IN THE SUPREME COURT OF THE STATE OF NEVADA

NATIONSTAR MORTGAGE LLC, Appellant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT, Respondent.	Supreme Court No. 77874 District Court Case No. A689240

APPEAL

From the Eighth Judicial District Court, Department XIV
The Honorable Adriana Escobar, District Judge
District Court Case No. A-13-689240-C

JOINT APPENDIX, VOLUME VI

MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG, ESQ.
Nevada Bar No. 11015
AKERMAN, LLP
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Telephone: (702) 634-5000

Attorneys for Nationstar Mortgage LLC

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DATED June 17, 2019.

AKERMAN LLP

/s/ Donna M. Wittig
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG, ESQ.
Nevada Bar No. 11015
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134

Attorneys for Nationstar Mortgage LLC

CERTIFICATE OF SERVICE

I certify that I electronically filed on June 17, 2019, the foregoing **JOINT APPENDIX, VOLUME VI** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of Akerman LLP

agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(m) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) Pro forma operating statements (Budgets), Reserve Budgets, and Reserve Studies shall be distributed pursuant to Section 6.4, below;

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year) and a statement of cash flow for the Fiscal Year, shall be distributed within one hundred twenty (120) days after the close of each Fiscal Year.

(n) Maintenance of Other Areas. The power but not the duty to maintain and repair slopes, parkways, entry structures and Community signs identifying the Properties, to the extent deemed advisable by the Board.

(o) Use Restrictions. The power and the duty to enforce use restrictions pertaining to the Properties

(p) Insurances. The power and the duty to cause to be obtained and maintained the insurance coverages pursuant to Article 12, below.

(q) Licenses and Permits. The power and the duty to obtain from applicable governmental authority any and all licenses and permits reasonably necessary to carry out Association functions hereunder.

Section 5.2 Rules and Regulations. The Board shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties, as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

(i) reasonably related to the purpose for which adopted;

(ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;

(iii) adopted without intent to evade any obligation of the Association;

(iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

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

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

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

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

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars ($5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars ($5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said $5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

(2) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call

a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Section 6.3, below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra

vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors, and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Section 5.5 Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and

governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant and subject to the provisions of NRS Chapter 645 and/or NRS § 116.3119.3, or duly exempted pursuant to NRS § 116.3119.4). Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee of the Manager, may be a Director or Officer of the Association.

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

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division; and (4) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed, by qualified Person designated by the Board, of the books and records of the Association, to verify assets.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.6 Inspection of Books and Records.

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association, and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law).

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited annual reports, as required in Section 5.1(m), above. Such notices and information shall be delivered to Declarant at its most recently designated address.

Section 5.8 Compliance with Applicable Laws. The Association shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person). The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or City or County ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed automatically amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

ARTICLE 6
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments, such assessments to be established and collected as provided in this Declaration. All assessments, together with interest thereon, late charges, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish at least the following separate accounts ("Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as trust accounts at a federally or state insured banking or savings institution, and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements as set forth in Section 6.3 below, and (3) any other funds which the Board may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than the Reserve Fund, which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate trust savings or trust checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary all must be Directors and (after the Declarant Control Period) must also all be Owners.

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements; (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever; (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing; (v) funds in the Reserve Fund may not be

withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); (vi) under no circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund, and (vii) any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst, with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study"). The Board shall cause to be prepared an initial Reserve Study by not later than October 1, 2000. Thereafter, the Board shall: (1) cause to be conducted at least once every five years, a subsequent Reserve Study; (2) review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and (3) make any adjustments the Board deems necessary to maintain the required reserves.

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

Section 6.4 Budget; Reserve Budget.

(a) The Board shall adopt a proposed annual Budget at least forty-five (45) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days, nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

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

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

(2) The Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements ("Major Component");

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

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

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

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

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification as provided in Section 6.4 above.

Section 6.6 Initial Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, the Purchaser of such Unit shall be required to pay a capital contribution to the Association, in an amount equal to two (2) full monthly installments of the greater of the initial or then-applicable Annual Assessment, notwithstanding Section 6.7 below. Such capital contribution is in addition to, and is not to be considered as an advance payment of, the Annual Assessment for such Unit, and may be applied to initial working capital needs of the Association.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units within the Original Property, the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Original Property, and (b) with respect to each Unit within Annexed Property, that date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, its sole discretion, a later Assessment Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 6.8 Capital Assessments. The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto, provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 6.9 Uniform Rate of Assessment. Annual Assessments and Capital Assessments shall be assessed at an equal and uniform rate against all Owners and their Units. Each Owner's share of such assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property).

Section 6.10 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

(a) all portions, if any, of the Properties dedicated to and accepted by, the United States, the State of Nevada, Clark County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) the Common Elements owned by the Association in fee.

Section 6.11 Special Assessments. The Association may, subject to the provisions of Section 9.3 and Section 11.1 (b) hereof, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent assessments, pursuant to Article 7, below.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of two (2) percentage points per annum above the prime rate charged from time to time by Bank of America N.T. & S.A. (or, if such rate is no longer published, then a reasonable replacement rate), but in any event not greater than the maximum rate permitted by applicable Nevada law, as well as a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandonment of his Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good

and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Board to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS § 107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.311635.

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents, unless the violation is of a type that substantially and imminently threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for Annual Assessments or Capital Assessments, or any portion respectively thereof, pursuant to this Article 7.

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person

obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his successors and assigns.

ARTICLE 8
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until such time as Declarant no longer owns any property in, or has any power to annex the Annexable Area or any portion thereof; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration, subject to Sections 9.7(b) and 10.15, below, and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including

the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, redecoration or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the ARC. Until changed by the Board, the address for submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholesomeness and attractiveness of the Common Elements or the enjoyment thereof by the Members; (4) the construction will not unreasonably interfere with existing views from other Units; and (5) the upkeep and maintenance will not become a burden on the Association

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon such changes therein as the ARC may deem appropriate or necessary, which may, but need not necessarily include any one or more or all of the following conditions: (1) agreement by the Applicant to furnish to the ARC a bond or other security acceptable to the ARC in an amount reasonably sufficient to (i) assure the completion of such Improvement or the availability of funds adequate to remedy any damage, or any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (2) such changes therein as the ARC deems appropriate, (3) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement; (4) agreement of the Applicant to reimburse the Association for the costs of maintenance; (5) agreement of the Applicant to replace such removed trees as may be designated by the ARC; (6) agreement of the applicant to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvements in detail as actually constructed upon completion of the Improvement; (7) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; (8) payment, by Applicant, of the professional fees of a licensed architect or engineer to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (9) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of

the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications.

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans and specifications submitted for approval. Any application submitted pursuant to this Section 8.2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials. The ARC will condition any approval required in this Article 8 upon, among other things, compliance with Declarant's (a) design criteria as established from time to time, (b) Improvement standards and (c) development standards, as amended from time to time, all of which are incorporated herein by this reference.

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggrieving the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall normally extend only to the external appearance or "aesthetics" of any Improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Units.

Section 8.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8.8 below. In the absence of such designation, the vote of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 8.4 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 8.5 Compensation of Members. Subject to the provisions of Section 8.2(b) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC.

Section 8 6 Correction by Owner of Nonconforming Items. Subject in all instances to compliance by Owner with all applicable requirements of governmental authorities with jurisdiction, ARC inspection (which shall be limited to inspection of the visible appearance of the size, color, location, and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows

(a) The ARC or its duly appointed representative shall have the right to inspect any Improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority) Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of Improvement has been completed If as a result of such inspection, the ARC finds that such Improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 8 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the Improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the noncompliance The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration

(c) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with ARC requirements (but, of course, shall remain subject to compliance by Owner with all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within one hundred eighty (180) days of the date on which the work commenced

Section 8.7 Scope of Review. The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 8.2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to, County) requirements.

Section 8.8 Variances. When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height, size, and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any such variance by ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations, and requirements affecting the use of his Unit, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by the County, or any municipal or other public authority. The granting of a variance by ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

Section 8.9 Non-Liability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 8.10 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a

Purchaser, to Units owned by Declarant. This Article 8 shall not be amended without Declarant's written consent set forth on the amendment.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

Section 9.1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring ARC approval, to maintain, repair, replace and restore all Improvements located on his Unit, and the Unit itself, in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

The foregoing notwithstanding: (a) the Association shall have an easement for the maintenance, repair and replacement of any portion of a Lot which constitutes a Common Element and the Improvements constructed by Declarant or the Association thereon, and (b) each Owner (other than Declarant), by acceptance of a deed to a Unit, whether or not so expressed in such deed, is deemed to covenant and agree not to place or install any Improvement on a Common Element, and not to hinder, obstruct, modify, change, add to or remove, partition, or seek partition of, any Common Element or any Improvement installed by Declarant or the Association thereon.

Section 9.2 Maintenance Obligations of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to the provisions of Sections 9.3 and 11.1 (b) hereof, upon the Assessment Commencement Date, the Association shall provide for the maintenance, repair, and replacement of the Common Elements. The Common Elements shall be maintained in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements. The Association shall also ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

Section 9.3 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the willful or negligent act of an Owner, his tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 11.1 (b) hereof.

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Unit.

Section 9.5 Party Walls. Each wall which is built as a part of the original construction by Declarant and placed approximately on the property line between Units shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, the party wall shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore the wall to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection, repair or replacement. The right of any Owner to contribution from any other Owner under this Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner shall alter, add to, or remove any party wall constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party wall, which consent shall not be unreasonably withheld, and the prior written approval of the ARC. In the event of any dispute arising concerning a party wall under the provisions of this Section 9.5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

Section 9.6 Perimeter Walls. Portions of Perimeter Walls, constructed or to be constructed by Declarant, abutting or located on individual Lots, are Improvements all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Units. By acceptance of a deed to his Unit, each Owner on whose Unit a portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to the portion of the Perimeter Wall ("Unit Wall") located or deemed located on his Unit: to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations

(including, without limitation, temporary alterations, such as removal for construction of a swimming pool or other Improvement) shall be made to any perimeter wall, or any portion thereof, without the prior written approval of the ARC (and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC pursuant to Section 8.2(b) above). The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment (without any obligation to make such judgment) of the ARC would adversely affect surface water, drainage, or other flood control considerations or requirements. If any Owner shall fail to insure, or to maintain, repair or replace his Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure, or to maintain, repair or replace such Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration. The foregoing notwithstanding, the Association, at its sole expense, shall be responsible for removing or painting over any graffiti from or on Exterior Walls.

Section 9.7 Installed Landscaping.

(a) Declarant shall have the option, in its sole and absolute discretion, to install landscaping on the front yards of Lots ("Declarant Installed Landscaping").

(b) Subject to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have an aggregate period, following the Close of Escrow on his or her Lot, of (i) not more than six (6) months (with regard to front yard landscaping other than Declarant Installed Landscaping), and one (1) year (with regard to rear yard landscaping), in which to apply for and obtain approval of plans for landscaping and to commence and complete, in accordance with such approved plans, installation of such landscaping on the Lot ("Homeowner Installed Landscaping"). Each Owner shall be responsible, at his sole expense, for: (1) maintenance, repair, replacement, and watering of all landscaping on his Unit (whether initially installed by Declarant or an Owner) in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, subject to Section 9.7(c)-(e), below.

(c) Each Owner covenants to pay promptly when due all water bills for his or her Unit, and (subject to bona-fide force majeure events) to not initiate or continue any act or omission which would have the effect of water being shut off to the Unit. In the event that all or any portion of landscaping and/or related systems is or are damaged because of any Owner's act or omission, then such Owner shall be solely liable for the costs of repairing such damage, and any and all costs reasonably related thereto, and the Association may, in its discretion, perform or cause to be performed such repair, and to assess all related costs against such Owner as a Special Assessment, and the Association, and its employees, agents and contractors, shall have an easement over Lots to perform such function.

(d) In the event that any plants (including, but not necessarily limited to, trees, shrubs, bushes, lawn, flowers, and ground cover) on a Unit require replacement, then the cost of such replacement, and costs reasonably related thereto, shall be the responsibility of the Owner of the Unit.

(e) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not cause or permit irrigation water or sprinkler water on his Unit to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three (3) feet of any such foundation or wall located on or immediately adjacent to the Owner's Unit; and (2) only non-irrigated desert landscaping is located on the Owner's Unit within three feet of any such foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall).

(f) Absent prior written approval of the ARC, in its sole discretion, no Owner may add to, delete, modify, or change, any landscaping or related system.

Section 9.8 Modification of Improvements. Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on a Common Element is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not: add to, remove, delete, modify, change, obstruct, or landscape, all or any portion of the Common Elements, or Site Visibility Restriction Area, or Perimeter Wall, and/or any other wall or fence constructed by Declarant on such Owner's Lot, without prior written approval of the ARC, in its sole discretion.

ARTICLE 10
USE RESTRICTIONS

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions, and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective directors, officers, members, agents or employees, shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose (provided that Declarant shall have the right, but not the obligation, to designate certain specific Lots as private park or "open area" Common Elements). No part of the Properties shall ever be used or caused to be used or allowed

or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering," destructive testing, or any other nonresidential purposes; provided that Declarant, its successors and assigns, may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than six (6) months.

Section 10.2 No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or all or any portion of the Common Elements may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. No two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Units.

Section 10.3 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, the Board shall have no power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, birds, or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable County ordinance or any other provision of the Declaration, and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent

permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar structure pertaining to animals shall be placed or permitted in any Lot, unless approved by the Board in advance and in writing (and, in any event, any such "dog run" or similar Improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the judgment of the Board; and (b) all Owners shall comply fully in all respects with all applicable County ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 10.5 Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings, and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purposes. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before or after scheduled trash collection hours). No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security, or fire protection purposes), noisy or smokey vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents or any equipment or item which may unreasonably interfere with television or radio reception within any Unit, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No unusually loud motorcycles, dirt bikes or similar mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. The Board shall have the right to reasonably determine if any noise, odor, activity, or circumstance, constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, which is the responsibility of such Owner or Resident to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Unit, for the purpose of so doing, and such Owner and/or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of Article 7 above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above. Without limiting the generality of the foregoing, any request by an Owner for ARC approval of alteration of established drainage pattern shall be subject to payment, by the Owner, of the professional fees of a licensed engineer to review the plans and specifications on behalf of the ARC, pursuant to Section 8.2(b)(8) above, which shall be required in all such cases, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.7, above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the ARC.

Section 10.8 Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, County health department, and any applicable utility and governmental authorities having jurisdiction, and has been approved in advance and in writing by the ARC.

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, Common Elements. Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except within a barbecue and contained within a receptacle commercially designed therefor, while attended and in use for cooking purposes, or except within a fireplace designed to prevent the dispersal of burning embers, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

Section 10.10 No Unsightly Articles. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or

inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. Without limiting the foregoing or any other provision herein, all refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to view of the public, or neighboring Units, only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

Section 10.11 No Temporary Structures. Unless required by Declarant during the initial construction of Dwellings and other Improvements, or unless approved in writing by the Board in connection with the construction of authorized Improvements, no outbuilding, tent, shack, shed or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties. No garage, carport, trailer, camper, motor home, recreational vehicle or other vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.12 No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Elements, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick of other structure designed for use in boring for water, oil, geothermal heat or natural gas, or other mineral or depleting asset shall be erected.

Section 10.13 Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties (other than minor repairs or rebuilding pursuant to Section 10.6 above) without the prior approval of the ARC pursuant to Article 8 hereof. There shall be no violation of the setback, side yard or other requirements of local governmental authorities, notwithstanding any approval of the ARC. This Section 10.13 shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

Section 10.14 Signs. Subject to the reserved rights of Declarant contained in Article 14 hereof, no sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the ARC, except: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent, or (b) traffic and other signs installed by Declarant as part of the original construction of the Properties, or (c) signs regulated to the maximum extent permitted by applicable law. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances.

Section 10.15 Improvements.

(a) No Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling; provided that one additional small permanent building (e.g., a small "pool house" or "hobby house") may (but need not necessarily) be authorized on a Lot by the ARC, subject to the following: (1) full compliance with the requirements of Article 8, above; (2) the ARC, in its sole discretion, must determine that the Lot is large enough and otherwise suitable to accommodate

such proposed Improvement; (3) such Improvement in all regards must comply with the Governing Documents, and all applicable governmental ordinances and laws; and (4) such Improvement may not and shall not be used for any commercial purpose whatsoever, pursuant to Section 10.1 above. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No permanent or attached basketball backboard, jungle gym, play equipment, or other sports apparatus shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. A portable basketball hoop or other portable sports apparatus shall be permitted on a Lot, provided that such item: (i) is not placed in any street, (ii) is used only daylight hours, (iii) during non-daylight hours, is stored on the Lot so as to be out of sight of any street, and (iv) does not otherwise constitute a nuisance in the reasonable judgment of the Board. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), unless the prior written approval of the ARC is obtained, subject to Section 10.16, below.

(b) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(c) No fence or wall shall be erected or altered without prior written approval of the ARC, and all alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the ARC.

(d) Garages shall be used only for the their ordinary and normal purposes. Unless constructed or installed by Declarant as part of its original construction, no Owner or Resident may convert the garage on his Unit into living space or otherwise use or modify the garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant may convert a garage located in any Unit owned by Declarant into a sales office or related purposes.

Section 10.16 Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (i) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is:

(a) located in the attic, crawl space, garage, or other interior space of the Dwelling, or within another approved structure on the Unit, so as not to be visible from outside the Dwelling or other structure, or, if such location is not reasonably practicable, then,

(b) located in the rear yard of the Unit (i.e., the area between the plane formed by the front facade of the Dwelling and the rear lot line) and set back from all lot lines at least eight (8) feet, or, if such location is not reasonably practicable, then,

(c) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna; or, if such location is not reasonably practicable, then,

(d) attached to or mounted on the rear wall of the Dwelling so as to extend no higher than the eaves of the Dwelling at a point directly above the position where attached or mounted to the wall, provided that,

(e) if an Owner reasonably determines that a Permitted Device cannot be located in compliance with the foregoing portions of this Section 10.16 without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Unit where an acceptable quality signal can be obtained; provided that,

(f) Permitted Devices shall be reasonably screened from view from the street or any other portion of the Properties, and shall be subject to Rules and Regulations adopted by the Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant may grant easements for maintenance of any such master or cable television service.

Section 10.17 Landscaping. Subject to the provisions of Articles 8 and 9 (including, but not limited to, Sections 9.7 and 9.8 above), each Owner shall install and shall thereafter maintain the landscaping on his Unit in a neat and attractive condition. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with this Declaration or such Rules and Regulations, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists a bona-fide unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon the exterior portion of such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment, enforceable in the manner set forth in Article 7, above. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Unit, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

Section 10.18 Prohibited Plant Types. Without limiting the generality of any other provision herein, the following plant types are hereby specifically declared to be nuisances, and shall not be permitted anywhere within the Properties: (a) Olea europaea ("olive"), other than "fruitless olive" which shall be permitted; (b) Morus alba or nigra ("mulberry"); (c) Cynodon dactylon ("bermuda

grass"), (d) Amaranthus palmen ("careless weed"); (e) Salsola kali ("Russian thistle"); and/or (f) Fransenan dumosa ("desert ragweed").

Section 10 19 Parking and Vehicular Restrictions. No Person shall park, store or keep anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle, including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, bus, aircraft, or any vehicular equipment, mobile or otherwise, except wholly within the Owner's garage as onginally constructed by Declarant ("Garage") and only with the Garage door closed. Any boat, trailer, camper, motor home, and similar recreational vehicle (collectively and individually, "RV"), shall be parked only (i) wholly within a Garage, with the Garage door completely closed, or (ii) wholly between the building lines (i.e., wholly behind the front building lines and wholly in front of the rear building lines) of the homes on both immediately adjacent Lots (or, if there is only one immediately adjacent Lot, then the building lines of the home on such adjacent Lot, provided that the Board shall have the power and authority, in its sole discretion, to entirely disapprove and/or prohibit parking of an RV on any Lot with only one other Lot immediately adjacent thereto) if such parking reasonably may be deemed to constitute a nuisance, and appropriately screened from view from all streets as determined by the Board in its reasonable discretion, and no variance from this requirement shall be authorized or permitted. The foregoing shall not be deemed to prohibit a pickup or camper truck or similar vehicle up to and including one (1) ton when used for daily transportation of the Owner or Resident, or the Family respectively thereof, which vehicle shall be permitted, subject to the Garage, nuisance, and parking provisions herein. No Person shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Properties or on any street abutting the Properties. However, repair and/or restoration of one (1) such item only shall be permitted within the Garage so long as the Garage door remains closed; provided, however, that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance. Vehicles owned, operated or within the control of any Owner or of a resident of such Owner's Dwelling shall be parked in the Garage to the extent of the space available therein. All garages shall be kept neat and free of stored materials so as to permit the parking of at least one (1) standard sized American sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not reasonably required for immediate ingress and egress. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for ordinary and reasonable guest parking, subject to parking regulations established by the Board. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any parking or other activity which would be contrary to any County ordinance, or which is determined by the Board, in its reasonable discretion, to constitute a bona-fide nuisance.

Section 10 20 Sight Visibility Restriction Areas. The maximum height of any and all sight restricting Improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, shall be restricted to a maximum height not to exceed twenty-four (24) inches, or such other height set forth in the Plat ("Maximum Permitted Height"). In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the Maximum Permitted Height, the Association shall have the power and easement to enter upon such Unit and to bring such Improvement into compliance, and the Owner shall be solely liable for the costs

thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration.

Section 10.21 Prohibited Direct Access. Any other provision herein notwithstanding, there shall be no direct vehicular access to Tompkins from any abutting Unit (and no direct vehicular access to Carsoli Court from Lots 18, 19, 20, or 21 of Block 1 of Unit 1 of the Properties), and any such direct vehicular access is hereby prohibited pursuant to and in accordance with the Plat (other than over Private Streets which shall be permitted, subject to the provisions set forth in this Declaration).

Section 10.22 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

Section 10.23 Declarant Exemption. Lots owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Lot to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, and marketing efforts, shall be exempt from the provisions of this Article 10. This Article 10 may not be amended without Declarant's prior written consent.

ARTICLE 11
DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS

Section 11.1 Damage or Destruction. Damage to, or destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner:

(a) Repair of Damage. Any portion of this Community for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Community is terminated, in which case the provisions of NRS § 116.2118, 166.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons denving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

Section 11.2 Condemnation. If at any time, all or any portion of the Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the operating fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members. Immediately upon having knowledge of any taking by eminent domain of Common Elements, or any portion thereof, or any threat thereof, the Board shall promptly notify all Owners and all Eligible Holders.

Section 11.3 Condemnation Involving a Unit. For purposes of NRS § 116.1107(2)(a), if part of a Unit is required by eminent domain, the award shall compensate the Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements. In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 12
INSURANCE

Section 12.1 Casualty Insurance. The Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all of the Association's insurable Improvements on the Common Elements, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance, and shall obtain insurance against such other hazards and casualties as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property whether real or personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common

Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

The Association, acting through the Board, shall be the named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any policies shall be paid to the Board as trustee. The Board shall have full power to receive and receipt for the proceeds and to deal therewith as deemed necessary and appropriate. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of insurance maintained by the Association and of all the renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Eligible Holders who have expressly requested the same in writing.

Section 12 2 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable (but in no event less than $1,000,000 00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12 3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors and Officers, and any Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof. If reasonably feasible, the amount of such coverage shall be at least $1,000,000.00, and said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period The Association shall require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From such time as Declarant no longer has the power to control the Board, as set forth in Section 3 7(c) above, blanket fidelity insurance coverage which names the Association as an obligee shall

be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds), or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable.

Section 12.4 Other Insurance Provisions. The Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Unit, at his sole expense to have obtained, and to have furnished his Mortgagee (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

Section 12.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission

of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 12.7 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his Family; (c) no act or omission by any Owner or member of his Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 13
MORTGAGEE PROTECTION CLAUSE

In order to induce FHA, VA, FHLMC, GNMA and FNMA and any other governmental agency or other Mortgagees to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each Eligible Holder, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

(c) Except as provided in NRS § 116.3116(2), each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

(d) Unless at least sixty-seven percent (67%) of Eligible Holders (based upon one (1) vote for each first Mortgage owned) or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(i) subject to Nevada nonprofit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Elements and the Improvements thereon which are owned by the Association, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause.

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the maintenance of the Exterior Walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) fail to maintain Fire and Extended Coverage on any insurable Common Elements on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

(v) except as provided by any provision of NRS Chapter 116 applicable hereto, use hazard insurance proceeds for losses to any Common Elements property for other than the repair, replacement or reconstruction of such property; or

(vi) amend those provisions of this Declaration or the Articles of Incorporation or Bylaws which provide for rights or remedies of first Mortgagees.

(e) Eligible Holders, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) All Beneficiaries, insurers and guarantors of first Mortgages, who have filed a written request for such notice with the Board shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; (2) the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws; and (3) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given

immediate notice (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars ($10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Elements property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(h) The Reserve Fund described in Article 6 above must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary assessments

(i) The Board shall require that any Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

(j) When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and of the Board respectively, and the Beneficiaries of at least fifty-one percent (51%) of the Eligible Holders.

(k) So long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then, pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); dedication, conveyance, or mortgage of the Common Elements; or amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document which may have been previously approved by the VA; provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the express applicable requirements of FHA, VA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

ARTICLE 14
DECLARANT'S RESERVED RIGHTS

Section 14.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS §116.2105(1)(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of ten (10) years thereafter.

(b) Exercise of Developmental Rights. Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for as long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community.

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for so long as Declarant owns or leases any Unit.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, for the period set forth therein during the Declarant Control Period.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 17.7, below, during the time periods set forth therein.

(f) Appointment and Removal of ARC. Declarant reserves the right to appoint and remove the ARC, for the time period set forth in Section 8.1, above.

(g) Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

(h) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, Article 16 below, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116.

(i) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control all entry gates, and to keep all entry

gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(j) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(k) Possible Future Common Recreation Area. Declarant reserves the right, but not the obligation, in Declarant's sole and absolute discretion, until the Close of Escrow of the last Unit in the Properties, to unilaterally develop and convey to the Association a common recreational area within the Community (which may but need not necessarily include, and need not necessarily be limited to, a tot lot, park, and/or pool) as a part of the Common Elements of this Community (and, in such event, the costs of maintenance and repair of the same shall be a Common Expense)

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 14.1(c), above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity. Any garages which have converted into sales offices by Declarant shall be converted back to garages at the time of sale to a Purchaser of such Unit

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

ARTICLE 15
ANNEXATION

Section 15 1 Annexation of Property. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111 450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15 2 Annexation Amendment. Each Annexation Amendment shall conform to the requirements of NRS § 116.2110, and shall include:

(a) the written and acknowledged consent of Declarant;

(b) a reference to this Declaration, which reference shall state the date of Recordation hereof and the County, book and instrument number, and any other relevant Recording data;

(c) a statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein;

(d) a sufficient description of the Annexed Property;

(e) assignment of an Identifying Number to each new Unit created;

(f) a reallocation of the allocated interests among all Units; and

(g) a description of any Common Elements created by the annexation of the Annexed Property.

Section 15.3 FHA/VA Approval. In the event that, and for so long as, the FHA or VA is insuring or guaranteeing loans (or has agreed to insure or guarantee loans) on any portion of the Properties with respect to the initial sale by Declarant to a Purchaser of any Unit, then a condition precedent to any annexation of any property other than the Annexable Area shall be written confirmation by the FHA or the VA that the annexation is in accordance with the development plan submitted to and approved by the FHA or the VA, provided, however, that such written confirmation shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written confirmations.

Section 15.4 Disclaimers Regarding Annexation. Portions of the Annexable Area may or may not be annexed, and, if annexed, may be annexed at any time by Declarant, and no assurances are made with respect to the boundaries or sequence of annexation of such portions. Annexation of a portion of the Annexable Area shall not necessitate annexation of any other portion of the remainder of the Annexable Area. Declarant has no obligation to annex the Annexable Area, or any portion thereof.

Section 15.5 Expansion of Annexable Area. In addition to the provisions for annexation specified in Section 15.2, above, the Annexable Area may, from time to time, be expanded to include additional real property, not as yet identified. Such property may be annexed to the Annexable Area upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners of such property and containing thereon the approval of the FHA and the VA; provided, however, that such written approval shall not be a condition precedent if at such time the FHA or the VA has ceased to regularly require or issue such written approvals.

Section 15.6 Contraction of Annexable Area. So long as real property has not been annexed to the Properties subject to this Declaration, the Annexable Area may be contracted to delete such real property effective upon the Recordation of a written instrument describing such real property, executed by Declarant and all other owners, if any, of such real property, and declaring that such real property shall thereafter be deleted from the Annexable Area. Such real property may be deleted from the Annexable Area without a vote of the Association or the approval or consent of any other Person, except as provided herein.

ARTICLE 16
ADDITIONAL DISCLOSURES, DISCLAIMERS AND RELEASES

Section 16.1 Additional Disclosures and Disclaimers of Certain Matters. Without limiting any other provision in this Declaration, by acceptance of a deed to a Unit, each Owner (for purposes of this Section 16.1, the term "Owner" shall include the Owner, and the Owner's Family, guests and tenants), and by residing within the Properties, each Resident (for purposes of this Article 16, the term "Resident" shall include each Resident, and the Resident's family and guests) shall conclusively be deemed to understand, and to have acknowledged and agreed to, all of the following:

(a) that there are or may be major electrical power system components (high voltage transmission or distribution lines, transformers, etc.) presently and from time to time located within, adjacent to, or nearby the Properties (including, but not limited to, the Common Elements and/or the Unit), which generate certain electric and magnetic fields ("EMF") around them, and that Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to EMF.

(b) that the Unit and the other portions of the Properties are or from time to time may be located within or nearby: (1) airplane flight patterns or clear zones, and subject to significant levels of airplane noise, and (2) major roadways, and subject to significant levels of noise, dust, and other nuisance resulting from proximity to major roadways and/or vehicles. Also, each Unit is located in proximity to streets and other Dwellings in the Community, and subject to substantial levels of sound and noise. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to such airplane flight patterns or clear zones and/or roadways or vehicles or noise;

(c) that the Unit and other portions of the Properties are or may be nearby major regional underground natural gas transmission pipelines. Declarant hereby specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to gas transmission lines,

(d) that the Las Vegas Valley contains a number of earthquake faults, and the Unit and other portions of the Properties may be located on or nearby an identified or yet to be identified seismic fault line. Declarant specifically disclaims any and all representations or warranties, express and implied, with regard to or pertaining to earthquake or seismic activities;

(e) that construction or installation of Improvements by Declarant, other Owners, or third parties, and/or installation or growth of trees or other plants, may impair or eliminate the view, if any, of or from a Unit. Declarant disclaims any and all representations or warranties, express and implied, with regard to or pertaining to the impairment or elimination of any existing or future view;

(f) that residential subdivision and new home construction is an industry inherently subject to variations and imperfections. Purchaser acknowledges and agrees that items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including, but not limited to reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch-up painting; minor flaws or corrective work; and like items) and are not constructional defects. Purchaser acknowledges that: (1) the finished construction of the Unit and the Common Elements, while within the standards of the industry in the Las Vegas Valley, Clark County, Nevada, and while in substantial compliance with the plans and specifications, will be subject to expected minor flaws; and (2) issuance of a Certificate of Occupancy by the relevant governmental authority with jurisdiction shall be deemed conclusive evidence that the relevant Improvement has been built within such industry standards;

(g) that indoor air quality of the Unit may be affected, in a manner and to a degree found in new construction within industry standards, by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes, and so on.

(h) that installation and maintenance of a gated community and/or any security device shall not create any presumption or duty whatsoever of Declarant or Association (or their respective officers, directors, managers, employees, agents, and/or contractors) with regard to security or protection of person or property within or adjacent to the Properties;

(i) that the Unit and other portions of the Properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures (including, but not limited to, coyotes and foxes), which may from time to time stray onto the Properties, and which may otherwise pose a nuisance or hazard;

(j) that Purchaser acknowledges having received from Declarant information regarding the zoning designations and the designations in the master plan regarding land use, adopted pursuant to NRS Chapter 278, for the parcels of land adjoining the Properties to the north, south, east, and west, together with a copy of the most recent gaming enterprise district map made available for public inspection by the jurisdiction in which the Unit is located, and related disclosures. Declarant makes no further representation, and no warranty (express or implied), with regard to any matters pertaining to adjoining land or uses thereof or to gaming uses. Purchaser is hereby advised that the master plan and zoning ordinances are subject to change from time to time. If Purchaser desires additional or more current information concerning these zoning and gaming designations, Purchaser should contact the City of Las Vegas Planning Department. Purchaser acknowledges and agrees that its decision to purchase is based solely upon Purchaser's own investigation and not upon any information provided by any sales agent;

(k) that Declarant presently plans to develop only those Lots which have already been released for construction and sale, and Declarant has no obligation with respect to future phases, plans, zoning, or development of other real property contiguous to or nearby the Unit. The Purchaser or Owner of a Unit may have seen proposed or contemplated residential and other developments which may have been illustrated in the plot plan or other sales literature in or from Declarant's sales office, and/or may have been advised of the same in discussions with sales personnel, however, notwithstanding such plot plans, sales literature, or discussions or representations by sales personnel or otherwise, Declarant is under no obligation to construct such future or planned developments or units, and the same may not be built in the event that Declarant, for any reason whatsoever, decides not to build same. A Purchaser or Owner is not entitled to rely upon, and in fact has not relied upon, the presumption or belief that the same will be built; and no sales personnel or any other person in any way associated with Declarant has any authority to make any statement contrary to the foregoing provisions;

(l) that residential subdivision and new home construction are subject to and accompanied by substantial levels of noise, dust, traffic, and other construction-related "nuisances". Purchaser acknowledges and agrees that it is purchasing a Unit which is within a residential subdivision currently being developed, and that Purchaser will experience and accepts substantial levels of construction-related "nuisances" until the subdivision and any neighboring land have been completed and sold out;

(m) that Declarant shall have the right, from time to time, in its sole discretion, to establish and/or adjust sales prices or price levels for new homes;

(n) that model homes are displayed for illustrative purposes only, and such display shall not constitute an agreement or commitment on the part of Declarant to deliver the Unit in conformity with any model home, and any representation or inference to the contrary is hereby expressly disclaimed. None of the decorator items and other items or furnishings (including, but

not limited to, decorator paint colors, wallpaper, window treatments, mirrors, upgraded carpet, decorator built-ins, model home furniture, model home landscaping, and the like) shown installed or on display in any model home are included for sale to a Purchaser unless an authorized officer of Declarant has specifically agreed in a written Addendum to the Purchase Agreement to make specific items a part of the Purchase Agreement; and

(o) that the Unit and other portions of the Properties are or may be located adjacent to or nearby a school, and school bus drop off/pickup areas, and subject to levels of noise, dust, and other nuisance resulting from or related to proximity to such school and/or school bus stops; and

(p) that some, but not all, Units, are large enough to accommodate parking of a recreational vehicle ("RV") on the side yard area of the Unit, subject to all restrictions set forth in the Declaration. If a Purchaser desires to purchase a Unit suitable for accommodating parking of an RV on the Unit, it is solely the Purchaser's responsibility and obligation to specifically confirm and verify with Declarant in a written addendum to the Purchase Agreement, whether the Unit being purchased may legitimately accommodate parking of an RV, subject to all use and other restrictions set forth in the Declaration; and

(q) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control the entry gate(s), and to keep all such entry gate(s) open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities;

(r) that Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties;

(s) that Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116 (including, but not necessarily limited to, all special declarant's rights referenced in NRS § 116.110385);

(t) that Declarant has reserved certain easements, and related rights and powers, as set forth in this Declaration;

(u) that there are presently and may in the future be a water reservoir site and/or other additional water retention facilities located nearby or adjacent to, or within the Community, and the Community is located adjacent to or nearby major water and drainage channels (including, but not necessarily limited to, the Naples Channel), major washes, and a major water detention basin (all of the foregoing, collectively, "Channel"), the ownership, use, regulation, operation, maintenance, improvement and repair of which are not within Declarant's control, and over which Declarant has no jurisdiction or authority, and, in connection therewith: (1) the Channel may be an attractive nuisance; (2) maintenance and use of the Channel may involve various operations and applications, including (but not necessarily limited to) noisy electric, gasoline or other power driven vehicles and/or equipment used by Channel maintenance and repair personnel during various times of the day, including, without limitation, early morning and/or late evening hours; and (3) the possibility of damage to Improvements and property on the Properties, particularly in the event of overflow of water or other substances from or related to the Channel, as the result of nonfunction,

malfunction, or overtaxing of the Channel or any other reason; and (4) any or all of the foregoing may cause inconvenience and disturbance to Purchaser and other persons in or near the Unit and/or Common Elements, and possible injury to person and/or damage to property.

Section 16.2 Disclaimers and Releases. As an additional material inducement to Declarant to sell the Unit to Purchaser, and without limiting any other provision in the Purchase Agreement, Purchaser (for itself and all persons claiming under or through Purchaser) acknowledges and agrees (a) that Declarant specifically disclaims any and all representations and warranties, express and implied, with regard to any of the foregoing disclosed or described matters (other than to the extent expressly set forth in the foregoing disclosures); and (b) fully and unconditionally releases Declarant and the Association, and their respective officers, managers, agents, employees, suppliers and contractors, from any and all loss, damage or liability (including, but not limited to, any claim for nuisance or health hazards) related to or arising in connection with any disturbance, inconvenience, injury, or damage resulting from or pertaining to all and/or any one or more of the conditions, activities, and/or occurrences described in the foregoing portions of this Declaration

ARTICLE 17
GENERAL PROVISIONS

Section 17.1 Enforcement. Subject to Section 5.3 above, the Governing Documents may be enforced by the Association as follows:

(a) Breach of any of the provisions contained in the Declaration or Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal or equitable proceedings instituted, in compliance with applicable Nevada law, by any Owner, including Declarant so long as Declarant owns a Unit, by the Association, or by the successors-in-interest of the Association. Any judgment rendered in any action or proceeding pursuant hereto shall include a sum for attorneys' fees in such amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each Owner shall have a right of action against the Association for any material unreasonable and continuing failure by the Association to comply with the material and substantial provisions of this Declaration, or of the Articles or Bylaws.

(b) The Association further shall have the right to enforce the obligations of any Owner under any material provision of this Declaration, by assessing a reasonable fine as a Special Assessment against such Owner or Resident, and/or suspending the right of such Owner to vote at meetings of the Association and/or the right of the Owner or Resident to use Common Elements (other than ingress and egress, by the most reasonably direct route, to the Unit), subject to the following

(i) the person alleged to have violated the material provision of the Declaration must have had written notice (either actual or constructive, by inclusion in any Recorded document) of the provision for at least thirty (30) days before the alleged violation; and

(ii) such use and/or voting suspension may not be imposed for a period longer than thirty (30) days per violation, provided that if any such violation continues for a period of ten (10) days or more after notice of such violation has been given to such Owner or

Resident, each such continuing violation shall be deemed to be a new violation and shall be subject to the imposition of new penalties;

(iii) notwithstanding the foregoing, each Owner shall have an unrestricted right of ingress and egress to his Unit by the most reasonably direct route over and across the relevant streets;

(iv) no fine imposed under this Section 17.1 may exceed the maximum amount(s) permitted from time to time by applicable provision of NRS Chapter 116 for each failure to comply. No fine may be imposed until the Owner or Resident has been afforded the right to be heard, in person, by submission of a written statement, or through a representative, at a regularly noticed hearing (unless the violation is of a type that substantially and imminently threatens the health, safety and/or welfare of the Owners and Community, in which case, the Board may take expedited action, as the Board may deem reasonable and appropriate under the circumstances, subject to the limitations set forth in Section 5.2(b), above);

(v) subject to Section 5.2(c)(iii) above, if any such Special Assessment imposed by the Association on an Owner or Resident by the Association is not paid within thirty (30) days after written notice of the imposition thereof, then such Special Assessment shall be enforceable pursuant to Articles 6 and 7 above; and

(vi) subject to Section 5.3 above, and to applicable Nevada law (which may first require mediation or arbitration), the Association may also take judicial action against any Owner or Resident to enforce compliance with provisions of the Governing Documents, or other obligations, or to obtain damages for noncompliance, all to the fullest extent permitted by law.

(c) Responsibility for Violations. Should any Resident violate any material provision of the Rules and Regulations or Declaration, or should any Resident's act, omission or neglect cause damage to the Common Elements, then such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner of the Unit in which the Resident resides. Likewise, should any guest of an Owner or Resident commit any such violation or cause such damage to Common Elements, such violation, act, omission or neglect shall also be considered and treated as a violation, act, omission or neglect of the Owner or Resident. Reasonable efforts first shall be made to resolve any alleged material violation, or any dispute, by friendly discussion or informal mediation by the ARC or Board (and/or mutually agreeable or statutorily authorized third party mediator), in a "good neighbor" manner. Fines or suspension of voting privileges shall be utilized only after reasonable efforts to resolve the issue by friendly discussion or informal mediation have failed.

(d) The result of every act or omission whereby any of the provisions contained in this Declaration or the Bylaws are materially violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association or its successors-in-interest.

(e) The remedies herein provided for breach of the provisions contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive

(f) The failure of the Association to enforce any of the provisions contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter.

(g) If any Owner, his Family, guest, licensee, lessee or invitee violates any such provisions, the Board may impose a reasonable Special Assessment upon such Owner for each violation and, if any such Special Assessment is not paid or reasonably disputed in writing to the Board (in which case, the dispute shall be subject to reasonable attempts at resolution through mutual discussions and mediation) within thirty (30) days after written notice of the imposition thereof, then the Board may suspend the voting privileges of such Owner, and such Special Assessment shall be collectible in the manner provided hereunder, but the Board shall give such Owner appropriate Notice and Hearing before invoking any such Special Assessment or suspension.

Section 17.2 Severability. Invalidation of any provision of this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 17.3 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successive Owners and assigns, until duly terminated in accordance with NRS § 116.2118.

Section 17.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Common Elements. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

Section 17.5 Amendment. Except as otherwise provided by this Declaration, and except in cases of amendments that may be executed by a Declarant, this Declaration, including the Plat, may only be amended by both: (a) the vote and agreement of Owners constituting at least sixty-seven percent (67%) of the voting power of the Association, and (b) the written assent or vote of at least a majority of the total voting power of the Board. Notwithstanding the foregoing, termination of this Declaration and any of the following amendments, to be effective, must be approved in writing by the Eligible Holders of at least two-thirds (2/3) of the first Mortgages on all of the Units in the Properties at the time of such amendment or termination, based upon one (1) vote for each first Mortgage owned.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers and guarantors of first Mortgages as provided in Articles 7, 12, 13, 14 and 16 hereof.

(b) Any amendment which would necessitate a Mortgagee, after it has acquired a Unit through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Unit not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions as set out in Article 12 hereof, or to the application of insurance proceeds as set out in Article 12 hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(e) Any amendment which would or could result in termination or abandonment of the Properties or subdivision of a Unit, in any manner inconsistent with the provisions of this Declaration

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction if such Unit is proposed to be sold, transferred or otherwise conveyed

(g) Any amendment materially and substantially affecting: (i) voting rights; (ii) rights to use the Common Elements; (iii) reserves and responsibility for maintenance, repair and replacement of the Common Elements; (iv) leasing of Units; (v) establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage; (vi) boundaries of any Unit; (vii) Declarant's right and power to annex or de-annex property to or from the Properties; and (viii) assessments, assessment liens, or the subordination of such liens.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed termination, amendment or amendments to the Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed termination, amendment or amendments. Notwithstanding anything contained in this Declaration to the contrary, nothing contained herein shall operate to allow any Mortgagee to: (a) deny or delegate control of the general administrative affairs of the Association by the Members or the Board; (b) prevent the Association or the Board from commencing, intervening in or settling any litigation or proceeding, or (c) prevent any trustee or the Association from receiving and distributing any proceeds of insurance, except pursuant to NRS §§ 116.31133 & 116.31135.

A copy of each amendment shall be certified by at least two (2) Officers, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by at least two (2) Officers, that the requisite number of Owners have either voted for or consented in writing to any termination or amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Eligible Holders shall include a certification that the requisite approval of the Eligible Holders has been obtained. Until the first Close of Escrow for the sale of a Unit, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification

Notwithstanding all of the foregoing, for so long as Declarant owns a Lot or Unit, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any scrivener's errors, to clarify any ambiguous provision, to modify or supplement the Exhibits hereto, to make and process through appropriate governmental authority, minor revisions to the Plat deemed appropriate by Declarant in its discretion, and otherwise to ensure that the Declaration conforms with requirements of applicable law. Additionally, by acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B") hereto, in the event such real property has not theretofore been annexed to the Properties encumbered by this

Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111.450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, adding said real property to the Community, in the manner provided for in NRS § 116.2110 and in Article 15 above, and to make and process through appropriate governmental authority, any and all minor revisions to the Plat deemed appropriate by Declarant in its reasonable discretion, and each and every Owner, by acceptance of a deed to his Unit, covenants to sign such further documents and to take such further actions as to reasonably implement and consummate the foregoing.

Section 17.6 Notice of Change to Governing Documents. If any change is made to the Governing Documents, the Secretary (or other designated Officer) shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner, a copy of the changes made.

Section 17.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

Section 17.8 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of the Properties does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Properties, or any portion thereof.

Section 17.9 Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered three (3) business days after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

Section 17.10 Priorities and Inconsistences. The Governing Documents shall be construed to be consistent with one another to the extent reasonably possible. If there exist any irreconcilable conflicts or inconsistencies among the Governing Documents, the terms and provisions of this Declaration shall prevail (unless and to the extent only that a term of provision of this Declaration fails to comply with applicable provision of NRS Chapter 116. In the event of any inconsistency between the Articles and Bylaws, the Articles shall prevail. In the event of any inconsistency between the Rules and Regulations and any other Governing Document, the other Governing Document shall prevail.

Section 17.11 Limited Liability. Except to the extent, if any, expressly prohibited by applicable Nevada law, none of Declarant, Association, and/or ARC, and none of their respective directors, officers, any committee representatives, employees, or agents, shall be liable to any Owner or any other Person for any action or for any failure to act with respect to any matter if the

action taken or failure to act was reasonable or in good faith. The Association shall indemnify every present and former Officer and Director and every present and former committee representative against all liabilities incurred as a result of holding such office, to the full extent permitted by law.

Section 17.12 Business of Declarant. Except to the extent expressly provided herein or as required by applicable provision of NRS Chapter 116, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant, or its agents or representatives, in connection with or incidental to Declarant's improvement and/or development of the Properties, so long as any Unit therein owned by Declarant remains unsold.

Section 17.13 Compliance With NRS Chapter 116. It is the intent of Declarant and the Community that this Declaration shall be in all respects consistent with, and not in violation of, applicable provisions of NRS Chapter 116. In the event any provision of this Declaration is found to irreconcilably conflict with or violate such applicable provision of NRS Chapter 116, such offending Declaration provision shall be deemed automatically modified or severed herefrom to the minimum extent necessary to remove the irreconcilable conflict with or violation of the applicable provision of NRS Chapter 116. Notwithstanding the foregoing or any other provision set forth herein, if any provision of Senate Bill 451 (1999) should, in the future, be removed or made less burdensome (from the perspective of Declarant), as a matter of law, then the future change in such provision shall automatically be deemed to have been made and reflected in this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first written above

DECLARANT:

PERMA-BILT,
a Nevada corporation

By: _____
Daniel Schwartz, President

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

This instrument was acknowledged before me on this 29 day of February, 2000, by DANIEL SCHWARTZ, as President of **PERMA-BILT**, a Nevada corporation.

_____
NOTARY PUBLIC
(SEAL)

Notary Public - State of Nevada
County of Clark
RENA L. WINTERS
My Appointment Expires
No. 93-4318-1 September 19, 2000

My Commission Expires:

9-19-2000

wmf 1388 2611 CCRS 01.wpd

20000307
00911

EXHIBIT "A"

ORIGINAL PROPERTY

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

Lot Thirteen (13) in **Block One (1)**, as shown by final map of **CONQUISTADOR/TOMPKINS - UNIT 1**, on file in **Book 92** of Plats, **Page 68**, Office of the County Recorder, Clark County, Nevada; TOGETHER WITH a non-exclusive easement of ingress, egress, and enjoyment of Common Elements of the Properties (as said terms are defined and egress over and across the entry area and private streets of NAPLES, and a non-exclusive easement of use and enjoyment of the Common Elements thereof (subject to and as set forth in the foregoing Declaration, as the same from time to time may be amended and/or supplemented by instrument recorded in the Office of the County Recorder of Clark County, Nevada)

20000307
00911

EXHIBIT "B"

ANNEXABLE AREA

[ALL, OR ANY PORTIONS FROM TIME TO TIME MAY, BUT NEED NOT NECESSARILY, BE ANNEXED BY DECLARANT TO THE PROPERTIES]

PARCEL 1

All of the real property as shown by final map of **CONQUISTADOR/TOMPKINS - UNIT 1**, on file in **Book 92** of Plats, **Page 68**, Office of the County Recorder of Clark County, Nevada;

(**EXCEPTING THEREFROM ONLY** Lot Thirteen (13), in Block One (1), of NAPLES, as shown by said final map of CONQUISTADOR/TOMPKINS - UNIT 1).

PARCEL 2

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 2**, as shown by final map thereof on file in **Book 93** of Plats, **Page 1**, Office of the County Recorder of Clark County, Nevada.

PARCEL 3

All of the real property in **CONQUISTADOR/TOMPKINS - UNIT 3**, as shown by final map thereof on file in Book ____ of Plats, Page ____, Office of the County Recorder of Clark County, Nevada

[NOTE: DECLARANT HAS SPECIFICALLY RESERVED THE RIGHT FROM TIME TO TIME TO UNILATERALLY ADD TO OR MODIFY OF RECORD ALL OR ANY PARTS OF THE FOREGOING AND/OR ATTACHED DESCRIPTIONS]

When Recorded, Return to:

WILBUR M. ROADHOUSE, ESQ.
Goold Patterson DeVore Ales & Roadhouse
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
W ROADHOUSE
03-07-2000 15:17 JSB 77
OFFICIAL RECORDS
BOOK: 20000307 INST: 00911
FEE: 83.00 RPTT: .00

MDSM
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I Through X, inclusive, Counter-defendants	

MOTION FOR VOLUNTARY DISMISSAL AGAINST DEFENDANT COOPER CASTLE LAW FIRM, LLP

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct, by and through its attorney, the Law Offices

of Michael F. Bohn, Esq., Ltd. hereby moves this court for an order of voluntary dismissal of this matter and the claims of the plaintiff as to defendant Cooper Castle Law Firm, LLP only.

DATED this 29th day of August, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / *Adam R. Trippiedi, Esq.*
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for Plaintiff

NOTICE OF MOTION

TO: Defendants above named; and

TO: All counsel of record

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the above entitled Court, Department XIV, on the 28th day of SEPT, 2017, at 9:30AM a.m. or as soon thereafter as counsel can be heard.

DATED this 29th day of August, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / *Adam R. Trippiedi, Esq.*
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for Plaintiff

FACTS

Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada ("the Property"). Plaintiff acquired the property by foreclosure deed recorded September 6, 2013 as instrument number 201309060000930. The foreclosure deed arose from a delinquency in assessments due from the former owner to the Naples Community Homeowners Association, pursuant to NRS

Chapter 116.

At the time of the filing of the complaint, defendant Cooper Castle Law Firm, LLP ("Cooper Castle") was the trustee of defendant Nationstar Mortgage, LLC's ("Nationstar") deed of trust. Cooper Castle was included as a defendant for title insurance purposes. Since the filing of the complaint, it has been determined that Cooper Castle is no longer needed as a defendant in this matter in order for plaintiff to obtain title insurance.

Based on the foregoing facts, the plaintiff now moves to voluntarily dismiss its complaint as against defendant Cooper Castle.

POINTS AND AUTHORITIES

NRCP 41, *Dismissal of Actions*, provides in part:

(a) Voluntary Dismissal: Effect Thereof.

...

(2) By Order of Court. Except as provided in subdivision (a)(1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

As mentioned above, Cooper Castle is no longer a necessary defendant for purposes of plaintiff securing title insurance. As a result, plaintiff seeks to dismiss its claims as against Cooper Castle only. It is therefore respectfully requested that this court permit the plaintiff to dismiss this action as against Cooper Castle only.

DATED this 29th day of August, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s /*Adam R. Trippiedi, Esq.*
Michael F. Bohn, Esq.
Adam R. Trippiedi, Esq.
376 East Warm Springs Road, Suite 140
Las Vegas, Nevada 89119
Attorney for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and on the 29th day of August, 2017, an electronic copy of the **MOTION FOR VOLUNTARY DISMISSAL AGAINST DEFENDANT COOPER CASTLE LAW FIRM, LLP** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
WRIGHT FINLAY & ZAK, LLP
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117

Jason Peck, Esq.
THE COOPER CASTLE LAW FIRM, LLP
5275 South Durango Drive
Las Vegas, Nevada 89113

/s/ Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

FFCL

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY

Defendants.

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPROATIONS I Through X, inclusive,

COUNTER-DEFENDANTS

CASE NO.: A-13-689240-C
DEPT NO.: XIV

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Date of hearing: August 10, 2017
Time of hearing: 9:00 a.m.

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment and defendant Nationstar Mortgage, LLC's opposition to Plaintiff's motion for summary judgment, having come before the court on the 10th day of September, 2017, Michael F. Bohn, Esq. appearing on behalf of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct, Regina A. Habermas, Esq. appearing on behalf of defendant Nationstar Mortgage, LLC, and the Court, having reviewed the plaintiff's motion, and having heard the arguments of counsel, the Court makes its findings of fact, conclusion of law and judgment as follows:

FINDINGS OF FACT

1. Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct ("Saticoy Bay") is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada.

2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

3. Monique Guillory is the former owner of the property. She has been served with the summons and complaint, and has been defaulted.

4. The property is encumbered by CC&R's in favor of the Naples Community Homeowners Association.

5. The foreclosure deed arose from a delinquency in assessments due from the former owner to the Naples Community Homeowners Association pursuant to NRS Chapter 116.

6. Defendant Nationstar Mortgage LLC ("Defendant") is the beneficiary of a deed of trust that was recorded as an encumbrance on the Property on January 25, 2007. Defendant obtained its property interest by an assignment recorded on October 18, 2012.

7. Naples Community Homeowners Association retained the law firm of Leach Johnson Song & Gruchow as the foreclosure agent to collect the unpaid assessments due on the subject property.

8. On August 18, 2011, the foreclosure agent sent the former owner a copy of the notice of delinquent assessment lien.

9. On August 18, 2011, the foreclosure agent recorded the notice of lien.

10. On January 24, 2012, the foreclosure agent recorded the notice of default and election to sell. The notice of default was mailed to the former owner, to MERS, and other interested parties.

11. On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale.

12. The foreclosure agent also mailed a copy of the notice of sale to the former owner, to MERS, and other interested parties.

13. The notice of foreclosure sale under the lien for delinquent assessments was also served upon the unit owner by posting a copy of the notice in a conspicuous place on the property.

14. The Notice of Sale was also posted in three locations within the county.

15. The foreclosure agent also published the notice of sale in Nevada Legal News on three dates.

16. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the public auction conducted on August 22, 2013, and entered the high bid of $5,563.00 to purchase the Property.

17. The HOA foreclosure agent issued a deed upon sale which was recorded on September 6, 2013, and contains the following recitals:

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV.

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE ($5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

18. At no time was a check or other form of payment sent to the HOA or its agent by the defendant Nationstar Mortgage.

19. Defendant Nationstar Mortgage failed to take any steps to protect its interest in the property prior to the foreclosure sale.

20. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA lien representing 9 months of assessments for common expenses.

21. The defendant failed to present any evidence of any fraud, oppression or unfairness in regards to the foreclosure sale which would warrant equitable relief from the court.

22. The plaintiff is a bona fide purchaser, and the defendant has failed to present any proof to disprove that the plaintiff was a bona fide purchaser.

23. Counsel for the defendant failed to file an opposition to the plaintiff's motion for summary judgment, despite being granted two prior continuances to do so. EDCR 2.20 provides that the failure to file an opposition to a motion may be construed as an admission that the motion is meritorious and a consent to the motion being granted. In addition to the findings herein, the court will construe the failure of the defendant to file an opposition as an admission that the motion is meritorious and a consent to the motion being granted.

24. Any findings of fact which should be considered to be a conclusion of law shall be treated as such.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005).

2. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev. at 732 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. Matsushita, 475 U.S. at 587; Wood P.3d at 1130. Further, in ruling upon a motion for

summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

3. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. Harlow v. MTC Financial Inc. 865 F. Supp.2d 1095 (D. Nev. 2012). The exhibits to plaintiff's Motion for Summary Judgment are referenced in the complaint and/or are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.") "Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic." NRS 52.165.

4. The defendant did not object to the authenticity of any of the exhibits attached to plaintiff's motion for summary judgment.

5. Plaintiff's complaint alleges three claims for relief against defendant: injunctive relief, quiet title, and declaratory relief. Summary judgment in favor of the plaintiff on all of plaintiff's claims for relief is appropriate.

6. The HOA foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, mailing, posting, and publication of the Notice of Sale.

7. There is no requirement that foreclosure notices are actually received. The law only requires that they be mailed. Hankins v. Administrator of Veterans Affairs€ 92 Nev. 578, 555 P.2d 483 (1976) v. Administrator of Veterans Affairs 92 Nev. 578, 555 P.2d 483 (1976); Turner v. Dewco 87 Nev. 14, 479 P.2d 462 (1971).

8. There is a public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Court described the non-judicial foreclosure provisions of NRS Chapter 116 as "elaborate," and therefore indicative of the public policy favoring the finality of a foreclosure sale.

9. There is a common law presumption that a foreclosure sale was conducted validly. Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014); Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

10. Nevada has a disputable presumption that "the law has been obeyed." See NRS 47.250(16). This creates a disputable presumption that the foreclosure sale was conducted in compliance with the law.

11. The recitals in the foreclosure deed are sufficient and conclusive proof that the required notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provides that conclusive presumptions include "[a]ny other presumption which, by statute, is expressly made conclusive." Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals in the foreclosure deed are "conclusive proof" that defendant bank was served with copies of the required notices for the foreclosure sale.

12. The presented evidence in the form of proofs of mailing from the foreclosure agent, which also evidence that the notices were sent to MERS.

13. Under the terms of the deed of trust, MERS is the agent or nominee of the lender and the lenders' assigns. Therefore, MERS is the agent of defendant Nationstar Mortgage.

14. The defendant has not presented any evidence to show that equitable relief is warranted in this case or to disprove any of the recitals in the foreclosure deed.

15. The defendant has not presented any evidence to show any defect with the foreclosure sale or the recording and service of the notices prior to the foreclosure sale.

16. The court also finds that there are no grounds to set aside the HOA sale. To set aside an association foreclosure sale on a theory of inadequate price, there must be "a showing of grossly inadequate price, plus fraud, unfairness, or oppression." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing Long v. Towne, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982). Price alone is an insufficient basis to overturn a foreclosure sale, and the price at auction reflected the risk involved in HOA foreclosure sales prior to the SFR decision.

17. In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. Shadow Wood at 1114 (finding "courts must consider the entirety of the circumstances that bear upon the equities"). Here, Nationstar Mortgage LLC made no efforts and took no action to prevent the foreclosure sale from going forward, despite having knowledge of the pending sale. Plaintiff, on the other hand, was a bona fide purchaser. Thus, the equities weigh in favor of maintaining the sale as it occurred.

18. The Court finds the price at auction reflected the risk involved in these types of foreclosure sales prior to SFR. Defendant further argues that the low price when combined with fraud, unfairness, or oppression is sufficient to void said sale, however, Nationstar Mortgage LLC failed to present any evidence of fraud, unfairness, or oppression in regards to the foreclosure sale.

19. Nationstar Mortgage LLC argues there was fraud, oppression, or unfairness in the conduct of the sale because the notices did not explicitly state the HOA was foreclosing on the

superpriority of its lien. However, there is no such requirement in the law, as the HOA lien necessarily includes the super-priority portion pursuant to SFR.

20. There is no issue regarding whether or not the association foreclosed on the "super-priority" portion of its lien. The evidence shows that defendant Nationstar Mortgage LLC's agent or nominee, MERS, received both the notice of default and the notice of sale. The language in both the notice of default and notice of sale constitute prima facie evidence that the HOA was foreclosing on a lien comprised of monthly assessments. As such, there is no genuine issue of material fact that the HOA possessed a super priority lien at the time of the foreclosure sale, and that the super priority lien was foreclosed upon. As stated in the Nevada Supreme Court in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) as to first deeds of trust, NRS 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. Unless the superpriority piece has been satisfied prior to the foreclosure sale, the HOA foreclosure sale on its assessment lien would necessarily include both the superpriority piece and a subpriority piece of the lien. The defendant failed to present any evidence that the superpriority portion of the lien was satisfied prior to the foreclosure sale.

21. Therefore, because Nationstar Mortgage LLC has failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression which led to the low purchase price, the Court finds that the price of the sale is not a legitimate basis to overturn the sale.

22. Nationstar Mortgage LLC has put forth no evidence to indicate that the decision in in SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. Adv. Op 75, 334 P.3d 408 (2014) should not be applied retroactively to the date the statutes were enacted. See K&P Homes v. Christiana Trust 133 Nev. Adv. Op. 51 (2017).

23. There is no issue of fact regarding whether the former owner was in default in payment of the assessments as well as whether the lien and foreclosure notices were properly served and posted.

The recitals in the foreclosure deed are conclusive as to these issues. Furthermore, the plaintiff presented proof, which was not controverted, that the notices were mailed, published, and posted.

24. The plaintiff is a bona fide purchaser ("BFP"). A subsequent purchaser is bona fide under common law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive."). The Nevada Supreme Court has further held, that "[w]here the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby." Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that "[c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property.". Shadow Wood, 366 P.3d at 1114 fn. 7.

25. The evidence shows that plaintiff purchased said property for valuable consideration in the amount of $5,563.00 and had no actual, constructive, or inquiry notice of any dispute of title or defect in the sales process. Such evidence is clear from the fact defendant did not attempt to tender the superpriority lien in question, attend the sale in question, or attempt to take any other action to put potential buyers on notice of any dispute. Nationstar Mortgage LLC was in the position to take any number of simple steps to avoid a BFP issue and simply failed to take such action. After receiving

notice of the trustee sale, Nationstar Mortgage LLC, after knowing a delinquent assessment sale would take place, looks now to enforce their rights. The Court notes that all that was required of defendant to defeat BFP status was to put purchasers on notice of their claim to the property by either showing up to the sale to announce their claim of title, record a legal tender, file a lis pendens, or seek a temporary restraining order.

26. Equitable relief is only available when no adequate remedy at law exists. One who seeks equitable relief cannot merely sit on its hands to its detriment. It would be a gross injustice for Plaintiff, an innocent third party who paid valuable consideration", to have its equitable rights subordinate to Defendant's who did nothing to protect itself at the foreclosure sale. See generally Holmberg v. Armbrecht, 66 S. Ct. 582, 584 (1946)(quoting Russell v. Todd, 60 S. Ct. 527, 532 (1940)) (finding "[t]here must be conscience, good faith, and reasonable diligence, to call into action the [equitable] powers of the court."). Therefore, the Court finds Plaintiff is a BFP, undisturbed by any issue raised in Nationstar's Opposition to Motion for Summary Judgment, as plaintiff's equitable interest as an innocent purchaser cannot be outweighed by the inaction of defendant Nationstar Mortgage.

27. The policy reasons behind NRS Chapter 116 also support granting of summary judgment on plaintiffs behalf. The policy is that the HOAs are supposed to receive their assessments, and if they don't receive payment from the banks, the HOA has the right to foreclose.

28. Nationstar Mortgage LLC is not entitled to equitable relief because it was on notice of the foreclosure sale and failed to take any steps to protect its interest in the property.

29. The policies and equities favor the plaintiff. In balancing the equities, plaintiff's interest as a bona fide purchaser is not outweighed by the inaction of Nationstar Mortgage.

30. The defendant failed to file an opposition to the plaintiff's motion for summary judgment. Pursuant to EDCR 2.20, the court takes such failure to file an opposition as an admission that the plaintiff's motion is meritorious and a consent to the motion being granted.

31. Any conclusion of law which should be a finding of fact shall be considered as such.

ORDER and JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct for summary judgment is granted.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct against defendant Nationstar Mortgage LLC.

IT IS FURTHER ORDERED that title to the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada and legally described as:

> Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as: 4641 Viareggio Ct., Las Vegas, NV.
>
> APN 163-19-311-015

is hereby quieted in the name of Saticoy Bay LLC Series 4641 Viareggio Ct.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on August 22, 2013, and the foreclosure deed recorded on September 6, 2013, as instrument number 201309060000930, the interests of defendant Nationstar Mortgage LLC as well as its successors or assigns in the property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada are extinguished.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC, as well as its successors and assigns, have no further right, title or claim to the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC, as well as its successors and assigns, or anyone acting on their behalf, are forever enjoined from asserting any estate, right, title or interest in the real property commonly known as 4641 Viareggio Ct., Las Vegas,

Nevada as a result of the deed of trust recorded on January 25, 2007, as instrument number 20070125-0003583.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC as well as its successors and assigns or anyone acting on their behalf, are forever barred from enforcing any rights against the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada as a result of the deed of trust recorded on January 25, 2007, as instrument number 20070125-0003583.

DATED this 8 day of September, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By:
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorneys for Saticoy Bay LLC Series 4641 Viareggio Ct

Reviewed by:

Wright Finlay & Zak, LLP

By:
Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117
Attorneys for Nationstar Mortgage, LLC
Wells Fargo Bank, N.A.

NJUD
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPROATIONS I Through X, inclusive, Counter-defendants	

NOTICE OF ENTRY OF JUDGMENT

TO: Parties above-named; and

TO: Their Attorney of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT GRANTING QUIET TITLE** has been entered on

the 12th day of September, 2017, in the above captioned matter, a copy of which is attached hereto.

Dated this 13th day of September, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: /s/ /*Michael F. Bohn, Esq.*/
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 13th day of September, 2017, an electronic copy of the **NOTICE OF ENTRY OF JUDGMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
Wright Finlay & Zak, LLP
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117

/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

FFCL

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY

Defendants.

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPROATIONS I Through X, inclusive,

COUNTER-DEFENDANTS

CASE NO.: A-13-689240-C
DEPT NO.: XIV

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

Date of hearing: August 10, 2017
Time of hearing: 9:00 a.m.

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment and defendant Nationstar Mortgage, LLC's opposition to Plaintiff's motion for summary judgment, having come before the court on the 10th day of September, 2017, Michael F. Bohn, Esq. appearing on behalf of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct, Regina A. Habermas, Esq. appearing on behalf of defendant Nationstar Mortgage, LLC, and the Court, having reviewed the plaintiff's motion, and having heard the arguments of counsel, the Court makes its findings of fact, conclusion of law and judgment as follows:

FINDINGS OF FACT

1. Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct ("Saticoy Bay") is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada.

2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

3. Monique Guillory is the former owner of the property. She has been served with the summons and complaint, and has been defaulted.

4. The property is encumbered by CC&R's in favor of the Naples Community Homeowners Association.

5. The foreclosure deed arose from a delinquency in assessments due from the former owner to the Naples Community Homeowners Association pursuant to NRS Chapter 116.

6. Defendant Nationstar Mortgage LLC ("Defendant") is the beneficiary of a deed of trust that was recorded as an encumbrance on the Property on January 25, 2007. Defendant obtained its property interest by an assignment recorded on October 18, 2012.

7. Naples Community Homeowners Association retained the law firm of Leach Johnson Song & Gruchow as the foreclosure agent to collect the unpaid assessments due on the subject property.

8. On August 18, 2011, the foreclosure agent sent the former owner a copy of the notice of delinquent assessment lien.

9. On August 18, 2011, the foreclosure agent recorded the notice of lien.

10. On January 24, 2012, the foreclosure agent recorded the notice of default and election to sell. The notice of default was mailed to the former owner, to MERS, and other interested parties.

11. On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale.

12. The foreclosure agent also mailed a copy of the notice of sale to the former owner, to MERS, and other interested parties.

13. The notice of foreclosure sale under the lien for delinquent assessments was also served upon the unit owner by posting a copy of the notice in a conspicuous place on the property.

14. The Notice of Sale was also posted in three locations within the county.

15. The foreclosure agent also published the notice of sale in Nevada Legal News on three dates.

16. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the public auction conducted on August 22, 2013, and entered the high bid of $5,563.00 to purchase the Property.

17. The HOA foreclosure agent issued a deed upon sale which was recorded on September 6, 2013, and contains the following recitals:

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV.

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE ($5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

18. At no time was a check or other form of payment sent to the HOA or its agent by the defendant Nationstar Mortgage.

19. Defendant Nationstar Mortgage failed to take any steps to protect its interest in the property prior to the foreclosure sale.

20. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion of the HOA lien representing 9 months of assessments for common expenses.

21. The defendant failed to present any evidence of any fraud, oppression or unfairness in regards to the foreclosure sale which would warrant equitable relief from the court.

22. The plaintiff is a bona fide purchaser, and the defendant has failed to present any proof to disprove that the plaintiff was a bona fide purchaser.

23. Counsel for the defendant failed to file an opposition to the plaintiff's motion for summary judgment, despite being granted two prior continuances to do so. EDCR 2.20 provides that the failure to file an opposition to a motion may be construed as an admission that the motion is meritorious and a consent to the motion being granted. In addition to the findings herein, the court will construe the failure of the defendant to file an opposition as an admission that the motion is meritorious and a consent to the motion being granted.

24. Any findings of fact which should be considered to be a conclusion of law shall be treated as such.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026 (2005).

2. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev. at 732 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. Matsushita, 475 U.S. at 587; Wood P.3d at 1130. Further, in ruling upon a motion for

summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

3. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. Harlow v. MTC Financial Inc. 865 F. Supp.2d 1095 (D. Nev. 2012). The exhibits to plaintiff's Motion for Summary Judgment are referenced in the complaint and/or are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.") "Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic." NRS 52.165.

4. The defendant did not object to the authenticity of any of the exhibits attached to plaintiff's motion for summary judgment.

5. Plaintiff's complaint alleges three claims for relief against defendant: injunctive relief, quiet title, and declaratory relief. Summary judgment in favor of the plaintiff on all of plaintiff's claims for relief is appropriate.

6. The HOA foreclosure sale complied with all requirements of law, including but not limited to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the recording, mailing, posting, and publication of the Notice of Sale.

7. There is no requirement that foreclosure notices are actually received. The law only requires that they be mailed. Hankins v. Administrator of Veterans Affairs€ 92 Nev. 578, 555 P.2d 483 (1976) v. Administrator of Veterans Affairs 92 Nev. 578, 555 P.2d 483 (1976); Turner v. Dewco 87 Nev. 14, 479 P.2d 462 (1971).

8. There is a public policy which favors a final and conclusive foreclosure sale as to the purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210. In the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408 (2014), the Court described the non-judicial foreclosure provisions of NRS Chapter 116 as "elaborate," and therefore indicative of the public policy favoring the finality of a foreclosure sale.

9. There is a common law presumption that a foreclosure sale was conducted validly. Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353 (2014); Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v. McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

10. Nevada has a disputable presumption that "the law has been obeyed." See NRS 47.250(16). This creates a disputable presumption that the foreclosure sale was conducted in compliance with the law.

11. The recitals in the foreclosure deed are sufficient and conclusive proof that the required notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provides that conclusive presumptions include "[a]ny other presumption which, by statute, is expressly made conclusive." Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals in the foreclosure deed are "conclusive proof" that defendant bank was served with copies of the required notices for the foreclosure sale.

12. The presented evidence in the form of proofs of mailing from the foreclosure agent, which also evidence that the notices were sent to MERS.

13. Under the terms of the deed of trust, MERS is the agent or nominee of the lender and the lenders' assigns. Therefore, MERS is the agent of defendant Nationstar Mortgage.

14. The defendant has not presented any evidence to show that equitable relief is warranted in this case or to disprove any of the recitals in the foreclosure deed.

15. The defendant has not presented any evidence to show any defect with the foreclosure sale or the recording and service of the notices prior to the foreclosure sale.

16. The court also finds that there are no grounds to set aside the HOA sale. To set aside an association foreclosure sale on a theory of inadequate price, there must be "a showing of grossly inadequate price, plus fraud, unfairness, or oppression." Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016) (citing Long v. Towne, 98 Nev. 11, 13, 639, P.2d 528, 530 (1982). Price alone is an insufficient basis to overturn a foreclosure sale, and the price at auction reflected the risk involved in HOA foreclosure sales prior to the SFR decision.

17. In considering whether equity supports setting aside the sale in question, the Court is to consider any other factor bearing on the equities, including actions or inactions of both parties seeking to set aside the sale and the impact on a bona fide purchaser for value. Shadow Wood at 1114 (finding "courts must consider the entirety of the circumstances that bear upon the equities"). Here, Nationstar Mortgage LLC made no efforts and took no action to prevent the foreclosure sale from going forward, despite having knowledge of the pending sale. Plaintiff, on the other hand, was a bona fide purchaser. Thus, the equities weigh in favor of maintaining the sale as it occurred.

18. The Court finds the price at auction reflected the risk involved in these types of foreclosure sales prior to SFR. Defendant further argues that the low price when combined with fraud, unfairness, or oppression is sufficient to void said sale, however, Nationstar Mortgage LLC failed to present any evidence of fraud, unfairness, or oppression in regards to the foreclosure sale.

19. Nationstar Mortgage LLC argues there was fraud, oppression, or unfairness in the conduct of the sale because the notices did not explicitly state the HOA was foreclosing on the

superpriority of its lien. However, there is no such requirement in the law, as the HOA lien necessarily includes the super-priority portion pursuant to SFR.

20. There is no issue regarding whether or not the association foreclosed on the "super-priority" portion of its lien. The evidence shows that defendant Nationstar Mortgage LLC's agent or nominee, MERS, received both the notice of default and the notice of sale. The language in both the notice of default and notice of sale constitute prima facie evidence that the HOA was foreclosing on a lien comprised of monthly assessments. As such, there is no genuine issue of material fact that the HOA possessed a super priority lien at the time of the foreclosure sale, and that the super priority lien was foreclosed upon. As stated in the Nevada Supreme Court in the case of SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014) as to first deeds of trust, NRS 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. Unless the superpriority piece has been satisfied prior to the foreclosure sale, the HOA foreclosure sale on its assessment lien would necessarily include both the superpriority piece and a subpriority piece of the lien. The defendant failed to present any evidence that the superpriority portion of the lien was satisfied prior to the foreclosure sale.

21. Therefore, because Nationstar Mortgage LLC has failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression which led to the low purchase price, the Court finds that the price of the sale is not a legitimate basis to overturn the sale.

22. Nationstar Mortgage LLC has put forth no evidence to indicate that the decision in in SFR Investments Pool 1, LLC v. U.S. Bank N.A. 130 Nev. Adv. Op 75, 334 P.3d 408 (2014) should not be applied retroactively to the date the statutes were enacted. See K&P Homes v. Christiana Trust 133 Nev. Adv. Op. 51 (2017).

23. There is no issue of fact regarding whether the former owner was in default in payment of the assessments as well as whether the lien and foreclosure notices were properly served and posted.

The recitals in the foreclosure deed are conclusive as to these issues. Furthermore, the plaintiff presented proof, which was not controverted, that the notices were mailed, published, and posted.

24. The plaintiff is a bona fide purchaser ("BFP"). A subsequent purchaser is bona fide under common law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive."). The Nevada Supreme Court has further held, that "[w]here the complaining party has access to all the facts surrounding the questioned transaction and merely makes a mistake as to the legal consequences of his act, equity should normally not interfere, especially where the rights of third parties might be prejudiced thereby." Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz. 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that "[c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender] did not use the legal remedies available to it to prevent the property from being sold to a third party, such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens on the property.". Shadow Wood, 366 P.3d at 1114 fn. 7.

25. The evidence shows that plaintiff purchased said property for valuable consideration in the amount of $5,563.00 and had no actual, constructive, or inquiry notice of any dispute of title or defect in the sales process. Such evidence is clear from the fact defendant did not attempt to tender the superpriority lien in question, attend the sale in question, or attempt to take any other action to put potential buyers on notice of any dispute. Nationstar Mortgage LLC was in the position to take any number of simple steps to avoid a BFP issue and simply failed to take such action. After receiving

notice of the trustee sale, Nationstar Mortgage LLC, after knowing a delinquent assessment sale would take place, looks now to enforce their rights. The Court notes that all that was required of defendant to defeat BFP status was to put purchasers on notice of their claim to the property by either showing up to the sale to announce their claim of title, record a legal tender, file a lis pendens, or seek a temporary restraining order.

26. Equitable relief is only available when no adequate remedy at law exists. One who seeks equitable relief cannot merely sit on its hands to its detriment. It would be a gross injustice for Plaintiff, an innocent third party who paid valuable consideration", to have its equitable rights subordinate to Defendant's who did nothing to protect itself at the foreclosure sale. See generally Holmberg v. Armbrecht, 66 S. Ct. 582, 584 (1946)(quoting Russell v. Todd, 60 S. Ct. 527, 532 (1940)) (finding "[t]here must be conscience, good faith, and reasonable diligence, to call into action the [equitable] powers of the court."). Therefore, the Court finds Plaintiff is a BFP, undisturbed by any issue raised in Nationstar's Opposition to Motion for Summary Judgment, as plaintiff's equitable interest as an innocent purchaser cannot be outweighed by the inaction of defendant Nationstar Mortgage.

27. The policy reasons behind NRS Chapter 116 also support granting of summary judgment on plaintiffs behalf. The policy is that the HOAs are supposed to receive their assessments, and if they don't receive payment from the banks, the HOA has the right to foreclose.

28. Nationstar Mortgage LLC is not entitled to equitable relief because it was on notice of the foreclosure sale and failed to take any steps to protect its interest in the property.

29. The policies and equities favor the plaintiff. In balancing the equities, plaintiff's interest as a bona fide purchaser is not outweighed by the inaction of Nationstar Mortgage.

30. The defendant failed to file an opposition to the plaintiff's motion for summary judgment. Pursuant to EDCR 2.20, the court takes such failure to file an opposition as an admission that the plaintiff's motion is meritorious and a consent to the motion being granted.

31. Any conclusion of law which should be a finding of fact shall be considered as such.

ORDER and JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct for summary judgment is granted.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct against defendant Nationstar Mortgage LLC.

IT IS FURTHER ORDERED that title to the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada and legally described as:

> Lot 70 in Block 1 of Conquistador/Tompkins - Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as: 4641 Viareggio Ct., Las Vegas, NV.
>
> APN 163-19-311-015

is hereby quieted in the name of Saticoy Bay LLC Series 4641 Viareggio Ct.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on August 22, 2013, and the foreclosure deed recorded on September 6, 2013, as instrument number 201309060000930, the interests of defendant Nationstar Mortgage LLC as well as its successors or assigns in the property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada are extinguished.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC, as well as its successors and assigns, have no further right, title or claim to the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC, as well as its successors and assigns, or anyone acting on their behalf, are forever enjoined from asserting any estate, right, title or interest in the real property commonly known as 4641 Viareggio Ct., Las Vegas,

Nevada as a result of the deed of trust recorded on January 25, 2007, as instrument number 20070125-0003583.

IT IS FURTHER ORDERED that defendant Nationstar Mortgage LLC as well as its successors and assigns or anyone acting on their behalf, are forever barred from enforcing any rights against the real property commonly known as 4641 Viareggio Ct., Las Vegas, Nevada as a result of the deed of trust recorded on January 25, 2007, as instrument number 20070125-0003583.

DATED this 8 day of September, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By:
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorneys for Saticoy Bay LLC Series 4641 Viareggio Ct

Reviewed by:

Wright Finlay & Zak, LLP

By:
Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117
Attorneys for Nationstar Mortgage, LLC
Wells Fargo Bank, N.A.

DFJD
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV DATE OF HEARING: September 21, 2017 TIME OF HEARING: 9:30 a.m.
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I Through X, inclusive, Counter-defendants	

DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY

Defendant Monique Guillory, having been served with the Summons and Complaint, and having failed to appear and answer the plaintiff's Complaint filed herein, the time for answering having expired,

and no answer having been filed, the default of said defendant having been duly entered according to law; and plaintiff having filed a motion for default judgment against said defendant with no opposition being entered, this matter coming on the court's calendar on September 21, 2017, at 9:30 a.m., and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct and against defendant Monique Guillory .

IT IS FURTHER ORDERED that title to the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada, and legally described as:

PARCEL ONE (1):

Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Book 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).

is hereby quieted in the name of Saticoy Bay LLC Series 4641 Viareggio Ct and against defendant Monique Guillory only.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on August 22, 2013, and the foreclosure deed recorded on September 6, 2013 , as instrument number 201309060000930, the interests of defendant Monique Guillory, as well as her heirs or assigns in the property commonly known as 4641 Viareggio Court, Las Vegas, Nevada are extinguished.

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IT IS FURTHER ORDERED that defendant Monique Guillory, as well as her heirs and assigns, have no further right, title or claim to the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada.

DATED this 21 day of September, 2017.

J. Escobar

DISTRICT COURT JUDGE
Case No. A689240

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: _____
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

NEDJ
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: II **NOTICE OF ENTRY OF DEFAULT JUDGMENT**
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I Through X, inclusive, Counter-defendants	

TO: Parties above-named; and

TO: Their Attorney of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a **DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY** has been entered on the 25th day of September, 2017, in the above captioned matter, a copy of which is attached hereto.

Dated this 26th day of September, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: /s/ /*Michael F. Bohn, Esq.*/
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 26th day of September, 2017, an electronic copy of the **NOTICE OF ENTRY OF DEFAULT JUDGMENT** was served on opposing counsel via the Court's electronic service system and/or deposited for mailing in the U.S. Mail, postage prepaid to the following:

VIA Wiznet

Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
Wright Finlay & Zak, LLP
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117

Via U.S. Mail

Monique Quilory
7605 Cruz Bay Court
Las Vegas, NV 89128

/s/ /Marc Sameroff/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

DFJD
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV DATE OF HEARING: September 21, 2017 TIME OF HEARING: 9:30 a.m.
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I Through X, inclusive, Counter-defendants	

DEFAULT JUDGMENT AGAINST DEFENDANT MONIQUE GUILLORY

Defendant Monique Guillory, having been served with the Summons and Complaint, and having failed to appear and answer the plaintiff's Complaint filed herein, the time for answering having expired,

and no answer having been filed, the default of said defendant having been duly entered according to law; and plaintiff having filed a motion for default judgment against said defendant with no opposition being entered, this matter coming on the court's calendar on September 21, 2017, at 9:30 a.m., and for good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct and against defendant Monique Guillory .

IT IS FURTHER ORDERED that title to the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada, and legally described as:

PARCEL ONE (1):

Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Book 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).

is hereby quieted in the name of Saticoy Bay LLC Series 4641 Viareggio Ct and against defendant Monique Guillory only.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on August 22, 2013, and the foreclosure deed recorded on September 6, 2013 , as instrument number 201309060000930, the interests of defendant Monique Guillory, as well as her heirs or assigns in the property commonly known as 4641 Viareggio Court, Las Vegas, Nevada are extinguished.

///

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///

IT IS FURTHER ORDERED that defendant Monique Guillory, as well as her heirs and assigns, have no further right, title or claim to the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada.

DATED this 21 day of September, 2017.

J. Escobar

DISTRICT COURT JUDGE
Case No. A689240

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: _____
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

MRCN
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
rhabermas@wrightlegal.net
Attorneys for Defendant/Counterclaimant Nationstar Mortgage, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT, Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY, Defendants.	Case No.: A-13-689240-C Dept. No.: XIV **NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT**
NATIONSTAR MORTGAGE, LLC, Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Counter-Defendants.	

Defendant/Counterclaimant, Nationstar Mortgage, LLC (hereinafter "Nationstar"), by and through its attorneys of record, Dana Jonathon Nitz, Esq., and Regina A. Habermas, Esq., of

the law firm of Wright Finlay & Zak, LLP, hereby submits its Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment.

This Motion is based on EDCR 2.24, N.R.C.P. 60(b), N.R.C.P. 59(e), the attached Memorandum of Points and Authorities, the Declaration of Regina A. Habermas, Esq., the papers and pleadings on file herein, and on any oral or documentary evidence that may be submitted at a hearing on the matter.

DATED this 2 day of October, 2017.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendant/Counterclaimant, Nationstar Mortgage, LLC

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring the attached **NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT** on for hearing on the 02 day of November, 2017, at the hour of 9:30A.m., or as soon thereafter as counsel may be heard.

DATED this 2 day of October, 2017.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
Attorneys for Defendant/Counterclaimant, Nationstar Mortgage, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Nationstar respectfully requests the Court reconsider, grant relief from, and alter or amend the Findings of Fact, Conclusions of Law, and Judgment (the "Judgment") entered in this quiet title action on September 12, 2017. The Court should reconsider the entry of summary judgment in favor of Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct ("Saticoy Bay") for a number of reasons. First, the Court erred by failing to hear oral argument on Saticoy Bay's Motion for Summary Judgment. Second, the untimely filing of Nationstar's Opposition to Saticoy Bay's Motion for Summary Judgment resulted from mistake, inadvertence or excusable neglect. Finally, the Judgment does not accurately reflect the Court's oral ruling on the Motion for Summary Judgment.

II.

FACTUAL AND PROCEDURAL HISTORY

On or about January 22, 2007, Monique Guillory ("Guillory") purchased the Property located at 4641 Viareggio Court, Las Vegas, Nevada 89147 (the "Property").[1] On January 25, 2007, a Deed of Trust was recorded, wherein First Magnus Financial Corporation was identified as the Lender, Great American Title was identified as the Trustee, and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary acting solely as nominee for lender and lender's successors and assigns (the "Deed of Trust"), and which secured a loan in the amount of $258,400.00 (the "Guillory Loan").[2] On August 30, 2012, a Corporate Assignment of Deed of Trust was recorded, reflecting that MERS assigned the Deed of Trust to Nationstar.[3]

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[1] A true and correct copy of the Grant, Bargain and Sale Deed recorded in the Clark County Recorder's Office as Book and Instrument Number 20070125-0003582 is attached Nationstar's Answer to the Complaint and Counterclaim (the "Answer and Counterclaim"), on file herein, as **Exhibit 1**.

[2] A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20070125-0003583 is attached to the Answer and Counterclaim as **Exhibit 2**.

[3] A true and correct copy of the Corporate Assignment of Deed of Trust recorded as Book and Instrument Number 20120830-0000676 is attached to the Answer and Counterclaim as **Exhibit 3**.

On August 18, 2011, a Notice of Delinquent Assessment Lien was recorded against the Property on behalf of Naples Community Homeowners Association (the "HOA").[4] On January 24, 2012, a Notice of Default and Election to Sell under Homeowners Association Lien was recorded against the Property on behalf of the HOA.[5] On July 30, 2012, a Notice of Foreclosure Sale Under Notice of Delinquent Assessment was recorded against the Property.[6] On September 6, 2013, a Foreclosure Deed was recorded stating that Plaintiff was the grantee.[7] Pursuant to the Foreclosure Deed, a non-judicial foreclosure sale purportedly occurred on August 22, 2013 (the "HOA Sale"), whereby Saticoy Bay acquired its interest in the Property, if any, for $5,563.00.[8]

On September 25, 2013, Saticoy Bay initiated this action against Nationstar, Cooper Castle Law Firm, LLP and Guillory alleging causes of action for quiet title and declaratory relief and seeking a writ of restitution against Guillory. On January 24, 2014, the Court stayed the case based upon the large number of HOA foreclosure appeals then pending before the Nevada Supreme Court. The case remained stayed for more than one year and the stay was lifted on February 12, 2015. On March 13, 2015, Nationstar filed an Answer to the Complaint and Counterclaim against Saticoy Bay and the HOA. The Court dismissed Nationstar's claims against Saticoy Bay and the HOA on July 28, 2015 and August 12, 2015 respectively.

On May 15, 2017, Saticoy Bay filed its Motion for Summary Judgment (the "Motion") and the hearing of the Motion was set for June 15, 2017.[9] Due to mistake or inadvertence, the deadline for Nationstar to file and serve its Opposition to the Motion was not calendared in the

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[4] A true and correct copy of the Notice of Lien (HOA) recorded as Book and Instrument Number 20110818-0002904 is attached to the Answer and Counterclaim as **Exhibit 4.**

[5] A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument Number 20120124-0000764 is attached to the Answer and Counterclaim as **Exhibit 5.**

[6] A true and correct copy of the Notice of Foreclosure Sale (HOA) recorded as Book and Instrument Number 20120730-0001448 is attached to the Answer and Counterclaim as **Exhibit 6.**

[7] A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number 20130906-0000930 is attached to the Answer and Counterclaim as **Exhibit 7.**

[8] Id.

[9] See Declaration of Regina A. Habermas, Esq. in Support of Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment, attached hereto as **Exhibit A**, ¶ 6.

case management program used by undersigned counsel's firm and undersigned counsel ("Ms. Habermas") therefore failed to file an Opposition before the deadline to do so.[10] On June 14, 2017, counsel for Saticoy Bay agreed to continue the hearing of the Motion and extend the deadline for Nationstar's Opposition to July 6, 2017.[11] The hearing of the Motion was continued to July 27, 2017.[12] It appears the July 6, 2017 deadline was calendared in counsel's case management program.[13] However, Ms. Habermas does not recall receiving the messages that are typically generated by the program as a deadline approaches and failed to file the Opposition on or before July 6, 2017.[14]

Ms. Habermas was ill and out of the office from Monday, July 24, 2017 through Wednesday, July 26, 2017 and did not realize the July 6, 2017 deadline to file the Opposition had been missed until the evening of July 26, 2017 when she received a message from her assistant about the July 27, 2017 hearing.[15] Ms. Habermas appeared at the July 27, 2017 hearing, advised the Court of her recent illness and requested permission to file an Opposition.[16] The Court granted the request, set August 3, 2017 as the deadline for the Opposition, and continued the hearing to August 10, 2017.[17] When Ms. Habermas returned to the office on July 27, 2017, she advised her assistant of the new deadline and continuance of the hearing and requested the deadline and hearing date be calendared.[18] Due to mistake or inadvertence, the August 10, 2017 hearing was calendared, but the August 3, 2017 deadline for the Opposition was not calendared.[19]

On July 31, 2017, counsel for the parties participated in an EDCR 2.67 conference and agreed to file a Joint Pre-Trial Memorandum.[20] On August 1, 2017, counsel for Saticoy Bay

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[10] Id. at ¶ 7.
[11] Id. at ¶ 8.
[12] Id.
[13] Id. at ¶ 9.
[14] Id.
[15] Id. at ¶ 10.
[16] Id. at ¶ 11.
[17] Id.
[18] Id. at¶ 12.
[19] Id.
[20] Id. at ¶ 13.

provided a draft Joint Pre-Trial Memorandum.[21] Ms. Habermas reviewed the draft and forwarded comments to counsel for Saticoy Bay the same day.[22] On August 2, 2017, Ms. Habermas began to draft the Opposition to Saticoy Bay's Motion and counsel for Saticoy Bay provided a second draft of the Joint Pre-Trial Memorandum for review.[23] On August 3, 2017, Ms. Habermas reviewed the second draft of the Joint Pre-Trial Memorandum and forwarded additional comments to counsel for Saticoy Bay.[24] Also on August 3, 2017, Ms. Habermas finished the Opposition to the Motion and thought she told her assistant to e-file and e-serve it that day.[25] However, the assistant does not recall receiving that direction and the Opposition was not filed.[26] Because the deadline had not been calendared, the firm's case management system did not identify the Opposition as overdue.[27] On August 4, 2017, counsel for the parties finalized the Joint Pre-Trial Memorandum and it was filed that day.[28]

During the evening of August 9, 2017, Ms. Habermas began to prepare for the hearing of the Motion and discovered the Opposition did not appear on the docket.[29] She immediately assembled .pdf files containing the Opposition and exhibits thereto as well as the accompanying Request for Judicial Notice and exhibits thereto.[30] Ms. Habermas then made at least four attempts to e-file and e-serve the documents through the Court's online Odyssey File and Serve program.[31] Each time Ms. Habermas attempted to file and serve a document, she received two error messages: 1) "the file did not upload successfully;" and 2) "Internal Server Error."[32] On August 10, 2017 at 6:15 a.m., Ms. Habermas again attempted to file and serve the Opposition and Request for Judicial Notice, but received the same error messages.[33] Ms. Habermas finally

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[21] Id. at ¶ 14.
[22] Id.
[23] Id. at ¶ 15.
[24] Id. at ¶ 16.
[25] Id. at ¶ 17.
[26] Id.
[27] Id.
[28] Id. at ¶ 18.
[29] Id. at ¶ 19.
[30] Id.
[31] Id.
[32] Id. at ¶ 20 and **Exhibit 1** attached to the Declaration.
[33] Id. at ¶ 21.

succeeded in filing and serving the Opposition and Request for Judicial Notice at 8:19 a.m. and 8:22 a.m. respectively.[34] Ms. Habermas then appeared at the August 10, 2017 hearing and advised the Court that the Opposition had been prepared in a timely manner, but not filed until that morning.[35] The Court decided not to hear oral argument on the merits of the Motion and instead granted the Motion as unopposed and directed counsel for Saticoy Bay to prepare the Order.[36] On September 12, 2017, the Court entered the Judgment.

III.

LEGAL ARGUMENT

A. LEGAL STANDARDS

a. Reconsideration

This Court "may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (citations omitted). Pursuant to EDCR 2.24(b), a motion for reconsideration of a ruling, other than one based on N.R.C.P. 50(b), 52(b), 59 or 60, must be filed "within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order." In this case, written notice of the Court's Findings of Fact, Conclusions of Law and Order was filed and served on September 13, 2017 and this motion is timely made under EDCR 2.24.

b. Alter or Amend

If taken as a Motion to Alter or Amend under Rule 59(e), it is likewise still timely as "[a] motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of the judgment." The Court should grant relief under Rule 59(e) where "(1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in

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[34] Id.
[35] Id. at ¶ 22.
[36] Id. at ¶ 23.

controlling law." *See* Turner v. Burlington Northern Santa Fe R.R. Co., 338 F.3d 1058, 1063 (9th Cir. 2003).

c. Relief From Judgment

This Court has broad discretion in granting relief from judgments. Cook v. Cook, 112 Nev. 179, 181, 912 P.2d 264, 265 (1996). Nevada Rule of Civil Procedure 60(b) allows for relief from a judgment or order on various grounds. The Rule provides, in pertinent part, "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void. ... The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of the judgment or order was served." "The salutary purpose of Rule 60(b) is to redress any injustices that may have resulted because of excusable neglect or the wrongs of an opposing party. Rule 60 should, therefore, be liberally construed to effectuate that purpose." Carlson v. Carlson, 108 Nev. 358, 361-362, 832 P.2d 380, 382 (1992), quoting Nevada Indus. Devel., Inc. v. Benedetti, 103 Nev. 360, 364, 741 P.2d 802, 805 (1987) (emphasis added). It is a firmly established policy of Nevada Supreme Court that "justice is best served when controversies are resolved on their merits whenever possible." Gutenberger v. Continental Thrift and Loan Company, 94 Nev. 173, 175, 576 P.2d 745 (1978). A motion to set aside a judgment on the ground that it is void is not required to be made within six months. Moore v. Moore, 75 Nev. 189, 336 P.2d 1073 (1959). Teriano v. Nev. State Bank (In re Harrison Living Trust), 121 Nev. 217, 112 P.3d 1058 (2005). A void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally. People v. Wade, 116 Ill. 2d 1, 4, 506 N.E.2d 954, 955 (1987).

B. THE COURT ERRED IN REFUSING TO HEAR ARGUMENT ON THE MERITS OF THE MOTION

The Court erred when it decided not to hear oral argument on the merits of the Motion during the August 10, 2017 hearing. Nevada has long followed the rule that it is better to determine a matter on the merits than to decide a case on a technical error of the opponent. *Howe v. Coldren*, 4 Nev. 171, 174 (1868). Other Nevada courts have followed this same thinking. In the case of *Hotel Last Frontier v. Frontier Property,* 79 Nev. 150, 380 P.2d 293 (1963), the Nevada Supreme Court said, "Finally, we mention, as a proper guide to the exercise of discretion, the basic underlying policy to have each case decided on its merits. In the normal course of events, justice is best served by such a policy." *See also, Young v. Johnny Ribeiro Buildings, LLC*, 106 Nev. 88, 787 P.2d 777 (1990); and *Kahn v. Orme*, 108 Nev. 510, 516 (1992) ("This court has held that good public policy dictates that cases be adjudicated on their merits.").

This case turns, in large part, on a legal issue regarding the effect of an HOA foreclosure sale on a first position Deed of Trust. Pursuant to Nevada's policy to adjudicate cases on the merits, Nationstar should have been permitted to present its arguments as to why the first Deed of Trust remains on the Property and why Saticoy Bay is not entitled to judgment in its favor. The Court should correct its error by setting a hearing of the Motion, hearing the parties' arguments and deciding whether Saticoy Bay has demonstrated it is entitled to judgment as a matter of law.

C. THE COURT SHOULD GRANT NATIONSTAR RELIEF BECAUSE THE FAILURE TO FILE ITS OPPOSITION IN A TIMELY MANNER WAS THE RESULT OF MISTAKE, INADVERTENCE OR EXCUSABLE NEGLECT

Nationstar is entitled to relief from the Judgment because the delayed filing of the Opposition was not the result of intentional or culpable conduct on the part of Nationstar. Rather, the delay was caused by a number of errors and miscommunications within the office of Nationstar's counsel. Those errors demonstrate the failure to act in a timely manner was caused by mistake, inadvertence or excusable neglect rather than any bad faith or dilatory motive. Under the circumstances, it is just to grant Nationstar relief from the Judgment and decide the issues presented in the Motion and Opposition on their merits. Indeed, when Saticoy Bay

initiated this action, it requested the Court adjudicate the merits of the parties' adverse claims to the Property, exactly what Nationstar requests now.

D. THE JUDGMENT SHOULD BE AMENDED TO REFLECT ACCURATELY THE COURT'S AUGUST 10, 2017 RULING

As noted above, the Court did not hear argument on the merits of Saticoy Bay's Motion during the August 10, 2017 hearing. Rather, the Court considered the Motion to be unopposed and granted it on that basis. The Court then directed counsel for Saticoy Bay to prepare an order that included findings of fact and conclusions of law. The Judgment contains such findings and conclusions, but does not accurately reflect what occurred during the August 10, 2017 hearing. Instead, the Judgment indicates the Court made its findings of fact and conclusions of law after "having reviewed the plaintiff's motion, and having heard the arguments of counsel."[37] This language indicates the Court heard argument on the merits of the Motion, which was not the case. In addition, the Judgment identifies the date of the hearing as September 10, 2017 rather than August 10, 2017.[38] If the Court denies Nationstar's requests for reconsideration and relief, the Judgment should be amended to correct these errors.

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[37] See Judgment at p. 2, lines 6-8.
[38] Id. at p. 2, line 3.

IV.

CONCLUSION

For these reasons, Nationstar respectfully requests the Court reconsider its ruling, grant Nationstar relief from the Judgment, and conduct a hearing of the merits of Saticoy Bay's Motion for Summary Judgment. If the Court's Judgment is not set aside, it should be amended to correct the errors noted above.

DATED this 2 day of October, 2017.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendant/Counterclaimant, Nationstar Mortgage, LLC

AFFIRMATION

Pursuant to N.R.S. 239B.030, the undersigned does hereby affirm that the preceding **NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT** filed in the above-captioned action **does not** contain the social security number of any person.

DATED this 2 day of October, 2017.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendant/Counterclaimant, Nationstar Mortgage, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 2 day of October, 2017, I did cause a true copy of **NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NECFR 9.

Eserve Contact .	office@bohnlawfirm.com
Michael F Bohn Esq .	mbohn@bohnlawfirm.com
Mark Hutchings	mhutchings@houser-law.com
Victoria Campbell	vcampbell@houser-law.com

An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

DECL
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Ave., Suite 200
Las Vegas, NV 89117
(702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
rhabermas@wrightlegal.net
Attorneys for Defendant/Counterclaimant Nationstar Mortgage, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT, Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY, Defendants.	Case No.: A-13-689240-C Dept. No.: XIV **DECLARATION OF REGINA A. HABERMAS, ESQ. IN SUPPORT OF NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT**
NATIONSTAR MORTGAGE, LLC, Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Counter-Defendants.	

I, Regina A. Habermas, Esq., declare under penalty of perjury under the laws of the State of Nevada as follows:

1. I am an attorney with the law firm of Wright, Finlay & Zak, LLP, and counsel of record for Defendant/Counterclaimant, Nationstar Mortgage, LLC ("Nationstar") in the above-captioned action.

2. I am one of the attorneys responsible for the day-to-day handling of this case.

3. I make this Declaration in support of Nationstar's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment and make it on my own personal knowledge, except as to those matters stated upon information and belief and, as to those matters, I believe them to be true.

4. I am competent to testify in this matter.

5. I am admitted to practice law before all of the courts of the State of Nevada.

6. Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct ("Saticoy Bay") filed its Motion for Summary Judgment in this action on May 15, 2017 (the "Motion") and the hearing of the Motion was set for June 15, 2017.

7. Due to mistake or inadvertence, the deadline for Nationstar to file and serve its Opposition to the Motion was not calendared in the firm's case management program upon which I regularly rely in identifying and prioritizing tasks to be completed. I therefore failed to file an Opposition before the deadline to do so.

8. On June 14, 2017, counsel for Saticoy Bay agreed to continue the hearing of the Motion and extend the deadline for Nationstar's Opposition to July 6, 2017. The hearing of the Motion was continued to July 27, 2017.

9. It appears the July 6, 2017 deadline to file the Opposition was calendared in the firm's case management program. However, I do not recall receiving the messages that are typically generated by that program as a deadline approaches and I failed to file the Opposition on or before July 6, 2017.

10. I was ill and out of the office from Monday, July 24, 2017 through Wednesday, July 26, 2017 and did not realize the July 6, 2017 deadline to file the Opposition had been missed until the evening of July 26, 2017 when I received a message from my assistant about the July 27, 2017 hearing.

11. I appeared at the July 27, 2017 hearing, advised the Court of my recent illness and requested permission to file an Opposition. The Court granted the request, set August 3, 2017 as the deadline for the Opposition, and continued the hearing to August 10, 2017.

12. When I returned to the office on July 27, 2017, I advised my assistant of the new deadline and continuance of the hearing and requested the deadline and hearing date be calendared. Due to mistake or inadvertence, the August 10, 2017 hearing was calendared, but the August 3, 2017 deadline for the Opposition was not calendared.

13. On July 31, 2017, counsel for the parties participated in an EDCR 2.67 conference and agreed to file a Joint Pre-Trial Memorandum.

14. On August 1, 2017, counsel for Saticoy Bay provided a draft Joint Pre-Trial Memorandum. I reviewed the draft and forwarded my comments to counsel for Saticoy Bay the same day.

15. On August 2, 2017, I began to draft the Opposition to Saticoy Bay's Motion and counsel for Saticoy Bay provided a second draft of the Joint Pre-Trial Memorandum for review.

16. On August 3, 2017, I reviewed the second draft of the Joint Pre-Trial Memorandum and forwarded additional comments to counsel for Saticoy Bay.

17. Also on August 3, 2017, I finished the Opposition to the Motion and thought I told my assistant to e-file and e-serve it that day. However, my assistant does not recall receiving that direction and the Opposition was not filed. Because the deadline had not been calendared, the firm's case management system did not flag the Opposition as overdue.

18. On August 4, 2017, counsel for Saticoy Bay and I finalized the Joint Pre-Trial Memorandum and it was filed that day.

19. During the evening of August 9, 2017, I began to prepare for the hearing of the Motion and discovered the Opposition did not appear on the docket. I immediately assembled .pdf files containing the Opposition and exhibits thereto as well as the accompanying Request for Judicial Notice and exhibits thereto. I then made at least four attempts to e-file and e-serve the documents through the Court's online Odyssey File and Serve program.

20. Each time I attempted to file and serve a document, I received two error

messages: 1) "the file did not upload successfully;" and 2) "Internal Server Error." A true and correct copy of the printout of one such set of messages is attached hereto as **Exhibit 1.**

21. On August 10, 2017 at 6:15 a.m., I again attempted to file and serve the Opposition and Request for Judicial Notice, but received the same error messages. I finally succeeded in filing and serving the Opposition and Request for Judicial Notice on August 10, 2017 at 8:19 a.m. and 8:22 a.m. respectively.

22. I then appeared at the August 10, 2017 hearing and advised the Court that the Opposition had been prepared in a timely manner, but not filed until that morning.

23. The Court decided not to hear oral argument on the merits of the Motion and instead granted the Motion as unopposed and directed counsel for Saticoy Bay to prepare an order including findings of fact and conclusions of law.

24. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 2 day of October, 2017.

Regina A. Habermas, Esq.

Exhibit 1

Exhibit 1

Exhibit 1

Case Information

Internal Server Error ×
Internal Server Error

Location
Department 14

Category
Civil

Case Type
Title to Property

Case Initiation Date
9/25/2013

Case #
A-13-689240-C

Assigned to Judge
Escobar, Adriana

Need Help?

Party Information

Party Type	Party Name	Lead Attorney
Plaintiff	Saticoy Bay LLCSeries 4641...	Michael Bohn
Counter Defendant	Saticoy Bay LLCSeries 4641...	Michael Bohn
Defendant	Cooper Castle Law Firm LLP	Jason Peck
Defendant	Nationstar Mortgage LLC	
Counter Claimant	Nationstar Mortgage LLC	
Defendant	Monique Guillory	

Need Help?

1 10 items per page 1 - 6 of 6 items

Add Another Party

Filings

Filing Code	Client Ref #	Filing Description
Opposition - OPPS	619-2014105	Defendant/Counterclaimant Nati...

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Enter the details for this filing

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Filing Type
EFileAndServe

Filing Code
Opposition - OPPS

Filing Description
Defendant/Counterclaimant Nationstar Mortgage, LLC's Opposition to Plaintiff's Motion for Summary Judgment

Client Reference Number
619-2014105

Comments to Court

Courtesy Copies
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Nationstar Mortgage LLC ×

Saticoy Bay LLCSeries 4641 Viareggio Ct.Saticoy Bay LLCSeries 4641 Viareggio CtCooper Castle Law Firm LLPNationstar Mortgage LLCNationstar Mortgage LLCMonique Guillory

Lead Document (Required)

Internal Server Error

Internal Server Error

Opp (A689240) R.pdf *14.67 MB*

The file did not upload successfully. Click here to remove it and try again.

Optional Services and Fees

Optional Services and Fees	Fee Amount	Quantity	Fee Total

Add Optional Services and Fees

Service Contacts

Only contacts checked below will be served electronically.

Se...	Name	Email

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- **Party:** Saticoy Bay LLCSeries 4641 Viareggio Ct. - Plaintiff
- **Party:** Saticoy Bay LLCSeries 4641 Viareggio Ct. - Counter Defendant
- **Party:** Cooper Castle Law Firm LLP - Defendant
- **Party:** Nationstar Mortgage LLC - Defendant
- **Party:** Nationstar Mortgage LLC - Counter Claimant
- **Party:** Monique Guillory - Defendant

Other Service Contacts

☑	Brandon Lopipero .	blopipero@wrightlegal.net
☑	Eserve Contact .	office@bohnlawfirm.com
☑	Michael F Bohn Esq .	mbohn@bohnlawfirm.com
☑	NVEfile .	nvefile@wrightlegal.net
☑	Regina A. Habermas .	rhabermas@wrightlegal.net

1 10 items per page 1 - 7 of 7 items

Fees

▾ Opposition - OPPS

Description	Amount
Filing Fee	$0.00
	Filing Total: $0.00

Internal Server Error

Internal Server Error

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Need Help?

Total Filing Fee	$0.00
E-File Fee	$3.50
	Envelope Total: $3.50

Payment Account

Click to select Payment Account

Party Responsible for Fees

Click to select Party Responsible for Fees

Filing Attorney

Click to select Filing Attorney

Version: 3.16.2.5794

ORDG
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff/counterdefendant

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY

Defendants

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I through X, inclusive,

Counter-defendants

CASE NO.: A689240-C
DEPT NO.: XIV

Date of hearing: September 28, 2017
Time of hearing: Chambers

ORDER GRANTING MOTION FOR VOLUNTARY DISMISSAL

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct's unopposed motion for voluntary dismissal of the Cooper Castle Law Firm as a defendant in this case having come before the court on its chambers calendar, and the court having reviewed the motion, the court notes that EDCR 2.20 provides that the failure to file an opposition to a motion may be construed as an admission that the motion is meritorious and a consent to it's being granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for voluntary dismissal is granted.

IT IS FURTHER ORDERED that the Cooper Castle Law Firm is voluntarily dismissed from this case, with each party to bear their own attorneys fees and costs.

DATED this 3 day of ~~September~~ October, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: _____
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

NEO
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV
NATIONSTAR MORTGAGE, LLC Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPROATIONS I Through X, inclusive, Counter-defendants	

NOTICE OF ENTRY OF ORDER

TO: Parties above-named; and

TO: Their Attorney of Record

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER GRANTING MOTION FOR VOLUNTARY DISMISSAL** has been entered on the 5th day of October, 2017, in the

above captioned matter, a copy of which is attached hereto.

Dated this 5th day of October, 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: /s/ /*Michael F. Bohn, Esq.*/
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW OFFICES OF MICHAEL F. BOHN., ESQ., and on the 5th day of October, 2017, an electronic copy of the **NOTICE OF ENTRY OF ORDER** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
Wright Finlay & Zak, LLP
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117

/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

ORDG
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
atrippiedi@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorneys for plaintiff/counterdefendant

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT

Plaintiff,

vs.

NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY

Defendants

NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; DOES 1 through X; and ROE CORPORATIONS I through X, inclusive,

Counter-defendants

CASE NO.: A689240-C
DEPT NO.: XIV

Date of hearing: September 28, 2017
Time of hearing: Chambers

ORDER GRANTING MOTION FOR VOLUNTARY DISMISSAL

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct's unopposed motion for voluntary dismissal of the Cooper Castle Law Firm as a defendant in this case having come before the court on its chambers calendar, and the court having reviewed the motion, the court notes that EDCR 2.20 provides that the failure to file an opposition to a motion may be construed as an admission that the motion is meritorious and a consent to it's being granted.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for voluntary dismissal is granted.

IT IS FURTHER ORDERED that the Cooper Castle Law Firm is voluntarily dismissed from this case, with each party to bear their own attorneys fees and costs.

DATED this 3 day of ~~September~~ October, 2017

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: _____
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

OPPS
MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY Defendants.	CASE NO.: A-13-689240-C DEPT NO.: XIV

PLAINTIFF'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff, Saticoy Bay LLC Series 4641 Viareggio Ct. (hereinafter "plaintiff"), by and through its attorney, Michael F. Bohn, Esq., submits the following points and authorities in response to the motion for reconsideration, motion for relief, and motion to alter or amend judgment, filed on October 2, 2017, by Nationstar Mortgage, LLC (hereinafter "defendant").

POINTS AND AUTHORITIES

FACTS

Plaintiff is the owner of the real property commonly known as 4641 Viareggio Court, Las Vegas, Nevada. Plaintiff obtained title by a foreclosure deed recorded on September 6, 2013. See Exhibit 1 to

plaintiff's motion for summary judgment, filed on May 15, 2017.

Defendant is the beneficiary by assignment of a deed of trust which was recorded as an encumbrance to the subject property on January 25, 2007. See Exhibit B to defendant's request for judicial notice, filed on August 10, 2017. The deed of trust was assigned to defendant on October 18, 2012. See Exhibit E to defendant's request for judicial notice, filed on August 10, 2017.

Plaintiff filed its motion for summary judgment on May 15, 2017, and plaintiff supported the motion with evidence proving that the HOA and its foreclosure agent complied with all requirements of Nevada law to hold a public auction on August 22, 2013 to foreclose its assessment lien, including the superpriority portion of the lien.

As acknowledged by counsel for defendant at pages 4 and 5 of its motion, defendant failed to timely file an opposition to plaintiff's motion within the deadline provided by EDCR 2.20(e).

Defendant also failed to file an opposition to plaintiff's motion by the deadline of July 6, 2017 agreed to by counsel for the parties on June 14, 2017.

Defendant also failed to file an opposition to plaintiff's motion by the continued hearing date scheduled for July 27, 2017.

Defendant also failed to file an opposition to plaintiff's motion by the deadline of August 3, 2017 set by the court at the hearing held on July 27, 2017.

Defendant instead waited until the morning of the continued hearing set for August 10, 2017 to file a 41 page opposition that exceeded the 30 page limit set by EDCR 2.20(a).

Defendant also failed to support its opposition with admissible evidence as required by NRCP 56 (c) and (e) and EDCR 2.21.

Legal Argument

A. Defendant's motion is not supported by substantially different evidence, and defendant has not proved that the challenged order is clearly erroneous.

At page 7 of its motion, defendant cites Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 941 P.3d 486 (1997), but defendant fails to support its motion with "substantially different evidence," and defendant fails to show how the judgment entered

on September 12, 2017 is "clearly erroneous." In Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd., the Court stated: "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." 941 P.3d at 489 (quoting Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976)). Defendant has not supported its motion with "new issues of fact or law."

At page 7 of its motion, defendant cites NRCP 59(e), but defendant's motion is not supported by evidence proving that the judgment entered on September 12, 2017 contains "manifest errors of law or fact." Defendant has also not supported its motion with "newly discovered or previously unavailable evidence." Defendant has also not proved that its motion is "necessary to prevent manifest injustice" or that there has been "an intervening change in controlling law."

B. Defendant has not met the requirements for relief under NRCP 60(b).

At page 8 of its motion, defendant cites NRCP 60(b), and at page 9 of its motion, defendant states that its "failure to act in a timely manner was caused by mistake, inadvertence or excusable neglect." On the other hand, defendant has not supported its motion with admissible evidence proving that its failure to comply with the time deadlines set by the Nevada Rules of Civil Procedure and the Eighth Judicial District Court Rules is "excusable."

Even after missing four deadlines, defendant filed an opposition that did not comply with court rules. Defendant also failed to support its untimely filed opposition with admissible evidence. As a result, even if this court had considered defendant's late-filed opposition, filed on August 10, 2017, summary judgment was properly entered in plaintiff's favor.

At pages 12 to 26 of its opposition, defendant stated that the HOA foreclosure sale was barred by 12 U.S.C. § 4617(j)(3), but defendant did not produce admissible evidence proving that Freddie Mac complied with Nevada law to own the deed of trust on the date of the foreclosure sale. As noted above, Exhibit E to defendant's request for judicial notice, filed on August 10, 2107, proves that the deed of trust was assigned to defendant on October 18, 2012. No assignment of the deed of trust to Freddie Mac was ever recorded. Defendant also failed to produce admissible evidence proving that it was the servicer for Freddie Mac on the date of the foreclosure sale.

At page 6 of its opposition, defendant stated that the declaration of Freddie Mac attached as Exhibit C to its opposition proved that Freddie Mac purchased the loan on or about March 29, 2007 and maintained that ownership at the time of the HOA foreclosure sale. No declaration by Freddie Mac was attached to the opposition as Exhibit C.

At pages 26 to 29 of its opposition, defendant stated that plaintiff was not a bona fide purchaser, but defendant did not produce admissible evidence of any defect in the HOA foreclosure sale that would prevent defendant's subordinate deed of trust from being extinguished by foreclosure of the HOA's superpriority lien. At page 28 of its opposition, defendant cited the Mortgage Protection Clause in Section 7.8 of the CC&Rs, but the Nevada Supreme Court held in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), that NRS 116.1104 prevents any language in the CC&Rs from varying or waiving the superpriority lien rights granted to the HOA by NRS 116.3116(2).

At pages 30 to 33 of its opposition, defendant stated that the foreclosure sale was "commercially unreasonable," but no such requirement exists for an HOA foreclosure sale. At page 32 of its opposition, defendant states that the California rule adopted by the Nevada Supreme Court in Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963), cert. denied, 382 U.S. 844 (1965), was satisfied by the mortgage protection provisions in the CC&Rs, by the HOA's failure "to obtain the best price or protect other lienholders," and by the HOA's failure to identify any super-priority lien in its notices. The Nevada Supreme Court rejected each of these objections in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.

At pages 33 and 34 of its opposition, defendant stated that in Shadow Wood Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016), the Nevada Supreme Court "rejected the argument that the recitals in a foreclosure deed are conclusive," but the Nevada Supreme Court instead stated that the recitals in the foreclosure deed are conclusive "*in the absence of grounds for equitable relief*." 366 P.3d at 1112. (emphasis in original) The court also cited Bechtel v. Wilson, 18 Cal. App. 2d 331, 63 P.2d 1170, 1172 (Cal. Ct. App. 1936), as "distinguishing between a challenge to the sufficiency of pre-sale notice, **which was precluded by the conclusive recitals** in the deed, and an equity-based challenge based upon the alleged unfairness

of the sale." 366 P.3d at 1112. (emphasis added)

At page 34 to 41 of its opposition, defendant stated that the foreclosure statute is facially unconstitutional, but the Nevada Supreme Court held in Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev., Adv. Op. 5 (Jan. 26, 2017), that due process is not an issue for an HOA foreclosure sale because no "state actor" participates in the foreclosure process. Defendant cited Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F.3d 1154 (9th Cir. 2016), but only the Nevada Supreme Court can authoritatively construe NRS Chapter 116.

In Blanton v. N. Las Vegas Mun. Ct., 103, Nev. 623, 633, 748 P.2d 494, 500 (1987), *aff'd*, Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989), the Nevada Supreme Court stated:

> We note initially that the decisions of the federal district court and panels of the federal circuit court of appeal are not binding upon this court. United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1075-76 (7th Cir. 1970), *cert. denied*, 402 U.S. 983, 91 S.Ct. 1658, 29 L.Ed. 2d 140 (1971). Even *en banc* decision of a federal circuit court would not bind Nevada to restructure the court system of this state. Our state constitution binds the courts of the State of Nevada to the United States Constitution as interpreted by the United States Supreme Court. art. I, §2. See Bargas v. Warden, 87 Nev. 30, 482 P.2d 317, *cert. denied*, 403 U.S. 935, 91 S. Ct. 2267, 29 L.Ed.2d 715 (1971).

In California Teachers Association v. State Board of Education, 271 F.3d 1141 (9th Cir. 2001), the court identified the following limits on a federal court's power to interpret state law:

> We recognize that it is **solely within the province of the state courts to authoritatively construe state legislation**. *See* United States v. Thirty–Seven (37) Photographs, 402 U.S. 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we authorized to rewrite the law so it will pass constitutional muster. Virginia v. American Booksellers Ass'n, Inc., 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988). A federal court's duty, when faced with a constitutional challenge such as this one, is to employ traditional tools of statutory construction to determine the statute's "allowable meaning." Grayned v. City of Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972); Stoianoff v. Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In doing so, **we look to the words of the statute itself as well as state court interpretations of the same or similar statutes**. Grayned, 408 U.S. at 109–10, 92 S. Ct. 2294. Moreover, before invalidating a state statute on its face, a federal court **must determine whether the statute is "readily susceptible" to a narrowing construction by the state courts.** American Booksellers, 484 U.S. at 397, 108 S. Ct. 636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997). (emphasis added)
>
> 271 F.3d at 1146-1147.

In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court stated:

> Federal courts lack competence to rule definitively on the meaning of state legislation, see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate

challenges to state measures absent a showing of actual impact on the challenger, see, e.g., Golden v. Zwickler, 394 U.S. 103, 110 (1969).

In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978), the court stated that "the Oklahoma Courts may express their differing views on the retroactivity problem **or similar federal questions** until we are all guided by a binding decision of the Supreme Court." (emphasis added)

In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court stated that "[a] more cautious approach was in order" and that "[t]hrough certification of novel or unsettled questions of state law for authoritative answers by a State's highest court, a federal court may save 'time, energy, and resources and hel[p] build a cooperative judicial federalism.'"

CONCLUSION

For the reasons set forth above, plaintiff respectfully requests that the court enter an order denying defendant's motion for reconsideration, motion for relief, and motion to alter or amend judgment.

DATED this 17th day of October 2017.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 17th day of October, 2017 an electronic copy of the PLAINTIFF'S OPPOSITION TO NATIONSTAR MORTGAGE, LLC'S MOTION FOR RECONSIDERATION, MOTION FOR RELIEF, AND MOTION TO ALTER OR AMEND JUDGMENT was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Dana Jonathon Nitz, Esq.
Regina A. Habermas, Esq.
Wright Finlay & Zak, LLP
7785 W. Sahara Ave. # 200
Las Vegas, NV 89117

/s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**November 02, 2017**

A-13-689240-C Saticoy Bay LLCSeries 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

November 02, 2017	**9:30 AM**	**Motion For Reconsideration**	**Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES PRESENT:
Bohn, Michael F — Attorney for Plaintiff
Habermas, Regina A. — Attorney for Defendant

JOURNAL ENTRIES

- Ms. Habermas stated there was no intentional misconduct; the failure to timely file an opposition was due to a series of mistakes made in her office. She requested that the judgment be set aside and matter set for oral judgment. COURT ORDERED, Motion to Alter or Amend Judgment is GRANTED. Mr. Bohn stated that the matter had been continued more than one time for counsel to file an opposition. Following CONFERENCE AT BENCH, COURT ORDERED, matter set for hearing. Mr. Bohn is to file a reply to the opposition and the matter will be heard on the merits. FURTHER, sanctions will be determined against the defense at that time. Mr. Bohn to prepare the order.

12/5/17 9:30 AM PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

RJFN
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Tel: (702) 475-7964; Fax: (702) 946-1345
dnitz@wrightlegal.net
rhabermas@wrightlegal.net
Attorneys for Defendant/Counter-Claimant, Nationstar Mortgage, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641 VIAREGGIO CT, Plaintiff, vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; and MONIQUE GUILLORY, Defendants.	Case No.: A-13-689240-C Dept. No.: V **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT/ COUNTERCLAIMANT NATIONSTAR MORTGAGE, LLC'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
NATIONSTAR MORTGAGE, LLC, Counterclaimant, vs. SATICOY BAY LLC SERIES 4641 VIAREGGIO CT; NAPLES COMMUNITY HOMEOWNERS ASSOCIATION; LEACH JOHNSON SONG & GRUCHOW; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Counter-Defendants.	

Defendant/Counterclaimant Nationstar Mortgage, LLC ("Nationstar"), by and through its attorneys of record, Dana Jonathon Nitz Esq. and Regina A. Habermas, Esq. of the law firm of Wright, Finlay & Zak, LLP, hereby requests the Court take judicial notice of the following

documents submitted in support of its Amended Opposition to Plaintiff/Counter-Defendant Saticoy Bay LLC Series 4641 Viareggio Ct's Motion for Summary Judgment.

1. A true and correct copy of the Statement on Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations, dated August 28, 2015 is attached hereto as **Exhibit A**.

2. A true and correct copy of the Deed of Trust recorded in the Clark County Recorder's Office as Book and Instrument Number 20070125-0003583 on January 25, 2007, is attached hereto as **Exhibit B**. All other recording identified hereafter were recorded in the same manner and method.

3. A true and correct copy of the Corporate Assignment of Deed of Trust recorded as Book and Instrument Number 20110211-0002654 on February 11, 2011, is attached hereto as **Exhibit D**.

4. A true and correct copy of the Assignment of Deed of Trust recorded as Book and Instrument Number 20121018-0000833 on October 18, 2012, is attached hereto as **Exhibit E**.

5. A true and correct copy of the Lien for Delinquent Assessments recorded as Book and Instrument Number 20070730-0000902 on July 30, 2007, is attached hereto as **Exhibit F**.

6. A true and correct copy of the Release of Lien for Delinquent Assessments recorded as Book and Instrument Number 20071109-0001010 on November 9, 2007, is attached hereto as **Exhibit G**.

7. A true and correct copy of the Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 20110818-0002904 on August 18, 2011, is attached hereto as **Exhibit H**.

8. A true and correct copy of the Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 20120124-0000764 on January 24, 2012, is attached hereto as **Exhibit I**.

9. A true and correct copy of the Notice of Foreclosure Sale Under Notice of Delinquent Assessment Lien recorded as Book and Instrument Number 20120730-0001448 on November 26, 2013, is attached hereto as **Exhibit J**.

10. A true and correct copy of the Foreclosure Deed recorded as Book and Instrument Number 20130906-0000930 on September 6, 2013, 2013, is attached hereto as **Exhibit K**.

11. A true and correct copy of the Statement on HOA Super-Priority Lien Foreclosures dated April 21, 2015 is attached hereto as **Exhibit L**.

12. A true and correct copy of the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Naples recorded as Book and Instrument Number 20000307-0000911 on March 7, 2000, is attached hereto as **Exhibit M**.

DATED this 19th day of December, 2017.

WRIGHT, FINLAY & ZAK, LLP

/s/ Regina A. Habermas, Esq.
Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Regina A. Habermas, Esq.
Nevada Bar No. 8481
7785 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
Attorneys for Defendant/Counter-Claimant, NATIONSTAR MORTGAGE, LLC

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 19th day of December, 2017, I did cause a true copy of **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT/COUNTERCLAIMANT NATIONSTAR MORTGAGE, LLC'S AMENDED OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** to be e-served through the Eighth Judicial District EFP system pursuant to NECFR 9, addressed as follows:

Eserve Contact .	office@bohnlawfirm.com
Michael F Bohn Esq .	mbohn@bohnlawfirm.com
Mark Hutchings	mhutchings@houser-law.com
Victoria Campbell	vcampbell@houser-law.com

/s/ Regina A. Habermas
An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

Federal Housing Finance Agency

August 28, 2015

Servicer Reliance on the Housing and Economic Recovery Act of 2008 in Foreclosures Involving Homeownership Associations

As noted in the December 22, 2014 and April 21, 2015 statements on certain super-priority liens, the Federal Housing Finance Agency has an obligation to protect Fannie Mae's and Freddie Mac's property rights. FHFA will aggressively do so by bringing or supporting actions to contest common ownership association (commonly known as HOAs) foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law.

This statement confirms that FHFA supports the reliance on Title 12 United States Code Section 4617(j)(3) in litigation by authorized servicers of the Enterprises to preclude the purported involuntary extinguishment of an Enterprise's property interest by an HOA foreclosure sale.

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency

EXHIBIT B

EXHIBIT B

EXHIBIT B

21

20070125-0003583

Fee: $40.00
N/C Fee: $0.00

01/25/2007 13:30:50
T20070014336
Requestor:
GREAT AMERICAN TITLE

Debbie Conway KXC
Clark County Recorder Pgs: 27

Assessor's Parcel Number:
163-19-311-015
Return To:
FIRST MAGNUS FINANCIAL CORPORATION

603 N. WILMOT
TUCSON, AZ 85711

Prepared By:

FIRST MAGNUS FINANCIAL CORPORATION
603 N. WILMOT
TUCSON, AZ 85711

~~Recording Requested By:~~
FIRST MAGNUS FINANCIAL CORPORATION

07.01.6578DH [Space Above This Line For Recording Data] 4

DEED OF TRUST

LOAN NO.: 5040782241
ESCROW NO.: 07-01-6578DH

MIN 100039250407822414
MERS Phone: 1-888-679-6377

DEFINITIONS
Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.
(A) "Security Instrument" means this document, which is dated JANUARY 17, 2007 , together with all Riders to this document.
(B) "Borrower" is
MONIQUE GUILLORY, A SINGLE WOMAN

Borrower is the trustor under this Security Instrument.
(C) "Lender" is
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

Lender is a CORPORATION
organized and existing under the laws of ARIZONA

Lender's address is
603 North Wilmot Road, Tucson, AZ 85711
(D) "Trustee" is
GREAT AMERICAN TITLE
(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated JANUARY 17, 2007
The Note states that Borrower owes Lender
TWO HUNDRED FIFTY EIGHT THOUSAND FOUR HUNDRED AND NO/100 X X X X X X X X X
Dollars
(U.S. $ 258,400.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 01, 2037
(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

[XX] Adjustable Rate Rider	[ ] Condominium Rider	[ ] 1-4 Family Rider
[ ] Graduated Payment Rider	[XX] Planned Unit Development Rider	[ ] Biweekly Payment Rider
[ ] Balloon Rider	[ ] Rate Improvement Rider	[ ] Second Home Rider
[XX] Other(s) [specify]	INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER ADDENDUM TO ADJUSTABLE RATE RIDER	

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.
(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.
(M) "Escrow Items" means those items that are described in Section 3.
(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.
(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.
(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

Initials: MG

(Q) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(R) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

The beneficiary of this Security Instrument is MERS (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction] of CLARK [Name of Recording Jurisdiction]:

LEGAL DESCRIPTION ATTACHED HERETO AND MADE PART HEREOF .....AND BEING MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 163-19-311-015 which currently has the address of

4641 VIAREGGIO COURT [Street]

LAS VEGAS [City], Nevada 89147 [Zip Code]

("Property Address"):

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives

Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. **Assignment of Miscellaneous Proceeds; Forfeiture.** All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

Initials: MG

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be

one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the Note, and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold, and shall cause such notice to be recorded in each county in which any part of the Property is located. Lender shall mail copies of the notice as prescribed by Applicable Law to Borrower and to the persons prescribed by Applicable Law. Trustee shall give public notice of sale to the persons and in the manner prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs. Lender may charge such person or persons a fee for reconveying the Property, but only if the fee is paid to a third party (such as the Trustee) for services rendered and the charging of the fee is permitted under Applicable Law.

24. Substitute Trustee. Lender at its option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. Assumption Fee. If there is an assumption of this loan, Lender may charge an assumption fee of U.S. $.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

_____
-Witness

_____
-Witness

MONIQUE GUILLORY (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

_____ (Seal) -Borrower

STATE OF ~~NEVADA~~ California
COUNTY OF Los Angeles

This instrument was acknowledged before me on January 19, 2007 by MONIQUE GUILLORY

Notary Public

Mail Tax Statements To:

CLARK COUNTY

PO BOX 551220
LAS VEGAS, NV 89155-0000

PLANNED UNIT DEVELOPMENT RIDER

LOAN NO.: 5040782241

MIN: 100039250407822414
MERS Phone: 1-888-679-6377

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 17th day of JANUARY, 2007 , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

COVENANTS, CONDITIONS AND RESTRICTIONS.
(the "Declaration"). The Property is a part of a planned unit development known as

CONQUISTADOR TOMPKINS

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

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

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

Initials:

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become

Initials: MG

additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

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

MONIQUE GUILLORY _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

ADJUSTABLE RATE RIDER

(LIBOR Six-Month Index (As Published In *The Wall Street Journal*) - Rate Caps)

SEE "ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.
SEE "INTEREST-ONLY ADDENDUM TO ARM RIDER" ATTACHED HERETO AND MADE A PART HEREOF.
LOAN NO.: 5040782241 MIN: 100039250407822414
MERS Phone: 1-888-679-6377

THIS ADJUSTABLE RATE RIDER is made this 17th day of JANUARY, 2007, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

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

4641 VIAREGGIO COURT, LAS VEGAS, NV 89147
[Property Address]

THE NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE INTEREST RATE AND THE MONTHLY PAYMENT. THE NOTE LIMITS THE AMOUNT BORROWER'S INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of 8.375 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of FEBRUARY, 2012, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in The Wall Street Journal. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

Initials: MG

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE QUARTERS percentage points (2.750 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage points (2.000 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 14.375 % , or less than 8.375 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

Initials: MG

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

MONIQUE GUILLORY (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

INTEREST-ONLY ADDENDUM TO ADJUSTABLE RATE RIDER

LOAN NO.: 5040782241

MIN: 100039250407822414
MERS Phone: 1-888-679-6377

PROPERTY ADDRESS: 4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

THIS ADDENDUM is made this 17th day of JANUARY, 2007 , and is incorporated into and intended to form a part of the Adjustable Rate Rider (the "Rider") dated the same date as this Addendum executed by the undersigned and payable to
FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION

(the "Lender").

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND THREE QUARTERS percentage point(s) (2.750 %) to the Current Index for such Change Date. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

Initials: MG7

MONIQUE GUILLORY (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

ADDENDUM TO ADJUSTABLE RATE RIDER

MIN: 100039250407822414 LOAN NO.: 5040782241
MERS Phone: 1-888-679-6377

This addendum is made JANUARY 17, 2007 and is incorporated into and deemed to amend and supplement the Adjustable Rate Rider of the same date.

The property covered by this addendum is described in the Security Instrument and located at:
4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

AMENDED PROVISIONS

In addition to the provisions and agreements made in the Security Instrument, I/we further covenant and agree as follows:

ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 14.375 % or less than 8.375 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000THS percentage point(s) (2.000 %) from the rate of interest I have been paying for the preceding six (6) months. My interest rate will never be greater than 14.375 %. My interest rate will never be less than 8.375 %.

TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Uniform Covenant 18 of the Security Instrument is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

Initials: MG

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

In Witness Thereof, Trustor has executed this addendum.

Witness

_____

MONIQUE GUILLORY _____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

_____(Seal) -Borrower

EXHIBIT "A"

PARCEL ONE (1):

Lot Seventy (70) in Block One (1) of CONQUISTADOR/TOMPKINS-UNIT 2, as shown by map thereof on file in Bokk 93 of Plats, Page 1, in the Office of the County Recorder of Clark County, Nevada.

PARCEL TWO (2):

A non exclusive easement for ingress, egress and Public Utility Purposes on, over and Across the Private Streets on the Map Referenced Hereinabove, which easement is Appurtenant to parcel one (1).

EXHIBIT D

EXHIBIT D

EXHIBIT D

Inst #: 201102110002654
Fees: $15.00
N/C Fee: $0.00
02/11/2011 11:01:31 AM
Receipt #: 674859
Requestor:
LSI TITLE AGENCY INC.
Recorded By: SCA Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

Assessor's/Tax ID No. 163-19-311-015

Recording Requested By:
AURORA LOAN SERVICES

When Recorded Return To:
ASSIGNMENT PREP
AURORA LOAN SERVICES
P.O. Box 1706
Scottsbluff, NE 69363-1706
10077063

CORPORATE ASSIGNMENT OF DEED OF TRUST

Clark, Nevada
SELLER'S SERVICING #:0040026742 "GUILLORY"
OLD SERVICING #: FC

MERS #: 100039250407822414 VRU #: 1-888-679-6377

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THIS DOCUMENT SUBMITTED FOR RECORDING DOES NOT CONTAIN PERSONAL INFORMATION ABOUT ANY PERSON.

Date of Assignment: February 1st, 2011
Assignor: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION IT'S SUCCESSORS AND ASSIGNS at 1901 E VOORHEES STREET, SUITE C, DANVILLE, IL 61834
Assignee: AURORA LOAN SERVICES LLC at 2617 COLLEGE PARK, SCOTTSBLUFF, NE 69361

Executed By: MONIQUE GUILLORY, A SINGLE WOMAN To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION
Date of Deed of Trust: 01/17/2007 Recorded: 01/25/2007 in Book: 20070125 as Instrument No.: 0003583 In the County of Clark, State of Nevada.

Assessor's/Tax ID No. 163-19-311-015

Property Address: 4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of TEN and NO/100ths DOLLARS and other good and valuable consideration, paid to the above named Assignor, the receipt and sufficiency of which is hereby acknowledged, said Assignor hereby assigns unto the above-named Assignee, the said Deed of Trust having an original principal sum of with interest, secured thereby, with all moneys now owing or that may hereafter become due or *RRG*RRGALSI*02/01/2011 07:59:51 AM* ALSI01ALSIA0000000000000000701648* NVCLARK* 0040026742 NVCLARK_TRUST_ASSIGN_ASSN * *RRGALSI*

owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Deed of Trust.

TO HAVE AND TO HOLD the said Deed of Trust, and the said property unto the said Assignee forever, subject to the terms contained in said Deed of Trust. IN WITNESS WHEREOF, the assignor has executed these presents the day and year first above written:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR FIRST MAGNUS FINANCIAL CORPORATION, AN ARIZONA CORPORATION IT'S SUCCESSORS AND ASSIGNS
On February 1st, 2011

By:
JAN WALSH, Vice-President

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. CORPORATE SEAL 1995 DELAWARE

STATE OF Nebraska
COUNTY OF Scotts Bluff

ON February 1st, 2011, before me, IRENE GUERRERO, a Notary Public in and for the County of Scotts Bluff County, State of Nebraska, personally appeared JAN WALSH, Vice-President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

IRENE GUERRERO
Notary Expires: 09/14/2013

GENERAL NOTARY - State of Nebraska
IRENE GUERRERO
My Comm. Exp. Sept. 14, 2013

(This area for notarial seal)

Mail Tax Statements To: MONIQUE GUILLORY, 4641 VIAREGGIO COURT, LAS VEGAS, NV 89147

*RRG*RRGALSI*02/01/2011 07:59:51 AM* ALSI01ALSIA0000000000000000701648* NVCLARK* 0040026742 NVCLARK_TRUST_ASSIGN_ASSN * *RRGALSI*

EXHIBIT E

EXHIBIT E

EXHIBIT E

Inst #: 201210180000833
Fees: $17.00
N/C Fee: $25.00
10/18/2012 08:07:07 AM
Receipt #: 1348388
Requestor:
CASTLE STAWIARSKI, LLC - NE
Recorded By: GILKS Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

Requested and Prepared by:
The Cooper Castle Law Firm

When Recorded Mail To:
Cooper Castle Law Firm, LLP
5275 S. Durango Drive
Las Vegas, NV 89113

A.P.N.: 163-19-311-015
TS NO: 12-08-45830-NV

Property Address: 4641 Viareggio Court
Las Vegas, NV 89147

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to: Nationstar Mortgage, LLC all beneficial interest under that certain Deed of Trust dated: January 17, 2007 executed by Monique Guillory, a single woman, as Trustor(s), Great American Title as Trustee, and recorded as 20070125-0003583 on January 25, 2007 of Official Records, in the office of the County Recorder of Clark County, Nevada, with all moneys now owing or that may hereafter become due or owing in respect thereof and also all rights accrued or to accrue under said Deed of Trust.

Date of Execution: 10-8-12

Nationstar Mortgage LLC, as attorney in fact for Aurora Loan Services LLC

10-8-12
By: Sean McKenzie
Title: Assistant Secretary

Acknowledgement:
State of Texas
County of Denton

On 10/8/12 before me Matthew J Johnstone, personally appeared Sean McKenzie who provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.
I certify under PENALTY OF PERJURY under the laws of the State of Texas that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

Signature _____

MATTHEW J. JOHNSTONE
Notary Public, State of Texas
My Commission Expires
June 20, 2016

EXHIBIT F

EXHIBIT F

EXHIBIT F

20070730-0000902

Fee: $14.00
N/C Fee: $0.00

07/30/2007 09:46:43
T20070136428
Requestor:
NORTH AMERICAN TITLE COMPANY

Debbie Conway DHG
Clark County Recorder Pgs: 1

Assessor Parcel Number: 163-19-311-015
File Number: R16253

107

LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HERBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Naples Community Homeowners Association, herein also called the Association, in accordance with Nevada Revised Statues and outlined in the Association Covenants, Conditions, and Restrictions, herein also called CC&R's, recorded on 3/7/2000, in Book Number 20000307, as Instrument Number 00911 and including any and all Amendments and Annexations et. seq., of Official Records of Clark County, Nevada. Which have been supplied to and agreed upon by said owner.

Said Association imposes a Lien for Delinquent Assessments on the commonly known property:
4641 Viareggio Court, Las Vegas, NV 89147
CONQUISTADOR TOMPKINS- UNIT 2 PLAT BOOK 93 PAGE 1 LOT 70 BLOCK 1, in the County of Clark

Current Owner(s) of Record:
MONIQUE GUILLORY

The amount owing as of the date of preparation of this lien is **$1,532.95.
This amount includes assessments, late fees, interest, fines/violations and collection fees and costs.
**The said amount will increase as assessments, late fees, interest, fines/violations, collection fees and costs and/or decrease as partial payments are applied to the account.

Dated: July 25, 2007

Prepared By Monique Washington, Red Rock Financial Services, on behalf of Naples Community Homeowners Association

STATE OF NEVADA)
COUNTY OF CLARK)
On July 25, 2007, before me, personally appeared Monique Washington, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

ASHLEY REMEIKA
Notary Public State of Nevada
No. 05-98151-1
My appt. exp. July 14, 2009

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118
702-932-6887

EXHIBIT G

EXHIBIT G

EXHIBIT G

20071109-0001010
Fee: $14.00
N/C Fee: $0.00
11/09/2007 09:20:34
T20070198088
Requestor:
NORTH AMERICAN TITLE COMPANY
Debbie Conway DHG
Clark County Recorder Pgs: 1

Assessor Parcel Number: 163-19-311-015
File Number: R16253

RELEASE OF LIEN FOR DELINQUENT ASSESSMENTS

Red Rock Financial Services, a division of RMI Management LLC, is a debt collector and is attempting to collect a debt. Any information obtained will be used for that purpose.

NOTICE IS HERBY GIVEN: Red Rock Financial Services, a division of RMI Management LLC, officially assigned as agent by the Naples Community Homeowners Association which the Lien for Delinquent Assessments was executed and affecting the following described property situated in the County of Clark, State of Nevada, and more commonly known as:

4641 Viareggio Court, Las Vegas, NV 89147
CONQUISTADOR TOMPKINS- UNIT 2 PLAT BOOK 93 PAGE 1 LOT 70 BLOCK 1, recorded at the Clark County, Nevada Recorders Office.

The owner(s) of record on said Lien: MONIQUE GUILLORY

The Lien for Delinquent Assessments recorded at the Clark County, Nevada Recorders Office on 7/30/2007 as Book Number 20070730, as Instrument Number 0000902, against above said property is herby released and satisfied.

Dated: November 7, 2007

Stacy Dominguez

Prepared By Stacy Dominguez, with Red Rock Financial Services, on behalf of Naples Community Homeowners Association

STATE OF NEVADA)
COUNTY OF CLARK)

On November 7, 2007, before me, personally appeared Stacy Dominguez, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Charita Pangelinan

CHARITA PANGELINAN
Notary Public State of Nevada
No. 07-4801-1
My appt. exp. Sept. 5, 2011

When Recorded Mail To: Red Rock Financial Services
6830 West Oquendo Road, Suite 201
Las Vegas, Nevada 89118

EXHIBIT H

EXHIBIT H

EXHIBIT H

Inst #: 201108180002904
Fees: $15.00
N/C Fee: $0.00
08/18/2011 02:30:03 PM
Receipt #: 884554
Requestor:
LEACH JOHNSON SONG & GRUCHC
Recorded By: MGM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

JOHN E. LEACH, ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that, pursuant to the provisions of the Nevada Revised Statutes, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION claims a lien upon the real property and buildings, improvements or structures thereon, described in Paragraph 2 below, and states the following:

1. The amount of the assessment, late charge, interest, costs and penalties is $1,288.86, as of August 17, 2011, and currently increases at the rate of $40.00 per month for regular assessments, plus late charges for each late payment, plus interest on any delinquent amount, as well as additional attorney fees and fees of the agent for the management body, including such fees incurred in connection with preparation, recording and foreclosure of this lien and/or which may thereafter accrue.

2. The property against which the assessment is assessed is described as follows:

> Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

3. The name of the record owner(s) is: Monique Guillory, a single woman, as evidenced by a Grant, Bargain, Sale Deed, recorded January 25, 2007, in Book No. 20070125, as Instrument No. 0003582.

DATED this 17th day of August, 2011.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By _____
JOHN E. LEACH, ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JOHN E. LEACH, ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for NAPLES COMMUNITY HOMEOWNERS ASSOCIATION in the above-entitled matter; that I have read the foregoing, **Notice of Delinquent Assessment Lien**, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

_____
JOHN E. LEACH, ESQ.

SUBSCRIBED and SWORN to before me
this 17th day of August, 2011.

HEATHER L. KELLEY
Notary Public State of Nevada
No. 02-73274-1
My appt. exp. Dec. 30, 2013

_____
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 02-73274-1
Notary Seal Expiration: December 30, 2013

EXHIBIT I

EXHIBIT I

EXHIBIT I

Inst #: 201201240000764
Fees: $18.00
N/C Fee: $0.00
01/24/2012 09:27:49 AM
Receipt #: 1044083
Requestor:
LEACH JOHNSON SONG & GRUCHC
Recorded By: LEX Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When Recorded, Mail To:

KIRBY C. GRUCHOW, JR., ESQ.
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148

APN No.: 163-19-311-015

WARNING!
IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

NOTICE OF DEFAULT AND ELECTION TO SELL
REAL PROPERTY TO SATISFY NOTICE OF DELINQUENT ASSESSMENT LIEN

NOTICE IS HEREBY GIVEN that Naples Community Homeowners Association is the lienholder and beneficiary under a Notice of Delinquent Assessment Lien, executed by Kirby C. Gruchow, Jr., Esq., as Authorized Agent for Naples Community Homeowners Association, to secure certain obligations of Monique Guillory, record owner of the Property, in favor of Naples Community Homeowners Association, and recorded on August 18, 2011, in Book No. 20110818, as Instrument No. 0002904, of the Official Records in the Office of the Recorder of Clark County, Nevada, describing land therein as:

> All that certain real property situated in the County of Clark, State of Nevada, described as follows:
>
> Lot Seventy (70) in Block One (1) of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Book 93 of Plats, Page 1, all in the Office of the County Recorder of Clark County, Nevada, more commonly known as: 4641 Viareggio Court, Las Vegas, Nevada 89147.

Said obligations being in the amount of $2,361.35, as of January 11, 2012, plus assessments, late charges, interest, costs, attorney fees, and fees of the agent for the management body, that have accrued since January 12, 2012, that the beneficial interest under such Notice of Delinquent Assessment Lien and the obligations secured thereby are presently held by the undersigned; that a breach of, and default in, the obligations for which such Notice of Delinquent Assessment Lien is security has occurred in that payment has not been made in the above-referenced amounts and the

account has not been brought current; that by reason thereof, the present beneficiary under such Notice of Delinquent Assessment Lien has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the property to be sold to satisfy the obligations secured thereby.

PURSUANT TO NEVADA REVISED STATUTES, a sale will be held if the obligations to the lienholder and beneficiary are not completely satisfied and paid within ninety (90) days from the date of recording of this Notice, on the real property described hereinabove.

DATED this 23rd day of January, 2012.

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By _____
KIRBY C. GRUCHOW, JR., ESQ., as Authorized Agent for Naples Community Homeowners Association

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

KIRBY C. GRUCHOW, JR., ESQ., being first duly sworn, deposes and says:

That I am the Authorized Agent for Naples Community Homeowners Association in the above-entitled matter; that I have read the foregoing, **Notice of Default and Election to Sell Real Property to Satisfy Notice of Delinquent Assessment Lien**, and know the contents thereof, and that the same is true to the best of my knowledge, except as to those matters therein stated on information and belief, and as to those matters, I believe them to be true.

_____
KIRBY C. GRUCHOW, JR., ESQ.

SUBSCRIBED and SWORN to before me
this 23rd day of January, 2012.

_____
NOTARY PUBLIC, in and for said
County and State
Notary Appointment No.: 11-5066-1
Notary Seal Expiration: May 18, 2015

CHRISTIE-ANN VERNON
Notary Public State of Nevada
No. 11-5066-1
My Appt. Exp. May 18, 2015

EXHIBIT J

EXHIBIT J

EXHIBIT J

Inst #: 201207300001448
Fees: $19.00
N/C Fee: $0.00
07/30/2012 01:36:24 PM
Receipt #: 1251958
Requestor:
NATIONAL SEARCH SOLUTIONS
Recorded By: SAO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

(3)

A P N: 163-19-311-015

NOTICE OF FORECLOSURE SALE UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

Recording Requested by:

Pro Forma Lien & Foreclosure Services

Return to:

Pro Forma Lien & Foreclosure Services
P.O. Box 96807
Las Vegas, NV 89193

NOTICE OF FORECLOSURE SALE
UNDER NOTICE OF DELINQUENT ASSESSMENT LIEN

TS# 1079.005KCG **APN: 163-19-311-015**

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL PRO FORMA LIEN & FORECLOSURE SERVICES AT 702-736-4237 OR KIRBY C. GRUCHOW, JR., ESQ., THE ATTORNEY FOR THE ASSOCIATION, AT 702-538-9074. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A NOTICE OF DELINQUENT ASSESSMENT LIEN RECORDED AUGUST 18, 2011 IN BOOK NO. 20110818, INSTRUMENT NO. 02904 OF THE OFFICIAL RECORDS OF CLARK COUNTY, NEVADA. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN that real property situated in Clark County, Nevada, known as 4641 Viareggio Ct., Las Vegas, Nevada, and described as: Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown in Plat Book 93, Page 1 of the records of the County Recorder of Clark County, Nevada, **WILL BE SOLD** at public auction **at the front entrance to the Nevada Legal News, 930 South Fourth Street, Las Vegas, Nevada**, 89101 on **October 18, 2012** at 10:00 a.m. to the highest bidder for cash or cashier's checks drawn on a savings association, or savings bank authorized to do business in Nevada, in the amount of $3,647.16 as of June 21, 2012, including the total amount of unpaid balance and reasonably estimated costs, expenses and advances including the initial publication of this notice, **plus** any subsequent Association Dues, fees charges, expenses, and advances, if any, of the Homeowners Association and its Agent, under the terms of the Assessment Lien. ***The amount due as stated hereinabove does not include unpaid violations totaling $350 as of June 1, 2012, which continue to accrue, and will be collected upon sale from any third-party bidder. The homeowner is entitled to cure the account without paying the violations, although the violations will continue to be assessed, and will remain as a debt against the property.***

The sale will be made without covenant or warranty express or implied, regarding title, possession or encumbrance, against all right, title and interest of the owner, without equity or right of redemption to satisfy the indebtedness secured by said Lien, with interest thereon, as provided in the Declaration of Covenants, Conditions and Restrictions, recorded March 7, 2000, in Book 20000307 as Instrument No. 0911 Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions.

The Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012, in Book No. 20120124, Instrument No. 00764 in the Official Records of Clark County, Nevada. The purported owner(s): Monique Guillory

Dated: 6/29/12

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By _____
KIRBY C. GRUCHOW, JR., ESQ., Authorized Agent

For payoff or redemption information call: 702-736-4237 Ref: Naples/Guillory
For sale information access www.priorityposting.com TS# 1079.005KCG

EXHIBIT K

EXHIBIT K

EXHIBIT K

Inst #: 201309060000930
Fees: $18.00 N/C Fee: $25.00
RPTT: $640.05 Ex: #
09/06/2013 09:03:24 AM
Receipt #: 1761079
Requestor:
RESOURCES GROUP
Recorded By: LEX Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to, and
Mail Tax Statements to:

Saticoy Bay LLC Series 4641 Viareggio Ct.
900 S. Las Vegas Blvd., Suite 810
Las Vegas, NV 89101

APN: 163-19-311-015

FORECLOSURE DEED

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION ("Naples"), pursuant to NRS 116.31164(3), does hereby grant and convey, but without covenant or warranty, express or implied regarding title, possession or encumbrances, to SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. (herein called Grantee), the real property in the County of Clark, State of Nevada, described as follows:

> **Lot 70 in Block 1 of Conquistador/Tompkins – Unit 2, as shown by map thereof on file in Plat Book 93, Page 1, of the records of the County Recorder of Clark County, NV, more commonly known as: 4641 Viareggio Ct., Las Vegas, NV**

This conveyance is made pursuant to the authority and powers vested to Naples by Chapter 116 of Nevada Revised Statutes and the provisions of the Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark County, Nevada, and any subsequent modifications, amendments or updates of the said Declaration of Covenants, Conditions and Restrictions, and Naples having complied with all applicable statutory requirements of the State of Nevada, and performed all duties required by such Declaration of Covenants, Conditions and Restrictions.

A Notice of Delinquent Assessment Lien was recorded on August 18, 2011 in Book 20110818, Instrument No. 02904 of the Official Records of the Clark County Recorder, Nevada, said Notice having been mailed by certified mail to the owners of record; a Notice of Default and Election to Sell Real Property to Satisfy Assessment Lien was recorded on January 24, 2012 in Book 20120124, Instrument No. 00764 in the Official Records, Clark County, Nevada, said document having been mailed by certified mail to the owner of record

and all parties of interest, and more than ninety (90) days having elapsed from the mailing of said Notice of Default, a Notice of Sale was published once a week for three consecutive weeks commencing on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said Notice of Sale was recorded on July 30, 2012 in Book 20120730 as Instrument 01448 of the Official Records of the Clark County Recorder, Nevada, and at least twenty days before the date fixed therein for the sale, a true and correct copy of said Notice of Sale was posted in three of the most public places in Clark County, Nevada, and in a conspicuous place on the property located at 4641 Viareggio Ct., Las Vegas, NV

On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its power of sale and did sell the above described property at public auction. Grantee, being the highest bidder at said sale, became the purchaser and owner of said property for the sum of FIVE THOUSAND FIVE HUNDRED SIXTY THREE ($5,563.00) Dollars, cash, lawful money of the United States, in full satisfaction of the indebtedness secured by the lien of Naples.

IN WITNESS WHEREOF, NAPLES COMMUNITY HOMEOWNERS ASSOCIATION caused its corporate name to be affixed hereto, and this instrument to be executed by its authorized agent.

Dated 8/27/13

NAPLES COMMUNITY HOMEOWNERS ASSOCIATION

By: _____

Kirby C. Gruchow, Jr., Esq., Authorized Agent

STATE OF NEVADA)
COUNTY OF CLARK)

HEATHER L. KELLEY
Notary Public State of Nevada
No. 02-73274-1
My appt. exp. Dec. 30, 2013

On 8/27/13 **, before me, the undersigned, a Notary Public in and for said State, personally appeared KIRBY C. GRUCHOW, JR., known (or proven) to me to be the authorized agent of NAPLES COMMUNITY HOMEOWNERS ASSOCIATION, and executed the within Foreclosure Deed on behalf of the corporation therein named.**

Heather L. Kelley
NOTARY PUBLIC

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 163-19-311-015
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 125,057.00
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 125,057.00
   d. Real Property Transfer Tax Due $ 640.05

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ 8/27/13 Capacity: Agent for Seller
Kirby R. Gruchow, Jr., Esq.

Signature _____ Capacity: Agent for Buyer

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Naples Community HOA	Print Name: SATICOY BAY LLC
Address: c/o Leach Johnson Song & Gruchow	Address: Series 4641 Viareggio Ct.
City: 8945 W. Russel Rd., Suite 330	City: 900 S. Las Vegas Blvd., #810
State: Las Vegas, NV Zip: 89148	State: Las Vegas, NV Zip: 89101

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

Print Name: SATICOY BAY LLC SERIES 4641 Escrow #
Address: 900 S Las Vegas Blvd #810 VIAREGGIO CT
City: L.V State: NV Zip: 89101

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT L

EXHIBIT L

EXHIBIT L

Statement

Statement on HOA Super-Priority Lien Foreclosures

FOR IMMEDIATE RELEASE

4/21/2015

Title 12 United States Code Section 4617(j)(3) states that, while the Federal Housing Finance Agency acts as Conservator, "[no] property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency." This law precludes involuntary extinguishment of Fannie Mae or Freddie Mac liens while they are operating in conservatorships and preempts any state law that purports to allow holders of homeownership association (HOA) liens to extinguish a Fannie Mae or Freddie Mac lien, security interest, or other property interest.

As noted in our December 22, 2014 statement on certain super-priority liens, FHFA has an obligation to protect Fannie Mae's and Freddie Mac's rights, and will aggressively do so by bringing or supporting actions to contest HOA foreclosures that purport to extinguish Enterprise property interests in a manner that contravenes federal law. Consequently, FHFA confirms that it has not consented, and will not consent in the future, to the foreclosure or other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection with HOA foreclosures of super-priority liens.

12/22/2014: Statement of the Federal Housing Finance Agency on Certain Super-Priority Liens

###

Contacts:

Media: Corinne Russell (202) 649-3032 / Stefanie Johnson (202) 649-3030

Consumers: Consumer Communications or (202) 649-3811

EXHIBIT M

EXHIBIT M

EXHIBIT M

20000307
.00911

APN: 163-19-310-013

WHEN RECORDED, RETURN TO:

WILBUR M. ROADHOUSE, ESQ.
Goold Patterson DeVore Ales & Roadhouse
4496 South Pecos Road
Las Vegas, Nevada 89121
(702) 436-2600

(Space Above Line for Recorder's Use Only)

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS

FOR

NAPLES

(a Nevada Residential Common-Interest Planned Community)
CLARK COUNTY, NEVADA

TABLE OF CONTENTS

20000307
0511

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
NAPLES

THIS DECLARATION ("Declaration"), made as of the 29th day of February, 2000, by PERMA-BILT a Nevada corporation ("Declarant").

WITNESSETH:

WHEREAS:

A Declarant owns certain real property located in Clark County, Nevada, on which Declarant intends to subdivide, develop, construct, market and sell a single family detached residential common-interest planned community, to be known as "NAPLES", and

B A portion of said property, as more particularly described in Exhibit "A" attached hereto, shall constitute the property initially covered by this Declaration ("Original Property"); and

C Declarant intends that, upon Recordation of this Declaration, the Original Property shall be a Nevada Common-Interest Community, as defined in NRS § 116.110323, and a Nevada Planned Community, as defined in NRS § 116.110368 ("Community"); and

D. The name of the Community shall be NAPLES, and the name of the Nevada nonprofit corporation organized in connection therewith shall be NAPLES HOMEOWNERS ASSOCIATION ("Association"); and

E. Declarant further reserves the right from time to time to add all or any portion of certain other real property, more particularly described in Exhibit "B" hereto ("Annexable Area"); and

F The total maximum number of Units that may (but need not) be created in the Community is two hundred and twelve (212) aggregate Units ("Units That May Be Created"); and

G Declarant intends to develop and convey all of the Original Property, and any Annexable Area which may be annexed from time to time thereto ("Annexed Property"), pursuant to a general plan and subject to certain protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges; and

H. Declarant has deemed it desirable, for the efficient preservation of the value and amenities of the Original Property and any Annexed Property, to organize the Association, to which shall be delegated and assigned the powers of owning, maintaining and administering the Common Elements (as defined herein), administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created. Declarant will cause, or has caused, the Association to be formed for the purpose of exercising such functions; and

I This Declaration is intended to set forth a dynamic and flexible plan for governance of the Community, and for the overall development, administration, maintenance and preservation of a unique residential community, in which the Owners enjoy a quality life style as "good neighbors",

NOW, THEREFORE Declarant hereby declares that all of the Original Property, and, from the date(s) of respective annexation, all Annexed Property (collectively, "Properties") shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Properties (as defined in Article 1 hereof), in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale, and lease, of the Properties or any portion thereof. The protective covenants, conditions, restrictions, reservations, easements, and equitable servitudes set forth herein shall run with and burden the Properties and shall be binding upon all Persons having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the Properties and any interest therein; and shall inure to the benefit of and be binding upon, and may be enforced by, Declarant, the Association, each Owner and their respective heirs, executors and administrators, and successive owners and assigns. All Units within this Community shall be used, improved and devoted limited exclusively to single Family residential use.

ARTICLE 1
DEFINITIONS

Section 1 1 "Annexable Area" shall mean the real property described in Exhibit "B" hereto, all or any portion of which real property may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof. At no time shall any portion of the Annexable Area be deemed to be a part of the Community or a part of the Properties until such portion of the Annexable Area has been duly annexed hereto pursuant to Article 15 hereof.

Section 1 2 "Annexed Property" shall mean any and all portion(s) of the Annexable Area from time to time added to the Properties covered by this Declaration, by Recordation of Annexation Amendment(s) pursuant to Article 15 hereof.

Section 1 3 "ARC" shall mean the Architectural Review Committee created pursuant to Article 8 hereof.

Section 1.4 "Articles" shall mean the Articles of Incorporation of the Association as filed or to be filed in the office of the Secretary of State of Nevada, as such Articles may be amended from time to time.

Section 1 5 "Assessments" shall refer collectively to Annual Assessments, and any applicable Capital Assessments and Special Assessments.

Section 1 6 "Assessment, Annual" shall mean the annual or supplemental charge against each Owner and his Unit, representing a portion of the Common Expenses, which are to be paid in equal periodic (monthly or quarterly, as determined from time to time by the Board)

installments commencing on the Assessment Commencement Date, by each Owner to the Association in the manner and proportions provided herein.

Section 1.7 "Assessment, Capital" shall mean a charge against each Owner and his Unit, representing a portion of the costs to the Association for installation, construction, or reconstruction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration. Such charge shall be levied among all Owners and their Units in the same proportion as Annual Assessments.

Section 1.8 "Assessment, Special" shall mean a charge against a particular Owner and his Unit, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action, performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Association, plus interest and other charges on such Special Assessments as provided for herein.

Section 1.9 "Assessment Commencement Date" shall mean that date, pursuant to Section 6.7 hereof, duly established by the Board, on which Annual Assessments shall commence.

Section 1.10 "Association" shall mean NAPLES HOMEOWNERS ASSOCIATION, a Nevada nonprofit corporation, its successors and assigns

Section 1.11 "Association Funds" shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article 6 hereof.

Section 1.12 "Beneficiary" shall mean a Mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such mortgagee or beneficiary.

Section 1.13 "Board" or "Board of Directors" shall mean the Board of Directors of the Association The Board of Directors is an "Executive Board" as defined by NRS § 116.110345.

Section 1.14 "Budget" shall mean a written, itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration, prepared and approved pursuant to the provisions of this Declaration.

Section 1.15 "Bylaws" shall mean the Bylaws of the Association which have or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 1.16 "Close of Escrow" shall mean the date on which a deed is Recorded conveying a Unit from Declarant to a Purchaser.

Section 1.17 "Common Elements" shall mean all real property or interests therein (and any personal property) owned or leased by the Association, but shall exclude Units (other than easements on portions thereof), as provided in NRS § 116.110318. Common Elements shall include all real property in the Community (other than Units), including, but not necessarily limited to, all real property designated on the Plat as "Private Landscape Easement", "Private Drainage Easement", "Public Utility Easement," or "Private Street and Public Utility Easement," and any Improvements respectively thereon, as "Common Elements" on the Plat, and Improvements thereon. Without limiting the generality of the foregoing, Common Elements shall include private entry gates and entry monumentation, emergency access easements, utility easements, private

streets, street lights, curbs and gutters, sidewalks and walkways (all of which may be located on easements over portions of Lots), Common Element landscaping, and designated drainage and sewer easement areas, all or some of which are or may be located on easements over portions of Lots) Without limiting the foregoing, Declarant reserves the right, but not the obligation, in Declarant's sole discretion, to develop and include a common recreational area within the Community (which may include, but not necessarily be limited to, a tot lot, park, and/or pool) as a part of the Common Elements of this Community, as set forth in further detail in Article 14, below.

Section 1.18 "Common Expenses" shall mean expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, including the actual and estimated costs of, maintenance, insurance, management, operation, repair and replacement of the Common Elements; painting over or removing graffiti on the exterior side of perimeter walls, pursuant to Section 9 10 **[Article 9 only has 8 sections]** below, unpaid Special Assessments, or Capital Assessments; costs of any commonly metered utilities and other commonly metered charges for the Properties; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to Managers, accountants, attorneys and employees; costs of all utilities, gardening, trash pickup and disposal, and other services benefiting the Common Elements, costs of fire, casualty and liability insurance, workers' compensation insurance, and any other insurance covering the Common Elements or Properties or deemed prudent and necessary by the Board; costs of bonding the Board, Officers, any Managers, or any other Person handling the funds of the Association; any statutorily required "ombudsman" fees; taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Elements or Properties, or portions thereof; costs of any other item or items incurred by the Association for any reason whatsoever in connection with the Properties, for the benefit of the Owners; prudent reserves; and any other expenses for which the Association is responsible pursuant to this Declaration or pursuant to any applicable provision of NRS Chapter 116

Section 1.19 "Community" shall mean a Common-Interest Community, as defined in NRS § 116.110323, and a Planned Community, as defined in NRS § 116.110368.

Section 1 20 "County" shall mean the county in which the Properties are located (i.e., Clark County, Nevada).

Section 1.21 "Declarant" shall mean PERMA-BILT, a Nevada corporation, and its successors and any Person(s) to which it shall have assigned any rights hereunder by express written and Recorded assignment (but specifically excluding Purchasers as defined in NRS § 116 110375).

Section 1 22 "Declaration" shall mean this instrument as it may be amended from time to time

Section 1 23 "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

Section 1 24 "Director" shall mean a duly appointed or elected and current member of the Board of Directors.

Section 1.25 "Dwelling" shall mean a residential building located on a Unit, designed and intended for use and occupancy as a residence by a single Family.

Section 1.26 "Eligible Holder" shall mean each Beneficiary, insurer and/or guarantor of a first Mortgage encumbering any Unit, which has filed with the Board a written request for notification as to relevant specified matters.

Section 1.27 "Exterior Wall(s)" shall mean the exterior only face of Perimeter Walls (visible from public streets or other areas outside of and generally abutting the exterior boundary of the Properties).

Section 1.28 "Family" shall mean (a) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Dwelling, all as subject to and in compliance with all applicable federal and Nevada laws and local health codes and other applicable County ordinances.

Section 1.29 "FHA" shall mean the Federal Housing Administration.

Section 1.30 "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporations.

Section 1.31 "Fiscal Year" shall mean the twelve (12) month fiscal accounting and reporting period of the Association selected from time to time by the Board.

Section 1.32 "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Section 1.33 "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

Section 1.34 "Governing Documents" shall mean the Declaration, Articles, Bylaws, Plat, and any Rules and Regulations. Any inconsistency among the Governing Documents shall be governed pursuant to Section 17.12 below.

Section 1.35 "Identifying Number", pursuant to NRS § 116.110348, shall mean the number which identifies a Unit on the Plat.

Section 1.36 "Improvement" shall mean any structure or appurtenance thereto of every type and kind, whether above or below the land surface, placed in the Properties, including but not limited to Dwellings and other buildings, walkways, waterways, sprinkler pipes, swimming pools, spas and other recreational facilities, carports, garages, roads, driveways, parking areas, walls, perimeter walls, party walls, fences, screening walls, block walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, patio covers, railings, plantings, planted trees and shrubs, poles, signs, storage areas, exterior air conditioning and water-softener fixtures or equipment.

Section 1.37 "Lot" shall mean the residential real property of any residential lot to be owned separately by an Owner, as shown on the Plat (subject to Common Element easements over Lots as shown on the Plat, including, but not limited to, Private Street easements). Notwithstanding the foregoing, in the event that certain Lots, shown as such on the Plat, are expressly designated by Declarant, in its sole and absolute discretion, by separate Recorded instrument to constitute Common Elements (such as, for example, a common recreational area), pursuant to Declarant's reserved rights as set forth in Article 14 below, then such specifically designated Lots shall not be Lots for purposes of this Declaration and the other Governing Documents, but shall be conclusively deemed a portion of the Common Elements.

Section 1.38 "Manager" shall mean the Person, if any, whether an employee or independent contractor, appointed by the Association and delegated the authority to implement certain duties, powers or functions of the Association as further provided in this Declaration and in the Bylaws.

Section 1.39 "Member," "Membership." "Member" shall mean any Person holding a membership in the Association, as provided in this Declaration. "Membership" shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations, including liability for Assessments, contained in the Governing Documents.

Section 1.40 "Mortgage," "Mortgagee," "Mortgagor." "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of Record, given voluntarily by an Owner, encumbering his Unit to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt. The term "Deed of Trust" or "Trust Deed" when used herein shall be synonymous with the term "Mortgage." "Mortgage" shall not include any judgment lien, mechanic's lien, tax lien, or other similarly involuntary lien on or encumbrance of a Unit. The term "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the beneficiary of a Deed of Trust. "Mortgagor" shall mean a Person who mortgages his Unit to another (i.e., the maker of a Mortgage), and shall include the trustor of a Deed of Trust. "Trustor" shall be synonymous with the term "Mortgagor;" and "Beneficiary" shall be synonymous with "Mortgagee."

Section 1.41 "Notice and Hearing" shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at Owner's expense, in the manner further provided in the Bylaws.

Section 1.42 "Officer" shall mean a duly elected or appointed and current officer of the Association.

Section 1.43 "Original Property" shall mean that real property described on Exhibit "A," attached hereto and incorporated by this reference herein, which shall be the initial real property made subject to this Declaration, immediately upon the Recordation of this Declaration.

Section 1.44 "Owner" shall mean the Person or Persons, including Declarant, holding fee simple interest of Record to any Unit. The term "Owner" shall include sellers under executory contracts of sale, but shall exclude Mortgagees.

Section 1.45 "Perimeter Walls" shall mean the walls, initially constructed by Declarant, and located generally around the exterior perimeter of the Properties.

Section 1.46 "Person" shall mean a natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 1.47 "Plat" shall mean the final plat map of CONQUISTADOR/TOMPKINS - UNIT 1, Recorded on December 27, 1999, in Book 92 of Plats, Page 68, as said plat map from time to time may be amended or supplemented of Record by Declarant.

Section 1.48 "Private Streets" shall mean all private streets, rights of way, street scapes, and vehicular ingress and egress easements, in the Properties, shown as such on the Plat.

Section 1.49 "Properties" shall mean all of the Original Property described in Exhibit "A," attached hereto, together with such portions of the Annexable Area, described in Exhibit "B" hereto, as may from time to time hereafter be annexed thereto pursuant to Article 15 of this Declaration.

Section 1.50 "Purchaser" shall have that meaning as provided in NRS § 116.110375.

Section 1.51 "Record," "Recorded," "Filed" or "Recordation" shall mean, with respect to any document, the recordation of such document in the official records of the County Recorder of Clark County, Nevada.

Section 1.52 "Resident" shall mean any Owner, tenant, or other person who is physically residing in a Unit.

Section 1.53 "Rules and Regulations" shall mean the rules and regulations, if any, adopted by the Board pursuant to the Declaration and Bylaws, as such Rules and Regulations from time to time may be amended.

Section 1.54 "Sight Visibility Restriction Area" shall mean those areas, portions of which are or may be located on portions of Common Elements and/or Lots, identified on the Plat as "Sight Visibility Restriction Easements," in which the height of landscaping or other sight restricting Improvements shall be limited to 24 inches (or as otherwise set forth on the Plat).

Section 1.55 "Unit" shall mean that residential portion of this Community to be separately owned by each Owner (as shown and separately identified as such on the Plat), and shall include such Lot and all Improvements thereon (specifically including the portion of Perimeter Walls located on or within the Unit's boundaries, pursuant to Section 9.6, below). Subject to the foregoing, and subject to Section 9.5 below, the boundaries of each Unit shall be the property lines of the Lot, as shown on the Plat.

Section 1.56 "Units That May Be Created" shall mean the total "not to exceed" maximum number of aggregate Units within the Original Property and the Annexable Area (which Declarant has reserved the right, in its sole discretion, to create) (i.e., 212 Units).

Section 1.57 "VA" shall mean the U.S. Department of Veterans Affairs.

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

ARTICLE 2
OWNERS' PROPERTY RIGHTS

Section 2.1 Owners' Easements of Enjoyment. Each Owner shall have a nonexclusive right and easement of ingress and egress and of use and enjoyment in, to and over the Common Elements, which easement shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the following:

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

(b) the right of the Association to establish uniform Rules and Regulations pertaining to the use of the Common Elements;

(c) the right of the Association in accordance with the Declaration, Articles and Bylaws, with the vote of at least two-thirds (2/3) of the voting power of the Association and a majority of the voting power of the Board, to borrow money for the purpose of improving or adding to the Common Elements, and in aid thereof, and further subject to the Mortgagee protection provisions of Article 13 of this Declaration, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Mortgagee shall be subordinated to the rights of the Owners;

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

(e) subject to the provisions of Article 14 hereof, the right of Declarant and its sales agents, representatives and prospective Purchasers, to the nonexclusive use of the Common Elements, without cost, for access, ingress, egress, use and enjoyment, in order to show and dispose of the Properties and/or any other development(s), until the last Close of Escrow for the marketing and/or sale of a Unit in the Properties or such other development(s); provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein;

(f) the other easements, and rights and reservations of Declarant as set forth in Article 14 and elsewhere in this Declaration;

(g) the right of the Association (by action of the Board) to reconstruct, replace or refinish any Improvement or portion thereof upon the Common Elements in accordance with the original design, finish or standard of construction of such Improvement, or of the general Improvements within the Properties, as the case may be; and if not materially in accordance with such original design, finish or standard of construction only with the vote or written consent of the Owners holding seventy-five percent (75%) of the voting power of the Association, and the vote

or written consent of a majority of the voting power of the Board, and the approval of the Eligible Holders of fifty-one percent (51%) of the first Mortgages on Units in the Properties;

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

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

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

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

(l) the obligations and covenants of Owners as set forth in Article 9 and elsewhere in this Declaration;

(m) the use restrictions set forth in Article 10 and elsewhere in this Declaration; and

(n) the easements reserved in Sections 2.2 through 2.7, inclusive, Article 14, and/or any other provision of this Declaration.

Section 2.2 Easements for Parking. Subject to the parking and vehicular restrictions set forth in Section 10.19 below, the Association, through the Board, is hereby empowered to establish "parking" and/or "no parking" areas within the Common Elements, and to establish Rules and Regulations governing such matters, as well as to enforce such parking rules and limitations by all means lawful for such enforcement on public streets, including the removal of any violating vehicle by those so empowered, at the expense of the Owner of the violating vehicle. If any temporary guest or recreational parking is permitted within the Common Elements, such parking shall be permitted only within any spaces and areas clearly marked or designated by the Board for such purpose.

Section 2.3 Easements for Vehicular and Pedestrian Traffic. In addition to the general easements for use of the Common Elements reserved herein, there shall be reserved to Declarant and all future Owners, and each of their respective agents, employees, guests, invitees and successors, nonexclusive, appurtenant easements for vehicular and pedestrian traffic over the private main entry gate areas and all Private Streets, and any walkways within the Common Elements, subject to parking provisions set forth in Section 2.2, above, and the use restrictions set forth in Article 10, below.

Section 2.4 Easement Right of Declarant Incident to Construction, Marketing and/or Sales Activities. An easement is reserved by and granted to Declarant, its successors and assigns, and their respective officers, managers, employees, agents, contractors, sales representatives, prospective purchasers of Units, guests and other invitees, for access, ingress, and egress over, in, upon, under, and across the Properties, including Common Elements, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's use, development, advertising, marketing and/or sales related to the Properties, or any portions thereof; provided, however, that no such rights or easements shall be exercised by Declarant in such a manner as to interfere unreasonably with the occupancy, use, enjoyment, or access by any Owner, his Family, guests, or invitees, to or of that Owner's Lot, or the Common Elements. The easement created pursuant to this Section 2.4 is subject to the time limit set forth in Section 14.1(a) below. Without limiting the generality of the foregoing, until such time as the Close of Escrow of the last Unit in the Properties, Declarant reserves the right to control entry gate(s) to the Properties, and neither the Association nor any one or more of the Owners shall at any time, without the prior written approval of Declarant in its discretion, cause any entry gate in the Properties to be closed during regular marketing or sales hours (including weekend sales hours) of Declarant, or shall in any other way impede or hinder Declarant's marketing or sales activities.

Section 2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Elements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for: (a) placement of any fire hydrants on portions of certain Lots and/or Common Elements, and other purposes regularly or normally related thereto; and (b) County, state, and federal public services, including but not limited to, the right of postal, law enforcement, and fire protection services and their respective employees and agents to enter upon any part of the Common Elements or any Lot for the purpose of carrying out their official duties.

Section 2.6 Easements for Water, Sewage, Utility, and Irrigation Purposes. In addition to the foregoing easements, there shall be and Declarant hereby reserves and covenants for itself and all future Owners within the Properties, easements for purposes of public and private utilities, power, telephone, cable TV, water, and gas lines and appurtenances (including but not limited to, the right of any public or private utility or mutual water and/or sewage district of ingress or egress over the Properties, including portions of Lots, for purposes of reading and maintaining meters, and using and maintaining any fire hydrants located on the Properties). Declarant further reserves and covenants for itself and the Association, and their respective agents, employees and contractors, easements over the Common Elements and all Lots, for the control, installation, maintenance, repair and replacement of water and/or sewage lines and systems for watering or irrigation of any landscaping on, and/or sewage disposal from or related to, Common Elements. In the event that any utility exceeds the scope of this or any other easement reserved in this Declaration, and causes damage to property, the Owner of such property shall pursue any resultant claim against the offending utility, and not against Declarant or the Association.

Section 2.7 Additional Reservation of Easements. Declarant hereby reserves for the benefit of each Owner and his Unit reciprocal, nonexclusive easements over the adjoining Unit(s) for the control, maintenance and repair of the utilities serving such Owner's Unit. Declarant further expressly reserves for the benefit of all of the real property in the Properties, and for the benefit of all of the Units, the Association and the Owners, reciprocal, nonexclusive easements over all Units and the Common Elements, for the control, installation, maintenance and repair of utility services

and drainage facilities serving any portion of the Properties (which may be located on portions of Lots, pursuant to the Plat), for drainage of water resulting from the normal use thereof or of adjoining Units or Common Elements, for the use, maintenance, repair and replacement of Private Streets and/or Perimeter Walls (subject to Section 9.6 below), and for any required customer service work and/or maintenance and repair of any Dwelling or other Improvement, wherever located in the Properties, and for compliance with Sight Visibility Restriction Area maximum permitted height requirements. In the event that any utility or governmental body exceeds the scope of any easement pertaining to the Properties, and thereby causes bodily injury or damage to property, the injured or damaged Owner or Resident shall pursue any and all resultant claims against the offending utility, and not against Declarant or the Association. In the event of any minor encroachment upon the Common Elements or Unit(s), as a result of initial construction or as a result of reconstruction, repair, shifting, settlement or movement of any portion of the Properties, a valid easement for minor encroachment and for the maintenance of the same shall exist so long as the minor encroachment exists. Declarant and each Owner of a Unit on which there is constructed a Dwelling along or adjacent to such Unit, shall have an easement appurtenant to such Unit, over such property line, to and over the adjacent Unit and/or adjacent Common Elements, for the purposes of accommodating any natural movement or settling of any Dwelling or other Improvement located on such Unit, any encroachment of such Improvement due to minor engineering or construction variances, and any encroachment of eaves, roof overhangs, patio walls and architectural features comprising parts of the original construction of such Improvement. Declarant further reserves (a) a nonexclusive easement on or over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of Declarant and its agents and/or contractors, for any required warranty repairs, and (b) a nonexclusive easement on and over the Properties, and all portions thereof (including Common Elements and Units), for the benefit of the Association, and its agents, contractors, and/or any other authorized party, for the maintenance and/or repair of any and all landscaping and/or other improvements located on the Common Elements and/or Units.

Section 2.8 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Unit or other property owned by said Owner from the liens and charges hereof, by waiver of the use and enjoyment of the Common Elements or any Improvement thereon, or by abandonment of his Unit or any other property in the Properties.

Section 2.9 Easement Data. The Recording data for all easements and licenses reserved pursuant to the terms of this Declaration is the same as the Recording data for this Declaration. The Recording data for any easements and licenses created by the Plat is the same as the Recording data for the Plat.

Section 2.10 Owners' Right of Ingress and Egress. Each Owner shall have an unrestricted right of ingress and egress to his Unit reasonably over and across the Common Elements, which right shall be appurtenant to the Unit, and shall pass with any transfer of title to the Unit.

Section 2.11 No Transfer of Interest in Common Elements. No Owner shall be entitled to sell, lease, encumber, or otherwise convey (whether voluntarily or involuntarily) his interest in any of the Common Elements, except in conjunction with conveyance of his Unit. No transfer of Common Elements, or any interest therein, shall deprive any Unit of its rights of access. Any attempted or purported transaction in violation of this provision shall be void and of no effect.

Section 2.12 Taxes. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain separate real estate tax assessment of each Unit. If any taxes or assessments of any Owner may, in the opinion of the Association, become a lien on the Common Elements, or any part thereof, they may be paid by the Association as a Common Expense or paid by the Association and levied against such Owner as a Special Assessment.

ARTICLE 3
NAPLES HOMEOWNERS ASSOCIATION

Section 3.1 Organization of Association. The Association is or shall be incorporated under the name of NAPLES HOMEOWNERS ASSOCIATION, or similar name, as a non-profit corporation under NRS §§ 81.410 through 81.540, inclusive. Upon dissolution of the Association, the assets of the Association shall be disposed of as set forth in the Governing Documents and in compliance with applicable Nevada law

Section 3.2 Duties, Powers and Rights. Duties, powers and rights of the Association are those set forth in this Declaration, the Articles and Bylaws, together with its general and implied powers as a non-profit corporation, generally to do any and all things that a corporation organized under the laws of the State of Nevada may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, including any applicable powers set forth in NRS § 116.3102, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents, or in any applicable provision of NRS Chapter 116. The Association shall make available for inspection at its office by any prospective purchaser of a Unit, any Owner, and the Beneficiaries, insurers and guarantors of the first Mortgage on any Unit, during regular business hours and upon reasonable advance notice, current copies of the Governing Documents, and all other books, records, and financial statements of the Association

Section 3.3 Membership. Each Owner, upon purchasing a Unit, shall automatically become a Member and shall remain a Member until such time as his ownership of the Unit ceases, at which time his membership in the Association shall automatically cease. Memberships shall not be assignable, except to the Person to which title to the Unit has been transferred, and each Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. Ownership of such Unit shall be the sole qualification for Membership, and shall be subject to the Governing Documents.

Section 3.4 Transfer of Membership. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Unit, and then only to the purchaser or Mortgagee of such Unit. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. An Owner who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser said Owner's Membership rights. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to his Unit until fee title to the Unit sold is transferred. If any Owner should fail or refuse to transfer his Membership to the purchaser of such Unit upon transfer of fee title thereto, the Board shall have

the right to record the transfer upon the books of the Association. Until satisfactory evidence of such transfer (which may, but need not necessarily, be a copy of the Recorded deed of transfer) first has been presented to the reasonable satisfaction of the Board, the purchaser shall not be entitled to vote at meetings of the Association, unless the purchaser shall have a valid proxy from the seller of said Unit, pursuant to Section 4.6, below. The Association may levy a reasonable transfer fee against a new Owner and his Unit (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the records of the Association. The new Owner shall, if requested by the Board or Manager, timely attend an orientation to the Community and the Properties, conducted by an Association Officer or Manager, and will be required to pay any costs necessary to obtain entry gate keys and/or remote controls, if not obtained from the prior Owner at Close of Escrow

Section 3.5 Articles and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Owners as Members of the Association set forth in this Declaration may and shall be amplified by provisions of the Articles and Bylaws, including any reasonable provisions with respect to corporate matters; but in the event that any such provisions may be, at any time, inconsistent with any provisions of this Declaration, the provisions of this Declaration shall govern. The Bylaws shall provide:

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

(b) for election by the Board of an Association president, treasurer, secretary and any other Officers specified by the Bylaws;

(c) the qualifications, powers and duties, terms of office and manner of electing and removing Directors and Officers, and filling vacancies;

(d) which, if any, respective powers the Board or Officers may delegate to other Persons or to a Manager;

(e) which of the Officers may prepare, execute, certify and record amendments to the Declaration on behalf of the Association;

(f) procedural rules for conducting meetings of the Association; and

(g) a method for amending the Bylaws.

Section 3.6 Board of Directors.

(a) The affairs of the Association shall be managed by a Board of not less than three (3), nor more than seven (7) Directors, all of whom (other than Directors appointed by Declarant pursuant to Section 3.7 below) must be Members of the Association. In accordance with the provisions of Section 3.7 below, upon the formation of the Association, Declarant shall appoint the Board, which shall initially consist of three (3) Directors. The number of Directors may be increased to five (5) or seven (7) by Declarant (during the Declarant Control Period), or by resolution of the Board, and otherwise may be changed by amendment of the Bylaws, provided that there shall not be less than any minimum number of Directors nor more than any maximum number

of Directors from time to time required by applicable Nevada law. The Board may act in all instances on behalf of the Association, except as otherwise may be provided in the Governing Documents or any applicable provision of NRS Chapter 116 or other applicable law. The Directors, in the performance of their duties, are fiduciaries, and are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule. Notwithstanding the foregoing, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Community, or to elect Directors or determine their qualifications, powers and duties or terms of office, provided that the Board may fill vacancies in the Board for the unexpired portion of any term. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any Director with or without cause, other than a Director appointed by Declarant. If a Director is sued for liability for actions undertaken in his role as a Director, the Association shall indemnify him for his losses or claims, and shall undertake all costs of defense, unless and until it is proven that the Director acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the costs of defense, and may recover, from the Director who so acted, costs already expended. Directors are not personally liable to the victims of crimes occurring within the Properties. Punitive damages may not be recovered against Declarant or the Association, subject to applicable Nevada law. An officer, employee, agent or director of a corporate Owner, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit, may be an Officer or Director. In every event where the person serving or offering to serve as an Officer or Director is a record Owner, he shall file proof of authority in the records of the Association. No Director shall be entitled to delegate his or her vote on the Board, as a Director, to any other Director or any other Person; and any such attempted delegation of a Director's vote shall be void. Each Director shall serve in office until the appointment (or election, as applicable) of his successor.

(b) The term of office of a Director shall not exceed two (2) years. A Director may be elected to succeed himself. Following the Declarant Control Period, elections for Directors (whose terms are expiring) must be held at the Annual Meeting, as set forth in Section 4.3 below.

(c) A quorum is deemed present throughout any Board meeting if Directors entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting.

Section 3.7 Declarant's Control of the Board. During the period of Declarant's control ("Declarant Control Period"), as set forth below, Declarant at any time, with or without cause, may remove or replace any Director appointed by Declarant. Directors appointed by Declarant need not be Owners. Declarant shall have the right to appoint and remove the Directors, subject to the following limitations.

(a) Not later than sixty (60) days after conveyance from Declarant to Purchasers of twenty-five percent (25%) of the Units That May Be Created, at least one Director and not less than twenty-five percent (25%) of the total Directors must be elected by Owners other than Declarant.

(b) Not later than sixty (60) days after conveyance from Declarant to Purchasers of fifty percent (50%) of the Units That May Be Created, not less than one-third of the total Directors must be elected by Owners other than Declarant.

(c) The Declarant Control Period shall terminate on the earliest of: (i) sixty (60) days after conveyance from Declarant to Purchasers of seventy-five percent (75%) of the Units That May Be Created, (ii) five years after Declarant has ceased to offer any Units for sale in the ordinary course of business, or (iii) five years after any right to annex any portion of the Annexable Area was last exercised pursuant to Article 15 hereof.

Section 3.8 Control of Board by Owners. Subject to and following the Declarant Control Period (a) the Owners shall elect a Board of at least three (3) Directors, and (b) the Board may fill vacancies in its membership (e.g., due to death or resignation of a Director), subject to the right of the Owners to elect a replacement Director, for the unexpired portion of any term. After the Declarant Control Period, all of the Directors must be Owners, and each Director shall, within thirty (30) days of his appointment or election, certify in writing that he is an Owner and has read and reasonably understands the Governing Documents and applicable provisions of NRS Chapter 116 to the best of his or her ability. The Board shall elect the Officers, all of whom (after the Declarant Control Period) must be Owners and Directors. The Owners, upon a two-thirds (2/3) affirmative vote of all Owners present and entitled to vote at any Owners' meeting at which a quorum is present, may remove any Director(s) with or without cause; provided, however that any Director(s) appointed by Declarant may only be removed by Declarant.

Section 3.9 Election of Directors. Not less than thirty (30) days before the preparation of a ballot for the election of Directors, which shall normally be conducted at an Annual Meeting, the Association Secretary or other designated Officer shall cause notice to be given to each Owner of his eligibility to serve as a Director. Each Owner who is qualified to serve as a Director may have his name placed on the ballot along with the names of the nominees selected by the Board or a nominating committee established by the Board. The election of any Director must be conducted by secret written ballot. The Association Secretary or other designated Officer shall cause to be sent prepaid by United States mail to the mailing address of each Unit within the Community or to any other mailing address designated in writing by the Unit Owner, owner, a secret ballot and a return envelope. Election of Directors must be conducted by secret written ballot, with the vote publicly counted (which may be done as the meeting progresses).

Section 3.10 Board Meetings.

(a) A Board meeting must be held at least once every 90 days. Except in an emergency, the Secretary or other designated Officer shall, not less than 10 days before the date of a Board meeting, cause notice of the meeting to be given to the Owners. Such notice must be: (1) sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner; or (2) published in a newsletter or other similar publication circulated to each Owner. In an emergency, the Secretary or other designated Officer shall, if practicable, cause notice of the meeting to be sent prepaid by United States mail to the mailing address of each Unit. If delivery of the notice in this manner is impracticable, the notice must be hand-delivered to each Unit within the Community or posted in a prominent place or places within the Common Elements.

(b) As used in this Section 3.10, "emergency" means any occurrence or combination of occurrences that: (1) could not have been reasonably foreseen; (2) affects the health, welfare and safety of the Owners; (3) requires the immediate attention of, and possible

action by, the Board, and (4) makes it impracticable to comply with regular notice and/or agenda provisions.

(c) The notice of the Board meeting must state the time and place of the meeting and include a copy of the agenda for the meeting (or the date on which and the locations where copies of the agenda may be conveniently obtained by Owners). The notice must include notification of the right of an Owner to: (1) have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request (and, if required by the Board, upon payment to the Association of the cost of making the distribution), and (2) speak to the Association or Board, unless the Board is meeting in Executive Session.

(d) The agenda of the Board meeting must comply with the provisions of NRS § 116.3108.3. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. In an emergency, the Board may take action on an item which is not listed on the agenda as an item on which action may be taken.

(e) At least once every 90 days, the Board shall review at one of its meetings: (1) a current reconciliation of the Operating Fund (as defined in Section 6.2 below); (2) a current reconciliation of the Reserve Fund (as defined in Section 6.2 below); (3) the actual revenues and expenses for the Reserve Fund, compared to the Reserve Budget for the current year; (4) the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained; (5) an income and expense statement, prepared on at least a quarterly basis, for the Operating Fund and Reserve Fund; and (6) the current status of any civil action or claim submitted to arbitration or mediation in which the Association is a party.

(f) The minutes of a Board meeting must be made available to Owners in accordance with NRS § 116.3108.5.

Section 3.11 Attendance by Owners at Board Meetings; Executive Sessions. Owners are entitled to attend any meeting of the Board (except for Executive Sessions) and may speak at such meeting, provided that the Board may establish reasonable procedures and reasonable limitations on the time an Owner may speak at such meeting. The period required to be devoted to comments by Owners and discussion of those comments must be scheduled for the beginning of each meeting. Owners may not attend or speak at an Executive Session, unless the Board specifically so permits. An "Executive Session" is an executive session of the Board (which may be a portion of a Board meeting), designated as such by the Board in advance, for the sole purpose of:

(a) consulting with an attorney for the Association on matters relating to proposed or pending litigation, if the contents of the discussion would otherwise be governed by the privilege set forth in NRS §§ 49.035 to 49.115, inclusive; or

(b) discussing Association personnel matters of a sensitive nature; or

(c) discussing any violation ("Alleged Violation") of the Governing Documents (including, without limitation, the failure to pay an Assessment) alleged to have been committed by an Owner ("Involved Owner") (provided that the Involved Owner shall be entitled to request in writing that such hearing be conducted by the Board in open meeting, and provided further that the Involved Owner may attend such hearing and testify concerning the Alleged Violation, but may be

excluded by the Board from any other portion of such hearing, including, without limitation, the Board's deliberation).

No other matter may be discussed in Executive Session. Any matter discussed in Executive Session must be generally described in the minutes of the Board meeting, provided that the Board shall maintain detailed minutes of the discussion of any Alleged Violation, and, upon request, shall provide a copy of said detailed minutes to the Involved Owner or his designated representative.

ARTICLE 4
VOTING RIGHTS

Section 4.1 Owners' Voting Rights. Subject to the following provisions of this Section 4.1, and to Section 4.6 below, each Member shall be entitled to cast one (1) vote for each Unit owned. In the event that more than one Person holds fee title to a Unit ("co-owners"), all such co-owners shall be one Member and may attend any meeting of the Association, but only one such co-owner shall be entitled to exercise the vote to which the Unit is entitled. Such co-owners may from time to time all designate in writing one of their number to vote. Fractional votes shall not be allowed. Where no voting co-owner is designated, or if such designation has been revoked, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit mutually agree. No vote shall be cast for any Unit where the co-owners present in person or by proxy owning the majority interests in such Unit cannot agree to said vote or other action. The nonvoting co-owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Unit and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns. Notwithstanding the foregoing, the voting rights of an Owner shall be automatically suspended during any time period that Annual Assessments or any Special Assessment levied against such Owner are delinquent.

Section 4.2 Transfer of Voting Rights. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of fee interest in any Unit to a new Owner shall operate to transfer the appurtenant Membership and voting rights without the requirement of any express reference thereto. Each Owner shall, within ten (10) days of any sale, transfer or conveyance of a fee interest in the Owner's Unit, notify the Association in writing of such sale, transfer or conveyance, with the name and address of the transferee, the nature of the transfer and the Unit involved, and such other information relative to the transfer and the transferee as the Board may reasonably request, and shall deliver to the Association a copy of the Recorded deed therefor.

Section 4.3 Meetings of the Membership. Meetings of the Association must be held at least once each year, or as otherwise may be required by applicable law. The annual Association meeting shall be held on a recurring anniversary basis, and shall be referred to as the "Annual Meeting." The business conducted at each such Annual Meeting shall include the election of Directors whose terms are then expiring. If the Members have not held a meeting for one (1) year, a meeting of the Association Membership must be held by not later than the March 1 next following. A special meeting of the Association Membership may be called at any reasonable time and place by written request of: (a) the Association President, (b) a majority of the Directors, or (c) Members

representing at least ten percent (10%) of the voting power of the Association, or as otherwise may be required by applicable law. Notice of special meetings shall be given by the Secretary of the Association in the form and manner provided in Section 4.4, below.

Section 4.4 Meeting Notices; Agendas; Minutes. Meetings of the Members shall be held in the Properties or at such other convenient location near the Properties and within Clark County as may be designated in the notice of the meeting.

(a) Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the Association Secretary shall cause notice to be hand delivered or sent postage prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by any Owner. The meeting notice must state the time and place of the meeting and include a copy of the agenda for the meeting. The notice must include notification of the right of an Owner to: have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request, if the Owner pays the Association the cost of making the distribution, and speak to the Association or Board (unless the Board is meeting in Executive Session).

(b) The meeting agenda must consist of:

(i) a clear and complete statement of the topics scheduled to be considered during the meeting, including, without limitation, any proposed amendment to any of the Governing Documents, any fees or assessments to be imposed or increased by the Association, any budgetary changes, and/or any proposal to remove an Officer or Director; and

(ii) a list describing the items on which action may be taken, and clearly denoting that action may be taken on those items ("Agenda Items"); and

(iii) a period devoted to comments by Owners and discussion of such comments, provided that, except in emergencies, no action may be taken upon a matter raised during this comment and discussion period unless the matter is an Agenda Item. If the matter is not an Agenda Item, it shall be tabled at the current meeting, and specifically included as an Agenda Item for discussion and consideration at the next following meeting, at which time, action may be taken thereon.

(c) In an "emergency" (as said term is defined in Section 3.10(b), above, Members may take action on an item which is not listed on the agenda as an item on which action may be taken.

(d) If the Association adopts a policy imposing a fine on an Owner for the violation of a provision of the Governing Documents, the Board shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner thereof, a specific schedule of fines that may be imposed for those particular violations, at least thirty (30) days prior to any attempted enforcement, and otherwise subject to Section 17.1, below.

(e) Not more than thirty (30) days after any meeting, the Board shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy

of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy.

Section 4.5 Record Date. The Board shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting or to be furnished with any Budget or other information or material, or in order to make a determination of Members for any purpose. Notwithstanding any provisions hereof to the contrary, the Members of record on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for an adjournment of the same meeting. A record date shall not be more than sixty (60) days nor less than ten (10) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur.

Section 4.6 Proxies. Every Member entitled to attend, vote at, or exercise consents with respect to, any meeting of the Members, may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Board prior to the meeting to which the proxy is applicable. A Member may give a proxy only to a member of his immediate Family, a Resident tenant, or another Member. No proxy shall be valid after the conclusion of the meeting (including continuation of such meeting) for which the proxy was executed. Such powers of designation and revocation may be exercised by the legal guardian of any Member or by his conservator, or in the case of a minor having no guardian, by the parent legally entitled to permanent custody, or during the administration of any Member's estate where the interest in the Unit is subject to administration in the estate, by such Member's executor or administrator. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonably specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification. Unless applicable Nevada law provides otherwise, a proxy is void if (a) it is not dated or purports to be revocable without notice; (b) it does not designate the votes that must be cast on behalf of the Member who executed the proxy; or (c) the holder of the proxy does not disclose at the beginning of the meeting (for which the proxy is executed) the number of proxies pursuant to which the proxy holder will be casting votes and the voting instructions received for each proxy. If and for so long as prohibited by Nevada law, a vote may not be cast pursuant to a proxy for the election of a Director.

Section 4.7 Quorums. The presence at any meeting of Members who hold votes equal to twenty percent (20%) of the total voting power of the Association, in person or by proxy, shall constitute a quorum for consideration of that matter. The Members present at a duly called meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken other than adjournment is approved by at least a majority of the Members required to constitute a quorum, unless a greater vote is required by applicable law or by this Declaration. If any meeting cannot be held because a quorum is not present, the Members present, either in person or by proxy, may, except as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which reconvened meeting the quorum requirement shall be the presence, in person or by written proxy, of the Members entitled to vote at least twenty percent (20%) of the total votes of the Association.

Notwithstanding the presence of a sufficient number of Owners to constitute a quorum, certain matters, including, without limitation, amendment to this Declaration, require a higher percentage (e g , 67%) of votes of the total voting Membership, as set forth in this Declaration.

Section 4 8 Actions If a quorum is present, the affirmative vote on any matter of the majority of the votes represented at the meeting (or, in the case of elections in which there are more than two (2) candidates, a plurality of the votes cast) shall be the act of the Members, unless the vote of a greater number is required by law or by this Declaration.

Section 4 9 Action By Written Consent, Without Meeting. Any action which may be taken at any regular or special meeting of the Members may be taken without a meeting and without prior notice, if authorized by a written consent setting forth the action so taken, signed by Members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all Members were present and voted, and filed with the Association Secretary, provided, however, that Directors may not be elected by written consent except by unanimous written consent of all Members. Any Member giving a written consent, or such Member's proxy holder, may revoke any such consent by a writing received by the Association prior to the time that written consents of the number of Members required to authorize the proposed action have been filed with the Association Secretary, but may not do so thereafter. Such revocation shall be effective upon its receipt by the Association Secretary. Unless the consents of all Members have been solicited in writing and have been received, prompt notice shall be given, in the manner as for regular meetings of Members, to those Members who have not consented in writing, of the taking of any Association action approved by Members without a meeting Such notice shall be given at least ten (10) days before the consummation of the action authorized by such approval with respect to the following:

(a) approval of any reorganization of the Association;

(b) a proposal to approve a contract or other transaction between the Association and one or more Directors, or any corporation, firm or association in which one or more Directors has a material financial interest, or

(c) approval required by law for the indemnification of any person.

Section 4 10 Adjourned Meetings and Notice Thereof. Any Members' meeting, regular or special, whether or not a quorum is present, may be adjourned from time to time by a vote of a majority of the Members present either in person or by proxy thereat, but in the absence of a quorum, no other business may be transacted at any such meeting except as provided in Section 4.9. When any Members' meeting, either regular or special, is adjourned for seven (7) days or less, the time and place of the reconvened meeting shall be announced at the meeting at which the adjournment is taken. When any Members' meeting, either regular or special, is adjourned for more than seven (7) days, notice of the reconvened meeting shall be given to each Member as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at a reconvened meeting, and at the reconvened meeting the Members may transact any business that might have been transacted at the original meeting.

ARTICLE 5
FUNCTIONS OF ASSOCIATION

Section 5.1 Powers and Duties. The Association shall have all of the powers of a Nevada nonprofit corporation, subject only to such limitations, if any, upon the exercise of such powers as are expressly set forth in the Declaration, Articles and Bylaws. The Association shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association. The Association's obligations to maintain the Common Elements shall commence on the date Annual Assessments commence on Units; until commencement of Annual Assessments, the Common Elements shall be maintained by Declarant, at Declarant's expense. Without in any way limiting the generality of the foregoing provisions, the Association may act through the Board, and shall have:

(a) Assessments. The power and duty to levy assessments against the Owners of Units, and to enforce payment of such assessments in accordance with the provisions of Article 6 hereof.

(b) Repair and Maintenance of Common Elements. The power and duty to paint, plant, maintain and repair in a neat and attractive condition, in accordance with standards adopted by the ARC, all Common Elements and any Improvements thereon, and to pay for utilities, gardening, landscaping, and other necessary services for the Common Elements. Notwithstanding the foregoing, the Association shall have no responsibility to provide any of the services referred to in this subsection 5.1(b) with respect to any Improvement which is accepted for maintenance by any state, local or municipal governmental agency or public entity. Such responsibility shall be that respectively of the applicable agency or public entity.

(c) Removal of Graffiti. The power and duty to remove or paint over any graffiti from or on Exterior Walls, pursuant and subject to Section 9.6, below.

(d) Taxes. The power and duty to pay all taxes and assessments levied upon the Common Elements and all taxes and assessments payable by the Association.

(e) Utility Services. The power and duty to obtain, for the benefit of the Common Elements, any necessary commonly metered water, gas and electric services (or other similar services), and/or refuse collection, and the power but not the duty to provide for all refuse collection and cable or master television service, if any, for all or portions of the Properties.

(f) Easements and Rights-of-Way. The power but not the duty to grant and convey to any Person, (i) easements, licenses and rights-of-way in, on, over or under the Common Elements, and (ii) with the consent of seventy-five percent (75%) of the voting power of the Association, fee title to parcels or strips of land which comprise a portion of the Common Elements, for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder: (A) roads, streets, walks, driveways, and slope areas; (B) overhead or underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, television, telephone and other similar purposes; (C) sewers, storm and water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and, (D) any similar public or quasi-public Improvements or facilities.

(g) Manager. The power, subject to Section 5.5, below, but not the duty to employ or contract with a professional Manager to perform all or any part of the duties and responsibilities of the Association, and the power but not the duty to delegate powers to committees, Officers and employees of the Association. Any such management agreement, or any agreement providing for services by Declarant to the Association, shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon ninety (90) days written notice.

(h) Rights of Entry and Enforcement. The power but not the duty, after Notice and Hearing (except in the event of emergency which poses an imminent threat to health or substantial damage to property, in which event, Notice and Hearing shall not be required), to enter upon any area of a Unit, without being liable to any Owner, except for damage caused by the Association entering or acting in bad faith, for the purpose of enforcing by peaceful means the provisions of this Declaration, or for the purpose of maintaining or repairing any such area if for any reason whatsoever the Owner thereof fails to maintain and repair such area as required by this Declaration. All costs of any such maintenance and repair as described in the preceding sentence (including all amounts due for such work, and the costs and expenses of collection) shall be assessed against such Owner as a Special Assessment, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment pursuant to Article 7, below. The responsible Owner shall pay promptly all amounts due for such work, and the costs and expenses of collection. Unless there exists an emergency, there shall be no entry into a Dwelling without the prior consent of the Owner thereof Any damage caused by an entry upon any Unit shall be repaired by the entering party Subject to Section 5 3, below, the Association may also commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory injunctions or otherwise, all of the provisions of the Declaration, and, if such action pertaining to the Declaration is brought by the Association, the prevailing party shall be entitled to reasonable attorneys' fees and costs to be fixed by the court.

(i) Other Services. The power and duty to maintain the integrity of the Common Elements and to provide such other services as may be necessary or proper to carry out the Association's obligations and business under the terms of this Declaration to enhance the enjoyment, or to facilitate the use, by the Members, of the Common Elements.

(j) Employees, Agents and Consultants. The power but not the duty, if deemed appropriate by the Board to hire and discharge employees and agents and to retain and pay for legal, accounting and other services as may be necessary or desirable in connection with the performance of any duties or exercise of any powers of the Association under this Declaration.

(k) Acquiring Property and Construction on Common Elements. The power but not the duty, by action of the Board, to acquire property or interests in property for the common benefit of Owners, including Improvements and personal property. The power but not the duty, by action of the Board, to construct new Improvements or additions to the Common Elements, or demolish existing Improvements (other than maintenance or repairs to existing Improvements).

(l) Contracts. The power, but not the duty, to enter into contracts with Owners to provide services or to maintain and repair Improvements within the Properties which the Association is not otherwise required to maintain pursuant to this Declaration, and the power, but not the duty, to contract with third parties for such services. Any such contract or service

agreement must, however, provide for payment to the Association of the cost of providing such service or maintenance.

(m) Records and Accounting. The power and the duty to keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Financial statements for the Association shall be regularly prepared and distributed to all Members as follows:

(i) Pro forma operating statements (Budgets), Reserve Budgets, and Reserve Studies shall be distributed pursuant to Section 6.4, below;

(ii) Reviewed or audited Financial Statements (consisting of a reasonably detailed statement of revenues and expenses of the Association for each Fiscal Year, and a balance sheet showing the assets (including, but not limited to, Association Reserve Funds) and liabilities of the Association as at the end of each Fiscal Year) and a statement of cash flow for the Fiscal Year, shall be distributed within one hundred twenty (120) days after the close of each Fiscal Year.

(n) Maintenance of Other Areas. The power but not the duty to maintain and repair slopes, parkways, entry structures and Community signs identifying the Properties, to the extent deemed advisable by the Board.

(o) Use Restrictions. The power and the duty to enforce use restrictions pertaining to the Properties

(p) Insurances. The power and the duty to cause to be obtained and maintained the insurance coverages pursuant to Article 12, below.

(q) Licenses and Permits. The power and the duty to obtain from applicable governmental authority any and all licenses and permits reasonably necessary to carry out Association functions hereunder.

Section 5.2 Rules and Regulations. The Board shall be empowered to adopt, amend, repeal, and/or enforce reasonable and uniformly applied Rules and Regulations, which shall not discriminate among Members, for the use and occupancy of the Properties, as follows:

(a) General. A copy of the Rules and Regulations, as from time to time may be adopted, amended or repealed, shall be posted in a conspicuous place in the Common Elements and/or shall be mailed or otherwise delivered to each Member. Upon such mailing, delivery or posting, the Rules and Regulations shall have the same force and effect as if they were set forth herein and shall be binding on all Persons having any interest in, or making any use of any part of, the Properties, whether or not Members; provided, however, that the Rules and Regulations shall be enforceable only to the extent that they are consistent with the other Governing Documents. If any Person has actual knowledge of any of the Rules and Regulations, such Rules and Regulations shall be enforceable against such Person, whether or not a Member, as though notice of such Rules and Regulations had been given pursuant to this Section 5.2. The Rules and Regulations may not be used to amend any of the other Governing Documents.

(b) Limitations. The Rules and Regulations must be:

(i) reasonably related to the purpose for which adopted;

(ii) sufficiently explicit in their prohibition, direction, or limitation, so as to reasonably inform an Owner or Resident, or tenant or guest thereof, of any action or omission required for compliance;

(iii) adopted without intent to evade any obligation of the Association;

(iv) consistent with the other Governing Documents (and must not arbitrarily restrict conduct, or require the construction of any capital improvement by an Owner if not so required by the other Governing Documents);

(v) uniformly enforced under the same or similar circumstances against all Owners; provided that any particular rule not so uniformly enforced may not be enforced against any Owner (except as, and to the extent, if any, such enforcement may be permitted from time to time by applicable law); and

(vi) duly adopted and distributed to the Owners at least thirty (30) days prior to any attempted enforcement.

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

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

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

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

(i) The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall then endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars ($5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a majority of the voting power of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

(1) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Nevada attorney regularly residing in Clark County, Nevada, with a Martindale-Hubbell rating of "av", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars ($5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said $5,000.00 limit, with the express consent of more than fifty percent (50%) of all of the Members of the Association, at a special meeting called for such purpose.

(2) Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

(3) Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call

a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (A) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (B) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (x) if not more than fifty percent (50%) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (y) if more than fifty percent (50%) of the total voting power of the Association (i.e., more than fifty percent (50%) of all of the Members of the Association) affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (i) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and (ii) that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(4) In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association Reserve Fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy). Association Reserve Funds, pursuant to Section 6.3, below, are to be used only for the specified replacements, painting and repairs of Common Elements, and for no other purpose whatsoever.

(d) Any provision in this Declaration notwithstanding: (i) other than as set forth in this Section 5.3, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Proceeding, (ii) any institution, prosecution, or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 5.3, shall be unauthorized and ultra

vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 5.3 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Proceeding; and (iii) this Section 5.3 may not be amended or deleted at any time without the express prior written approval of both (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors, and any purported amendment or deletion of this Section 5.3, or any portion hereof, without both of such express prior written approvals shall be void.

Section 5.4 Additional Express Limitations on Powers of Association. The Association shall not take any of the following actions except with the prior vote or written consent of a majority of the voting power of the Association:

(a) Incur aggregate expenditures for capital improvements to the Common Elements in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year; or sell, during any Fiscal Year, any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

(b) Enter into a contract with a third person wherein the third person will furnish goods or services for the Association for a term longer than one (1) year, except (i) a contract with a public or private utility or cable television company, if the rates charged for the materials or services are regulated by the Nevada Public Service Commission (provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate), or (ii) prepaid casualty and/or liability insurance policies of no greater than three (3) years duration

(c) Pay compensation to any Association Director or Officer for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Section 5.5 Manager. The Association shall have the power to employ or contract with a Manager, to perform all or any part of the duties and responsibilities of the Association, subject to the Governing Documents, for the purpose of operating and maintaining the Properties, subject to the following:

(a) Any agreement with a Manager shall be in writing and shall be for a term not in excess of one (1) year, subject to cancellation by the Association for cause at any time upon not less than thirty (30) days written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not more than ninety (90) days written notice. In the event of any explicit conflict between the Governing Documents and any agreement with a Manager, the Governing Documents shall prevail.

(b) The Manager shall possess sufficient experience, in the reasonable judgment of the Board, in managing residential subdivision projects, similar to the Properties, in the County, and shall be duly licensed as required from time to time by the appropriate licensing and

governmental authorities (and must have the qualifications, including education and experience, when and as required for the issuance of the relevant certificate by the Nevada Real Estate Division pursuant and subject to the provisions of NRS Chapter 645 and/or NRS § 116.3119.3, or duly exempted pursuant to NRS § 116.3119.4). Any and all employees of the Manager with responsibilities to or in connection with the Association and/or the Community shall have such experience with regard to similar projects. (If no Manager meeting the above-stated qualifications is available, the Board shall retain the most highly qualified management entity available, which is duly licensed by the appropriate licensing authorities).

(c) No Manager, or any director, officer, shareholder, principal, partner, or employee of the Manager, may be a Director or Officer of the Association.

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

(e) By execution of its agreement with the Association, a Manager shall be conclusively deemed to have covenanted: (1) in good faith to be bound by, and to faithfully perform all duties (including, but not limited to, full and faithful accounting for all Association funds within the possession or control of Manager) required of the Manager under the Governing Documents (and, in the event of any irreconcilable conflict between the Governing Documents and the contract with the Manager, the Governing Documents shall prevail); (2) that any penalties, fines or interest levied upon the Association as the result of Manager's error or omission shall be paid (or reimbursed to the Association) by the Manager; (3) to comply fully, at its expense, with all applicable regulations of the Nevada Real Estate Division; and (4) at Manager's sole expense, to promptly turn over, to the Board, possession and control of all funds, documents, books, records and reports pertaining to the Properties and/or Association, and to coordinate and cooperate in good faith with the Board in connection with such turnover, in any event not later than ten (10) days of expiration or termination of the Association's agreement with Manager (provided that, without limiting its other remedies, the Association shall be entitled to withhold all amounts otherwise due to the Manager until such time as the Manager turnover in good faith has been completed).

(f) Upon expiration or termination of an agreement with a Manager, a replacement Manager meeting the above-stated qualifications shall be retained by the Board as soon as possible thereafter and a limited review performed, by qualified Person designated by the Board, of the books and records of the Association, to verify assets.

(g) The Association shall also maintain and pay for the services of such other personnel, including independent contractors, as the Board shall determine to be necessary or desirable for the proper management, operation, maintenance, and repair of the Association and the Properties, pursuant to the Governing Documents, whether such personnel are furnished or employed directly by the Association or by any person with whom or which it contracts. Such other personnel shall not all be replaced concurrently, but shall be replaced according to a "staggered" schedule, to maximize continuity of services to the Association.

Section 5.6 Inspection of Books and Records.

(a) The Board shall, upon the written request of any Owner, make available the books, records and other papers of the Association for review during the regular working hours of the Association, with the exception of: (1) personnel records of employees (if any) of the Association, and (2) records of the Association relating to another Owner.

(b) The Board shall cause to be maintained and made available for review at the business office of the Association or other suitable location: (1) the financial statements of the Association; (2) the Budgets and Reserve Budgets; and (3) Reserve Studies.

(c) The Board shall cause to be provided a copy of any of the records required to be maintained pursuant to (a) and (b) above, to an Owner or to the Nevada State Ombudsman, as applicable, within 14 days after receiving a written request therefor. The Board may charge a fee to cover the actual costs of preparing such copy, but not to exceed 25 cents per page (or such maximum amount as permitted by applicable Nevada law).

(d) Notwithstanding the foregoing, each Director shall have the unfettered right at any reasonable time, and from time to time, to inspect all such records.

Section 5.7 Continuing Rights of Declarant. Declarant shall preserve the right, without obligation, to enforce the Governing Documents (including, without limitation, the Association's duties of maintenance and repair, and Reserve Study and Reserve Fund obligations). After the end of Declarant Control Period, throughout the term of this Declaration, the Board shall deliver to Declarant notices and minutes of all Board meetings and Membership meetings, and Declarant shall have the right, without obligation, to attend such meetings, on a non-voting basis. Declarant shall also receive notice of, and have the right, without obligation, to attend, all inspections of the Properties or any portion(s) thereof. The Board shall also, throughout the term of this Declaration, deliver to Declarant (without any express or implied obligation or duty on Declarant's part to review or to do anything) all notices and correspondence to Owners, all inspection reports, the Reserve Studies prepared in accordance with Section 6.3 below, and audited annual reports, as required in Section 5.1(m), above. Such notices and information shall be delivered to Declarant at its most recently designated address.

Section 5.8 Compliance with Applicable Laws. The Association shall comply with all applicable laws (including, but not limited to, applicable laws prohibiting discrimination against any person in the provision of services or facilities in connection with a Dwelling because of a handicap of such person). The provisions of the Governing Documents shall be upheld and enforceable to the maximum extent permissible under applicable federal or state law or City or County ordinance. Subject to the foregoing, in the event of irreconcilable conflict between applicable law and any provision of the Governing Documents, the applicable law shall prevail, and the affected provision of the Governing Document shall be deemed automatically amended (or deleted) to the minimum extent reasonably necessary to remove such irreconcilable conflict. In no event shall the Association adhere to or enforce any provision of the Governing Documents which irreconcilably contravenes applicable law.

ARTICLE 6
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1 Personal Obligation of Assessments. Each Owner of a Unit, by acceptance of a deed therefor, whether or not so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, (b) Special Assessments, and (c) any Capital Assessments, such assessments to be established and collected as provided in this Declaration. All assessments, together with interest thereon, late charges, costs and reasonable attorneys' fees for the collection thereof, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such assessment is made. Each such assessment, together with interest thereon, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment became due. This personal obligation cannot be avoided by abandonment of a Unit or by an offer to waive use of the Common Elements. The personal obligation only shall not pass to the successors in title of any Owner unless expressly assumed by such successors.

Section 6.2 Association Funds. The Board shall establish at least the following separate accounts ("Association Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under the provisions of this Declaration. The Association Funds shall be established as trust accounts at a federally or state insured banking or savings institution, and shall include: (1) an operating fund ("Operating Fund") for current expenses of the Association, and (2) a reserve fund ("Reserve Fund") for capital repairs and replacements as set forth in Section 6.3 below, and (3) any other funds which the Board may establish, to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Association Funds (other than the Reserve Fund, which shall be kept segregated), provided that the integrity of each individual Association Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Association Fund separately. Each of the Association Funds shall be established as a separate trust savings or trust checking account, at any federally or state insured banking or lending institution, with balances not to exceed institutionally insured levels. All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the common benefit of the Owners for purposes authorized by this Declaration. The Manager shall not be authorized to make withdrawals from the Reserve Fund. Withdrawals from the Reserve Fund shall require signatures of both the President and Treasurer (or, in the absence of either the President or Treasurer, the Secretary may sign in place of the absent Officer). The President, Treasurer, and Secretary all must be Directors and (after the Declarant Control Period) must also all be Owners.

Section 6.3 Reserve Fund; Reserve Studies.

(a) Any other provision herein notwithstanding: (i) the Association shall establish a reserve fund ("Reserve Fund"); (ii) the Reserve Fund shall be used only for capital repairs, restoration, and replacement of major components ("Major Components") of the Common Elements, (iii) in no event whatsoever shall the Reserve Fund be used for regular maintenance recurring on an annual or more frequent basis, or as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding, or for any other purpose whatsoever, (iv) the Reserve Fund shall be kept in a segregated account, withdrawals from which shall only be made upon specific approval of the Board subject to the foregoing, (v) funds in the Reserve Fund may not be

withdrawn without the signatures of both the President and the Treasurer (provided that the Secretary may sign in lieu of either the President or the Treasurer, if either is not reasonably available); (vi) under no circumstances shall the Manager (or any one Officer or Director, acting alone) be authorized to make withdrawals from the Reserve Fund, and (vii) any use of the Reserve Fund in violation of the foregoing provisions shall be unauthorized and ultra vires as to the Association, and shall subject any Director who acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.3(a) to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized use of the Reserve Fund.

(b) The Board shall periodically retain the services of a qualified reserve study analyst, with sufficient experience with preparing reserve studies for similar residential projects in the County, to prepare and provide to the Association a reserve study ("Reserve Study"). The Board shall cause to be prepared an initial Reserve Study by not later than October 1, 2000. Thereafter, the Board shall: (1) cause to be conducted at least once every five years, a subsequent Reserve Study; (2) review the results of the most current Reserve Study at least annually to determine if those reserves are sufficient; and (3) make any adjustments the Board deems necessary to maintain the required reserves.

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

Section 6.4 Budget; Reserve Budget.

(a) The Board shall adopt a proposed annual Budget at least forty-five (45) days prior to the first Annual Assessment period for each Fiscal Year. Within thirty (30) days after adoption of any proposed Budget, the Board shall provide to all Owners a summary of the Budget, and shall set a date for a meeting of the Owners to consider ratification of the Budget. Said meeting shall be held not less than fourteen (14) days, nor more than thirty (30) days after mailing of the summary. Unless at that meeting the proposed Budget is rejected by at least seventy-five percent (75%) of the voting power of the Association, the Budget shall be deemed ratified, whether or not a quorum was present. If the proposed Budget is duly rejected as aforesaid, the annual Budget for the immediately preceding Fiscal Year shall be reinstated, as if duly approved for the Fiscal Year in question, and shall remain in effect until such time as a subsequent proposed Budget is ratified.

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

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

(2) The Reserve Budget, which must include, without limitation:

(A) the current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements ("Major Component");

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

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

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

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

Section 6.5 Limitations on Annual Assessment Increases. The Board shall not levy, for any Fiscal Year, an Annual Assessment which exceeds the "Maximum Authorized Annual Assessment" as determined below, unless first approved by the vote of Members representing at least a majority of the voting power of the Association. The "Maximum Authorized Annual Assessment" in any fiscal year following the initial budgeted year shall be a sum which does not exceed the aggregate of (a) the Annual Assessment for the prior Fiscal Year, plus (b) a twenty-five percent (25%) increase thereof. Notwithstanding the foregoing, if, in any Fiscal Year, the Board reasonably determines that the Common Expenses cannot be met by the Annual Assessments levied under the then-current Budget, the Board may, upon the affirmative vote of a majority of the voting power of the Association and a majority of the voting power of the Board, submit a Supplemental Annual Assessment, applicable to that Fiscal Year only, for ratification as provided in Section 6.4 above.

Section 6.6 Initial Capital Contributions to Association. At the Close of Escrow for the sale of a Unit by Declarant, the Purchaser of such Unit shall be required to pay a capital contribution to the Association, in an amount equal to two (2) full monthly installments of the greater of the initial or then-applicable Annual Assessment, notwithstanding Section 6.7 below. Such capital contribution is in addition to, and is not to be considered as an advance payment of, the Annual Assessment for such Unit, and may be applied to initial working capital needs of the Association.

Section 6.7 Assessment Commencement Date. The Board, by majority vote, shall authorize and levy the amount of the Annual Assessment upon each Unit, as provided herein. Annual Assessments shall commence on Units on the respective Assessment Commencement Date. The "Assessment Commencement Date" hereunder shall be: (a) with respect to Units within the Original Property, the first day of the calendar month following the Close of Escrow to a Purchaser of the first Unit in the Original Property, and (b) with respect to each Unit within Annexed Property, that date on which the Annexation Amendment for such Unit is Recorded; provided that Declarant may establish, its sole discretion, a later Assessment Commencement Date uniformly as to all Units by agreement of Declarant to pay all Common Expenses for the Properties up through and including such later Assessment Commencement Date. The first Annual Assessment for each Unit shall be pro-rated based on the number of months remaining in the Fiscal Year. All installments of Annual Assessments shall be collected in advance on a regular basis by the Board, at such frequency and on such due dates as the Board shall determine from time to time in its sole discretion. The Association shall, upon demand, and for a reasonable charge, furnish a certificate binding on the Association, signed by an Officer or Association agent, setting forth whether the assessments on a Unit have been paid. At the end of any Fiscal Year, the Board may determine that all excess funds remaining in the operating fund, over and above the amounts used for the operation of the Properties, may be retained by the Association for use in reducing the following year's Annual Assessment or for deposit in the reserve account. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Properties, any amounts remaining in any of the Association Funds shall be distributed proportionately to or for the benefit of the Members, in accordance with Nevada law.

Section 6.8 Capital Assessments. The Board may levy, in any Fiscal Year, a Capital Assessment applicable to that Fiscal Year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement or other such addition upon the Common Elements, including fixtures and personal property related thereto, provided that any proposed Capital Assessment shall require the advance consent of a majority of the voting power of the Association.

Section 6.9 Uniform Rate of Assessment. Annual Assessments and Capital Assessments shall be assessed at an equal and uniform rate against all Owners and their Units. Each Owner's share of such assessments shall be a fraction, the numerator of which shall be the number of Units owned by such Owner, and the denominator of which shall be the aggregate number of Units in the Original Property (and, upon annexation, of Units in portions of the Annexed Property).

Section 6.10 Exempt Property. The following property subject to this Declaration shall be exempt from the assessments herein:

(a) all portions, if any, of the Properties dedicated to and accepted by, the United States, the State of Nevada, Clark County, or any political subdivision of any of the foregoing, or any public agency, entity or authority, for so long as such entity or political subdivision is the owner thereof, or for so long as such dedication remains effective; and

(b) the Common Elements owned by the Association in fee.

Section 6.11 Special Assessments. The Association may, subject to the provisions of Section 9.3 and Section 11.1 (b) hereof, levy Special Assessments against specific Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their tenants, families, guests, invitees or agents. Special Assessments also shall include, without limitation, late payment penalties, interest charges, fines, administrative fees, attorneys' fees, amounts expended to enforce assessment liens against Owners as provided for herein, and other charges of similar nature. Special Assessments, if not paid timely when due, shall constitute unpaid or delinquent assessments, pursuant to Article 7, below.

ARTICLE 7
EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 7.1 Nonpayment of Assessments. Any installment of an Annual Assessment, Special Assessment, or Capital Assessment shall be delinquent if not paid within thirty (30) days of the due date as established by the Board. Such delinquent installment shall bear interest from the due date until paid, at the rate of two (2) percentage points per annum above the prime rate charged from time to time by Bank of America N.T. & S.A. (or, if such rate is no longer published, then a reasonable replacement rate), but in any event not greater than the maximum rate permitted by applicable Nevada law, as well as a reasonable late charge, as determined by the Board, to compensate the Association for increased bookkeeping, billing, administrative costs, and any other appropriate charges. No such late charge or interest or any delinquent installment may exceed the maximum rate or amount allowable by law. The Association may bring an action at law against the Owner personally obligated to pay any delinquent installment or late charge, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Elements or by abandonment of his Unit.

Section 7.2 Notice of Delinquent Installment. If any installment of an assessment is not paid within thirty (30) days after its due date, the Board may mail notice of delinquent assessment to the Owner and to each first Mortgagee of the Unit. The notice shall specify: (a) the amount of assessments and other sums due; (b) a description of the Unit against which the lien is imposed; (c) the name of the record Owner of the Unit; (d) the fact that the installment is delinquent; (e) the action required to cure the default; (f) the date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured; and (g) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of such assessment for the then-current Fiscal Year and sale of the Unit. The notice shall further inform the Owner of his right to cure after acceleration. If the delinquent installment of assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of such assessments levied against such Owner and his Unit to be immediately due and payable without further demand, and may enforce the collection of the full assessments and all charges thereon in any manner authorized by law or this Declaration.

Section 7.3 Notice of Default and Election to Sell. No action shall be brought to enforce any assessment lien herein, unless at least sixty (60) days have expired following the later of: (a) the date a notice of default and election to sell is Recorded; or (b) the date the Recorded notice of default and election to sell is mailed in the United States mail, certified or registered, return receipt requested, to the Owner of the Unit. Such notice of default and election to sell must recite a good

and sufficient legal description of such Unit, the Record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid assessment as described in Section 7.1 above, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by such lien), the name and address of the Association, and the name and address of the Person authorized by the Board to enforce the lien by sale. The notice of default and election to sell shall be signed and acknowledged by an Association Officer, Manager, or other Person designated by the Board for such purpose, and such lien shall be prior to any declaration of homestead Recorded after the date on which this Declaration is Recorded. The lien shall continue until fully paid or otherwise satisfied.

Section 7.4 Foreclosure Sale. Subject to the limitation set forth in Section 7.5 below, any such sale provided for above may be conducted by the Board, its attorneys, or other Person authorized by the Board in accordance with the provisions of NRS §116.31164 and Covenants Nos. 6, 7 and 8 of NRS § 107.030 and §107.090, as amended, insofar as they are consistent with the provisions of NRS § 116.31164, as amended, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in Mortgages and Deeds of Trust, or in any other manner permitted by law. The Association, through its duly authorized agents, shall have the power to bid on the Unit at the foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Notices of default and election to sell shall be provided as required by NRS § 116.31163. Notice of time and place of sale shall be provided as required by NRS § 116.311635.

Section 7.5 Limitation on Foreclosure. Any other provision in the Governing Documents notwithstanding, the Association may not foreclose a lien by sale for the assessment of a fine or for a violation of the Governing Documents, unless the violation is of a type that substantially and imminently threatens the health, safety, and welfare of the Owners and Residents of the Community. The foregoing limitation shall not apply to foreclosure of a lien for Annual Assessments or Capital Assessments, or any portion respectively thereof, pursuant to this Article 7.

Section 7.6 Cure of Default. Upon the timely cure of any default for which a notice of default and election to sell was filed by the Association, the Officers thereof shall Record an appropriate release of lien, upon payment by the defaulting Owner of a reasonable fee to be determined by the Board, to cover the cost of preparing and Recording such release. A certificate, executed and acknowledged by any two (2) Directors or the Manager, stating the indebtedness secured by the lien upon any Unit created hereunder, shall be conclusive upon the Association and, if acknowledged by the Owner, shall be binding on such Owner as to the amount of such indebtedness as of the date of the certificate, in favor of all Persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request, at a reasonable fee, to be determined by the Board.

Section 7.7 Cumulative Remedies. The assessment liens and the rights of foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law or in equity, including a suit to recover a money judgment for unpaid assessments, as provided above.

Section 7.8 Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created under this Article 7, nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the Beneficiary under any Recorded First Deed of Trust encumbering a Unit, made in good faith and for value; provided that after such Beneficiary or some other Person

obtains title to such Unit by judicial foreclosure, other foreclosure, or exercise of power of sale, such Unit shall remain subject to this Declaration and the payment of all installments of assessments accruing subsequent to the date such Beneficiary or other Person obtains title. The lien of the assessments, including interest and costs, shall be subordinate to the lien of any First Mortgage upon the Unit. The release or discharge of any lien for unpaid assessments by reason of the foreclosure or exercise of power of sale by the First Mortgagee shall not relieve the prior Owner of his personal obligation for the payment of such unpaid assessments.

Section 7.9 Priority of Assessment Lien. Recording of the Declaration constitutes Record notice and perfection of a lien for assessments. A lien for assessments, including interest, costs, and attorneys' fees, as provided for herein, shall be prior to all other liens and encumbrances on a Unit, except for: (a) liens and encumbrances Recorded before the Declaration was Recorded, (b) a first Mortgage Recorded before the delinquency of the assessment sought to be enforced, and (c) liens for real estate taxes and other governmental charges, and is otherwise subject to NRS § 116.3116. The sale or transfer of any Unit shall not affect an assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments which thereafter become due. Where the Beneficiary of a First Mortgage of Record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure or "deed in lieu thereof," the Person who obtains title and his successors and assigns shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses and assessments shall be deemed to become expenses collectible from all of the Units, including the Unit belonging to such Person and his successors and assigns.

ARTICLE 8
ARCHITECTURAL AND LANDSCAPING CONTROL

Section 8.1 ARC. The Architectural Review Committee, sometimes referred to in this Declaration as the "ARC," shall consist of three (3) committee members; provided, however, that such number may be increased or decreased from time to time by resolution of the Board. Notwithstanding the foregoing, Declarant shall have the sole right and power to appoint and/or remove all of the members to the ARC until such time as Declarant no longer owns any property in, or has any power to annex the Annexable Area or any portion thereof; provided that Declarant, in its sole discretion, by written instrument, may at any earlier time turn over to the Board the power to appoint the members to the ARC; thereafter, the Board shall appoint all members of the ARC. A member of the ARC may be removed at any time, without cause, by the Person who appointed such member. Unless changed by resolution of the Board, the address of the ARC for all purposes, including the submission of plans for approval, shall be at the principal office of the Association as designated by the Board.

Section 8.2 Review of Plans and Specifications. The ARC shall consider and act upon any and all proposals, plans and specifications, drawings, and other information or other items (collectively in this Article 8, "plans and specifications") submitted, or required to be submitted, for ARC approval under this Declaration, subject to Sections 9.7(b) and 10.15, below, and shall perform such other duties as from time to time may be assigned to the ARC by the Board, including

the inspection of construction in progress to assure conformance with plans and specifications approved by the ARC.

(a) With the exception of any such activity of Declarant, no construction, alteration, grading, addition, excavation, removal, relocation, repainting, demolition, installation, modification, decoration, redecoration or reconstruction of an Improvement, including Dwelling and landscaping, or removal of any tree, shall be commenced or maintained by any Owner, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. No design or construction activity of Declarant shall be subject to ARC approval. The Owner submitting such plans and specifications ("Applicant") shall obtain a written receipt therefor from an authorized agent of the ARC. Until changed by the Board, the address for submission of such plans and specifications shall be the principal office of the Association. The ARC shall approve plans and specifications submitted for its approval only if it deems that: (1) the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area or the Properties as a whole; (2) the appearance of any structure affected thereby will be in harmony with other structures in the vicinity; (3) the construction will not detract from the beauty, wholesomeness and attractiveness of the Common Elements or the enjoyment thereof by the Members; (4) the construction will not unreasonably interfere with existing views from other Units; and (5) the upkeep and maintenance will not become a burden on the Association

(b) The ARC may condition its review and/or approval of plans and specifications for any Improvement upon such changes therein as the ARC may deem appropriate or necessary, which may, but need not necessarily include any one or more or all of the following conditions: (1) agreement by the Applicant to furnish to the ARC a bond or other security acceptable to the ARC in an amount reasonably sufficient to (i) assure the completion of such Improvement or the availability of funds adequate to remedy any damage, or any nuisance or unsightly conditions occurring as a result of the partial completion of such Improvement, and (ii) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Properties or damage to the Common Elements as a result of such work; (2) such changes therein as the ARC deems appropriate, (3) agreement by the Applicant to grant appropriate easements to the Association for the maintenance of the Improvement; (4) agreement of the Applicant to reimburse the Association for the costs of maintenance; (5) agreement of the Applicant to replace such removed trees as may be designated by the ARC; (6) agreement of the applicant to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvements in detail as actually constructed upon completion of the Improvement; (7) payment or reimbursement, by Applicant, of the ARC and/or its members for their actual costs incurred in considering the plans and specifications; (8) payment, by Applicant, of the professional fees of a licensed architect or engineer to review the plans and specifications on behalf of the ARC, if such review is deemed by the ARC to be necessary or desirable; and/or (9) such other conditions as the ARC may reasonably determine to be prudent and in the best interests of the Association. The ARC may further require submission of additional plans and specifications or other information prior to approving or disapproving materials submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans and specifications, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of such fee shall be uniform, or that the fee may be determined in any other reasonable manner, such as based upon the reasonable cost of

the construction, alteration or addition contemplated or the cost of architectural or other professional fees incurred by the ARC in reviewing plans and specifications.

(c) The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, landscaping plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ARC of any required plans and specifications, the ARC may postpone review of any plans and specifications submitted for approval. Any application submitted pursuant to this Section 8.2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the ARC of all required materials. The ARC will condition any approval required in this Article 8 upon, among other things, compliance with Declarant's (a) design criteria as established from time to time, (b) Improvement standards and (c) development standards, as amended from time to time, all of which are incorporated herein by this reference.

(d) Any Owner aggrieved by a decision of the ARC may appeal the decision to the ARC in accordance with procedures to be established by the ARC. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the ARC's opinion warrant reconsideration. If the ARC fails to allow an appeal or if the ARC, after appeal, again rules in a manner aggrieving the appellant, the decision of the ARC is final. The foregoing notwithstanding, after such time as the Board appoints all members of the ARC, all appeals from ARC decisions shall be made to the Board, which shall consider and decide such appeals.

(e) Notwithstanding the foregoing or any other provision herein, the ARC's jurisdiction shall normally extend only to the external appearance or "aesthetics" of any Improvement, and shall not extend to structural matters, method of construction, or compliance with a building code or other applicable legal requirement. ARC approval shall be subject to all applicable requirements of applicable government authority, drainage, and other similar matters, and shall not be deemed to encompass or extend to possible impact on neighboring Units.

Section 8.3 Meetings of the ARC. The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may from time to time, by resolution unanimously adopted in writing, designate an ARC representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 8.8 below. In the absence of such designation, the vote of a majority of the ARC, or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 8.4 No Waiver of Future Approvals. The approval by the ARC of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the ARC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 8.5 Compensation of Members. Subject to the provisions of Section 8.2(b) above, members of the ARC shall not receive compensation from the Association for services rendered as members of the ARC.

Section 8.6 Correction by Owner of Nonconforming Items. Subject in all instances to compliance by Owner with all applicable requirements of governmental authorities with jurisdiction, ARC inspection (which shall be limited to inspection of the visible appearance of the size, color, location, and materials of work), and Owner correction of visible nonconformance therein, shall proceed as follows

(a) The ARC or its duly appointed representative shall have the right to inspect any Improvement ("Right of Inspection") whether or not the ARC's approval has been requested or given, provided that such inspection shall be limited to the visible appearance of the size, color, location, and materials comprising such Improvement (and shall not constitute an inspection of any structural item, method of construction, or compliance with any applicable requirement of governmental authority). Such Right of Inspection shall, however, terminate sixty (60) days after receipt by the ARC of written notice from the Owner of the Unit that the work of Improvement has been completed. If, as a result of such inspection, the ARC finds that such Improvement was done without obtaining approval of the plans and specifications therefor or was not done in substantial compliance with the plans and specifications approved by the ARC, it shall, within sixty (60) days from the inspection, notify the Owner in writing of the Owner's failure to comply with this Article 8 specifying the particulars of noncompliance. If work has been performed without approval of plans and specifications therefor, the ARC may require the Owner of the Unit in which the Improvement is located, to submit "as-built" record drawings certified by a licensed architect or engineer which describe the Improvement in detail as actually constructed. The ARC shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(b) If, upon the expiration of sixty (60) days from the date of such notification, the Owner has failed to remedy such noncompliance, the ARC shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a noncompliance (with the visible appearance of the size, color, location, and/or materials thereof) and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a notice of noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the noncompliance, and, in addition, may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The right of the Association to remove a noncomplying Improvement or otherwise to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity, or in this Declaration.

(c) If for any reason the ARC fails to notify the Owner of any noncompliance with previously submitted and approved plans and specifications within sixty (60) days after receipt of written notice of completion from the Owner, the Improvement shall be deemed to be in compliance with ARC requirements (but, of course, shall remain subject to compliance by Owner with all requirements of applicable governmental authority).

(d) All construction, alteration or other work shall be performed as promptly and as diligently as possible and shall be completed within one hundred eighty (180) days of the date on which the work commenced

Section 8.7 Scope of Review. The ARC shall review and approve, conditionally approve, or disapprove, all proposals, plans and specifications submitted to it for any proposed Improvement, alteration, or addition, solely on the basis of the considerations set forth in Section 8.2 above, and solely with regard to the visible appearance of the size, color, location, and materials thereof. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any proposal, plan or design from the standpoint of structural safety or conformance with building or other codes. Each Owner shall be responsible for obtaining all necessary permits and for complying with all applicable governmental (including, but not necessarily limited to, County) requirements.

Section 8.8 Variances. When circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may require, the ARC may authorize limited variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions on size (including height, size, and/or floor area) or placement of structures, or similar restrictions. Such variances must be evidenced in writing, must be signed by a majority of the ARC, and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any such variance by ARC shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws, regulations, and requirements affecting the use of his Unit, including but not limited to zoning ordinances and Lot set-back lines or requirements imposed by the County, or any municipal or other public authority. The granting of a variance by ARC shall not be deemed to be a variance or approval from the standpoint of compliance with such laws or regulations, nor from the standpoint of structural safety, and the ARC, provided it acts in good faith, shall not be liable for any damage to an Owner as a result of its granting or denying of a variance.

Section 8.9 Non-Liability for Approval of Plans. The ARC's approval of proposals or plans and specifications shall not constitute a representation, warranty or guarantee, whether express or implied, that such proposals or plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such proposals or plans and specifications, neither the ARC, the members thereof, the Association, the Board, nor Declarant, assumes any liability or responsibility therefor, or for any defect in the structure constructed from such proposals or plans or specifications. Neither the ARC, any member thereof, the Association, the Board, nor Declarant, shall be liable to any Member, Owner, occupant, or other Person or entity for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any proposals, plans and specifications and drawings, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved proposals, plans and specifications and drawings.

Section 8.10 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Units owned by Declarant, and the provisions of this Article 8 shall not apply to Improvements built by Declarant, or, until such time as Declarant conveys title to the Unit to a

Purchaser, to Units owned by Declarant. This Article 8 shall not be amended without Declarant's written consent set forth on the amendment.

ARTICLE 9
MAINTENANCE AND REPAIR OBLIGATIONS

Section 9.1 Maintenance Obligations of Owners. It shall be the duty of each Owner, at his sole cost and expense, subject to the provisions of this Declaration requiring ARC approval, to maintain, repair, replace and restore all Improvements located on his Unit, and the Unit itself, in a neat, sanitary and attractive condition, except for any areas expressly required to be maintained by the Association under this Declaration. If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or otherwise to violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which the Association may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment, enforceable as set forth in this Declaration.

The foregoing notwithstanding: (a) the Association shall have an easement for the maintenance, repair and replacement of any portion of a Lot which constitutes a Common Element and the Improvements constructed by Declarant or the Association thereon, and (b) each Owner (other than Declarant), by acceptance of a deed to a Unit, whether or not so expressed in such deed, is deemed to covenant and agree not to place or install any Improvement on a Common Element, and not to hinder, obstruct, modify, change, add to or remove, partition, or seek partition of, any Common Element or any Improvement installed by Declarant or the Association thereon.

Section 9.2 Maintenance Obligations of Association. No Improvement, excavation or work which in any way alters the Common Elements shall be made or done by any Person other than the Association or its authorized agents after the completion of the construction or installation of the Improvements thereto by Declarant. Subject to the provisions of Sections 9.3 and 11.1 (b) hereof, upon the Assessment Commencement Date, the Association shall provide for the maintenance, repair, and replacement of the Common Elements. The Common Elements shall be maintained in a safe, sanitary and attractive condition, and in good order and repair. The Association shall also provide for any utilities serving the Common Elements. The Association shall also ensure that any landscaping on the Common Elements is regularly and periodically maintained in good order and in a neat and attractive condition. The Association shall not be responsible for maintenance of any portions of the Common Elements which have been dedicated to and accepted for maintenance by a state, local or municipal governmental agency or entity. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board shall determine in its judgment to be appropriate.

Section 9.3 Damage by Owners to Common Elements. The cost of any maintenance, repairs or replacements by the Association within the Common Elements arising out of or caused by the willful or negligent act of an Owner, his tenants, or their respective Families, guests or invitees shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner as provided in Section 11.1 (b) hereof.

Section 9.4 Damage and Destruction Affecting Dwellings and Duty to Rebuild. If all or any portion of any Unit or Dwelling is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the same in a manner which will restore the Unit substantially to its appearance and condition immediately prior to the casualty or as otherwise approved by the ARC. The Owner of any damaged Unit shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within six (6) months after the damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit which is damaged shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than ninety (90) days from the date such transferee acquired title to the Unit.

Section 9.5 Party Walls. Each wall which is built as a part of the original construction by Declarant and placed approximately on the property line between Units shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, the party wall shall be promptly restored, to its condition and appearance before such damage or destruction, by the Owner(s) whose Units have or had use of the wall. Subject to the foregoing, any Owner whose Unit has or had use of the wall may restore the wall to the way it existed before such destruction or damage, and any other Owner whose Unit makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use, subject to the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section 9.5, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements, or otherwise damaged or destroyed, shall bear the entire cost of furnishing the necessary protection, repair or replacement. The right of any Owner to contribution from any other Owner under this Section 9.5 shall be appurtenant to the land and shall pass to such Owner's successors in title. The foregoing, and any other provision in this Declaration notwithstanding, no Owner shall alter, add to, or remove any party wall constructed by Declarant, or portion of such wall, without the prior written consent of the other Owner(s) who share such party wall, which consent shall not be unreasonably withheld, and the prior written approval of the ARC. In the event of any dispute arising concerning a party wall under the provisions of this Section 9.5, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

Section 9.6 Perimeter Walls. Portions of Perimeter Walls, constructed or to be constructed by Declarant, abutting or located on individual Lots, are Improvements all portions of which are located, or conclusively deemed to be located, within the boundaries of individual Units. By acceptance of a deed to his Unit, each Owner on whose Unit a portion of the perimeter wall is located, hereby covenants, at the Owner's sole expense, with regard to the portion of the Perimeter Wall ("Unit Wall") located or deemed located on his Unit: to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Unit Wall at all times in good repair; and, if and when reasonably necessary, to replace the Unit Wall to its condition and appearance as originally constructed by Declarant. No changes or alterations

(including, without limitation, temporary alterations, such as removal for construction of a swimming pool or other Improvement) shall be made to any perimeter wall, or any portion thereof, without the prior written approval of the ARC (and any request therefor shall be subject to the provisions of Article 8 above, including, but not necessarily limited to, any conditions imposed by the ARC pursuant to Section 8.2(b) above). The foregoing and any other provision herein notwithstanding, under no circumstances shall any wall, or portion thereof, originally constructed by Declarant, be changed, altered or removed by any Owner (or agent or contractor thereof) if such wall, or portion thereof, is shown on any improvement plan as a flood control wall, or any other wall, or if such change, alteration or removal in the sole judgment (without any obligation to make such judgment) of the ARC would adversely affect surface water, drainage, or other flood control considerations or requirements. If any Owner shall fail to insure, or to maintain, repair or replace his Unit Wall within sixty (60) days when reasonably necessary, in accordance with this Section 9.6, the Association shall be entitled (but not obligated) to insure, or to maintain, repair or replace such Unit Wall, and to assess the full cost thereof against the Owner as a Special Assessment, which may be enforced as provided for in this Declaration. The foregoing notwithstanding, the Association, at its sole expense, shall be responsible for removing or painting over any graffiti from or on Exterior Walls.

Section 9.7 Installed Landscaping.

(a) Declarant shall have the option, in its sole and absolute discretion, to install landscaping on the front yards of Lots ("Declarant Installed Landscaping").

(b) Subject to the requirements of Article 8 (Architectural and Landscaping Control), above, each Owner shall have an aggregate period, following the Close of Escrow on his or her Lot, of (i) not more than six (6) months (with regard to front yard landscaping other than Declarant Installed Landscaping), and one (1) year (with regard to rear yard landscaping), in which to apply for and obtain approval of plans for landscaping and to commence and complete, in accordance with such approved plans, installation of such landscaping on the Lot ("Homeowner Installed Landscaping"). Each Owner shall be responsible, at his sole expense, for: (1) maintenance, repair, replacement, and watering of all landscaping on his Unit (whether initially installed by Declarant or an Owner) in a neat and attractive condition; and (2) maintenance, repair, and/or replacement of any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping, subject to Section 9.7(c)-(e), below.

(c) Each Owner covenants to pay promptly when due all water bills for his or her Unit, and (subject to bona-fide force majeure events) to not initiate or continue any act or omission which would have the effect of water being shut off to the Unit. In the event that all or any portion of landscaping and/or related systems is or are damaged because of any Owner's act or omission, then such Owner shall be solely liable for the costs of repairing such damage, and any and all costs reasonably related thereto, and the Association may, in its discretion, perform or cause to be performed such repair, and to assess all related costs against such Owner as a Special Assessment, and the Association, and its employees, agents and contractors, shall have an easement over Lots to perform such function.

(d) In the event that any plants (including, but not necessarily limited to, trees, shrubs, bushes, lawn, flowers, and ground cover) on a Unit require replacement, then the cost of such replacement, and costs reasonably related thereto, shall be the responsibility of the Owner of the Unit.

(e) To help prevent and/or control water damage to foundations and/or walls, each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not cause or permit irrigation water or sprinkler water on his Unit to seep or flow onto, or to strike upon, any foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall), and/or any other Improvement. Without limiting the generality of the foregoing or any other provision in this Declaration, each Owner shall at all times ensure that: (1) there are no unapproved grade changes (including, but not necessarily limited to, mounding) within three (3) feet of any such foundation or wall located on or immediately adjacent to the Owner's Unit; and (2) only non-irrigated desert landscaping is located on the Owner's Unit within three feet of any such foundation, slab, side or other portion of Dwelling, wall (including, but not necessarily limited to, party wall and/or Perimeter Wall).

(f) Absent prior written approval of the ARC, in its sole discretion, no Owner may add to, delete, modify, or change, any landscaping or related system.

Section 9.8 Modification of Improvements. Maintenance and repair of Common Elements shall be the responsibility of the Association, and the costs of such maintenance and repair shall be Common Expenses; provided that, in the event that any Improvement located on a Common Element is damaged because of any Owner's act or omission, such Owner shall be solely liable for the costs of repairing such damage and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration. Each Owner covenants, by acceptance of a deed to his Unit, whether or not so stated in such deed, to not: add to, remove, delete, modify, change, obstruct, or landscape, all or any portion of the Common Elements, or Site Visibility Restriction Area, or Perimeter Wall, and/or any other wall or fence constructed by Declarant on such Owner's Lot, without prior written approval of the ARC, in its sole discretion.

ARTICLE 10
USE RESTRICTIONS

Subject to the rights and exemptions of Declarant as set forth in this Declaration, and subject further to the fundamental "good neighbor" policy underlying the Community and this Declaration, all real property within the Properties shall be held, used and enjoyed subject to the limitations, restrictions, and other provisions set forth in this Declaration. The strict application of the limitations and restrictions set forth in this Article 10 may be modified or waived in whole or in part by the Board in specific circumstances where such strict application would be unduly harsh, provided that any such waiver or modification shall not be valid unless in writing and executed by the Board. Any other provision herein notwithstanding, neither Declarant, the Association, the Board, nor their respective directors, officers, members, agents or employees, shall be liable to any Owner or to any other Person as a result of the failure to enforce any use restriction or for the granting or withholding of a waiver or modification of a use restriction as provided herein.

Section 10.1 Single Family Residence. Each Unit shall be improved and used solely as a residence for a single Family and for no other purpose (provided that Declarant shall have the right, but not the obligation, to designate certain specific Lots as private park or "open area" Common Elements). No part of the Properties shall ever be used or caused to be used or allowed

or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, primary storage, vending, "reverse engineering," destructive testing, or any other nonresidential purposes; provided that Declarant, its successors and assigns, may exercise the reserved rights described in Article 14 hereof. The provisions of this Section 10.1 shall not preclude a professional or administrative occupation, or an occupation of child care, provided that the number of non-Family children, when added to the number of Family children being cared for at the Unit, shall not exceed a maximum aggregate of five (5) children, and provided further that there is no nuisance under Section 10.5, below, and no external evidence of any such occupation, for so long as such occupation is conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Dwelling as a residential home. This provision shall not preclude any Owner from renting or leasing his entire Unit by means of a written lease or rental agreement subject to this Declaration and any Rules and Regulations; provided that no lease shall be for a term of less than six (6) months.

Section 10.2 No Further Subdivision. Except as may be expressly authorized by Declarant, no Unit or all or any portion of the Common Elements may be further subdivided (including, without limitation, any division into time-share estates or time-share uses) without the prior written approval of the Board; provided, however, that this provision shall not be construed to limit the right of an Owner: (1) to rent or lease his entire Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration, so long as the Unit is not leased for transient or hotel purposes; (2) to sell his Unit; or (3) to transfer or sell any Unit to more than one person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. The terms of any such lease or rental agreement shall be made expressly subject to this Declaration. Any failure by the lessee of such Unit to comply with the terms of the Governing Documents shall constitute a default under the lease or rental agreement. No two or more Units in the Properties may be combined in any manner whether to create a larger Unit or otherwise, and no Owner may permanently remove any block wall or other intervening partition between Units.

Section 10.3 Insurance Rates. Without the prior written approval of the Board, nothing shall be done or kept in the Properties which will increase the rate of insurance on any Unit or other portion of the Properties, nor shall anything be done or kept in the Properties which would result in the cancellation of insurance on any Unit or other portion of the Properties or which would be a violation of any law. Any other provision herein notwithstanding, the Board shall have no power whatsoever to waive or modify this restriction.

Section 10.4 Animal Restrictions. No animals, reptiles, poultry, fish, or fowl or insects of any kind ("animals") shall be raised, bred or kept on any Unit, except that a reasonable number of dogs, cats, birds, or fish may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable County ordinance or any other provision of the Declaration, and such limitations as may be set forth in the Rules and Regulations. As used in this Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners or Residents. Subject to the foregoing, animals belonging to Owners, Residents, or their respective Families, licensees, tenants or invitees within the Properties must be either kept within an enclosure, an enclosed yard or on a leash or other restraint being held by a person capable of controlling the animal. Furthermore, to the extent

permitted by law, any Owner and/or Resident shall be liable to each and all other Owners, Residents, and their respective Families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Properties by an Owner or Resident or respective Family, tenants or guests; and it shall be the absolute duty and responsibility of each such Owner and Resident to clean up after such animals in the Properties or streets abutting the Properties. Without limiting the foregoing: (a) no "dog run" or similar structure pertaining to animals shall be placed or permitted in any Lot, unless approved by the Board in advance and in writing (and, in any event, any such "dog run" or similar Improvement shall not exceed the height of any party wall on the Lot, and shall otherwise not be permitted, or shall be immediately removed, if it constitutes a nuisance in the judgment of the Board; and (b) all Owners shall comply fully in all respects with all applicable County ordinances and rules regulating and/or pertaining to animals and the maintenance thereof on the Owner's Unit and/or any other portion of the Properties.

Section 10.5 Nuisances. No rubbish, clippings, refuse, scrap lumber or metal; no grass, shrub or tree clippings, and no plant waste, compost, bulk materials or other debris of any kind; (all, collectively, hereafter, "rubbish and debris") shall be placed or permitted to accumulate anywhere within the Properties, and no odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, or offensive. Without limiting the foregoing, all rubbish and debris shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purposes. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before or after scheduled trash collection hours). No noxious or offensive activities (including, but not limited to the repair of motor vehicles) shall be carried out on the Properties. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be offensive or detrimental to any other Unit or to occupants thereof, or to the Common Elements. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other similar or unusually loud sound devices (other than devices used exclusively for safety, security, or fire protection purposes), noisy or smokey vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), inoperable vehicle, unlicensed off-road motor vehicle, or other item which may unreasonably disturb other Owners or Residents or any equipment or item which may unreasonably interfere with television or radio reception within any Unit, shall be located, used or placed on any portion of the Properties without the prior written approval of the Board. No unusually loud motorcycles, dirt bikes or similar mechanized vehicles may be operated on any portion of the Common Elements without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. The Board shall have the right to reasonably determine if any noise, odor, activity, or circumstance, constitutes a nuisance. Each Owner and Resident shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Unit, including Dwelling. Each Owner and Resident shall be accountable to the Association and other Owners and Residents for the conduct and behavior of children and other Family members or persons residing in or visiting his Unit; and any damage to the Common Elements, personal property of the Association or property of another Owner or Resident, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Unit where such children or other Family members or persons are residing or visiting.

Section 10.6 Exterior Maintenance and Repair; Owner's Obligations. No Improvement anywhere within the Properties shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair. If any Owner or Resident shall permit any Improvement, which is the responsibility of such Owner or Resident to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, after consulting with the ARC, and after affording such Owner or Resident reasonable notice, shall have the right but not the obligation to correct such condition, and to enter upon such Unit, for the purpose of so doing, and such Owner and/or Resident shall promptly reimburse the Association for the cost thereof. Such cost may be assessed as a Special Assessment pursuant to Section 6.11 above, and, if not paid timely when due, shall constitute an unpaid or delinquent assessment for all purposes of Article 7 above. The Owner and/or Resident of the offending Unit shall be personally liable for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner and/or Resident shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor.

Section 10.7 Drainage. By acceptance of a deed to a Unit, each Owner agrees for himself and his assigns that he will not in any way interfere with or alter, or permit any Resident to interfere with or alter, the established drainage pattern over any Unit, so as to affect said Unit, any other Unit, or the Common Elements, unless adequate alternative provision is made for proper drainage and approved in advance and in writing by the ARC, and any request therefor shall be subject to Article 8 above, including, but not necessarily limited to, any condition imposed by the ARC pursuant to Section 8.2(b) above. Without limiting the generality of the foregoing, any request by an Owner for ARC approval of alteration of established drainage pattern shall be subject to payment, by the Owner, of the professional fees of a licensed engineer to review the plans and specifications on behalf of the ARC, pursuant to Section 8.2(b)(8) above, which shall be required in all such cases, and further shall be subject to the Owner obtaining all necessary governmental approvals pursuant to Section 8.7, above. For the purpose hereof, "established drainage pattern" is defined as the drainage which exists at the time that such Unit is conveyed to a Purchaser from Declarant, or later grading changes which are shown on plans and specifications approved by the ARC.

Section 10.8 Water Supply and Sewer Systems. No individual water supply system, or cesspool, septic tank, or other sewage disposal system, or exterior water softener system, shall be permitted on any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water or sewer district serving the Properties, County health department, and any applicable utility and governmental authorities having jurisdiction, and has been approved in advance and in writing by the ARC.

Section 10.9 No Hazardous Activities. No activities shall be conducted, nor shall any Improvements be constructed, anywhere in the Properties which are or might be unsafe or hazardous to any Person, Unit, Common Elements. Without limiting the foregoing, (a) no firearm shall be discharged within the Properties, and (b) there shall be no exterior or open fires whatsoever, except within a barbecue and contained within a receptacle commercially designed therefor, while attended and in use for cooking purposes, or except within a fireplace designed to prevent the dispersal of burning embers, so that no fire hazard is created, or except as specifically authorized in writing by the Board (all as subject to applicable ordinances and fire regulations).

Section 10.10 No Unsightly Articles. No unsightly article, facility, equipment, object, or condition (including, but not limited to, clotheslines, and garden and maintenance equipment, or

inoperable vehicle) shall be permitted to remain on any Unit so as to be visible from any street, or from any other Unit, Common Elements, or neighboring property. Without limiting the foregoing or any other provision herein, all refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. Such containers shall be exposed to view of the public, or neighboring Units, only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours).

Section 10.11 No Temporary Structures. Unless required by Declarant during the initial construction of Dwellings and other Improvements, or unless approved in writing by the Board in connection with the construction of authorized Improvements, no outbuilding, tent, shack, shed or other temporary or portable structure or Improvement of any kind shall be placed upon any portion of the Properties. No garage, carport, trailer, camper, motor home, recreational vehicle or other vehicle shall be used as a residence in the Properties, either temporarily or permanently.

Section 10.12 No Drilling. No oil drilling, oil, gas or mineral development operations, oil refining, geothermal exploration or development, quarrying or mining operations of any kind shall be permitted upon, in, or below any Unit or the Common Elements, nor shall oil, water or other wells, tanks, tunnels or mineral excavations or shafts be permitted upon or below the surface of any portion of the Properties. No derrick of other structure designed for use in boring for water, oil, geothermal heat or natural gas, or other mineral or depleting asset shall be erected.

Section 10.13 Alterations. There shall be no excavation, construction, alteration or erection of any projection which in any way alters the exterior appearance of any Improvement from any street, or from any other portion of the Properties (other than minor repairs or rebuilding pursuant to Section 10.6 above) without the prior approval of the ARC pursuant to Article 8 hereof. There shall be no violation of the setback, side yard or other requirements of local governmental authorities, notwithstanding any approval of the ARC. This Section 10.13 shall not be deemed to prohibit minor repairs or rebuilding which may be necessary for the purpose of maintaining or restoring a Unit to its original condition.

Section 10.14 Signs. Subject to the reserved rights of Declarant contained in Article 14 hereof, no sign, poster, display, billboard or other advertising device or other display of any kind shall be installed or displayed to public view on any portion of the Properties, or on any public street abutting the Properties, without the prior written approval of the ARC, except: (a) one (1) sign for each Unit, not larger than eighteen (18) inches by thirty (30) inches, advertising the Unit for sale or rent, or (b) traffic and other signs installed by Declarant as part of the original construction of the Properties, or (c) signs regulated to the maximum extent permitted by applicable law. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the regulations of all applicable governmental ordinances.

Section 10.15 Improvements.

(a) No Lot shall be improved except with one (1) Dwelling designated to accommodate no more than a single Family and its servants and occasional guests, plus a garage, fencing and such other Improvements as are necessary or customarily incident to a single-Family Dwelling; provided that one additional small permanent building (e.g., a small "pool house" or "hobby house") may (but need not necessarily) be authorized on a Lot by the ARC, subject to the following: (1) full compliance with the requirements of Article 8, above; (2) the ARC, in its sole discretion, must determine that the Lot is large enough and otherwise suitable to accommodate

such proposed Improvement; (3) such Improvement in all regards must comply with the Governing Documents, and all applicable governmental ordinances and laws; and (4) such Improvement may not and shall not be used for any commercial purpose whatsoever, pursuant to Section 10.1 above. No part of the construction on any Lot shall exceed the height limitations set forth in the applicable provisions of the Governing Documents, or any applicable governmental regulation(s). No projections of any type shall be placed or permitted to remain above the roof of any building within the Properties, except one or more chimneys or vent stacks. No permanent or attached basketball backboard, jungle gym, play equipment, or other sports apparatus shall be constructed, erected, or maintained on the Properties without the prior written approval of the Board. A portable basketball hoop or other portable sports apparatus shall be permitted on a Lot, provided that such item: (i) is not placed in any street, (ii) is used only daylight hours, (iii) during non-daylight hours, is stored on the Lot so as to be out of sight of any street, and (iv) does not otherwise constitute a nuisance in the reasonable judgment of the Board. Apart from any installation by Declarant as part of its original construction, no patio cover, antennae, wiring, air conditioning fixture, water softeners or other devices shall be installed on the exterior of a Dwelling or allowed to protrude through the walls or roof of the Dwelling (with the exception of items installed by Declarant during the original construction of the Dwelling), unless the prior written approval of the ARC is obtained, subject to Section 10.16, below.

(b) All utility and storage areas and all laundry rooms, including all areas in which clothing or other laundry is hung to dry, must be completely covered and concealed from view from other areas of the Properties and neighboring properties.

(c) No fence or wall shall be erected or altered without prior written approval of the ARC, and all alterations or modifications of existing fences or walls of any kind shall require the prior written approval of the ARC.

(d) Garages shall be used only for the their ordinary and normal purposes. Unless constructed or installed by Declarant as part of its original construction, no Owner or Resident may convert the garage on his Unit into living space or otherwise use or modify the garage so as to preclude regular and normal parking of vehicles therein. The foregoing notwithstanding, Declarant may convert a garage located in any Unit owned by Declarant into a sales office or related purposes.

Section 10.16 Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial, microwave antenna, aerial or satellite dish, "C.B." antenna or other antenna or aerial of any type, which is visible from any street or from anywhere in the Properties, shall be erected or maintained anywhere in the Properties. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (i) which are one meter or less in diameter and designed to receive direct broadcast satellite service; or (ii) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such Permitted Device is:

(a) located in the attic, crawl space, garage, or other interior space of the Dwelling, or within another approved structure on the Unit, so as not to be visible from outside the Dwelling or other structure, or, if such location is not reasonably practicable, then,

(b) located in the rear yard of the Unit (i.e., the area between the plane formed by the front facade of the Dwelling and the rear lot line) and set back from all lot lines at least eight (8) feet, or, if such location is not reasonably practicable, then,

(c) attached to or mounted on a deck or patio and extending no higher than the eaves of that portion of the roof of the Dwelling directly in front of such antenna; or, if such location is not reasonably practicable, then,

(d) attached to or mounted on the rear wall of the Dwelling so as to extend no higher than the eaves of the Dwelling at a point directly above the position where attached or mounted to the wall, provided that,

(e) if an Owner reasonably determines that a Permitted Device cannot be located in compliance with the foregoing portions of this Section 10.16 without precluding reception of an acceptable quality signal, then the Owner may install such Permitted Device in the least conspicuous alternative location within the Unit where an acceptable quality signal can be obtained; provided that,

(f) Permitted Devices shall be reasonably screened from view from the street or any other portion of the Properties, and shall be subject to Rules and Regulations adopted by the Board, establishing a preferred hierarchy of alternative locations, so long as the same do not unreasonably increase the cost of installation, or use of the Permitted Device.

Declarant or the Association may, but are in no way obligated to, provide a master antenna or cable television antenna for use of all or some Owners. Declarant may grant easements for maintenance of any such master or cable television service.

Section 10.17 Landscaping. Subject to the provisions of Articles 8 and 9 (including, but not limited to, Sections 9.7 and 9.8 above), each Owner shall install and shall thereafter maintain the landscaping on his Unit in a neat and attractive condition. No plants or seeds infected with insects or plant diseases shall be brought upon, grown or maintained upon any part of the Properties. The Board may adopt Rules and Regulations to regulate landscaping permitted and required in the Properties. If an Owner fails to install and maintain landscaping in conformance with this Declaration or such Rules and Regulations, or allows his landscaping to deteriorate to a dangerous, unsafe, unsightly, or unattractive condition, the Board shall have the right to either (a) after thirty (30) days' written notice, seek any remedies at law or in equity which it may have; or (b) after reasonable notice (unless there exists a bona-fide unsafe or dangerous condition, in which case, the right shall be immediate, and no notice shall be required), to correct such condition and to enter upon the exterior portion of such Owner's Unit for the purpose of so doing, and such Owner shall promptly reimburse the Association for the cost thereof, as a Special Assessment, enforceable in the manner set forth in Article 7, above. Each Owner shall be responsible, at his sole expense, for maintenance, repair, replacement, and watering of any and all landscaping on the Unit, as well as any and all sprinkler or irrigation or other related systems or equipment pertaining to such landscaping.

Section 10.18 Prohibited Plant Types. Without limiting the generality of any other provision herein, the following plant types are hereby specifically declared to be nuisances, and shall not be permitted anywhere within the Properties: (a) Olea europaea ("olive"), other than "fruitless olive" which shall be permitted; (b) Morus alba or nigra ("mulberry"); (c) Cynodon dactylon ("bermuda

grass"), (d) Amaranthus palmen ("careless weed"); (e) Salsola kali ("Russian thistle"); and/or (f) Fransenan dumosa ("desert ragweed").

Section 10 19 Parking and Vehicular Restrictions. No Person shall park, store or keep anywhere within the Properties, any inoperable or similar vehicle, or any large commercial-type vehicle, including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, bus, aircraft, or any vehicular equipment, mobile or otherwise, except wholly within the Owner's garage as onginally constructed by Declarant ("Garage") and only with the Garage door closed. Any boat, trailer, camper, motor home, and similar recreational vehicle (collectively and individually, "RV"), shall be parked only (i) wholly within a Garage, with the Garage door completely closed, or (ii) wholly between the building lines (i.e., wholly behind the front building lines and wholly in front of the rear building lines) of the homes on both immediately adjacent Lots (or, if there is only one immediately adjacent Lot, then the building lines of the home on such adjacent Lot, provided that the Board shall have the power and authority, in its sole discretion, to entirely disapprove and/or prohibit parking of an RV on any Lot with only one other Lot immediately adjacent thereto) if such parking reasonably may be deemed to constitute a nuisance, and appropriately screened from view from all streets as determined by the Board in its reasonable discretion, and no variance from this requirement shall be authorized or permitted. The foregoing shall not be deemed to prohibit a pickup or camper truck or similar vehicle up to and including one (1) ton when used for daily transportation of the Owner or Resident, or the Family respectively thereof, which vehicle shall be permitted, subject to the Garage, nuisance, and parking provisions herein No Person shall conduct repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of the Properties or on any street abutting the Properties. However, repair and/or restoration of one (1) such item only shall be permitted within the Garage so long as the Garage door remains closed; provided, however, that such activity may be prohibited entirely by the Board if the Board determines in its reasonable discretion that such activity constitutes a nuisance Vehicles owned, operated or within the control of any Owner or of a resident of such Owner's Dwelling shall be parked in the Garage to the extent of the space available therein All garages shall be kept neat and free of stored materials so as to permit the parking of at least one (1) standard sized American sedan automobile therein at all times. Garage doors shall not remain open for prolonged periods of time, and must be closed when not reasonably required for immediate ingress and egress. The Association, through the Board, is hereby empowered to establish and enforce any additional parking limitations, rules and/or regulations (collectively, "parking regulations") which it may deem necessary, including, but not limited to, the levying of fines for violation of parking regulations, and/or removal of any violating vehicle at the expense of the owner of such vehicle. No parking of any vehicle shall be permitted along any curb or otherwise on any street within the Properties, except only for ordinary and reasonable guest parking, subject to parking regulations established by the Board. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner as to permit any parking or other activity which would be contrary to any County ordinance, or which is determined by the Board, in its reasonable discretion, to constitute a bona-fide nuisance.

Section 10 20 Sight Visibility Restriction Areas. The maximum height of any and all sight restricting Improvements (including, but not necessarily limited to, landscaping), on all Sight Visibility Restriction Areas, shall be restricted to a maximum height not to exceed twenty-four (24) inches, or such other height set forth in the Plat ("Maximum Permitted Height"). In the event that any Improvement located on any Sight Visibility Restriction Area on a Unit exceeds the Maximum Permitted Height, the Association shall have the power and easement to enter upon such Unit and to bring such Improvement into compliance, and the Owner shall be solely liable for the costs

thereof and any and all costs reasonably related thereto, all of which costs may be assessed against such Owner as a Special Assessment under this Declaration.

Section 10.21 Prohibited Direct Access. Any other provision herein notwithstanding, there shall be no direct vehicular access to Tompkins from any abutting Unit (and no direct vehicular access to Carsoli Court from Lots 18, 19, 20, or 21 of Block 1 of Unit 1 of the Properties), and any such direct vehicular access is hereby prohibited pursuant to and in accordance with the Plat (other than over Private Streets which shall be permitted, subject to the provisions set forth in this Declaration).

Section 10.22 No Waiver. The failure of the Board to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction, but such term, covenant, condition or restrictions shall remain in full force and effect. The receipt by the Board or Manager of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by the Board or Manager of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board or the Manager.

Section 10.23 Declarant Exemption. Lots owned by Declarant, shall be exempt from the provisions of this Article 10, until such time as Declarant conveys title to the Lot to a Purchaser, and activities of Declarant reasonably related to Declarant's development, construction, and marketing efforts, shall be exempt from the provisions of this Article 10. This Article 10 may not be amended without Declarant's prior written consent.

ARTICLE 11
DAMAGE TO OR CONDEMNATION OF COMMON ELEMENTS

Section 11.1 Damage or Destruction. Damage to, or destruction or condemnation of, all or any portion of the Common Elements shall be handled in the following manner:

(a) Repair of Damage. Any portion of this Community for which insurance is required by this Declaration or by any applicable provision of NRS Chapter 116, which is damaged or destroyed, must be repaired or replaced promptly by the Association unless: (i) the Community is terminated, in which case the provisions of NRS § 116.2118, 166.21183 and 116.21185 shall apply; (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or (iii) eighty percent (80%) of the Owners, including every Owner of a Unit that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Community is not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Community; (A) the proceeds attributable to Units that are not rebuilt must be distributed to the Owners of those Units; and (B) the remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the liabilities of all the Units for Common Expenses. If the Owners vote not to rebuild any Unit, that Unit's allocated interests are automatically reallocated upon the vote as if the Unit had been condemned, and the Association promptly shall prepare, execute and Record an amendment to this Declaration reflecting the reallocations.

(b) Damage by Owner. To the full extent permitted by law, each Owner shall be liable to the Association for any damage to the Common Elements not fully reimbursed to the Association by insurance proceeds, provided the damage is sustained as a result of the negligence, willful misconduct, or unauthorized or improper installation or maintenance of any Improvement by said Owner or the Persons denving their right and easement of use and enjoyment of the Common Elements from said Owner, or by his respective Family and guests, both minor and adult. The Association reserves the right, acting through the Board, after Notice and Hearing, to: (1) determine whether any claim shall be made upon the insurance maintained by the Association; and (2) levy against such Owner a Special Assessment equal to any deductible paid and the increase, if any, in the insurance premiums directly attributable to the damage caused by such Owner or the Person for whom such Owner may be responsible as described above. In the case of joint ownership of a Unit, the liability of the co-owners thereof shall be joint and several, except to any extent that the Association has previously contracted in writing with such co-owners to the contrary. After Notice and Hearing, the Association may levy a Special Assessment in the amount of the cost of correcting such damage, to the extent not reimbursed to the Association by insurance, against any Unit owned by such Owner, and such Special Assessment may be enforced as provided herein.

Section 11.2 Condemnation. If at any time, all or any portion of the Common Elements, or any interest therein, is taken for any governmental or public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation shall be paid to the Association. Any such award payable to the Association shall be deposited in the operating fund. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation. The Association shall have the exclusive right to participate in such proceedings and shall, in its name alone, represent the interests of all Members. Immediately upon having knowledge of any taking by eminent domain of Common Elements, or any portion thereof, or any threat thereof, the Board shall promptly notify all Owners and all Eligible Holders.

Section 11.3 Condemnation Involving a Unit. For purposes of NRS § 116.1107(2)(a), if part of a Unit is required by eminent domain, the award shall compensate the Owner for the reduction in value of the Unit's interest in the Common Elements. The basis for such reduction shall be the extent to which the occupants of the Unit are impaired from enjoying the Common Elements. In cases where the Unit may still be used as a Dwelling, it shall be presumed that such reduction is zero (0).

ARTICLE 12
INSURANCE

Section 12.1 Casualty Insurance. The Board shall cause to be obtained and maintained a master policy of fire and casualty insurance with extended coverage for loss or damage to all of the Association's insurable Improvements on the Common Elements, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance, and shall obtain insurance against such other hazards and casualties as the Board deems reasonable and prudent. The Board, in its reasonable judgment, may also insure any other property whether real or personal, owned by the Association or located within the Properties, against loss or damage by fire and such other hazards as the Board may deem reasonable and prudent, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common

Elements shall be maintained for the benefit of the Association, the Owners, and the Eligible Holders, as their interests may appear as named insured, subject however to the loss payment requirements as set forth herein. Premiums for all insurance carried by the Association are Common Expenses included in the Annual Assessments levied by the Association.

The Association, acting through the Board, shall be the named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any policies shall be paid to the Board as trustee. The Board shall have full power to receive and receipt for the proceeds and to deal therewith as deemed necessary and appropriate. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of insurance maintained by the Association and of all the renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Eligible Holders who have expressly requested the same in writing.

Section 12 2 Liability and Other Insurance. The Association shall have the power and duty to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief, in such limits as it shall deem desirable (but in no event less than $1,000,000 00 covering all claims for bodily injury and property damage arising out of a single occurrence), insuring the Association, Board, Directors, Officers, Declarant, and Manager, and their respective agents and employees, and the Owners and Residents of Units and their respective Families, guests and invitees, against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property maintained or required to be maintained by the Association including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. Such insurance shall also include coverage, to the extent reasonably available, against liability for non-owned and hired automobiles, liability for property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Association may also obtain, through the Board, Worker's Compensation insurance (which shall be required if the Association has one or more employees) and other liability insurance as it may deem reasonable and prudent, insuring each Owner and the Association, Board, and any Manager, from liability in connection with the Common Elements, the premiums for which are a Common Expense included in the Annual Assessment levied against the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its reasonable business judgment.

Section 12 3 Fidelity Insurance. The Board shall further cause to be obtained and maintained errors and omissions insurance, blanket fidelity insurance coverage (in an amount at least equal to 100% of Association Funds from time to time handled by such Persons) and such other insurance as it deems prudent, insuring the Board, the Directors and Officers, and any Manager against any liability for any act or omission in carrying out their respective obligations hereunder, or resulting from their membership on the Board or on any committee thereof. If reasonably feasible, the amount of such coverage shall be at least $1,000,000.00, and said policy or policies of insurance shall also contain an extended reporting period endorsement (a tail) for a six-year period The Association shall require that the Manager maintain fidelity insurance coverage which names the Association as an obligee, in such amount as the Board deems prudent. From such time as Declarant no longer has the power to control the Board, as set forth in Section 3 7(c) above, blanket fidelity insurance coverage which names the Association as an obligee shall

be obtained by or on behalf of the Association for any Person handling funds of the Association, including but not limited to, Officers, Directors, trustees, employees, and agents of the Association, whether or not such Persons are compensated for their services, in such an amount as the Board deems prudent; provided that in no event may the aggregate amount of such bonds be less than the maximum amount of Association Funds that will be in the custody of the Association or Manager at any time while the policy is in force (but in no event less than the sum equal to one-fourth (1/4) of the Annual Assessments on all Units, plus Reserve Funds), or such other amount as may be required by FNMA, VA or FHA from time to time, if applicable.

Section 12.4 Other Insurance Provisions. The Board shall also obtain such other insurances customarily required with respect to projects similar in construction, location, and use, or as the Board may deem reasonable and prudent from time to time, including, but not necessarily limited to, Worker's Compensation insurance (which shall be required if the Association has any employees). All premiums for insurances obtained and maintained by the Association are a Common Expense included in the Annual Assessment levied upon the Owners. All insurance policies shall be reviewed at least annually by the Board and the limits increased in its sound business judgment. In addition, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and fidelity insurance coverage necessary to meet the requirements for similar developments, as set forth or modified from time to time by any governmental body with jurisdiction.

Section 12.5 Insurance Obligations of Owners. Each Owner is required, at Close of Escrow on his Unit, at his sole expense to have obtained, and to have furnished his Mortgagee (or, in the event of a cash transaction involving no Mortgagee, then to the Board) with duplicate copies of, a homeowner's policy of fire and casualty insurance with extended coverage for loss or damage to all insurable improvements and fixtures originally installed by Declarant on such Owner's Unit in accordance with the original plans and specifications, or installed by the Owner on the Unit, for the full insurance replacement cost thereof without deduction for depreciation or coinsurance. By acceptance of the deed to his Unit, each Owner agrees to maintain in full force and effect at all times, at said Owner's sole expense, such homeowner's insurance policy, and shall provide the Board with duplicate copies of such insurance policy upon the Board's request. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability, damage to person or property occurring inside his Unit or elsewhere upon the Properties. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. Notwithstanding the foregoing, or any other provision herein, each Owner shall be solely responsible for full payment of any and all deductible amounts under such Owner's policy or policies of insurance.

Section 12.6 Waiver of Subrogation. All policies of physical damage insurance maintained by the Association shall provide, if reasonably possible, for waiver of: (1) any defense based on coinsurance; (2) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (3) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission

of any named insured or the respective agents, contractors and employees of any insured; (4) any rights of the insurer to repair, rebuild or replace, and, in the event any Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured; or (5) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Unit. The Association hereby waives and releases all claims against the Board, the Owners, Declarant, and Manager, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for such loss; provided, however, that such waiver shall not be effective as to any loss covered by a policy of insurance which would be voided or impaired thereby.

Section 12.7 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without thirty (30) days' prior written notice to the Board and Declarant and to each Owner and each Eligible Holder who has filed a written request with the carrier for such notice, and every other Person in interest who requests in writing such notice of the insurer. All insurance policies carried by the Association pursuant to this Article 12, to the extent reasonably available, must provide that: (a) each Owner is an insured under the policy with respect to liability arising out of his interest in the Common Elements or Membership; (b) the insurer waives the right to subrogation under the policy against any Owner or member of his Family; (c) no act or omission by any Owner or member of his Family will void the policy or be a condition to recovery under the policy; and (d) if, at the time of a loss under the policy there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

ARTICLE 13
MORTGAGEE PROTECTION CLAUSE

In order to induce FHA, VA, FHLMC, GNMA and FNMA and any other governmental agency or other Mortgagees to participate in the financing of the sale of Units within the Properties, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of the Declaration, these added provisions shall control):

(a) Each Eligible Holder, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation or the Bylaws, which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Unit, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage.

(b) Each Owner, including every first Mortgagee of a Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage, or by foreclosure of such Mortgage, or by deed or assignment in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Governing Documents.

(c) Except as provided in NRS § 116.3116(2), each Beneficiary of a first Mortgage encumbering any Unit which obtains title to such Unit or by foreclosure of such Mortgage, shall take title to such Unit free and clear of any claims of unpaid assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee.

(d) Unless at least sixty-seven percent (67%) of Eligible Holders (based upon one (1) vote for each first Mortgage owned) or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(i) subject to Nevada nonprofit corporation law to the contrary, by act or omission seek to abandon, partition, alienate, subdivide, release, hypothecate, encumber, sell or transfer the Common Elements and the Improvements thereon which are owned by the Association, provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in this Declaration shall not be deemed a transfer within the meaning of this clause.

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;

(iii) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the exterior appearance of the Dwellings and other Improvements on the Units, the maintenance of the Exterior Walls or common fences and driveways, or the upkeep of lawns and plantings in the Properties;

(iv) fail to maintain Fire and Extended Coverage on any insurable Common Elements on a current replacement cost basis in an amount as near as possible to one hundred percent (100%) of the insurance value (based on current replacement cost);

(v) except as provided by any provision of NRS Chapter 116 applicable hereto, use hazard insurance proceeds for losses to any Common Elements property for other than the repair, replacement or reconstruction of such property; or

(vi) amend those provisions of this Declaration or the Articles of Incorporation or Bylaws which provide for rights or remedies of first Mortgagees.

(e) Eligible Holders, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of an annual audited financial statement (without expense to the Beneficiary, insurer or guarantor requesting such statement) and other financial data, (3) receive written notice of all meetings of the Members, and (4) designate in writing a representative to attend all such meetings.

(f) All Beneficiaries, insurers and guarantors of first Mortgages, who have filed a written request for such notice with the Board shall be given thirty (30) days' written notice prior to: (1) any abandonment or termination of the Association; (2) the effective date of any proposed, material amendment to this Declaration or the Articles or Bylaws; and (3) the effective date of any termination of any agreement for professional management of the Properties following a decision of the Owners to assume self-management of the Properties. Such first Mortgagees shall be given

immediate notice (i) following any damage to the Common Elements whenever the cost of reconstruction exceeds Ten Thousand Dollars ($10,000.00); and (ii) when the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Properties.

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Elements property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Elements property, and first Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

(h) The Reserve Fund described in Article 6 above must be funded by regular scheduled monthly, quarterly, semiannual or annual payments rather than by large extraordinary assessments

(i) The Board shall require that any Manager, and any employee or agent thereof, maintain at all times fidelity bond coverage which names the Association as an obligee; and, at all times from and after the end of the Declarant Control Period, the Board shall secure and cause to be maintained in force at all times fidelity bond coverage which names the Association as an obligee for any Person handling funds of the Association.

(j) When professional management has been previously required by a Beneficiary, insurer or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of at least sixty-seven percent (67%) of the voting power of the Association and of the Board respectively, and the Beneficiaries of at least fifty-one percent (51%) of the Eligible Holders.

(k) So long as VA is insuring or guaranteeing loans or has agreed to insure or guarantee loans on any portion of the Properties, then, pursuant to applicable VA requirement, for so long as Declarant shall control the Association Board, Declarant shall obtain prior written approval of the VA for any material proposed: action which may affect the basic organization, subject to Nevada nonprofit corporation law, of the Association (i.e., merger, consolidation, or dissolution of the Association); dedication, conveyance, or mortgage of the Common Elements; or amendment of the provisions of this Declaration, the Articles of Incorporation, Bylaws, or other document which may have been previously approved by the VA; provided that no such approval shall be required in the event that the VA no longer regularly requires or issues such approvals at such time

In addition to the foregoing, the Board of Directors may enter into such contracts or agreements on behalf of the Association as are required in order to reasonably satisfy the express applicable requirements of FHA, VA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, insurance or guaranty, as the case may be, by such entities of first Mortgages encumbering Units Each Owner hereby agrees that it will benefit the Association and the Membership, as a class of potential Mortgage borrowers and potential sellers of their Units, if such agencies approve the Properties as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Unit.

ARTICLE 14
DECLARANT'S RESERVED RIGHTS

Section 14.1 Declarant's Reserved Rights. Any other provision herein notwithstanding, pursuant to NRS §116.2105(1)(h), Declarant reserves, in its sole discretion, the following developmental rights and other special Declarant's rights, on the terms and conditions and subject to the expiration deadlines, if any, set forth below:

(a) Right to Complete Improvements and Construction Easement. Declarant reserves, for a period terminating on the fifteenth (15th) anniversary of Recordation of this Declaration, the right, in Declarant's sole discretion, to complete the construction of the Improvements on the Properties and an easement over the Properties for such purpose; provided, however, that if Declarant still owns any property in the Properties on such fifteenth (15th) anniversary date, then such rights and reservations shall continue for one additional successive period of ten (10) years thereafter.

(b) Exercise of Developmental Rights. Pursuant to NRS Chapter 116, Declarant reserves the right to annex all or portions of the Annexable Area to the Community, pursuant to the provisions of Article 15 hereof, for as long as Declarant owns any portion of the Annexable Area. No assurances are made by Declarant with regard to the boundaries of those portions of the Properties which may be annexed or the order in which such portions may be annexed. Declarant also reserves the right to withdraw real property from the Community.

(c) Offices, Model Homes and Promotional Signs. Declarant reserves the right to maintain signs, sales and management offices, and models in any Unit owned or leased by Declarant in the Properties, and signs anywhere on the Common Elements, for so long as Declarant owns or leases any Unit.

(d) Appointment and Removal of Directors. Declarant reserves the right to appoint and remove a majority of the Board as set forth in Section 3.7 hereof, for the period set forth therein during the Declarant Control Period.

(e) Amendments. Declarant reserves the right to amend this Declaration from time to time, as set forth in detail in Section 17.7, below, during the time periods set forth therein.

(f) Appointment and Removal of ARC. Declarant reserves the right to appoint and remove the ARC, for the time period set forth in Section 8.1, above.

(g) Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration.

(h) Other Rights. Declarant reserves all other rights, powers, and authority of Declarant set forth in this Declaration, including, but not limited to, Article 16 below, and, to the extent not expressly prohibited by NRS Chapter 116, further reserves all other rights, powers, and authority, in Declarant's sole discretion, of a declarant under NRS Chapter 116.

(i) Control of Entry Gates. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally control all entry gates, and to keep all entry

gates open during such hours established by Declarant, in its sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities.

(j) Restriction of Traffic. Declarant reserves the right, until the Close of Escrow of the last Unit in the Properties, to unilaterally restrict and/or re-route all pedestrian and vehicular traffic within the Properties, in Declarant's sole discretion, to accommodate Declarant's construction activities, and sales and marketing activities; provided that no Unit shall be deprived of access to a dedicated street adjacent to the Properties.

(k) Possible Future Common Recreation Area. Declarant reserves the right, but not the obligation, in Declarant's sole and absolute discretion, until the Close of Escrow of the last Unit in the Properties, to unilaterally develop and convey to the Association a common recreational area within the Community (which may but need not necessarily include, and need not necessarily be limited to, a tot lot, park, and/or pool) as a part of the Common Elements of this Community (and, in such event, the costs of maintenance and repair of the same shall be a Common Expense)

Section 14.2 Exemption of Declarant. Notwithstanding anything to the contrary in this Declaration, the following shall apply:

(a) Nothing in this Declaration shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Properties, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Properties, for so long as any Unit owned by Declarant remains unsold.

(b) This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Units; provided, however, that if FHA or VA approval is sought by Declarant, then the FHA and/or the VA shall have the right to approve any such grants as provided herein.

(c) Prospective purchasers and Declarant shall have the right to use all and any portion of the Common Elements for access to the sales facilities of Declarant and for placement of Declarant's signs.

(d) Without limiting Section 14.1(c), above, or any other provision herein, Declarant may use any structures owned or leased by Declarant, as model home complexes or real estate sales or management offices, subject to the time limitations set forth herein, after which time, Declarant shall restore the Improvement to the condition necessary for the issuance of a final certificate of occupancy by the appropriate governmental entity. Any garages which have converted into sales offices by Declarant shall be converted back to garages at the time of sale to a Purchaser of such Unit

(e) All or any portion of the rights of Declarant in this Declaration may be assigned by Declarant to any successor in interest, by an express and written Recorded assignment which specifies the rights of Declarant so assigned.

(f) The prior written approval (which shall not be unreasonably withheld) of Declarant, as developer of the Properties, shall be required before any amendment to the Declaration affecting Declarant's rights or interests (including, without limitation, this Article 14) can be effective

(g) The rights and reservations of Declarant referred to herein, if not earlier terminated pursuant to the Declaration, shall terminate on the date set forth in Section 14.1(a) above.

ARTICLE 15
ANNEXATION

Section 15 1 Annexation of Property. Declarant may, but shall not be required to, at any time or from time to time, add to the Properties covered by this Declaration all or any portion of the Annexable Area then owned by Declarant, by Recording an annexation amendment ("Annexation Amendment") with respect to the real property to be annexed ("Annexed Property"). Upon the recording of an Annexation Amendment covering any portion of the Annexable Area and containing the provisions set forth herein, the covenants, conditions and restrictions contained in this Declaration shall apply to the Annexed Property in the same manner as if the Annexed Property were originally covered in this Declaration and originally constituted a portion of the Original Property; and thereafter, the rights, privileges, duties and liabilities of the parties to this Declaration with respect to the Annexed Property shall be the same as with respect to the Original Property and the rights, obligations, privileges, duties and liabilities of the Owners and occupants of Units within the Annexed Property shall be the same as those of the Owners and occupants of Units originally affected by this Declaration. By acceptance of a deed from Declarant conveying any real property located in the Annexable Area (Exhibit "B" hereto), in the event such real property has not theretofore been annexed to the Properties encumbered by this Declaration, and whether or not so expressed in such deed, the grantee thereof covenants that Declarant shall be fully empowered and entitled (but not obligated) at any time thereafter, and appoints Declarant as attorney in fact, in accordance with NRS §§ 111 450 and 111.460, of such grantee and his successors and assigns, to unilaterally execute and Record an Annexation Amendment, annexing said real property to the Community, in the manner provided for in this Article 15.

Section 15 2 Annexation Amendment. Each Annexation Amendment shall conform to the requirements of NRS § 116.2110, and shall include:

(a) the written and acknowledged consent of Declarant;

(b) a reference to this Declaration, which reference shall state the date of Recordation hereof and the County, book and instrument number, and any other relevant Recording data;

(c) a statement that the provisions of this Declaration shall apply to the Annexed Property as set forth therein;

(d) a sufficient description of the Annexed Property;

(e) assignment of an Identifying Number to each new Unit created;