Declaration.

1.8 **Association:** "Association" shall mean Rosemere Estates Property Owners Association, a Nevada nonprofit corporation, organized under NRS Chapter 82 as the association of Owners pursuant to the Act.

1.9 **Board of Directors or Board:** "Board of Directors" or "Board" shall mean the board of directors of the Association.

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1.10 Budget: "Budget" shall mean the Operating Budget and the Reserve Budget for the Association as defined in Article 12 Section 12.4 of this Declaration.

1.11 Bylaws: "Bylaws" shall mean the Bylaws of Rosemere Estates Property Owners Association, as they may be amended from time to time.

1.12 Commercial Vehicle: "Commercial Vehicle" shall mean any dump truck, cement mixer truck, delivery truck, oil or gas truck, or any other vehicle that meets at least two (2) of the following:

1. Such vehicle is designed, maintained or used primarily for the transportation of property or passengers in furtherance of any commercial purpose. For purposes of this Section, "commercial purpose" shall mean any task in furtherance of a business enterprise that is required to hold a business license issued by pertinent government authorities;

2. Such vehicle weighs over Eight Thousand Five Hundred (8,500) pounds gross when unloaded;

3. Such vehicle bears commercial insignia, names or other common indicia indicating that the vehicle is used for commercial purposes; or

4. Such vehicle is larger than a nineteen foot (19') foot van or a three-quarter (3/4) ton pickup truck.

1.13 Common Elements: "Common Elements" shall have the meaning ascribed to such term in NRS 116.017. The anticipated Common Elements for which the Association will be responsible include the streets, sidewalks, non-exclusive use and/or utility easements, exterior wall planters, entrance-way planters, perimeter landscaping, perimeter walls along Oakley, Tenaya and El Parque, landscaping located in cul-de-sacs, each as may be located within the Property, and all other parts of the Property designated by Declarant (through the Final Map or in amendment to this Declaration) as Common Elements and existing for the use of one or more of the Owners, but specifically excluding any Lot.

1.14 Common Expense: "Common Expenses" shall have the meaning ascribed to such term in NRS 116.019 and shall include the expenses or financial liabilities for the operation of the Property, together with any allocations to reserves and shall include:

(a) Expenses of administration, insurance, operation, maintenance, repair or replacement of the Common Elements except to the extent such repairs and replacements are the responsibility of a particular Owner pursuant to the terms of this Declaration; and

(b) Expenses declared to be Common Expenses under the Governing Documents or the Act; and

(c) Expenses agreed upon as Common Expenses by the Members of the Association;

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(d) Allocation for reserves established by the Association for repair, replacement and restoration of the major components of the Common Elements pursuant to the Act; and

(e) Expenses, fees, and other charges imposed upon the Association by any governmental entity because the Property is a common interest community pursuant to the Act.

1.15 **Declarant:** "Declarant" shall mean, Baughman & Turner Pension Trust, and its successors and assigns.

1.16 **Declaration:** "Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Rosemere Estates, recorded in the Office of the County Recorder, Clark County, Nevada, as may be amended from time to time.

1.17 **Design Review Committee:** "Design Review Committee" or "DRC" shall mean the committee that is appointed or that may be appointed to review written requests from Owners pertaining to additions, alterations, or Improvements that Owner wishes to construct in the Property.

1.18 **Design Review Guidelines:** "Design Review Guidelines" shall mean the rules adopted by the Design Review Committee and approved by the Board of Directors, pursuant to Article 8, Section 8.6 of this Declaration.

mean and refer to a member of the Board of Directors.

1.20 **Final Map:** "Final Map" shall mean the Final Map of Rosemere Court, Recorded in the Office of the County Recorder, Clark County, Nevada, on December 16, 1993, in Book 59, Page 58 of Plats (Official Book Records No. 931216, as Instrument No. 01474), together with any amendments to the foregoing.

1.21 **Fiscal Year:** "Fiscal Year" shall mean the twelve (12) month period used by the Association for preparing its annual financial reports. Unless otherwise specified by the Board of Directors, the Fiscal Year for the Association shall commence on January 1st and end on December 31st.

1.22 **FNMA:** "FNMA" shall mean the Federal National Mortgage Association.

1.23 **FHLMC:** "FHLMC" shall mean the Federal Home Loan Mortgage Corporation.

1.24 **Governing Documents:** "Governing Documents" shall mean the Declaration, the Articles, the Bylaws, and any Rules or Design Review Guidelines that may be adopted or approved by the Board, as they may be amended from time to time, including any exhibits, schedules or certifications attached thereto.

1.25 **HUD:** "HUD" shall mean the U.S. Department of Housing and Urban Development.

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1.26 **Improvements:** "Improvements" shall mean any construction, structure, fixture or facilities existing or to be constructed on the real property which is included in the Property, including, but not limited to: Residences, buildings, walkways, sprinklers, recreational facilities, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, patio covers, railings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softening fixtures or equipment.

1.27 **Invitee:** "Invitee" shall mean a tenant, guest, contractor, occupant, employee, family member, agent, or any other Person on the Property at the request of, with the consent or approval of, or for the benefit of Owner.

1.28 **Liability for Common Expenses:** "Liability for Common Expenses" shall mean the liability for common expenses allocated to each Lot pursuant to Article III, Section 12.1 of this Declaration.

1.29 **Lot:** "Lot" shall mean the real property within the Property, excluding the Common Elements, shown on the Final Map as individual lots, and including any Residence and any other Improvements erected, constructed or located thereon. The boundaries of each Lot created by this Declaration are the lot lines depicted on the Final Map.

1.30 **Manager:** "Manager" shall mean a Person, firm or corporation possessing all pertinent licenses and certifications required to engage in management work on the Association's behalf, including all permits and/or certifications required by NRS 116.700 and NRS 116.705, as may be amended from time to time.

1.31 **Member:** "Member" shall mean a Person entitled to membership in the Association as provided in the Governing Documents. A "Member in Good Standing" is defined in Article II, Section 2.02 of the Bylaws.

1.32 **Membership:** "Membership" shall mean the Members of the Association.

1.33 **NRS:** "NRS" shall mean the Nevada Revised Statutes, as it may be amended from time to time. Any reference to any particular section of the NRS shall be deemed to include that section of the NRS, as well as any amendment thereto from time to time and any successor statute.

1.34 **Operating Budget:** "Operating Budget" is defined in Article III, Section 12.4 of this Declaration.

1.35 **Owner:** "Owner" shall mean the Declarant or other Person who owns a Lot, however, Owner does not include a Person merely having a Security Interest in a Lot.

1.36 **Perimeter Wall:** "Perimeter Wall" shall mean those walls, if any, all or a part of which are located on the Common Elements or denote the boundary between a Lot and the Common Elements.

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1.37 **Person:** "Person" shall include an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

1.38 **Property:** "Property" shall refer to the Property as a whole, including the Lots and Common Elements, as restricted by and marketed and sold to third parties in accordance with this Declaration.

1.39 **Record, Recording, Recorded, or Recordation:** "Record," "Recording," "Recorded," or "Recordation" (including any derivation or tense thereof), unless otherwise specifically provided, shall mean or signify to file or have filed with the Office of the County Recorder, Clark County, Nevada.

1.40 **Recreational Vehicle:** "Recreational Vehicle" shall mean any motorized scooter, camper unit, house car, motor home, motor coach, trailer, trailer coach or camp trailer, watercraft, jet ski, canoe, kayak or boat, four-wheel, all terrain vehicle, dune buggy, or aircraft, or any other vehicle that is ordinarily used for purposes other than ordinary commuting.

1.41 **Reserve Budget:** "Reserve Budget" is defined in Article XII, Section 12.4 of this Declaration.

1.42 **Residence:** "Residence" shall mean a single family dwelling and related improvements located upon a Lot.

1.43 **Rules:** "Rules" shall mean the rules and regulations for the use of Common Elements and the conduct of Persons in connection therewith within the Property as adopted by the Board of Directors from time to time pursuant to this Declaration and the Bylaws.

1.44 **Security Interest:** "Security Interest" shall mean 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 on a Lot 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, pledge of an ownership interest in an Association, or any other consensual lien or title retention contract intended as security for any obligation.

1.45 **Supermajority of Owners or Supermajority of Members:** "Supermajority of Owners" or "Supermajority of Members" shall mean the Owners (including Declarant) of more than sixty-six percent (66%) of the total number of Lots in the Property.

1.46 **VA:** "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

ARTICLE 2 ASSOCIATION

The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents. None of the Governing Documents shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If any

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ambiguity exists in any provision of the Governing Documents, then such provision shall be construed in such a way that it is consistent with the provisions of this Declaration.

ARTICLE 3 ASSOCIATION PROPERTY

3.1 Ownership of Common Elements: The Common Elements shall be owned by the Association in fee simple (except for those held as easements or other property rights) for the use, enjoyment, and convenience of the Owners and shall include all portions of the Property as defined in Article I, Section 1.13 of this Declaration, and specifically excludes Lots. Each Lot and its Owner shall have an easement over all of the Common Elements, and such easement is hereby granted, transferred, and conveyed to all Owners for the benefit of the Lots, the Owners, and each of them, and for their respective Invitees.

3.2 Use of Common Elements: Each Owner and Owner's Invitees shall be entitled to use the Common Elements, subject to the following:

- (a) The right of the Association to suspend the rights of an Owner and/or an Owner's Invitees to use the Common Elements, excluding any vehicular or pedestrian ingress or egress to or from a Lot, and any area used for parking, for any period during which any Assessment against the Owner's Lot remains past due and unpaid, and after notice and hearing by the Board in accordance with the provisions of this Declaration;
- (b) Such rights to use the Common Elements as may have been granted by the Association to others;
- (c) Such Rules for the use of the Common Elements as may be imposed by the Association from time to time; and

ARTICLE 4 MAINTENANCE

4.1 Common Elements: The Association shall maintain and repair all of the Common Elements. Such duty to maintain and repair includes, but is not limited to, the following:

- (a) Periodic trimming and/or pruning of any trees or shrubbery located on or comprising part of the Common Elements;
- (b) Replacement of injured or diseased shrubbery, trees or other vegetation located on or comprising part of the Common Elements to the extent that the Board, in its sole and absolute discretion, deems necessary for the conservation of water and soil, and for aesthetic purposes;
- (c) Maintenance and repair of any Improvements located on the Common Elements, including but not limited to the street sidewalk and the gate;
- (d) Removal of all papers, debris, and refuse from the Common Elements.

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4.2 **Lots:** Each Owner shall, at Owner's sole cost and expense and subject to the limitations set forth in this Declaration, maintain, repair, replace, and restore the Residence and any landscaping and Improvements located on the Owner's Lot. Furthermore, each Owner shall keep the Lot, Residence, and Improvements in a neat, sanitary, and attractive condition and in accordance with all restrictions contained in this Declaration. If any Owner permits the Residence, and any Improvements on the Lot or the Lot itself to fall into disrepair or to become unsafe, unsightly or unattractive as determined by the Board in its sole and absolute discretion, or permits any Residence, Improvements or Lot to otherwise violate the restrictions contained in this Declaration, the Association shall have the right to seek any remedies at law or in equity it may have. In addition, the Board shall have the right, but not the obligation, if such unacceptable maintenance is not corrected within thirty (30) days' written notice from the Association (or such longer period if reasonably necessary under the circumstances, provided that Owner is diligently performing such repairs or maintenance), to enter upon Owner's Lot and make such repairs and perform such maintenance and charge the costs thereof to Owner. Such costs shall be enforced, including penalty fees and costs, as an Assessment on the Lot pursuant to Article XII of this Declaration.

4.3 **Right of Access:** In addition to all other easements reserved or granted herein, there is hereby reserved to the Association an easement across each Lot as is necessary to permit a reasonable right of entry onto each Lot for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Property, or any other work that the Association is authorized to perform pursuant to this Declaration.

4.4 **Repairs Resulting From Negligence:** Each Owner will reimburse the Association for any damages to any other Lot or to any Common Elements caused intentionally, negligently or by the Owner's or the Owner's Invitee's failure to properly maintain, repair or make replacements to his or her Lot. If such damage is caused by misconduct, it will be imposed as a Special Assessment to the association account of the Owner deemed to be responsible for such misconduct, following notice and hearing, and may include attorneys' fees and costs.

4.5 **Improvements to Common Elements:** No land within the Common Elements may be improved by any Improvement, used, or occupied except in such manner as shall have been approved by the Board in its sole and absolute discretion. No approval shall be granted that would be in contravention of the zoning or other local regulation then in effect for the area in

4.6 **Professional Management:** The Board of Directors, on behalf of the Association, may contract with one or more Managers to conduct certain activities on behalf of the Association, as may be determined by the Board. Each such contract shall provide for the termination by the Association without cause and without payment of a termination fee upon at least thirty (30) days' written notice to the Manager.

ARTICLE 5 RESTRICTIONS ON USE, ALIENATION, AND OCCUPANCY

5.1 **Use Restrictions:** The following use restrictions apply to all Lots and to the Common Elements:

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(a) Single Family Residence. The use of each Lot is restricted to that of a single-family Residence and accessory uses as permitted herein. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with the City of Las Vegas Zoning Ordinances. For continuity of the neighborhood appearance every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar-style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 3,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby house. No industry, business, trade or commercial activities shall be conducted, maintained or permitted on a Lot. The provisions of this subsection 5.1(a) shall not preclude any of the above-described activities so long as such activities cannot be observed from the Common Elements and provided that all of the following conditions are fulfilled:

- (i) Such activities are conducted in conformance with all applicable laws;
- (ii) The patrons or clientele of such activities do not park automobiles or other vehicles within the Property, except during brief and limited drop-off and pick-up periods;
- (iii) No such activity increases the liability or casualty insurance obligation or premium of the Association; and
- (iv) Such activities are consistent with the residential character of the Property and conform with all provisions of the Governing Documents.

(b) Parking.

- (i) No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.
- (ii) No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.
- (iii) No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.
- (iv) No repairs to any vehicle may be conducted on the Property except within the confines of a closed garage and then only if such repairs do not otherwise violate the laws or any of the provisions of the Governing Documents.

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(c) Nuisances. No noxious, offensive, dangerous or unsafe activity shall be conducted anywhere in the Property, nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to, or poses a threat to the health, safety, and/or welfare of the other Owners or Invitees of Lots. No Owner or Invitee of a Lot shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, quiet use and enjoyment of other Owners or Invitees. No use that is reasonably deemed immoral, improper, offensive or unlawful by the Board of Directors may be made of the Property or any portion thereof. Owners shall comply with and conform to all applicable laws. The violating Owner shall hold harmless the Association and other Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

(d) Pets. No animals of any kind shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats or other pets deemed by the Board in its sole and absolute discretion as household pets may be kept on a Lot, provided that they are not kept, bred or maintained for commercial purposes or in violation of applicable laws or other provisions of this Declaration. No horses shall be allowed within the Association at any time. As used in this subsection, a "reasonable number" shall mean four (4) or fewer pets per Lot and does not apply to fish. It shall be the absolute duty and responsibility of each Owner or Invitee to remove any solid waste after such animals have used any portion of the Property. All pets shall be leashed when not within an enclosed area of a Lot. Any animal found in the Common Elements of the Property without a leash may be placed by the Association or any Owner in the custody of the appropriate governmental agency for animal control, with all costs associated therewith paid by the owner of the animal. Any pet causing or creating a nuisance or unreasonable disturbance or noise as determined by the Board shall be permanently removed from the Property upon three (3) days' written notice following notice and hearing from the Board of Directors in accordance with the provisions of this Declaration. Each Owner shall indemnify and hold the Association harmless from any claim resulting from any action of their pets.

(e) Signs. No signs, window displays or advertising visible from any other Lot, any public street or the Common Elements may be placed on any Lot without the prior written consent of the Board. Owners may display one (1) sign in the front yard of a Lot advertising the Lot for sale or rent, provided that such sign does not exceed twenty-four (24) inches by twenty-four (24) inches. In addition, one political sign may be placed in the front yard of a Lot but may not exceed twenty-four (24) inches by thirty-six (36) inches. As used herein, "political sign" means a sign that expresses support for or opposition to a candidate, political party or ballot question. No signs shall be displayed anywhere on the Common Elements.

(f) Flags.

(i) Except as otherwise provided in subsection (ii) below, the Association shall not prohibit an Owner from engaging in the display of the flag of the United States within such physical portion of the Association as the Owner has a right to occupy and use exclusively.

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(ii) The provisions of subsection (i) do not apply to the display of the flag of the United States for commercial advertising purposes or preclude the Association from adopting Rules that reasonably restrict the placement and manner of the display of the flag of the United States by an Owner.

(iii) As used in this section, "display of the flag of the United States" means a flag of the United States that is made of cloth, fabric, or paper, displayed from a pole or staff or in a window; and displayed in a manner that is consistent with 4 United States Code Chapter 1. The term does not include a depiction or emblem of the flag of the United States that is made of balloons, flora, lights, paint, paving materials, roofing, siding, or any other similar building, decorative, or landscaping component.

(iv) Any flag displayed on a Lot may not exceed four (4) feet by six (6) feet. In addition, if pole is used to display the flag, the pole may not exceed ten (10) feet in length.

(g) Antennas and Satellite Dishes. Subject to the Telecommunications Act of 1995, and the provisions of 47 Code of Federal Regulations ("C.F.R.") 1.4030, as may be amended from time to time, or any subsequent federal or state law applicable to common-interest communities, no television antennas or satellite dishes, or radio towers, except as set forth herein, may be erected on any part of the Lot or the Common Elements. Satellite dishes that are one (1) meter or less in diameter and that fall under the scope of the Telecommunications Act of 1995 and the provisions of 47 C.F.R. 1.4000 may be installed on the Lot subject to the preferred placement locations adopted by the Board from time to time, so long as such placement does not unreasonably delay or prevent the installation, maintenance or use of the satellite dish; does not unreasonably increase the cost of installation, maintenance or use; and does not preclude reception or transmission of an acceptable quality signal.

(h) Exterior Holiday Decorations. Lights or decorations may be erected on a Lot in commemoration or celebration of publicly observed holidays, provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of Owners of adjacent Lots by illuminating bedrooms, creating noise or attracting sight-seers. Holiday decorations or lights for any publicly-observed holiday between December 1 and December 31 of any year may not be displayed before November 15 of any year. For other holidays, decorations or lights may not be displayed more than two (2) weeks in advance of the holiday, and must be removed no more than two (2) weeks after the holiday. The Board shall have the right, upon thirty (30) days' prior written notice to designate a party to enter upon any Lot and summarily remove exterior lights or decorations displayed in violation of this provision. The Board, and the individuals removing the lights and decorations, shall not be liable to the Owner for trespass, conversion, or damages of any kind except intentional misdeeds and gross negligence.

(i) Utility Service. No lines, wires or other devices from the communication or transmission of electric current or power, including telephone, television, and radio signals shall be erected, placed or maintained anywhere in or on any Lot, unless the same

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shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved in writing by the Board. No provision hereof shall be deemed to forbid the erection of the temporary power or telephone installations incident to the construction of approved buildings or structures.

(j) Laundry. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot. No washing machine or dryer shall be kept on any Lot, except within a Residence, without the prior written approval of the Board.

(k) Garbage. No rubbish, trash, garbage or other waste shall be kept on any Lot except in sanitary containers. All garbage bags must be placed in receptacles with lids. No rubbish, trash, garbage or other waste shall be permitted to accumulate on any Lot in a manner which may permit the spread of fire, odors, seepage or encouragement of vermin. All equipment for the storage or disposal of waste materials shall be kept in a clean and sanitary condition and shall be stored so as not to be visible from any public street or from any other Lot or the Common Elements. Waste containers may be placed on the sidewalks no sooner than twelve (12) hours prior to a scheduled pick-up and must be stored out of sight no later than (12) hours after pick up.

(l) Window Coverings. No aluminum foil, sheets or blankets or any other unsightly material as determined by the Board may be used as window coverings in any Residence.

(m) Leasing of Residences: An Owner is permitted to lease Owner's Residence subject to the following conditions:

(i) A Lot may not be used for hotel or transient purposes;

(ii) A Lot may not be leased or rented for an initial term of less than six (6) months;

(iii) Owner and tenant must enter into a written lease agreement which provides that the terms of the lease shall be subject in all respects to the provisions of the Association's Governing Documents, and that failure by the tenant to comply with the terms of the Governing Documents and the shall be deemed a default of the lease agreement;

Board; and

(v) Owner provides the tenant with a copy of the Association's Governing Documents.

(n) Additions, Alterations, and Improvements: No Owner may make any structural addition, alteration or Improvement to his or her Lot or to the Property without the prior written consent of the Board or the DRC. The procedures for obtaining approval from the Board or DRC are explained in detail in Article 7 of this Declaration.

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(n) Front Yard Landscaping. Landscaping in the front yard of a Residence shall be completed within three (3) months from completion of construction of the Residence. Landscaping shall meet or surpass VA and FHA standards.

5.2 **Laws and Insurance Requirements:** Nothing shall be done to or kept on any Lot that might increase the rate of, or cause the cancellation of, insurance for the Property, or any portion of the Property, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in that Owner's Lot that violates any of the restrictions contained in this Declaration or any laws.

ARTICLE 6 EASEMENTS AND LICENSES

6.1 **Easements of Record:** The Property is presently subject to all easements and licenses of Record, including those shown on the Final Map or otherwise contained herein. The Property contains easements which have been granted to the City of Las Vegas, Clark County, Nevada or other interested parties. Easements for open space, landscaping, street lights, drainage, utilities, future streets, etc. may have some restricting effect on the use of the Common Elements within the Property. Known easements of this sort as of the date of Recordation of the Final Map are referenced on the same.

6.2 **Encroachment Easement:** The Property, and all portions thereof, shall be subject to an easement from the Lot's or Common Element's boundaries for the actual extent of encroachments created by construction as designed or constructed by Declarant and for settling, shifting, and movement of any portion of the Property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner, Owner's Invitee, the Association, or any other Person. A valid easement for said encroachments and for the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Property. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of improvements constructed on any Lot, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any Improvements on the Property.

6.3 **Association Easement:** The Association shall have an easement over the Common Elements for performing its duties and exercising its powers described in this Declaration. In addition, the Association shall have an easement over each Lot for the purpose of maintaining or repairing the Common Elements, including any portion of the Common Elements that may encroach upon a Lot.

6.4 **Member's Easement in Common Elements:** Subject to the provisions of this Declaration, every Owner shall have a non-exclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Elements.

6.5 **Extent of Member's Easements:** The rights and easements of use and enjoyment of the Common Elements created by this Declaration shall be subject to the Governing Documents, which include, without limitation, the following:

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(a) The right of the Board to consent to or otherwise cause the construction of additional Improvements on the Common Elements and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Elements for the benefit of the Owners.

(b) The right of the Association acting through the Board and pursuant to an agreement executed by a majority of Owners, which agreement must be Recorded and which must specify a date after which the agreement will be void unless Recorded, to convey the Common Elements or to subject the Common Elements to a Security Interest;

(c) The right of the Board to grant easements, leases, licenses through or over the Common Elements, including easements for water;

(d) The right of the Board to reasonably restrict access to easements for which the Association is responsible for maintenance;

(e) The right of the Board to establish uniform Rules for the use of the Common Elements; and

ARTICLE 7 ADDITIONS, ALTERATIONS, AND IMPROVEMENTS

7.1 Requisite Approvals and Procedures for Owner Alteration: No Owner may make or commence any structural addition, alteration or Improvement on his or her Lot or anywhere in the Property, including without limitation, the alteration or construction of any building, fence, wall or structure, or the planting of any tree, shrubbery, or other foliage, without the prior written consent of the Board of Directors or the DRC.

(a) Any request for approval of anything prohibited under Section 7.1 or Section 7.1(b) must be submitted in writing to the Board of Directors or the DRC, as applicable. The Board of Directors or the DRC shall answer any written request for approval within sixty (60) days after the request. Failure to answer the request within this time shall constitute a denial by the Board of Directors or the DRC of the proposed action. Any such request shall be reviewed in accordance with any Design Review Guidelines then in effect, this Declaration, and any Development Regulations, as defined in the Master Declaration, adopted by the Master Association.

(b) Subject to this Section 7.1, an Owner:

(i) May make any Improvements or alterations to the interior of such Owner's Residence that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Property. Owner is responsible for submitting any and all applications to any department or governmental authority necessary for obtaining permits to make any addition, alteration or Improvement.

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(ii) May not make any improvements or alterations to the Common Elements or any other portion of the Property, unless at the direction of the Board of Directors.

(c) Any member or authorized consultant of the Board of Directors or the DRC, or any authorized officer, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or improvement constructed or under construction on the Lot to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Board of Directors or the DRC.

(d) All additions, alterations and improvements to the Lots and Common Elements shall not, except pursuant to prior approval by the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Lots other than those affected by such change.

7.2 Construction Timelines: Upon approval by the Board or the DRC of an architectural request submitted by an Owner, the Owner shall have sixty (60) days from the date that he or she receives the written approval from the Board or DRC within which to construct the alteration or improvement, unless the Board agrees in writing to extend the time period. Failure by an Owner to construct an addition or improvement within the prescribed timeframe shall result in the assessment of a penalty of Fifty Dollars (\$50.00) per day until construction has been completed. The Board or DRC shall not assess any penalties until the Owner has been provided with notice and a hearing in accordance with Article XIV of this Declaration.

7.3 Members of the Committee: The DRC shall consist of at least three (3) members, all of whom shall be appointed by the Board. Each member of the DRC shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the DRC may be removed at any time without cause. The Board shall have the power to appoint and remove all members of the DRC. Members of the DRC need not be Members of the Association.

7.4 Meetings of the DRC: The DRC shall meet from time to time as necessary to perform its duties hereunder, but such meetings shall be held at least annually. The DRC may from time to time by resolution unanimously adopted in writing designate one of its members to take any action or perform any duties for and on behalf of the DRC. In the absence of such designation, the vote of a majority of all of the members of the DRC or the written consent of a majority of all of the members of the DRC taken without a meeting shall constitute an act of the DRC.

7.5 Limitation on Liability of Design Review Committee: Provided that the DRC or a particular member of the DRC has acted in good faith on the basis of the information as may be possessed by the DRC or the member, as the case may be, then neither the DRC nor any member thereof shall be liable to the Association, to any Owner, or any other Person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (c) the

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development of any property subject to this Declaration. Without limiting the generality of the foregoing, the DRC and any member thereof may, with the approval of the Board, consult with knowledgeable third parties with respect to any plans, drawings, specifications, or any other proposal submitted to the DRC.

7.6 Design Review Guidelines: The DRC may, upon request of the Board of Directors and subject to the approval of the Board of Directors, prepare and promulgate Design Review Guidelines containing guidelines and review procedures on behalf of the Association. The Design Review Guidelines shall be those of the Association, and the DRC shall have sole and full authority to prepare and to amend the Design Review Guidelines, provided the Design Review Guidelines are otherwise in compliance with the Articles, the Bylaws, and this Declaration. The DRC shall make copies of the Design Review Guidelines available to Owners upon request.

7.7 Board of Directors and Design Review Committee Discretion: Except as may be expressly provided in this Declaration, any consent or approval of the Board of Directors, DRC or Association that is required under the provisions hereof may be granted or withheld in the sole and absolute discretion of the Board of Directors, DRC, or Association, as applicable. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise; provided, however, that the decision of the Board of Directors, DRC, or Association shall be consistent with the Governing Documents, including the Design Review Guidelines, as may be in effect at the time of such granting or withholding of consent or approval. Furthermore, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

7.8 No Applicability to Board of Directors: Subject only to the express limitations in this Declaration or the Act, the Board of Directors may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

ARTICLE 8 AMENDMENTS TO DECLARATION

8.1 In General: Except in cases of amendments that may be executed by certain Owners under the Act, including, without limitation, NRS 116.2113(2), and NRS 116.2118, and except as limited by Articles 8 and 10 of this Declaration, this Declaration, including the Final Map, may be amended only by vote or agreement of a majority of Owners. The procedure for amendment must follow the procedures set forth in NRS 116.2117.

8.2 Limitation of Challenges: An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one (1) year after the amendment is Recorded.

8.3 Recordation of Amendments: Each amendment to this Declaration must be Recorded and the amendment is effective only upon being Recorded.

8.4 Unanimous Consent: Except to the extent expressly permitted or required by other provisions of this Declaration or the Act, no amendment may change the boundaries of any Lot,

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the Allocated Interests of a Lot or the uses to which any Lot is restricted in the absence of unanimous consent of the Owners affected and consent of a majority of Owners. For purposes of this subsection 9.4, "change in the use to which a Lot is restricted" refers to an amendment that would alter the land use designation or classification of a Lot or would alter the character of the Property (for example, changing a Lot from residential use to commercial use or changing the Property from single-family residential use to commercial use). However, it does not include any amendment to an existing use restriction set forth in Article VI of this Declaration or any new restriction that does not affect the designation or classification of a Lot or the Property.

8.5 Execution of Amendments: An amendment to this Declaration required by the Act to be Recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, Recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

8.6 Consent of Holders of Security Interests: Amendments are subject to the consent requirements of Article 10 of this Declaration, and, to the extent that any Security Interests are held by or insured by FNMA, FHLMC, VA, or HUD, such amendments shall be in accordance with applicable rules and regulations of FNMA, FHLMC, VA, or HUD.

ARTICLE 9 TERMINATION

Termination of the Property may be accomplished only upon the approval of the Owners of Eighty Percent (80%) of the total number of Lots within the Property, and then in accordance with the provisions of the Act.

ARTICLE 10 ASSESSMENT AND COLLECTION OF COMMON EXPENSES

10.1 Liability for Common Expenses: The percentage of liability for Common Expenses allocated to each Lot (except as otherwise set forth herein) is a fraction, the numerator being one (1) and the denominator being the total number of Lots within the Property. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Lots under this Declaration.

10.2 Common Expenses Attributable to Fewer than all Lots; Exempt Property:

- (a) Any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefited.
- (b) The costs of insurance and utilities shall be assessed equally amongst all Lots.
- (c) An Assessment to pay a judgment against the Association may be made only against the Lots in the Property at the time the judgment was entered, in proportion to the respective Liability for Common Expense.

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(d) If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Lot.

(e) If the Liability for Common Expenses is reallocated, Common Expenses Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

10.3 Lien:

(a) The Association has a lien on a Lot for an Assessment levied against the Lot or fines imposed against its Owner from the time the Assessment or fine becomes due. Fees, charges, late charges, fines, attorneys' fees, and interest charged pursuant to the Act and the Governing Documents are enforceable as Assessments under this Section; provided, however, that unless otherwise permitted by law, the Association may not foreclose upon a lien for unpaid Assessments which is comprised solely of fines levied against an Owner for violation of the Governing Documents unless the violation is of a type that poses an imminent threat of causing a substantial adverse effect on the health, safety and/or welfare of the Owners or Invitees of the Property. If an Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due.

(b) Except to the extent permitted under the Act, a lien under this section is prior to all other liens and encumbrances on a Lot except: (1) liens and encumbrances Recorded before the Recordation of this Declaration; (2) a first Security Interest on the Lot Recorded before the date on which the Assessment sought to be enforced became delinquent, except that a lien under this Section is prior to such Security interests to the extent of the Assessments for Common Expenses based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien; and (3) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other Assessments made by the Association.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. Further Recording of a claim of lien for Assessment under this Section is not required.

(d) A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due, except that if an Owner of a Lot subject to a lien under this section files a petition for relief under the United States Bankruptcy Code ("Bankruptcy Code"), the time period for instituting proceedings to enforce the Association's lien shall be tolled until the later of the time period allowed hereunder or thirty (30) days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

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(e) This section does not prohibit an action to recover sums for which subsection (a) of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this section shall include costs and reasonable attorneys' fees for the prevailing party.

(g) The Association's lien must be foreclosed by the same procedure set forth in NRS 116.31162 through NRS 116.31164.

(h) In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due to that Owner from third parties prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments, based on a periodic budget adopted by the Association pursuant to Section 10.4 below.

(i) If a holder of a first Security Interest in a Lot forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid Assessments against that Lot which became due before the sale, other than the Assessments which are prior to that Security Interest under Subsection (b) of this section of this Declaration and as provided in NRS 116.3116(2)(c). Any unpaid Assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

(j) Any Person who has or claims any right, title or interest in, or lien or charge upon a Lot or any other Person who is or may be held liable for any debt secured by a lien on the Lot may request a copy of a Notice of Default and Sale. Such request must be Recorded in accordance with NRS 107.090 and shall apply to the foreclosure of an Association lien. The request must identify the lien by stating the names of the Owner and the Property.

(k) In accordance with NRS 116.31162 through NRS 116.31164, the Association shall provide notice of its intent to foreclose a lien to each lien holder of the affected Lot known to the Association.

(l) Any payments received by the Association in the discharge of an Owner's obligation may be applied to the oldest balance due; provided, however, that the Association may not apply any Assessment, fee or other charge that is paid by an Owner toward a fine imposed against the Owner by the Association unless otherwise directed by the Owner or as permitted by law.

10.4 Budget Adoption and Ratification:

Prior to the commencement of each Fiscal Year, the Board shall determine the Budget for the Association for such Fiscal Year in the following manner:

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(a) The Board shall, not less than thirty (30) days nor more than sixty (60) days before the beginning of each Fiscal Year of the Association, prepare and distribute to each Owner a copy of the budget for the daily operation of the Association (the "Operating Budget"). The Operating Budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve fund established by this Article 10. In lieu of distributing copies of the Operating Budget, the Board may distribute summaries of the Operating Budget, accompanied by a written notice that the Operating Budget is available for review at the business office of the Association or other suitable location and that copies of the Operating Budget will be provided upon request.

(b) The Association shall also establish adequate reserves, funded upon a reasonable basis, for the repair, replacement, and restoration of the major components of the Common Elements. The reserve funds may be used only for those purposes and not for daily maintenance. Money in the reserve accounts may not be withdrawn without the signatures of at least two (2) members of the Board or the signatures of at least one (1) member of the Board and one (1) officer of the Association who is not a member of the Board.

(c) The Board shall, not less than thirty (30) days or more than sixty (60) days before the beginning of the Fiscal Year of the Association prepare and distribute to each Owner a copy of the reserve budget (the "Reserve Budget"). In lieu of distributing copies of the Reserve Budget, the Board may distribute summaries of the Reserve Budget, accompanied by a written notice that the Reserve Budget is available for review at the business office of the Association or other suitable location and that copies of the budget will be provided upon request.

The Reserve Budget must include, without limitation: (a) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component of the Common Elements; (b) as of the end of the Fiscal Year for which the Reserve Budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace, or restore the major components of the Common Elements; (c) a statement as to whether the Board has determined or anticipates that the levy of one or more Assessments will be required to repair, replace, or restore any major component of the Common Elements or to provide adequate reserves for that purpose; and (d) a general statement describing the procedures used for the estimation and accumulation of cash reserves, including, without limitation, the qualifications of the Person responsible for the preparation of the reserve study required under this Section.

The Board shall cause to be conducted at least once every five (5) years, a study of the reserves required to be maintained by this Section, review the results of that study at least annually to determine if those reserves are sufficient, and make any adjustments it deems necessary to maintain the required reserves. The reserve study must be conducted by a Person licensed to conduct such a study (as determined pursuant to the Act). The study must include, without limitation: (i) a summary of an inspection of the major components of the Common Elements that the Association is obligated to repair, replace, or restore; (ii) an identification of the major components of the Common Elements that the Association is obligated to repair, replace, or

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restore which have a remaining useful life of less than thirty (30) years; (iii) an estimate of the remaining useful life of each major component so identified; (iv) an estimate of the cost of repair, replacement, or restoration of each major component so identified; (v) an estimate of the total Common Assessments that may be required to cover the cost of repair, replacement, or restoration of the major components so identified after subtracting the reserves of the Association as of the date of the study; and (vi) an estimate of the funding plan that may be necessary to provide adequate funding for the required reserves. As used herein, "major component" shall mean any component of the Common Elements, including, without limitation, any amenity, improvement, furnishing, fixture, finish, system or equipment, that may, within 30 years after its original installation, require repair, replacement or restoration in excess of routine annual maintenance which is included in the annual operating budget of the Association.

In the event a reserve study shows a deficiency in the reserve account for the Association, the Association may establish a funding plan that is designed to allocate the costs for the repair, replacement and restoration of the major components of the Common Elements over a period of years; provided the funding plan is designed in an actuarially sound manner which will ensure that sufficient money is available when the repair, replacement and restoration of the major components of the Common Elements are necessary.

(d) Upon determination of the Budget for a Fiscal Year, the Board shall furnish a copy of the Budget to each Owner as herein provided (which Budget shall separately identify amounts attributable to the Operating Budget and the Reserve Budget) together with a written statement of the amount of the Common Assessment to be assessed against the Owner's Residence for the applicable Fiscal Year. The Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after the mailing of the budget. Unless at that meeting a majority of all Owners reject the Budget, the Budget is ratified, whether or not a quorum is present. If the proposed Budget is rejected, the periodic Budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

(e) The amount to be raised by Common Assessments during a Fiscal Year shall be equal to (a) the Operating Budget for such period, plus (b) the Reserve Budget to be set aside for said period, less the amount attributable to the Operating Budget collected but not disbursed in the immediately preceding Fiscal Year or partial Fiscal Year; provided, however, that in lieu of such subtraction the Board may elect to refund said surplus to the Owners or deposit the funds into the reserve account.

If the Board fails to determine or cause to be determined the total amount to be raised by Common Assessments in any Fiscal Year and/or fails to notify the Owners of the amount of such Common Assessments for any Fiscal Year, then the amounts of Common Assessments shall be deemed to be the amounts assessed in the previous Fiscal Year.

Except as emergencies may require, the Association shall make no commitments or expenditures in excess of the funds reasonably expected to be available to the Association.

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10.5 **Capital Improvement Assessments:** If the Board of Directors votes to levy a Capital Improvement Assessment, the Owners shall be provided with written notice of a meeting at which the Capital Improvement Assessment is to be considered or action is to be taken on such Assessment at least twenty-one (21) days before the date of the meeting. The Board of Directors shall submit the Assessment to the Owners for ratification in the same manner as a budget under Section 12.4(d). A Capital Improvement Assessment levied pursuant to this Section 12.5 shall include: (a) an assessment not included in the current Budget, other than one enumerated in Section 12.2 of this Declaration, in an amount greater than fifteen percent (15%) of the current annual operating budget; or (b) an assessment for the cost of construction, reconstruction, repair or replacement of a new capital improvement upon the Common Elements.

10.6 **Certificate of Payment of Common Expense Assessments:** The Association, upon written request, shall furnish an Owner with a statement, in Recordable form, setting out the amount of unpaid Assessments against the Lot. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association the Board of Directors and each Owner.

10.7 **Monthly Payment of Common Expenses:** Subject to Board decision, all Common Expense Assessments assessed under Sections 10.1 and 10.2 of this Declaration shall be due and payable monthly, at 1/12th of the annual total (in cases where an annual total is applicable).

10.8 **Acceleration of Common Expense Assessments and Late Fee:** In the event of default in which any Owner does not make the payment of any Common Expense Assessment levied against his or her Lot within ten (10) days after the date due, the Board of Directors shall have the right, after notice and hearing, to declare all unpaid Assessments for the pertinent Fiscal Year immediately due and payable. A late fee in the amount of Ten Dollars (\$10.00) will be imposed against the Owner's association account if a Common Expense Assessment is not received by 5:00 PM on the tenth (10th) calendar day of the month. In addition, if a Common Expense Assessment is not paid by the 5:00 PM on the last calendar day of a particular month, interest charges in the maximum amount permitted by the Act will be imposed against the Owner's association account.

10.9 **Commencement of Common Expense Assessments:** The Common Expense Assessments provided for herein shall begin as to all Lots in the Property and subject to this Declaration (other than unsold Lots owned by Declarant if a Subsidy Agreement is in effect) on the first day of the month following recordation of this Declaration.

10.10 **No Waiver of Liability for Common Expenses:** No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lots against which the Assessments are made.

10.11 **Personal Liability of Owners:** The Owner of a Lot, at the time a Common Expense Assessment or portion thereof is due and payable, is personally liable for the Common Expense Assessment. Additionally, the Owner of a Lot, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association: (a) annual Common Expense Assessments; (b) Capital Improvement Assessments; and (c) Special Assessments, such assessments to be

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established and collected as herein provided. All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made.

(a) No Owner may be exempt from the personal liability for any Assessments described in this Declaration, nor release the Lot owned by the Owner from the liens and charges thereof by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner's Lot.

(b) Personal liability for the Assessment shall not pass to a successor in title to the Lot unless the successor agrees to assume the obligation. The successor in title shall be personally liable for any Common Expense Assessments thereafter due.

ARTICLE 11 RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only upon the approval of a majority of Owners, at a meeting called for that purpose, and with Eligible Mortgagees' consent described in Article XI.

ARTICLE 12 PERSONS AND LOTS SUBJECT TO GOVERNING DOCUMENTS

12.1 Compliance with Governing Documents: All Owners and Invitees of Lots shall comply with the Governing Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Lot constitutes agreement that the provisions of the Governing Documents are accepted and ratified by that Owner or Invitee. All provisions of the Governing Documents that are Recorded are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Lot.

12.2 Responsibility for Violations: Consistent with the Governing Documents and the Act, an Owner is responsible for the actions and conduct of his or her Invitees.

(a) Upon receipt of a written complaint from an Owner or Invitee or observation by a member of the Board of Directors or management regarding a potential violation of the Governing Documents, the Association's Manager or other authorized agent of the Association, acting on behalf of the Board of Directors, shall issue a notice to the Owner of the alleged violation (the "Initial Notice"). The Initial Notice shall be in writing, and must be signed by a representative of the Board, the Manager, legal counsel, or some authorized agent of the Association. A copy of the Initial Notice may also be mailed to an Invitee residing on the Lot.

(b) If the alleged violation is not remedied within the time period set forth in the Initial Notice, the Board of directors, or any Person designated by the Board to act on its behalf may serve a "Notice of Violation" against the Owner for any alleged violation of any provisions of the Governing Documents by the Owner or his or her Invitee. A copy

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of the Notice of Violation may also be mailed to an Invitee residing on the Lot. The Notice of Violation must contain the following information:

- (i) A description of the violation;
- (ii) The approximate time and place at which the violation was observed;
- (iii) The amount of the fine that may be assessed against the Owner's association account for the violation;
- (iv) The name of the issuer of the Notice of Violation;
- (v) A statement advising the Owner of the date, time, and location of a hearing scheduled before the Board of Directors; and
- (vi) Notice that if the violation is not cured within the time period set forth in the Notice of Violation, the Association may Record a Notice of Non-Compliance against the Lot.

(c) If the nature of the alleged violation is such that, in the sole discretion of the Board of Directors, it poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association, then the Board may immediately send a Notice of Violation, as set forth in subsection (b) above, without first sending the Initial Notice as required by subsection (a) above. A copy of the Notice of Violation may also be mailed to an Invitee residing on the Lot.

(d) Any hearing which discussed a violation of the Governing Documents including, without limitation, the failure to pay an Assessment, shall be conducted in an executive session of the Board of Directors. If the Board concludes, after notice and a hearing, that an Owner has violated a provision of the Governing Documents, then the Board may impose one or all of the following sanctions:

- (i) Fines imposed consistent with the Act and the Rules, if any, adopted by the Board;
- (ii) Suspension of any right to use the Common Elements during the term of the violation;
- (iii) Suspension of the right of the Owner to vote on any matter affecting the Association;
- (iv) A declaration that the Owner is not in good standing;
- (v) Declaratory or injunctive relief against the Owner of the Lot, or against the Invitee residing on the Lot;

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(vi) Assessments, including any attorneys' fees, due to the misconduct of the Owner or Invitee, which were incurred to bring the Lot into compliance with the Governing Documents; and

(vii) Any other legal or equitable remedies available to the Association for said violations.

(e) Within thirty (30) days of the hearing, the Board shall issue a letter to the Owner outlining the hearing result, including any penalties imposed by the Board.

(f) Any fines imposed by the Association for a violation of the Governing Documents that does not pose an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association may not exceed One Hundred Dollars (\$100.00) for each violation.

(g) Any fines imposed by the Association for a violation of the Governing Documents that poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees of the Association must be commensurate with the severity of the violation as shall be determined by the Board in accordance with the Governing Documents, but is otherwise not subject to the limitation on the amount set forth in subsection (f), above.

(h) A fine may not be imposed unless the against whom the fine will be imposed has been provided with written notice of the applicable provisions of the Governing Documents that form the basis of the violation and within a reasonable time after discovery of the violation, the against whom the fine may be imposed has been provided with a Notice of Violation pursuant to subsection (c) and a reasonable opportunity to contest the violation at the hearing.

(i) If a fine is imposed pursuant to subsections (f) or (g) above and the violation is not cured within fourteen (14) days, or within any longer period that may be established by the Board, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for every seven (7) days or portion thereof that the violation remains uncured. Any additional fine may be imposed without an additional notice and opportunity to be heard.

(j) Any fine which is not paid within thirty (30) days of the notice of fine shall be considered past due and shall bear interest at the maximum rate permitted by the Act.

(k) If any fine is not paid within thirty (30) days of notice of the fine, then, in addition to any other remedies that may be pursued by the Board, the Association may Record a lien against the Lot in the Office of the County Recorder, Clark County, Nevada.

(l) If the violation giving rise to the fine is determined by the Board to be a violation that poses an imminent threat to the health, safety, and/or welfare of the Owners or Invitees in the Association, then in addition to Recording a lien against the Lot, the Association may initiate foreclosure proceedings against the Lot.

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