

IN THE SUPREME COURT OF NEVADA

PANORAMA TOWERS CONDOMINIUM
UNIT OWNERS' ASSOCIATION, a Nevada
non-profit corporation,

Appellant,

vs.

LAURENT HALLIER, an individual;
PANORAMA TOWERS I, LLC, a Nevada
limited liability company; PANORAMA
TOWERS I MEZZ, LLC, a Nevada limited
liability company; and M.J. DEAN
CONSTRUCTION, INC., a Nevada
corporation,

Respondents.

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APPEAL

from the Eighth Judicial District Court, Clark County, Nevada
The Honorable Susan H. Johnson, District Judge
District Court Case No. A-16-744146-D

APPELLANT'S APPENDIX VOL 8 OF 27

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1 (a) *An offer of judgment made to multiple parties who received*
2 *a notice pursuant to NRS 40.645 or 40.646 unless the same person*
3 *is authorized to decide whether to settle the claims against all the*
4 *parties to whom the offer is made and:*

5 (1) *There is a single common theory of liability against all*
6 *the parties to whom the offer is made;*

7 (2) *The liability of one or more of the parties to whom the*
8 *offer is made is entirely derivative of the liability of the remaining*
9 *parties to whom the offer is made; or*

10 (3) *The liability of all the parties to whom the offer is made*
11 *is entirely derivative of a common act or omission by another*
12 *person.*

13 (b) *An offer of judgment made to multiple claimants unless the*
14 *same person is authorized to decide whether to settle the claims of*
15 *all the claimants to whom the offer is made and:*

16 (1) *There is a single common theory of liability claimed by*
17 *all the claimants to whom the offer is made;*

18 (2) *The damages claimed by one or more of the claimants*
19 *to whom the offer is made are entirely derivative of an injury to*
20 *the remaining claimants to whom the offer is made; or*

21 (3) *The damages claimed by all the claimants to whom the*
22 *offer is made are entirely derivative of an injury to another person.*

23 **Sec. 4.** NRS 40.600 is hereby amended to read as follows:

24 40.600 As used in NRS 40.600 to 40.695, inclusive, and
25 sections 2 and 3 of this act, unless the context otherwise requires,
26 the words and terms defined in NRS 40.603 to 40.634, inclusive,
27 have the meanings ascribed to them in those sections.

28 **Sec. 5.** NRS 40.610 is hereby amended to read as follows:

29 40.610 "Claimant" means:

30 1. An owner of a residence or appurtenance; or

31 2. A representative of a homeowners' association {that is
32 responsible for a residence or appurtenance and is} acting within the
33 scope of the representative's duties pursuant to chapter 116 or 117
34 of NRS. ~~or~~

35 ~~3. Each owner of a residence or appurtenance to whom a notice~~
36 ~~applies pursuant to subsection 4 of NRS 40.645.~~

37 **Sec. 6.** NRS 40.615 is hereby amended to read as follows:

38 40.615 "Constructional defect" means a defect in the design,
39 construction, manufacture, repair or landscaping of a new residence,
40 of an alteration of or addition to an existing residence, or of an
41 appurtenance and includes, without limitation, the design,
42 construction, manufacture, repair or landscaping of a new residence,
43 of an alteration of or addition to an existing residence, or of an
44 appurtenance:



* A B 1 2 5 R 1 *

1 1. Which ~~is done in violation of law, including, without~~
2 ~~limitation, in violation of local codes or ordinances;~~

3 ~~2. Which **presents an unreasonable risk of injury to a person**~~
4 ~~**or property; or**~~

5 2. Which is not completed in a good and workmanlike
6 manner and proximately causes physical damage to the residence,
7 an appurtenance or the real property to which the residence or
8 appurtenance is affixed. ~~;~~

9 ~~3. Which is not completed in a good and workmanlike manner~~
10 ~~in accordance with the generally accepted standard of care in the~~
11 ~~industry for that type of design, construction, manufacture, repair or~~
12 ~~landscaping; or~~

13 ~~4. Which presents an unreasonable risk of injury to a person or~~
14 ~~property.~~

15 Sec. 7. NRS 40.635 is hereby amended to read as follows:

16 40.635 NRS 40.600 to 40.695, inclusive ~~;~~, and sections 2
17 and 3 of this act:

18 1. Apply to any claim that arises before, on or after July 1,
19 1995, as the result of a constructional defect, except a claim for
20 personal injury or wrongful death, if the claim is the subject of an
21 action commenced on or after July 1, 1995.

22 2. Prevail over any conflicting law otherwise applicable to the
23 claim or cause of action.

24 3. Do not bar or limit any defense otherwise available, except
25 as otherwise provided in those sections.

26 4. Do not create a new theory upon which liability may be
27 based, except as otherwise provided in those sections.

28 Sec. 8. NRS 40.645 is hereby amended to read as follows:

29 40.645 1. Except as otherwise provided in this section and
30 NRS 40.670, before a claimant commences an action or amends a
31 complaint to add a cause of action for a constructional defect against
32 a contractor, subcontractor, supplier or design professional, the
33 claimant:

34 (a) Must give written notice by certified mail, return receipt
35 requested, to the contractor, at the contractor's address listed in the
36 records of the State Contractors' Board or in the records of the
37 office of the county or city clerk or at the contractor's last known
38 address if the contractor's address is not listed in those records; and

39 (b) May give written notice by certified mail, return receipt
40 requested, to any subcontractor, supplier or design professional
41 known to the claimant who may be responsible for the
42 constructional defect, if the claimant knows that the contractor is no
43 longer licensed in this State or that the contractor no longer acts as a
44 contractor in this State.

45 2. The notice given pursuant to subsection 1 must:



* A B 1 2 5 R 1 *

1 (a) Include a statement that the notice is being given to satisfy
2 the requirements of this section;

3 (b) ~~{Specify in reasonable detail the defects or any damages or~~
4 ~~injuries}~~ *Identify in specific detail each defect, damage and injury*
5 *to each residence or appurtenance that is the subject of the claim {;*
6 ~~and}~~ *, including, without limitation, the exact location of each*
7 *such defect, damage and injury;*

8 (c) Describe in reasonable detail the cause of the defects if the
9 cause is known ~~{;~~ *and* the nature and extent that is known of the
10 damage or injury resulting from the defects ~~{and the location of each~~
11 ~~defect within each residence or appurtenance to the extent known.~~

12 ~~—3. Notice that includes an expert opinion concerning the cause~~
13 ~~of the constructional defects and the nature and extent of the damage~~
14 ~~or injury resulting from the defects which is based on a valid and~~
15 ~~reliable representative sample of the components of the residences~~
16 ~~or appurtenances may be used as notice of the common~~
17 ~~constructional defects within the residences or appurtenances to~~
18 ~~which the expert opinion applies.~~

19 ~~—4. Except as otherwise provided in subsection 5, one notice~~
20 ~~may be sent relating to all similarly situated owners of residences or~~
21 ~~appurtenances within a single development that allegedly have~~
22 ~~common constructional defects if:~~

23 ~~—(a) An expert opinion is obtained concerning the cause of the~~
24 ~~common constructional defects and the nature and extent of the~~
25 ~~damage or injury resulting from the common constructional defects;~~

26 ~~—(b) That expert opinion concludes that based on a valid and~~
27 ~~reliable representative sample of the components of the residences~~
28 ~~and appurtenances included in the notice, it is the opinion of the~~
29 ~~expert that those similarly situated residences and appurtenances~~
30 ~~may have such common constructional defects; and~~

31 ~~—(c) A copy of the expert opinion is included with the notice.~~

32 ~~—5.; and~~

33 (d) *Include a signed statement, by each named owner of a*
34 *residence or appurtenance in the notice, that each such owner*
35 *verifies that each such defect, damage and injury specified in the*
36 *notice exists in the residence or appurtenance owned by him or*
37 *her. If a notice is sent on behalf of a homeowners' association, the*
38 *statement required by this paragraph must be signed under*
39 *penalty of perjury by a member of the executive board or an*
40 *officer of the homeowners' association.*

41 3. A representative of a homeowners' association may send
42 notice pursuant to this section on behalf of an association ~~{that is~~
43 ~~responsible for a residence or appurtenance}~~ if the representative is
44 acting within the scope of the representative's duties pursuant to
45 chapter 116 or 117 of NRS.



1 ~~{6.}~~ 4. Notice is not required pursuant to this section before
2 commencing an action if:

3 (a) The contractor, subcontractor, supplier or design professional
4 has filed an action against the claimant; or

5 (b) The claimant has filed a formal complaint with a law
6 enforcement agency against the contractor, subcontractor, supplier
7 or design professional for threatening to commit or committing an
8 act of violence or a criminal offense against the claimant or the
9 property of the claimant.

10 Sec. 9. NRS 40.646 is hereby amended to read as follows:

11 40.646 1. Except as otherwise provided in subsection 2, not
12 later than 30 days after the date on which a contractor receives
13 notice of a constructional defect pursuant to NRS 40.645, the
14 contractor shall forward a copy of the notice by certified mail, return
15 receipt requested, to the last known address of each subcontractor,
16 supplier or design professional whom the contractor reasonably
17 believes is responsible for a defect specified in the notice.

18 2. If a contractor does not provide notice as required pursuant
19 to subsection 1, the contractor may not commence an action against
20 the subcontractor, supplier or design professional related to the
21 constructional defect unless the contractor demonstrates that, after
22 making a good faith effort, the contractor was unable to identify the
23 subcontractor, supplier or design professional whom the contractor
24 believes is responsible for the defect within the time provided
25 pursuant to subsection 1.

26 3. ~~{Except as otherwise provided in subsection 4, not}~~ Not later
27 than 30 days after receiving notice from the contractor pursuant to
28 this section, the subcontractor, supplier or design professional shall
29 inspect the alleged constructional defect in accordance with
30 ~~{subsection 1 of}~~ NRS 40.6462 and provide the contractor with a
31 written statement indicating:

32 (a) Whether the subcontractor, supplier or design professional
33 has elected to repair the defect for which the contractor believes the
34 subcontractor, supplier or design professional is responsible; and

35 (b) If the subcontractor, supplier or design professional elects to
36 repair the defect, an estimate of the length of time required for the
37 repair, and at least two proposed dates on and times at which the
38 subcontractor, supplier or design professional is able to begin
39 making the repair.

40 4. ~~{If the notice of a constructional defect forwarded by the~~
41 ~~contractor was given pursuant to subsection 4 of NRS 40.645 and~~
42 ~~the contractor provides a disclosure of the notice of the alleged~~
43 ~~common constructional defects to the unnamed owners to whom the~~
44 ~~notice may apply pursuant to NRS 40.6452;~~



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1 — (a) The contractor shall, in addition to the notice provided
2 pursuant to subsection 1, upon receipt of a request for an inspection,
3 forward a copy of the request to or notify each subcontractor,
4 supplier or design professional who may be responsible for the
5 alleged defect of the request not later than 5 working days after
6 receiving such a request; and

7 — (b) Not later than 20 days after receiving notice from the
8 contractor of such a request, the subcontractor, supplier or design
9 professional shall inspect the alleged constructional defect in
10 accordance with subsection 2 of NRS 40.6462 and provide the
11 contractor with a written statement indicating:

12 — (1) Whether the subcontractor, supplier or design
13 professional has elected to repair the defect for which the contractor
14 believes the subcontractor, supplier or design professional is
15 responsible; and

16 — (2) If the subcontractor, supplier or design professional elects
17 to repair the defect, an estimate of the length of time required for the
18 repair, and at least two proposed dates on and times at which the
19 subcontractor, supplier or design professional is able to begin
20 making the repair.

21 — 5.† If a subcontractor, supplier or design professional elects to
22 repair the constructional defect, the contractor or claimant may hold
23 the subcontractor liable for any repair which does not eliminate the
24 defect.

25 **Sec. 10.** NRS 40.6462 is hereby amended to read as follows:

26 40.6462 1†. Except as otherwise provided in subsection 2,
27 after| After notice of a constructional defect is given to a contractor
28 pursuant to NRS 40.645, the claimant shall, upon reasonable notice,
29 allow the contractor and each subcontractor, supplier or design
30 professional who may be responsible for the alleged defect
31 reasonable access to the residence or appurtenance that is the subject
32 of the notice to determine the nature and extent of a constructional
33 defect and the nature and extent of repairs that may be necessary. To
34 the extent possible, the persons entitled to inspect shall coordinate
35 and conduct the inspections in a manner which minimizes the
36 inconvenience to the claimant.

37 {2. If notice is given to the contractor pursuant to subsection 4
38 of NRS 40.645, the contractor and each subcontractor, supplier or
39 design professional who may be responsible for the defect do not
40 have the right to inspect the residence or appurtenance of an owner
41 who is not named in the notice unless the owner requests the
42 inspection in the manner set forth in NRS 40.6452. If the owner
43 does not request the inspection, the owner shall be deemed not to
44 have provided notice pursuant to NRS 40.645.}



1 **Sec. 11.** NRS 40.647 is hereby amended to read as follows:

2 40.647 1. ~~{Except as otherwise provided in NRS 40.6452,~~
3 ~~after}~~ *After* notice of a constructional defect is given pursuant to
4 NRS 40.645, before a claimant may commence an action or amend a
5 complaint to add a cause of action for a constructional defect against
6 a contractor, subcontractor, supplier or design professional, the
7 claimant must:

8 (a) Allow an inspection of the alleged constructional defect to be
9 conducted pursuant to NRS 40.6462; ~~and~~

10 (b) *Be present at an inspection conducted pursuant to NRS*
11 *40.6462 and identify the exact location of each alleged*
12 *constructional defect specified in the notice and, if the notice*
13 *includes an expert opinion concerning the alleged constructional*
14 *defect, the expert, or a representative of the expert who has*
15 *knowledge of the alleged constructional defect, must also be*
16 *present at the inspection and identify the exact location of each*
17 *alleged constructional defect for which the expert provided an*
18 *opinion; and*

19 (c) Allow the contractor, subcontractor, supplier or design
20 professional a reasonable opportunity to repair the constructional
21 defect or cause the defect to be repaired if an election to repair is
22 made pursuant to NRS 40.6472.

23 2. If a claimant commences an action without complying with
24 subsection 1 or NRS 40.645, the court shall:

25 (a) Dismiss the action without prejudice and compel the
26 claimant to comply with those provisions before filing another
27 action; or

28 (b) If dismissal of the action would prevent the claimant from
29 filing another action because the action would be procedurally
30 barred by the statute of limitations or statute of repose, the court
31 shall stay the proceeding pending compliance with those provisions
32 by the claimant.

33 **Sec. 12.** NRS 40.6472 is hereby amended to read as follows:

34 40.6472 1. Except as otherwise provided in NRS ~~{40.6452,}~~
35 40.670 and 40.672, a written response must be sent by certified
36 mail, return receipt requested, to a claimant who gives notice of a
37 constructional defect pursuant to NRS 40.645:

38 (a) By the contractor not later than 90 days after the contractor
39 receives the notice; and

40 (b) If notice was sent to a subcontractor, supplier or design
41 professional, by the subcontractor, supplier or design professional
42 not later than 90 days after the date that the subcontractor, supplier
43 or design professional receives the notice.

44 2. The written response sent pursuant to subsection 1 must
45 respond to each constructional defect in the notice and:



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1 (a) Must state whether the contractor, subcontractor, supplier
2 or design professional has elected to repair the defect or cause
3 the defect to be repaired. If an election to repair is included in the
4 response and the repair will cause the claimant to move from the
5 claimant's home during the repair, the election must also include
6 monetary compensation in an amount reasonably necessary for
7 temporary housing or for storage of household items, or for both, if
8 necessary.

9 (b) May include a proposal for monetary compensation, which
10 may include contribution from a subcontractor, supplier or design
11 professional.

12 (c) May disclaim liability for the constructional defect and state
13 the reasons for such a disclaimer.

14 3. If the claimant is a homeowners' association, the association
15 shall send a copy of the response to each member of the association
16 not later than 30 days after receiving the response.

17 4. If the contractor, subcontractor, supplier or design
18 professional has elected not to repair the constructional defect, the
19 claimant or contractor may bring a cause of action for the
20 constructional defect or amend a complaint to add a cause of action
21 for the constructional defect.

22 5. If the contractor, subcontractor, supplier or design
23 professional has elected to repair the constructional defect, the
24 claimant must provide the contractor, subcontractor, supplier or
25 design professional with a reasonable opportunity to repair the
26 constructional defect.

27 **Sec. 13.** NRS 40.648 is hereby amended to read as follows:

28 40.648 1. If the response provided pursuant to NRS 40.6472
29 includes an election to repair the constructional defect:

30 (a) The repairs may be performed by the contractor,
31 subcontractor, supplier or design professional, if such person is
32 properly licensed, bonded and insured to perform the repairs and, if
33 such person is not, the repairs may be performed by another person
34 who meets those qualifications.

35 (b) The repairs must be performed:

36 (1) On reasonable dates and at reasonable times agreed to in
37 advance with the claimant;

38 (2) In compliance with any applicable building code and in a
39 good and workmanlike manner in accordance with the generally
40 accepted standard of care in the industry for that type of repair; and

41 (3) In a manner which will not increase the cost of
42 maintaining the residence or appurtenance than otherwise would
43 have been required if the residence or appurtenance had been
44 constructed without the constructional defect, unless the contractor



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1 and the claimant agree in writing that the contractor will compensate
2 the claimant for the increased cost incurred as a result of the repair.

3 (c) Any part of the residence or appurtenance that is not
4 defective but which must be removed to correct the constructional
5 defect must be replaced.

6 (d) The contractor, subcontractor, supplier or design
7 professional shall prevent, remove and indemnify the claimant
8 against any mechanics' liens and materialmen's liens.

9 2. Unless the claimant and the contractor, subcontractor,
10 supplier or design professional agree to extend the time for repairs,
11 the repairs must be completed:

12 (a) ~~If the notice was sent pursuant to subsection 4 of NRS~~
13 ~~40.645 and there are four or fewer owners named in the notice, for~~
14 ~~the named owners, not later than 105 days after the date on which~~
15 ~~the contractor received the notice.~~

16 ~~(b) If the notice was sent pursuant to subsection 4 of NRS~~
17 ~~40.645 and there are five or more owners named in the notice, for~~
18 ~~the named owners, not later than 150 days after the date on which~~
19 ~~the contractor received the notice.~~

20 ~~(c) If the notice was sent pursuant to subsection 4 of NRS~~
21 ~~40.645, not later than 105 days after the date on which the~~
22 ~~contractor provides a disclosure of the notice to the unnamed~~
23 ~~owners to whom the notice applies pursuant to NRS 40.6452.~~

24 ~~(d) If the notice was not sent pursuant to subsection 4 of~~
25 ~~NRS 40.645:~~

26 ~~(1) Not later than 105 days after the date on which the~~
27 ~~notice of the constructional defect was received by the contractor,~~
28 ~~subcontractor, supplier or design professional if the notice of a~~
29 ~~constructional defect was received from four or fewer owners; or~~

30 ~~(2) (b) Not later than 150 days after the date on which the~~
31 ~~notice of the constructional defect was received by the contractor,~~
32 ~~subcontractor, supplier or design professional if the notice was~~
33 ~~received from five or more owners or from a representative of a~~
34 ~~homeowners' association.~~

35 3. If repairs reasonably cannot be completed within the time set
36 forth in subsection 2, the claimant and the contractor, subcontractor,
37 supplier or design professional shall agree to a reasonable time
38 within which to complete the repair. If the claimant and contractor,
39 subcontractor, supplier or design professional cannot agree on such
40 a time, any of them may petition the court to establish a reasonable
41 time for completing the repair.

42 4. Any election to repair made pursuant to NRS 40.6472 may
43 not be made conditional upon a release of liability.

44 5. Not later than 30 days after the repairs are completed, the
45 contractor, subcontractor, supplier or design professional who



1 repaired or caused the repair of a constructional defect shall provide
2 the claimant with a written statement describing the nature and
3 extent of the repair, the method used to repair the constructional
4 defect and the extent of any materials or parts that were replaced
5 during the repair.

6 **Sec. 14.** NRS 40.650 is hereby amended to read as follows:

7 40.650 1. If a claimant unreasonably rejects a reasonable
8 written offer of settlement made as part of a response pursuant to
9 paragraph (b) of subsection 2 of NRS 40.6472 and thereafter
10 commences an action governed by NRS 40.600 to 40.695, inclusive,
11 *and sections 2 and 3 of this act*, the court in which the action is
12 commenced may:

13 (a) Deny the claimant's attorney's fees and costs; and
14 (b) Award attorney's fees and costs to the contractor.
15 ➔ Any sums paid under a homeowner's warranty, other than sums
16 paid in satisfaction of claims that are collateral to any coverage
17 issued to or by the contractor, must be deducted from any recovery.
18 2. If a contractor, subcontractor, supplier or design professional
19 fails to:

20 (a) Comply with the provisions of NRS 40.6472;
21 (b) Make an offer of settlement;
22 (c) Make a good faith response to the claim asserting no
23 liability;
24 (d) Agree to a mediator or accept the appointment of a mediator
25 pursuant to NRS 40.680; or
26 (e) Participate in mediation,
27 ➔ the limitations on damages and defenses to liability provided in
28 NRS 40.600 to 40.695, inclusive, *and sections 2 and 3 of this act*
29 do not apply and the claimant may commence an action or amend a
30 complaint to add a cause of action for a constructional defect
31 without satisfying any other requirement of NRS 40.600 to 40.695,
32 inclusive ~~+~~, *and sections 2 and 3 of this act*.

33 3. If a residence or appurtenance that is the subject of the claim
34 is covered by a homeowner's warranty that is purchased by or on
35 behalf of a claimant pursuant to NRS 690B.100 to 690B.180,
36 inclusive ~~+~~, ~~a claimant shall diligently pursue a claim under the~~
37 ~~contract.~~ :

38 (a) *A claimant may not send a notice pursuant to NRS 40.645*
39 *or pursue a claim pursuant to NRS 40.600 to 40.695, inclusive,*
40 *and sections 2 and 3 of this act unless the claimant has first*
41 *submitted a claim under the homeowner's warranty and the*
42 *insurer has denied the claim.*

43 (b) *A claimant may include in a notice given pursuant to NRS*
44 *40.645 only claims for the constructional defects that were denied*
45 *by the insurer.*



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1 (c) If coverage under a homeowner's warranty is denied by an
2 insurer in bad faith, the homeowner and the contractor,
3 subcontractor, supplier or design professional have a right of action
4 for the sums that would have been paid if coverage had been
5 provided, plus reasonable attorney's fees and costs.

6 (d) *Statutes of limitation or repose applicable to a claim based*
7 *on a constructional defect governed by NRS 40.600 to 40.695,*
8 *inclusive, and sections 2 and 3 of this act are tolled from the time*
9 *notice of the claim under the homeowner's warranty is submitted*
10 *to the insurer until 30 days after the insurer rejects the claim, in*
11 *whole or in part, in writing.*

12 4. Nothing in this section prohibits an offer of judgment
13 pursuant to Rule 68 of the Nevada Rules of Civil Procedure or NRS
14 17.115 ~~if the offer of judgment includes all damages to which the~~
15 ~~claimant is entitled pursuant to NRS 40.655.~~ *or section 3 of this*
16 *act.*

17 **Sec. 15.** NRS 40.655 is hereby amended to read as follows:

18 40.655 1. Except as otherwise provided in NRS 40.650, in a
19 claim governed by NRS 40.600 to 40.695, inclusive, *and sections 2*
20 *and 3 of this act*, the claimant may recover only the following
21 damages to the extent proximately caused by a constructional
22 defect:

23 (a) ~~Any reasonable attorney's fees;~~

24 ~~—(b)—~~ The reasonable cost of any repairs already made that were
25 necessary and of any repairs yet to be made that are necessary to
26 cure any constructional defect that the contractor failed to cure and
27 the reasonable expenses of temporary housing reasonably necessary
28 during the repair;

29 ~~—(c)—~~ (b) The reduction in market value of the residence or
30 accessory structure, if any, to the extent the reduction is because of
31 structural failure;

32 ~~—(d)—~~ (c) The loss of the use of all or any part of the residence;

33 ~~—(e)—~~ (d) The reasonable value of any other property damaged
34 by the constructional defect;

35 ~~—(f)—~~ (e) Any additional costs reasonably incurred by the
36 claimant ~~for constructional defects proven by the claimant,~~
37 including, but not limited to, any costs and fees incurred for the
38 retention of experts to:

39 (1) Ascertain the nature and extent of the constructional
40 defects;

41 (2) Evaluate appropriate corrective measures to estimate the
42 value of loss of use; and

43 (3) Estimate the value of loss of use, the cost of temporary
44 housing and the reduction of market value of the residence; and

45 ~~—(g)—~~ (f) Any interest provided by statute.



1 2. ~~{The amount of any attorney's fees awarded pursuant to this~~
2 ~~section must be approved by the court.~~

3 ~~—3.—~~ If a contractor complies with the provisions of NRS 40.600
4 to 40.695, inclusive, *and sections 2 and 3 of this act*, the claimant
5 may not recover from the contractor, as a result of the constructional
6 defect, ~~{anything}~~ *any damages* other than ~~{that which is provided}~~
7 *damages authorized* pursuant to NRS 40.600 to 40.695, inclusive ~~{-~~
8 ~~—4.—~~ , *and sections 2 and 3 of this act.*

9 3. This section must not be construed as impairing any
10 contractual rights between a contractor and a subcontractor, supplier
11 or design professional.

12 ~~{5.—}~~ 4. As used in this section, "structural failure" means
13 physical damage to the load-bearing portion of a residence or
14 appurtenance caused by a failure of the load-bearing portion of the
15 residence or appurtenance.

16 **Sec. 16.** NRS 40.695 is hereby amended to read as follows:

17 40.695 1. Except as otherwise provided in ~~{subsection}~~
18 *subsections 2 and 3*, statutes of limitation or repose applicable to
19 a claim based on a constructional defect governed by NRS 40.600 to
20 40.695, inclusive, *and sections 2 and 3 of this act* are tolled from
21 the time notice of the claim is given, until ~~{30}~~ *the earlier of:*

22 (a) *One year after notice of the claim is given; or*

23 (b) *Thirty days after mediation is concluded or waived in*
24 *writing pursuant to NRS 40.680.*

25 2. *Statutes of limitation and repose may be tolled under this*
26 *section for a period longer than 1 year after notice of the claim is*
27 *given only if, in an action for a constructional defect brought by a*
28 *claimant after the applicable statute of limitation or repose has*
29 *expired, the claimant demonstrates to the satisfaction of the court*
30 *that good cause exists to toll the statutes of limitation and repose*
31 *under this section for a longer period.*

32 3. Tolling under this section applies to a third party regardless
33 of whether the party is required to appear in the proceeding.

34 **Sec. 17.** NRS 11.202 is hereby amended to read as follows:

35 11.202 1. ~~{A—}~~ *No* action may be commenced against the
36 owner, occupier or any person performing or furnishing the design,
37 planning, supervision or observation of construction, or the
38 construction of an improvement to real property ~~{at any time}~~ *more*
39 *than 6 years* after the substantial completion of such an
40 improvement, for the recovery of damages for:

41 (a) Any deficiency in the design, planning, supervision or
42 observation of construction or the construction of such an
43 improvement ; ~~{which is the result of his or her willful misconduct~~
44 ~~or which he or she fraudulently concealed;}~~



- 1 (b) Injury to real or personal property caused by any such
2 deficiency; or
3 (c) Injury to or the wrongful death of a person caused by any
4 such deficiency.
5 2. The provisions of this section do not apply ~~to~~ :
6 (a) *To a claim for indemnity or contribution.*
7 (b) *In an action brought against:*
8 ~~(a)~~ (1) The owner or keeper of any hotel, inn, motel, motor
9 court, boardinghouse or lodging house in this State on account of his
10 or her liability as an innkeeper.
11 ~~(b)~~ (2) Any person on account of a defect in a product.
12 **Sec. 18.** NRS 11.2055 is hereby amended to read as follows:
13 11.2055 1. Except as otherwise provided in subsection 2, for
14 the purposes of *this section and* NRS 11.202 , ~~to 11.206,~~
15 ~~inclusive,~~ the date of substantial completion of an improvement to
16 real property shall be deemed to be the date on which:
17 (a) The final building inspection of the improvement is
18 conducted;
19 (b) A notice of completion is issued for the improvement; or
20 (c) A certificate of occupancy is issued for the improvement,
21 ~~whichever occurs later.~~
22 2. If none of the events described in subsection 1 occurs, the
23 date of substantial completion of an improvement to real property
24 must be determined by the rules of the common law.
25 **Sec. 19.** NRS 113.135 is hereby amended to read as follows:
26 113.135 1. Upon signing a sales agreement with the initial
27 purchaser of residential property that was not occupied by the
28 purchaser for more than 120 days after substantial completion of the
29 construction of the residential property, the seller shall:
30 (a) Provide to the initial purchaser a copy of NRS 11.202 ~~to~~
31 ~~11.206, inclusive,~~ , *11.2055* and 40.600 to 40.695, inclusive ~~to~~ ,
32 *and sections 2 and 3 of this act;*
33 (b) Notify the initial purchaser of any soil report prepared for the
34 residential property or for the subdivision in which the residential
35 property is located; and
36 (c) If requested in writing by the initial purchaser not later than
37 5 days after signing the sales agreement, provide to the purchaser
38 without cost each report described in paragraph (b) not later than 5
39 days after the seller receives the written request.
40 2. Not later than 20 days after receipt of all reports pursuant to
41 paragraph (c) of subsection 1, the initial purchaser may rescind the
42 sales agreement.
43 3. The initial purchaser may waive his or her right to rescind
44 the sales agreement pursuant to subsection 2. Such a waiver is



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1 effective only if it is made in a written document that is signed by
2 the purchaser.

3 **Sec. 20.** NRS 116.3102 is hereby amended to read as follows:

4 116.3102 1. Except as otherwise provided in this chapter, and
5 subject to the provisions of the declaration, the association:

6 (a) Shall adopt and, except as otherwise provided in the bylaws,
7 may amend bylaws and may adopt and amend rules and regulations.

8 (b) Shall adopt and may amend budgets in accordance with the
9 requirements set forth in NRS 116.31151, may collect assessments
10 for common expenses from the units' owners and may invest funds
11 of the association in accordance with the requirements set forth in
12 NRS 116.311395.

13 (c) May hire and discharge managing agents and other
14 employees, agents and independent contractors.

15 (d) May institute, defend or intervene in litigation or in
16 arbitration, mediation or administrative proceedings in its own name
17 on behalf of itself or two or more units' owners on matters affecting
18 the common-interest community. *The association may not institute,*
19 *defend or intervene in litigation or in arbitration, mediation or*
20 *administrative proceedings in its own name on behalf of itself or*
21 *units' owners with respect to an action for a constructional defect*
22 *pursuant to NRS 40.600 to 40.695, inclusive, and sections 2 and 3*
23 *of this act unless the action pertains exclusively to common*
24 *elements.*

25 (e) May make contracts and incur liabilities. Any contract
26 between the association and a private entity for the furnishing of
27 goods or services must not include a provision granting the private
28 entity the right of first refusal with respect to extension or renewal
29 of the contract.

30 (f) May regulate the use, maintenance, repair, replacement and
31 modification of common elements.

32 (g) May cause additional improvements to be made as a part of
33 the common elements.

34 (h) May acquire, hold, encumber and convey in its own name
35 any right, title or interest to real estate or personal property, but:

36 (1) Common elements in a condominium or planned
37 community may be conveyed or subjected to a security interest only
38 pursuant to NRS 116.3112; and

39 (2) Part of a cooperative may be conveyed, or all or part of a
40 cooperative may be subjected to a security interest, only pursuant to
41 NRS 116.3112.

42 (i) May grant easements, leases, licenses and concessions
43 through or over the common elements.

44 (j) May impose and receive any payments, fees or charges for
45 the use, rental or operation of the common elements, other than



1 limited common elements described in subsections 2 and 4 of
2 NRS 116.2102, and for services provided to the units' owners,
3 including, without limitation, any services provided pursuant to
4 NRS 116.310312.

5 (k) May impose charges for late payment of assessments
6 pursuant to NRS 116.3115.

7 (l) May impose construction penalties when authorized pursuant
8 to NRS 116.310305.

9 (m) May impose reasonable fines for violations of the governing
10 documents of the association only if the association complies with
11 the requirements set forth in NRS 116.31031.

12 (n) May impose reasonable charges for the preparation and
13 recordation of any amendments to the declaration or any statements
14 of unpaid assessments, and impose reasonable fees, not to exceed
15 the amounts authorized by NRS 116.4109, for preparing and
16 furnishing the documents and certificate required by that section.

17 (o) May provide for the indemnification of its officers and
18 executive board and maintain directors and officers liability
19 insurance.

20 (p) May assign its right to future income, including the right to
21 receive assessments for common expenses, but only to the extent the
22 declaration expressly so provides.

23 (q) May exercise any other powers conferred by the declaration
24 or bylaws.

25 (r) May exercise all other powers that may be exercised in this
26 State by legal entities of the same type as the association.

27 (s) May direct the removal of vehicles improperly parked on
28 property owned or leased by the association, as authorized pursuant
29 to NRS 487.038, or improperly parked on any road, street, alley or
30 other thoroughfare within the common-interest community in
31 violation of the governing documents. In addition to complying with
32 the requirements of NRS 487.038 and any requirements in the
33 governing documents, if a vehicle is improperly parked as described
34 in this paragraph, the association must post written notice in a
35 conspicuous place on the vehicle or provide oral or written notice to
36 the owner or operator of the vehicle at least 48 hours before the
37 association may direct the removal of the vehicle, unless the vehicle:

38 (1) Is blocking a fire hydrant, fire lane or parking space
39 designated for the handicapped; or

40 (2) Poses an imminent threat of causing a substantial adverse
41 effect on the health, safety or welfare of the units' owners or
42 residents of the common-interest community.

43 (t) May exercise any other powers necessary and proper for the
44 governance and operation of the association.



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1 2. The declaration may not limit the power of the association to
2 deal with the declarant if the limit is more restrictive than the limit
3 imposed on the power of the association to deal with other persons.

4 3. The executive board may determine whether to take
5 enforcement action by exercising the association's power to impose
6 sanctions or commence an action for a violation of the declaration,
7 bylaws or rules, including whether to compromise any claim for
8 unpaid assessments or other claim made by or against it. The
9 executive board does not have a duty to take enforcement action if it
10 determines that, under the facts and circumstances presented:

11 (a) The association's legal position does not justify taking any or
12 further enforcement action;

13 (b) The covenant, restriction or rule being enforced is, or is
14 likely to be construed as, inconsistent with current law;

15 (c) Although a violation may exist or may have occurred, it is
16 not so material as to be objectionable to a reasonable person or to
17 justify expending the association's resources; or

18 (d) It is not in the association's best interests to pursue an
19 enforcement action.

20 4. The executive board's decision under subsection 3 not to
21 pursue enforcement under one set of circumstances does not prevent
22 the executive board from taking enforcement action under another
23 set of circumstances, but the executive board may not be arbitrary or
24 capricious in taking enforcement action.

25 5. Notwithstanding any provision of this chapter or the
26 governing documents to the contrary, an association may not impose
27 any assessment pursuant to this chapter or the governing documents
28 on the owner of any property in the common-interest community
29 that is exempt from taxation pursuant to NRS 361.125. For the
30 purposes of this subsection, "assessment" does not include any
31 charge for any utility services, including, without limitation,
32 telecommunications, broadband communications, cable television,
33 electricity, natural gas, sewer services, garbage collection, water or
34 for any other service which is delivered to and used or consumed
35 directly by the property in the common-interest community that is
36 exempt from taxation pursuant to NRS 361.125.

37 **Sec. 21.** 1. Section 2 of this act applies only to residential
38 construction for which a contract is entered into on or after the
39 effective date of this act.

40 2. The provisions of NRS 40.615 and 40.655, as amended by
41 sections 6 and 15 of this act, apply to any claim that arises on or
42 after the effective date of this act.

43 3. The provisions of NRS 40.645, 40.650 and 40.695, as
44 amended by sections 8, 14 and 16 of this act, apply to a notice of a
45 constructional defect given on or after the effective date of this act.



* A B 1 2 5 R 1 *

1 4. The provisions of NRS 40.647, as amended by section 11 of
2 this act, apply only to an inspection conducted pursuant to NRS
3 40.6462, as amended by section 10 of this act, on or after the
4 effective date of this act.

5 5. Except as otherwise provided in subsection 6, the period of
6 limitations on actions set forth in NRS 11.202, as amended by
7 section 17 of this act, applies retroactively to actions in which the
8 substantial completion of the improvement to the real property
9 occurred before the effective date of this act.

10 6. The provisions of subsection 5 do not limit an action:

11 (a) That accrued before the effective date of this act, and was
12 commenced within 1 year after the effective date of this act; or

13 (b) If doing so would constitute an impairment of the obligation
14 of contracts under the Constitution of the United States or the
15 Constitution of the State of Nevada.

16 7. The provisions of NRS 116.3102, as amended by section 20
17 of this act, do not apply if a unit-owners' association has given
18 notice of a constructional defect pursuant to NRS 40.600 to 40.695,
19 inclusive, and sections 2 and 3 of this act on or before the effective
20 date of this act.

21 8. As used in this section:

22 (a) "Residential construction" means the construction of a new
23 residence, of an alteration of or addition to an existing residence, or
24 of an appurtenance.

25 (b) "Unit-owners' association" has the meaning ascribed to it in
26 NRS 116.011.

27 **Sec. 22.** NRS 11.203, 11.204, 11.205, 11.206 and 40.6452 are
28 hereby repealed.

29 **Sec. 23.** This act becomes effective upon passage and
30 approval.

LEADLINES OF REPEALED SECTIONS

**11.203 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Known deficiencies.**

**11.204 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Latent deficiencies.**

**11.205 Actions for damages for injury or wrongful death
caused by deficiency in construction of improvements to real
property: Patent deficiencies.**



11.206 Actions for damages for injury or wrongful death caused by deficiency in construction of improvements to real property: Limitation of actions not a defense in actions based on liability as innkeeper or for defect in product.

40.6452 Common constructional defects within single development: Response to notice of defect by contractor; disclosure to unnamed owners; effect of contractor failing to provide disclosure to unnamed owners.

③



EXHIBIT “D”

EXHIBIT “D”

Receipt/Conformed Copy

Requestor:

TITLEONE

11/07/2006 14:57:53 T20060197532

Book/Instr: 20061107-0004723

Restrictio Page Count: 141

Fees: \$154.00 N/C Fee: \$25.00

APN: 16220311000

When Recorded Mail To:

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Clark County Recorder

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT AND RESERVATION OF EASEMENTS FOR
PANORAMA TOWERS

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EXHIBIT "B" — ANNEXABLE PROPERTY - LEGAL DESCRIPTION
EXHIBIT "C" — COMMON ELEMENTS - LEGAL DESCRIPTION
EXHIBIT "D" — TABLE OF ALLOCATED INTERESTS
EXHIBIT "E" — PARKING ASSIGNMENTS
EXHIBIT "F" — LIMITED COMMON ELEMENTS

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT AND RESERVATION OF EASEMENTS FOR
PANORAMA TOWERS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT AND RESERVATION OF EASEMENTS FOR PANORAMA TOWERS (the "**Declaration**") is dated for purposes of reference only as of the 7th day of November, 2006, and is made by PANORAMA TOWERS I, LLC, a Nevada limited liability company, with an office at 4230 South Decatur Blvd., Suite 200, Las Vegas, Nevada 89103 (as the owner of and with respect only to the real property described on Exhibit "A") and PANORAMA TOWERS II, LLC, a Nevada limited liability company, with an office at 4230 South Decatur Blvd., Suite 200, Las Vegas, Nevada 89103 (as the owner of and with respect only to the real property described on Exhibit "B") (collectively, the "**Declarant**").

RECITALS:

A. Declarant is the owner of certain real property, all of which is located in Clark County, Nevada, as is more fully described in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**"). Declarant intends to develop a mixed use residential and commercial development consisting of residential and commercial condominiums. If completely constructed by Declarant as presently intended, the development shall consist of approximately two (2) Commercial Units, and 646 Residential Units.

B. Declarant desires to develop the Land with improvements (collectively, the "**Property**") as a "common interest community" as defined in Chapter 116 of the Nevada Revised Statutes (the "**Act**"), consisting of "condominiums" as defined in the Act, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums created pursuant to the provisions of the Act.

C. Declarant intends to develop the Property in two phases. The first phase ("**Phase 1**") will consist of 320 Residential Units and one (1) Commercial Unit. The second phase ("**Phase 2**") will consist of approximately 330 Residential Units and one (1) Commercial Unit. Each phase will include a variety of residential units, including one, two and three-bedroom units located in a highrise tower over an underground garage, and townhomes and villas located in separate buildings. Commercial units will be located in separate buildings. The Property will also include private streets and driveways and surface parking.

D. Declarant hereby declares that all of the Property, together with any additional real property annexed into the development pursuant to this Declaration is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property.

NOW, THEREFORE, Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, easements, conditions, covenants, obligations, rights and duties set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. Each of the provisions of this Declaration shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

DECLARANT FURTHER DECLARES that Declarant, its successors, assigns and grantees, covenants and agrees that the undivided interest in the Common Elements granted hereby, the memberships in the Association, and the easements granted and reserved hereby to each respective Unit shall not be separated or separately conveyed, and each such undivided interest, membership and easements shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any conveyance by an Owner of a Unit, or any portion thereof, shall be presumed to convey the entire Unit, together with a membership in the Association and the appurtenant undivided interests and easements.

ARTICLE 1 DEFINITIONS

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

Section 1.1 Act: "Act" shall mean the Uniform Common Interest Ownership Act as adopted in Nevada, as set forth in NRS Chapter 116 and the rules and regulations promulgated thereunder; and, to the extent applicable (i) the provisions of NRS Chapter 116A relating to the licensing of persons providing services to "associations" (as defined in the Act), and the rules and regulations promulgated thereunder, and (ii) to the extent not in conflict with NRS Chapter 116, the provisions of NRS Chapter 82 relating to the Association, which is organized as a nonprofit corporation under NRS Chapter 82; as any of such statutes or regulations may amended from time to time.

Section 1.2 Alleged Defect: "Alleged Defect" is defined in Section 27.1(a).

Section 1.3 Allocated Interests: "Allocated Interests" shall mean the undivided interest in the Common Elements, the Liability for Common Expenses, and the votes in the Association which are allocated to Units in the Community. The Allocated Interests are described in Article 8.

Section 1.4 Annexable Property: "Annexable Property" shall mean the real property described in Exhibit "B", all or any portion of which may hereafter be brought within the terms of this Declaration as part of the Community pursuant to Article 7.

Section 1.5 ARC: "ARC" shall mean the Architectural Review Committee created pursuant to Section 12.3.

Section 1.6 Architectural Guidelines: "Architectural Guidelines" shall mean the architectural, design, and construction guidelines and application and review procedures applicable to the Community as promulgated, supplemented, and administered pursuant to Article 12, as they may be amended. Architectural Guidelines may be different for Residential Units (and for Tower and non-Tower Residential Units) and Commercial Units.

Section 1.7 Articles: "Articles" shall mean the Articles of Incorporation of the Association, on file with the Nevada Secretary of State from time to time.

Section 1.8 Assessment: "Assessment" shall mean Base Assessments, Capital Improvement Assessments, Cost Center Assessments, Reconstruction Assessments, Special Assessments or Specific Assessments, or any combination of them, as the context may require.

Section 1.9 Assessment, Base: "Base Assessment " shall mean the annual charge against each Owner and his or her Unit representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements or other Common Expenses, including Reserves, which are to be paid by each Owner to the Association, as provided herein.

Section 1.10 Assessment, Capital Improvement: "Capital Improvement Assessment" shall mean a charge against each Owner and his or her Unit representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.11 Assessment, Cost Center: "Cost Center Assessments" shall mean Assessments levied against the Units in a particular Cost Center to fund Cost Center Expenses, as described in Section 17.7.

Section 1.12 Assessment, Reconstruction: "Reconstruction Assessment" shall mean a charge against each Owner and his or her Unit, representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Common Elements, pursuant to the provisions of this Declaration.

Section 1.13 Assessment, Special: "Special Assessment" shall mean a charge against each Owner and his or her Unit, representing a portion of the amounts the Association elects to assess against the Owners and their Units pursuant to Section 17.10.

Section 1.14 Assessment, Specific: "Specific Assessment" shall mean a charge against a particular Owner and his or her Unit, directly attributable to or reimbursable by the Owner, equal to the costs and expenses of maintaining, repairing or replacing those portions of the Property the costs and expenses for which are payable by a particular Owner in accordance with Sections 6, 6.4, 6.6 or any other provision of this Declaration, the cost incurred by the

Association for corrective action performed pursuant to the provisions of this Declaration (including, if applicable, the amount of any deductible payable in connection with an insured loss), or any amount levied by the Board as a reasonable fine or penalty for non-compliance with the Restrictions or a construction penalty, plus interest and other charges on such charge, fine or penalty as provided for in this Declaration.

Section 1.15 Association: "Association" shall mean Panorama Towers Condominium Unit Owners' Association, Inc., a nonprofit corporation organized under NRS Chapter 82, which is organized as the "association" pursuant to the Act.

Section 1.16 Association Maintenance Funds: "Association Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article 17.

Section 1.17 Association Property: "Association Property" shall mean any real and personal property, including easements, that the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners (whether some or all); provided, however, that for so long as Declarant owns any real property subject to this Declaration or that may become subject to this Declaration, any deed, assignment, transfer or other conveyance of real or personal property to the Association shall require the Declarant's consent. Association Property may include condominiums purchased by the Association as a result of the foreclosure by the Association of its Assessment lien.

Section 1.18 Attorney Letter: "Attorney Letter" is defined in Section 24.1(b)(2).

Section 1.19 Authorized Reviewer: "Authorized Reviewer" is defined in Section 12.7(b).

Section 1.20 Balcony: "Balcony" refers to those portions of the Limited Common Elements adjoining certain Residential Units, over which an exclusive easement shall be and is hereby reserved for the benefit of the Owner of the Unit to which such Limited Common Element is attached for balcony, patio or deck purposes, subject to this Declaration and the Rules, and which easement right is and shall be appurtenant to such Owner's Unit.

Section 1.21 Board of Directors: "Board" or "Board of Directors" shall mean the board of directors of the Association, elected in accordance with the Bylaws and this Declaration.

Section 1.22 Budget: "Budget" shall mean the Operating Budget or the Reserve Budget.

Section 1.23 Bylaws: "Bylaws" shall mean the Bylaws of the Association, as they may be amended from time to time.

Section 1.24 Building: "Building" shall mean each of the structures situated on the Property in which the Units or Common Elements or both are located, regardless of the number of such structures. The Buildings in Phase 1 include Building 1 and Building 2 (low rise

Buildings with Residential Units), Building 3 (Tower/Parking Structure and low rise) and Building 4 (Commercial Unit C-1).

Section 1.25 Capital Contribution: "Capital Contribution" is defined in Section 17.14.

Section 1.26 Claimant: "Claimant" is defined in Section 27.1(a).

Section 1.27 Close of Escrow: "Close of Escrow" shall mean the date on which a Deed or other such instrument conveying a Unit is Recorded, representing the conveyance by Declarant of that Unit from Declarant to the first purchaser or grantee of the Unit.

Section 1.28 Commercial Common Elements: "Commercial Common Elements" shall mean the portions of the Property (a) designated as "Commercial Common Elements" on or by a Plat or (b) appurtenant only to Commercial Units. The term "Commercial Common Elements" shall include, as the context may require, Commercial Limited Common Elements.

Section 1.29 Commercial Limited Common Elements: "Commercial Limited Common Elements" shall mean those Limited Common Elements designated as "Commercial Limited Common Elements" on or by a Plat or those portions of the Commercial Common Elements appurtenant only to Commercial Units or over which exclusive easements are reserved for the benefit of one or more but fewer than all of the Commercial Owners and Commercial Units. The Commercial Limited Common Elements are any storefronts, store facades, entryways, doorways, patios, decks, landings, or similar features associated with any Commercial Unit.

Section 1.30 Commercial Occupant: "Commercial Occupant" shall mean any Person who is physically occupying a Commercial Unit as a matter of right, whether under a Lease or otherwise, for so long as such Person is so occupying the Commercial Unit. The term includes, as the context requires, a Commercial Owner and any tenant or licensee of a Commercial Owner. Restrictions which apply to a "Commercial Owner" also apply to any "Commercial Occupant."

Section 1.31 Commercial Owner: "Commercial Owner" shall mean the record owner, whether one or more Persons, including Declarant, of a Commercial Unit, but specifically excludes a Person having merely an interest as a Mortgagee with respect to the Commercial Unit, or as a secured party with respect to a security pledge of any fixtures or personal property, or any other Person holding an interest merely as security for repayment of a debt.

Section 1.32 Commercial Owner Issues: "Commercial Owner Issues" shall mean those matters and issues which concern and relate exclusively to the Commercial Units or Commercial Common Areas and require a vote of only the Commercial Owners, as provided in Section 2.10.

Section 1.33 Commercial Units: "Commercial Unit" shall mean a Unit identified on a Plat as a Commercial Unit, which are intended for commercial uses pursuant to

the terms of this Declaration and in compliance with applicable Laws, including County zoning codes and land use ordinances.

Section 1.34 Common Areas: "Common Areas" shall mean those Common Elements, other than the Residential Areas, available for the use or benefit of both Residential and Commercial Owners. In Phase 1 the Common Areas include "Common Element 1" (containing include the surface driveways and sidewalks on the Property and the entrance areas to the Property) as set forth on the Phase 1 Plat.

Section 1.35 Common Area Issues: "Common Area Issues" shall mean those matters and issues which require a vote of all the Owners, which for purposes of the Governing Documents means any matter which is not exclusively a Residential Owner Issue or a Commercial Owner Issue.

Section 1.36 Common Areas Amount: "Common Area Issues" is defined in Section 17.15(c).

Section 1.37 Common Areas Expenses: "Common Areas Expenses" is defined in Section 17.15(b).

Section 1.38 Co-Owner: "Co-Owner" is defined in Section 2.7.

Section 1.39 Common Elements: "Common Elements" shall mean all portions of the Property other than the Units. The term shall include the Limited Common Elements. The Common Elements shall initially consist of the real property classified as Common Elements in Exhibit "C". Additional Common Elements may also be designated in any Supplemental Declaration. By way of example and not limitation the Common Elements may include the following components:

(a) The Buildings, including, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, stairs, patios, balconies, entrances and exits, basements, lobbies, offices, meeting rooms, mail rooms, mechanical rooms, elevator shafts, and the mechanical installations of a building consisting of the equipment and materials making up the elevators, and all other central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith, but excluding, however, the Units;

(b) The swimming pools, Jacuzzi oasis, spa facilities, fitness center, sidewalks, walkways, paths, yards and gardens, grass, shrubbery, trees, entrance areas, guard gate, driveways, roadways, landscaping, parking garage and other parking areas, and related facilities upon the Property;

(c) The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of any Building existing for the use of one or more of the Owners;

(d) Easements through Units for conduits, pipes, ducts, vents, plumbing, wiring and other facilities, equipment and/or fixtures for the furnishing of utility services and/or heating, cooling, ventilation, or other services to more than one (1) Unit or to the Common Elements, together with related property and installations;

(e) An easement of support in every portion of a Unit which contributes to the support of the Building, other Units and/or any part of the Common Elements;

(f) The property and installation required for the furnishing of utilities and other services to more than one (1) Unit or to the Common Elements; and

(g) In general, all other parts of the Property designated on or by a Plat as Common Elements and existing for the use of one or more of the Owners.

Section 1.40 Common Expenses: "Common Expenses" shall mean the expenses or financial liabilities for the operation of the Property together with any allocations to Reserves, including, but not limited to, the actual estimated costs of:

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

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

(c) Sums lawfully assessed against the Units by the Board of Directors;

(d) The costs of any commonly metered charges for the Property;

(e) The cost of maintenance of clustered mailboxes;

(f) The costs of management and administration of the Association including compensation paid by the Association to Managers, accountants, attorneys and other employees or independent contractors;

(g) The costs of all landscaping and other services benefiting the Common Elements;

(h) The costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property, any Association Property and the Board and the officers and agents of the Association, including deductibles (except to the extent such deductible is the responsibility of an Owner pursuant to the terms of this Declaration);

(i) The costs of bonding of the members of the Board;

- (j) Taxes paid by the Association;
- (k) Amounts paid by the Association for discharge of any lien or encumbrance levied against the Property or Association Property, or portions thereof;
- (l) The cost of a master antenna television system or duly franchised cable television service, obtained pursuant to a bulk contract, if any;
- (m) Any and all costs, charges and other expenses relating to the provision of electronic gateway services or other access control to the Property;
- (n) If applicable, costs relating to reasonable transportation services, road maintenance and operation expenses, in-house and/or interactive communications and surveillance systems;
- (o) Any unpaid share of Common Expenses extinguished by foreclosure of a superior lien or by a deed in lieu of foreclosure;
- (p) The cost of providing any utility services to the Units (which charges shall be separately billed to each Owner based on actual consumption, or in proportion to each Owner's Allocated Interest, depending on whether the metering system installed measures actual consumption utilized by each Unit);
- (q) Judgments against the Association;
- (r) The costs (including reasonable attorneys' fees) associated with any litigation to which the Association is a party;
- (s) Costs associated with the maintenance, upkeep and management of any guest suites located within the Building;
- (t) The costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Community;
- (u) Expenses agreed upon as Common Expenses by the Members of the Association;
- (v) Reserves established by the Association for repair, replacement and restoration of the Major Components; and
- (w) Expenses, fees, and other charges imposed upon the Association by any Governmental Authority because the Property is a "common-interest community" pursuant to the Act.

Section 1.41 Community: "Community" shall mean the "common-interest community" (as defined in the Act) located at the Property.

Section 1.42 Cost Center: "Cost Center" shall mean (i) Limited Common Elements or (ii) Improvements ("**Cost Center Improvements**") or (iii) services that are allocated exclusively to Unit a group of Units or (iv) portions of the Common Elements, such as Exclusive License Areas, that are allocated exclusively to a group of Units. Any Cost Center and the Units within a Cost Center, shall be designated (a) by Declarant in this Declaration or in a Supplemental Declaration, or (b) by resolution of the Board from time to time in accordance with the provisions of this Declaration, provided, that for so long as Declarant owns any of the real property described in Exhibits "A" or "B", any such resolution by the Board shall require the Declarant's written consent. Declarant, in its sole discretion, may allocate Limited Common Elements, Cost Center Improvements or services and the related Cost Center Expenses applicable to Units that subsequently become part of the Property either to a new Cost Center or to an existing Cost Center.

Section 1.43 Cost Center Assessments: "Cost Center Assessments" shall mean Assessments levied against the Units in a particular Cost Center to fund Cost Center Expenses, as described in Section 17.7.

Section 1.44 Cost Center Expense: "Cost Center Expense" shall mean the actual and estimated expenses that the Association incurs or expects to incur exclusively for the benefit of Owners of Units generated by a particular Cost Center, which may include the expenses of maintaining, operating, insuring, repairing, and replacing the Limited Common Elements, Cost Center Improvements, and Common Elements subject to Exclusive License Areas assigned to the Cost Center, a reasonable reserve for capital repairs and replacements and a reasonable administrative charge.

Section 1.45 County: "County" shall mean the County of Clark, State of Nevada, and shall mean and refer to, as the context may require, either the political subdivision, its various departments, divisions, employees and representatives, or the geographic location.

Section 1.46 Declarant: "Declarant" shall mean PANORAMA TOWERS I, LLC, a Nevada limited liability company, and PANORAMA TOWERS II, LLC, a Nevada limited liability company, collectively or individually, and any successor, successor-in-title, or assign who takes title to any portion of the real property described in Exhibits "A" or "B" for the purpose of development or sale and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

Section 1.47 Declarant Control Period: "Declarant Control Period" shall mean the period to time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors pursuant to Section 7.9, whether or not the Declarant exercises such right.

Section 1.48 Declarant Improvements: "Declarant Improvements" is defined in Section 27.1.

Section 1.49 Declarant's Contractors: "Declarant's Contractors" is defined in Section 27.1(a).

Section 1.50 Declaration: "Declaration" shall mean this document, including any amendments, supplements, restatements and other modifications thereto as Recorded.

Section 1.51 Deed: "Deed" shall mean a grant, bargain and sale deed or other form of deed pursuant to which Declarant conveys a Unit to any third party, or as the context may require, any subsequent grant, bargain and sale or other form of deed.

Section 1.52 Development Rights: "Development Rights" shall mean the rights reserved by the Declarant under Section 7.1 to create Units, Common Elements and Limited Common Elements within the Property as well as other rights provided for in Article 7 relating to the development of the Community.

Section 1.53 Director: "Director" shall mean a member of the Board of Directors.

Section 1.54 Eligible Insurer: "Eligible Insurer" shall mean an insurer or guarantor of a first Security Interest in a Unit. An Eligible Insurer shall notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a Unit and must provide the Association with the Unit number and address of the Unit on which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article 16.

Section 1.55 Eligible Mortgagee: "Eligible Mortgagee" shall mean the holder of a first Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Unit. The notice must include the Unit number and address of the Unit on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article 16.

Section 1.56 Exclusive License: "Exclusive License" is defined in Section 5.6.

Section 1.57 Exclusive License Area: "Exclusive License Area" is defined in Section 5.6.

Section 1.58 Family: "Family" shall mean one or more natural Persons related to each other by blood, marriage or adoption, or one or more natural Persons not all so related, but who maintain a common household in a Unit.

Section 1.59 Fiscal Year: "Fiscal Year" shall mean the fiscal accounting and reporting period of the Association selected by the Board of Directors from time to time.

Section 1.60 Foreclosure Sale: "Foreclosure Sale" is defined in Section 17.12(d).

Section 1.61 Governing Documents: "Governing Documents" shall mean the Declaration, the Articles, the Bylaws, the Rules and the Architectural Guidelines as they may be

amended from time to time. Any exhibit, schedule or certification accompanying a Governing Document shall be deemed to be a part of that Governing Document.

Section 1.62 Governmental Authority: "Governmental Authority" shall mean the United States of America, the State of Nevada and any political subdivision or regional division of the foregoing, and any agency, department, court, regulatory body, commission, board, bureau or instrumentality of any of them. The term includes the United States Department of Housing and Urban Development, the State of Nevada Real Estate Division and Clark County, Nevada.

Section 1.63 Guest: "Guest" shall mean any visitor of an Owner, including any employee, tenant, guest (whether or not for hire), licensee, agent or invitee of such Owner, including any transient guest, or any family member of the Owner and, in the case of a Commercial Unit, a customer.

Section 1.64 Hazardous Materials: "Hazardous Materials" shall mean (a) any pollutants, toxic pollutants, oil, gasoline, petroleum products, asbestos, materials or substances containing asbestos, explosives, chemical liquids or solids, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other solid, liquid or other emission, substance, material, product or by product defined, listed or regulated as a hazardous, noxious, toxic or solid substance, material or waste or defined, listed or regulated as causing cancer or reproductive toxicity, or otherwise defined, listed or regulated as hazardous or toxic in, pursuant to, or by any federal, state or local law, ordinance, rule, or regulation, now or hereafter enacted, amended or modified, in each case to the extent applicable to the Property including the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.); the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.); Section 40.504 of the Nevada Revised Statutes; any so called "Superfund" or "Superlien" law; the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601 et seq.); the Clean Water Act (33 U.S.C. Section 1251 et seq.); and the Clean Air Act (42 U.S.C. Section 7901 et seq.); (b) any substance which is or contains asbestos, radon, polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, lead paint, motor fuel or other petroleum hydrocarbons, (c) fungus, mold, mildew, or other biological agents the presence of which may adversely affect the health of individuals or other animals or materially adversely affect the value or utility of the Mortgaged Property, and/or (d) any other substance which causes or poses a threat to cause a contamination or nuisance with respect to all or any portion of the Property or any adjacent property or a hazard to the environment or to the health or safety of natural Persons.

Section 1.65 Improvements: "Improvements," when used in the context of Common Elements, shall mean and refer to all structures and appurtenances thereto of every type and kind, located on and comprising a part of (or proposed to be located on and become a part of) the Property, including buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, exterior air conditioning, water softeners, satellite dishes, antennas, fixtures or equipment, wiring, utility lines, pipes, conduits, circuits, chutes, exercise equipment, swimming pools, decking, generators, pumps, and similar items. "Improvements," when used in the context of a Unit, shall mean and refer to any and all structures and appurtenances

constructed or proposed to be constructed within or upon the Unit or the Limited Common Elements serving that Unit by an Owner, including flooring, walls, paneling, lighting fixtures, antennas, satellite dishes, and similar items.

Section 1.66 Land: "Land" is defined in Recital A.

Section 1.67 Laws: "Laws" shall mean any federal, state or local law, ordinance, code, order or similar requirement, including NRS and the Act in particular, applicable building, health and safety codes and zoning and other land use ordinances, and rules and regulations and other requirements promulgated by any Governmental Authority. This term also includes orders, judgments and decrees of courts of competent jurisdiction and other Governmental Authorities.

Section 1.68 Lease: "Lease" shall mean, as a noun, any lease, license or other agreement, whether written or oral, whereby a Person other than an Owner of a Unit acquires rights to use or occupy or possess any portion of any Unit in return for which the Owner receives any consideration or other benefit, including rent or any other fee, service, gratuity or emolument. As a verb, "Lease" shall mean the entering into of any such agreement. The term "Residential Lease" shall mean and refer to a Lease of a Residential Unit, and the term "Commercial Lease" shall mean and refer to a Lease of a Commercial Unit.

Section 1.69 Liability for Common Expenses: "Liability for Common Expenses" shall mean the liability for Common Expenses allocated to each Unit pursuant to Article 8.

Section 1.70 Limited Common Elements: "Limited Common Elements" shall mean a portion of the Common Elements primarily benefiting one or more, but less than all, Units and being a "limited common element" as defined in the Act together with any portion of the Property set forth on a Map as a limited common element, L.C.E. or LCE. Limited Common Elements shall initially consist of those (i) those areas designated on the Map as "Limited Common Elements" or "L.C.E." and (ii) those portions of the Common Elements over which exclusive easements are reserved, whether on a Plat, by this Declaration or otherwise for the benefit of one or more but fewer than all of the Owners and Units, including Balconies, and stairwells, entry landings, lighting fixtures, chutes, ducts, wiring, pipes, and similar items serving fewer than all of the Units, in accordance with the definition of "limited common elements" contained in the Act. Limited Common Elements may also be designated as Commercial Limited Common Elements or Residential Limited Common Elements.

Section 1.71 Major Components: "Major Components" shall mean each "major component of the common elements" as defined in the Act and such other portions of the Common Elements as the Board determines require Reserve.

Section 1.72 Majority of Owners or Majority of Members: "Majority of Owners" or "Majority of Members" shall mean the Owners of more than fifty percent (50%) of the total number of Units then contained in the Community or, if the context so requires, the Owners of more than fifty percent (50%) of the total number of Residential Units or Commercial Units then contained in the Community.

Section 1.73 Management Contract: "Management Contract" is defined in Section 2.14.

Section 1.74 Manager: "Manager" shall mean a Person employed or engaged to perform management services for the Community and the Association.

Section 1.75 Member: "Member" shall mean a Person entitled to membership in the Association as provided in the Governing Documents. A "Member in Good Standing" shall mean a Member whose voting rights have not been suspended in accordance with the Bylaws.

Section 1.76 Mortgagee: "Mortgagee" shall mean the holder of a Security Interest, including the beneficiary of a deed of trust and the secured party under a security agreement.

Section 1.77 Notice and Comment: "Notice and Comment" shall mean the right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon, as set forth in Section 22.1.

Section 1.78 Notice and Hearing: "Notice and Hearing" shall mean the right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, as set forth in Section 22.2.

Section 1.79 Notice of Alleged Defect: "Notice of Alleged Defect" is defined in Section 27.1(b).

Section 1.80 Notice of Default: "Notice of Default" is defined in Section 17.12(b)(ii).

Section 1.81 Notice of Delinquent Assessment: "Notice of Delinquent Assessment" is defined in Section 17.12(b)(i).

Section 1.82 Notice of Non-Compliance: "Notice of Non-Compliance" shall mean a Recorded notice pursuant to Section 12.11 or Section 19.2(i) that an Owner or Unit is not in compliance with the Governing Documents.

Section 1.83 Notice of Release: "Notice of Release" is defined in Section 17.12(c).

Section 1.84 NRS: "NRS" shall mean the Nevada Revised Statutes as in effect as of the date of application.

Section 1.85 Occupant: "Occupant" shall mean a Residential Occupant or a Commercial Occupant.

Section 1.86 Operational Proceeding: "Operational Proceeding" is defined in Section 24.1(a).

Section 1.87 Operating Budget: "Operating Budget" is defined in Section 17.4(a).

Section 1.88 Owner: "Owner" shall mean the Declarant or other Person holding a fee simple interest to all, or any interest in, a Unit, whether a Commercial Unit or a Residential Unit; however, Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of each Unit created by this Declaration.

Section 1.89 Parking Garage: "Parking Garage" shall mean each enclosed parking garage situated within the Property. There is one Parking Garage in Phase 1.

Section 1.90 Parking Spaces: "Parking Spaces" or individually a "Parking Space" shall mean the parking spaces designated as such on a Plat a portion of which have been or will be assigned for the use of certain Owners by Declarant. Certain Parking Spaces are identified by number on a Plat others are not numbered. By way of example, and not by way of limitation, in the case of the Parking Space identified on the Phase 1 Plat as "4-070," "4" designates the floor of the Phase 1 Parking Garage and "070" designates the number of the Parking Space. Certain Parking Spaces may be identified from time to time as handicapped Parking Spaces, and may be assigned (or reserved) by Declarant in accordance with the Governing Documents or applicable Laws.

Section 1.91 Permit: "Permit" shall mean all permits, licenses, approvals and/or other requirements of any Governmental Authority or Laws applicable to the given circumstance, including (i) building permits, certificates of occupancy and other assignable governmental permits, licenses and authorizations, including all state, county and local occupancy certificates; (ii) all of such items pertaining to the development, construction, ownership, use, occupancy, operation, management and maintenance of any portion of the Property; (iii) business and trade or professional licenses or permits; and (iv) other licenses, permits or approvals in any way applicable to the Property or any part thereof or to any activity in connection therewith.

Section 1.92 Person: "Person" shall mean an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

Section 1.93 Phase 1: "Phase 1" shall mean the that portion of the Property initially subject to this Declaration as described in Exhibit "A" including the Units, Common Elements and all Improvements constructed thereon.

Section 1.94 Phase 1 Plat: "Phase 1 Plat" shall mean (a) the Final Map of Panorama Towers I, a Commercial/Residential Condominium Subdivision, Recorded August 18, 2006, on file in Book 133 of Plats, page 43, in the Recording Office, as it may be amended and supplemented from time to time, and all as Recorded in the Recording Office and (b) such other diagrammatic plans, narrative description and information regarding the Phase 1 Community as

may be set forth herein, all as may be required for the "plat" (as defined in the Act) or included in the discretion of Declarant.

Section 1.95 Phase 2: "Phase 2" shall mean the Annexable Property described in Exhibit "B" together with the Units, Common Elements and all Improvements constructed thereon.

Section 1.96 Phase 2 Plat: "Phase 2 Plat" shall mean (a) the final subdivision map, as required by NRS Chapter 278, applicable to Phase 2, as it may be amended and supplemented from time to time, and all as Recorded in the Recording Office and (b) such other diagrammatic plans, narrative description and information regarding the Phase 2 Community as may be set forth herein pursuant to a Supplemental Declaration or other amendment of this Declaration, all as may be required for the "plat" (as defined in the Act) or included in the discretion of Declarant.

Section 1.97 Plans: "Plans" is defined in Section 12.7(a).

Section 1.98 Plat: "Plat" shall mean the Phase 1 Plat or the Phase 2 Plat.

Section 1.99 Preventive Maintenance Workbooks: "Preventive Maintenance Workbooks" is defined in Section 6.2.

Section 1.100 Proceeding: "Proceeding" shall mean any legal action, cause of action, lawsuit, arbitration, mediation, governmental proceeding or other legal proceeding.

Section 1.101 Property: "Property" shall mean (i) the real property described in Exhibit "A" including the Units, Common Elements and all Improvements, easements, rights, appurtenances thereto; and (ii) such portions of the Annexable Property which are hereafter submitted to the provisions of the Act in accordance with this Declaration.

Section 1.102 Protected Persons: "Protected Persons" is defined in Section 12.10.

Section 1.103 Quoted Litigation Costs: "Quoted Litigation Costs" is defined in Section 24.1(b)(2).

Section 1.104 Record, Recording, Recordation: "Record," "Recording" or "Recordation" shall mean, with respect to any document, the recordation of such document in the Official Records, Book of Plats or other appropriate location in the Recording Office.

Section 1.105 Recording Office: "Recording Office" shall mean the Office of the Clark County Recorder, Clark County, Nevada.

Section 1.106 Recreational Facilities: "Recreational Facilities" shall mean (a) those areas identified on the Phase I Plat as the "Recreational Space" as well as any additional Common Elements located within Buildings 1, 2, 3 or 4, as set forth on the Phase I Plat, such as "Fitness Area" or "Spa" (but excluding the utility areas or mechanical rooms which Owners shall

not be permitted to enter upon or use), and related Improvements; and (b) similar areas identified in Phase 2, including those specifically identified on the Phase 2 Plat or in a Supplemental Declaration as recreational facilities.

Section 1.107 Reserve Budget: "Reserve Budget" is defined in Section 17.4(b).

Section 1.108 Reserve Study: "Reserve Study" is defined in Section 17.8.

Section 1.109 Reserves: "Reserves" shall mean those funds set aside by the Association for the repair, replacement and restoration of the "Major Components. The Reserves may be used only for those purposes, including repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance.

Section 1.110 Residential Areas: "Residential Areas" shall mean the Common Elements the use or benefit of which is reserved exclusively to the Residential Units/Owners. The Residential Areas in Phase 1 include (a) the lobbies, hallways, and other interior spaces located within Buildings 1, 2, 3 and 4; (b) the Recreational Facilities; and (c) the Parking Garage.

Section 1.111 Residential Areas Amount: "Residential Areas Amount" is defined in Section 17.15(c).

Section 1.112 Residential Areas Expenses: "Residential Areas Expenses" is defined in Section 17.15(b).

Section 1.113 Residential Limited Common Elements: "Residential Limited Common Elements" shall mean those portions of the Residential Common Elements, including Limited Common Elements designated on a Plat, over which exclusive easements are reserved, whether on the Plat, in the Declaration or a Supplemental Declaration, or the Act, for the benefit of one or more but fewer than all of the Residential Owners and Residential Units.

Section 1.114 Residential Occupant: "Residential Occupant" shall mean any Person physically residing in a Residential Unit, including the Residential Owner, his or her Guests and Family. Restrictions which apply to a "Residential Owner" also apply to any Residential Occupant.

Section 1.115 Residential Owner: "Residential Owner" shall mean any Owner of a Residential Unit.

Section 1.116 Residential Owner Issues: "Residential Owner Issues" shall mean those matters and issues which concern and relate exclusively to the Residential Areas and require a vote of only the Residential Owners, as set forth in Section 2.11.

Section 1.117 Residential Unit: "Residential Unit" shall mean a Unit, other than a Commercial Unit, which is intended for use by a single Family. Residential Units in Phase 1 include Units located in Buildings 1, 2, 3 and 4.

Section 1.118 Restrictions: "Restrictions" shall mean the restrictions contained in Article 9.

Section 1.119 Rules: "Rules" shall mean the rules and regulations for the use of Units, Common Elements and the conduct of Persons in connection therewith within the Property as adopted by the Board of Directors from time to time pursuant to this Declaration.

Section 1.120 Security Interest: "Security Interest" shall mean the interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in the Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.121 Special Declarant Rights: "Special Declarant Rights" shall mean those rights reserved for the benefit of Declarant in the Declaration and the Act to (1) complete improvements indicated on a Plat or in the Declaration; (2) exercise any Development Right; (3) maintain sales offices, management offices, advertising signs and models within the Property for the benefit of the Property and any other real property owned by Declarant or its affiliates, including the Annexable Property; (4) use easements through the Common Elements for the purpose of making Improvements within the Property, within real estate that may be added to the Community, and any other real property owned by Declarant or its affiliates; (5) make the Community subject to a "master association" (as defined in the Act); (6) merge or consolidate the Community with another common-interest community of the same form of ownership; (7) appoint or remove an officer of the Association or a master association or any Director during the Declarant Control Period; and (8) exercise any other right in connection with the development of the Community and sale of Units, as provided for in the Act or this Declaration.

Section 1.122 Special Litigation Assessment: "Special Litigation Assessment" is defined in Section 24.1(b)(3).

Section 1.123 Specific Assessment Report: "Specific Assessment Report" is defined in Section 24.1(b)(3).

Section 1.124 Storage Units: "Storage Units" shall mean the areas designated as Storage Units on a Plat. Certain Storage Units are identified on a Plat by the floor of the Storage Unit and its number, as shown on the Plat. By way of example, but not by way of limitation, in the case of the Storage Unit identified on the Phase 1 Plat as "S070," "S" designates storage unit and "070" refers to the number of the Storage Unit.

Section 1.125 Supplemental Declaration: "Supplemental Declaration" means an instrument that Declarant executes that amends this Declaration pursuant to Article 7 and the Act and subjects additional real property to this Declaration, and which contains such information as more fully set forth in Section 7.3.

Section 1.126 Tower: "Tower" shall mean Building 3 within Phase 1 and any similar highrise Building in Phase 2.

Section 1.127 Trustee: "Trustee" shall mean an entity designated by the Board of Directors as the trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other sources as provided for in the Declaration or Bylaws. If no Trustee has been designated, the Trustee shall be the Board of Directors acting by majority vote, as executed by the President and attested by the secretary.

Section 1.128 Unit: "Unit" shall mean a "unit" as defined in the Act. Each Unit shall be a separate fee simple estate, as separately shown, numbered and designated on the applicable Plat. In interpreting Deeds, the Declaration and the Plat, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the applicable Plat and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the Deed, Plat or Declaration, regardless of settling or lateral movement of the Building and regardless of minor variances between boundaries, as shown on the applicable Plat or defined in the Deed and Declaration, and the boundaries of a Building as constructed or reconstructed. There are two basic types of Units: (i) the Commercial Units, and (ii) the Residential Units. The Unit includes all Improvements situated within its boundaries, including interior walls (except interior bearing walls, if any), appliances, cabinets, interior doors and all electrical, heating, plumbing and other utility fixtures.

Section 1.129 Utility Facilities: "Utility Facilities" shall mean all utility facilities including intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Property.

Section 1.130 Villa: "Villa" shall mean the Building I Villas or the Building II Villas, as set forth on the Phase I Map and any similar Buildings located within Phase 2.

Section 1.131 Violator: "Violator" is defined in Section 19.3(a).

Section 1.132 Volunteer: "Volunteer" is defined in Section 20.10(d)(1).

ARTICLE 2 PROJECT AND ASSOCIATION

Section 2.1 Community. The name of the Community is Panorama Towers. Panorama Towers is a condominium common interest community under the Act.

Section 2.2 Organization of Association. The name of the Association is "Panorama Towers Condominium Unit-Owners' Association, Inc." The Association is a nonprofit corporation organized under the provisions of NRS Chapter 82.

Section 2.3 Duties and Powers of the Association. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of an "association" (as defined in the Act) and a nonprofit corporation generally, to do any and all things that such a corporation may lawfully do which are necessary or proper, in operating for the general welfare of the Owners, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. Without limiting the generality of the foregoing, the Association shall:

(a) Establish, fix and levy Assessments against the Owners and enforce payment of such Assessments, in accordance with the provisions of this Declaration, including, specifically, Article 17.

(b) Subject to the provisions of this Declaration, have the right, in its own name and on its own behalf, to commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association may temporarily suspend a Member's rights and privileges to vote on matters related to the Association and to use the Common Elements and may assess monetary penalties against any Owner or other Person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions. The right to suspend an Owner's or Person's right to use the Common Elements shall not prohibit an Owner or Occupant from using any vehicular or pedestrian ingress or egress to or from his or her Unit or use of his or her Parking Space.

(c) Maintain and otherwise manage the Common Elements and the Association Property, including any portion of the Common Elements which may encroach upon a Unit or be located within a Unit, and including all Utility Facilities, Improvements and landscaping thereon. Subject, however, to Section 6.3, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Elements and Association Property.

(d) Have the right to limit, on a reasonable basis, the number of Guests of the Owners using the Recreational Facilities, any Association Property and other facilities situated within the Common Elements. Any such limitation or restrictions shall be set forth in the Rules.

(e) Pay any real and personal property taxes and other charges assessed with respect to the Common Elements and the Association Property.

(f) Have the right, whether under Section 10.8 or otherwise pursuant to its powers under the Act, to grant easements and licenses, including Exclusive Use Licenses, where necessary for access or transportation facilities and for utilities and sewer facilities or other services over, upon and under the Common Elements and Association Property to serve the

Association or some or all of the Units or Owners or otherwise for the benefit of the Association or some or all of the Units or Owners.

(g) Maintain liability insurance and such other policy or policies of insurance as provided for in Article 20.

(h) Employ one or more Managers, provided that any Management Contract shall be consistent with this Declaration.

(i) Have the right, either on its own or through a Manager, to employ Persons and contract with independent contractors to perform all or any part of the duties of the Association, including accountants, attorneys, landscaping contractors, janitors and maintenance personnel, security guards and others.

(j) Consistent with Section 2.15, adopt Rules and shall have the right to suspend, amend or otherwise change or terminate Rules.

(k) Have the right to impose reasonable charges for late Assessment payments and after Notice and Hearing, levy reasonable fines or construction penalties consistent with the Act and this Declaration for violations of the Governing Documents of the Association.

(l) Jointly with Declarant, have the right, upon reasonable prior notice to the Owner, to enter upon any Unit where necessary in connection with construction, maintenance or repair of that Unit (or Common Elements or Limited Common Elements which can be accessed only by reason of entry into the Unit or that otherwise serve that Unit) in accordance with this Declaration and the Act, and to enforce an Owner's obligations under the Governing Documents. Without limiting the generality of the foregoing, Declarant and/or Association shall have the right to enter into a Unit pursuant to this Section 2.3(l) not less than two (2) times per year for the first two (2) years after substantial completion of construction of the Unit, and not less than one (1) time per year thereafter until twelve (12) years have passed from substantial completion of construction of the Unit, and an Owner may not refuse access to a Unit requested pursuant to this Section 2.3(l).

(m) Have the right to install or construct capital improvements on the Common Elements.

(n) Have the right to borrow money to improve, repair or maintain the Common Elements and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the Assessments collected thereon, provided that, the borrowing of any money or hypothecation of any real or personal property in excess of fifteen percent (15%) of the budgeted gross expenses of the Association shall require the approval by written ballot of fifty-one percent (51%) of both the Residential and Commercial Members, except that if the borrowing is for the benefit of the Residential Units, only the approval of a majority of Residential Owners shall be required, and if the borrowing is for the benefit of the Commercial Units, only the approval of a majority of Commercial Owners shall be required.

(o) Acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, communication, security and other necessary or desirable utility or other services for the Property, including the Common Elements. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Common Elements and/or other portions of the Property reasonably necessary to the ongoing development and operation of the Community.

(p) Enter into subsidy agreements or similar agreements with the Declarant whereby Base Assessments otherwise payable by the Declarant on Units owned by the Declarant are suspended or reduced in exchange for the payment by the Declarant of shortfalls in the Association's operating expenses, the provision of maintenance of the Common Elements and/or the performance of other services the cost of which would otherwise be Common Expenses.

(q) To the extent not prohibited in this Declaration, the Association shall have and exercise any rights or privileges reasonably implied from the provisions of the Declaration, or given or implied by law, or which may be necessary or desirable to fulfill its duties, obligations, rights or privileges. To the extent not prohibited in this Declaration, the Association shall also have all powers of a Nevada nonprofit corporation organized pursuant to NRS Chapter 82.

Section 2.4 Provision of Services. The Association shall be authorized, but not obligated, to enter into and terminate, in the Board's discretion, contracts or agreements with other Persons, including Declarant, to provide services to and facilities for the Members and their Guests and to charge use and consumption fees for such services and facilities. For example, some services and facilities that might be offered include pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. All services provided under this Section 2.4 shall be subject to the terms of the specific contract under which the services or facilities are provided.

Section 2.5 Change of Services and Use of Common Element. The Board shall have the power and right to terminate provided services or to change the use of portions of the Common Elements during the Declarant Control Period without the consent of the Members. Thereafter, subject to the penultimate paragraph of this Section, the Board may do so with the consent of a Majority of the Owners, and the Declarant's consent (so long as Declarant owns any real property described in Exhibits "A" or "B"). Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners and (c) the new use is consistent with any deed restrictions and Laws restricting or limiting the use of the Common Elements.

After conveyance of completed facilities and subject to *force majeure*, the Association shall maintain the facilities and equipment within the Common Elements for continuous use, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, or replace with reasonable non-material modification, unless, subject to the following paragraph, a Majority of the Members and Declarant, for so long as it owns any real property described on Exhibits "A" and/or "B", agree in writing to discontinue such operation.

Notwithstanding the above, if the Board resolution states that the change will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members submit written objections, the change shall be deemed approved and the consent of a Majority of the Owners shall not be necessary. The provisions of this paragraph shall not, however, affect Declarant's Rights under this Section.

This Section 2.5 shall not apply to the Board's ability to make and change rules relating to managing existing uses (e.g., scheduling use of Common Element facilities, such as rooms, etc.).

Section 2.6 Relationship with Other Properties; Entities. The Association may enter into contractual agreements or covenants to share costs with the owner(s) of any neighboring real property or any other Person to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance for any portion of the Common Elements.

Section 2.7 Membership in the Association. Every Owner, upon becoming the Owner of a Unit, shall automatically become a Member of the Association and shall remain a Member in the Association until such Person is no longer an Owner, at which time such Membership shall automatically cease. Ownership of a Unit shall be the sole qualification for Membership in the Association. Membership shall not be assignable except to the Person to which title to the Unit has been transferred, and every Membership shall be appurtenant to and may not be separated from the fee ownership of such Unit. The rights, duties, privileges and obligations of all Owners shall be as provided in the Governing Documents. There shall be only one (1) membership per Unit. If a Unit is owned by more than one Person ("Co-Owners"), all Co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, and all such Co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner who is not a natural person may be exercised by any officer, director, manager, member, partner or trustee of the Owner, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 2.8 Membership Classes and Voting Rights.

(a) Membership Class. The Association shall have one class of membership. Each Owner shall have one (1) equal vote for each Unit in which it holds the interest required for membership under Section 2.7, except that there shall be only one (1) vote per Unit. Accordingly, the total number of votes in the Association shall equal the total number of Units within the Community.

(b) Member in Good Standing. Notwithstanding any other provision contained in the Governing Documents, only those Members in Good Standing shall be entitled to vote, whether in person, by proxy or secret ballot or otherwise.

(c) Special Declarant Rights. Special Declarant Rights, including the right to approve, or withhold approval of, actions proposed under the Governing Documents during the

Declarant Control Period, are specified in the relevant sections of the Governing Documents. Declarant may appoint or remove officers of the Association and members of the Board during the Declarant Control Period, as specified in Section 7.9 or such longer period as may hereafter be permitted under the Act.

Section 2.9 Voting Rights. Members shall have the following voting rights in the Association:

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's Unit as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

The vote for each Unit shall be exercised in accordance with this Section 2.9. Only votes cast in person, by secret ballot or by proxy may be counted.

Owners, including Declarant, shall be entitled to one (1) vote for each Unit owned. The vote for a Unit with Co-Owners shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. Notwithstanding the foregoing, in the event that two (2) or more Residential Units have been combined pursuant to any provision of this Declaration by the removal of a demising wall, the number of votes allocable to the resulting Unit(s) shall remain based on the number of Units existing prior to such combination of the Units. Any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association. When more than one (1) Person holds such interest or interests in any Unit, all Co-Owners shall be Members and may attend any meeting of the Association, but only one (1) Co-Owner shall be entitled to exercise the vote or votes to which the Unit is entitled. If only one (1) of several Co-Owners of a Unit is present at a meeting of the Association, that Co-Owner is entitled to cast the vote allocated to that Unit. Co-Owners owning the majority interests in a Unit may from time to time designate in writing one (1) of their number to vote.

Fractional votes shall not be allowed, and the vote for each Unit shall be exercised, if at all, as one vote. Where no voting Co-Owner is designated or if the designation has been revoked, the vote for the Unit shall be exercised as the Co-Owners owning the majority interests in the Unit mutually agree. There is a majority agreement if any of the Co-Owners cast the vote allocated to that Unit without protest made promptly to the person presiding over the meeting by the other Co-Owners of the Unit. Unless the Board receives a written objection in advance from an absent Co-Owner, it shall be conclusively presumed that the corresponding voting Co-Owner is acting with the consent of his or her Co-Owners. No vote shall be cast for any Unit if the Co-Owners present in person or by proxy owning the majority interests in such Unit cannot agree upon the vote or other action. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns.

Section 2.10 Special Voting Rights. The following shall be special voting rights:

(a) Vote of Residential Owners. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following (the "**Residential Owner Issues**") shall require the approval (by simple majority vote) of only the Residential Owners:

1. Any matter requiring a vote of Owners relating to the allocation, increase or decrease of the Residential Assessment Component of the Common Expenses; and
2. Any matter requiring a vote of Owners relating exclusively to the Residential Areas or the use of the Residential Units, such as Section 9.2.
3. The election of four of the Directors of the Board, pursuant to Section 23.4.

(b) Vote of Commercial Owners. Notwithstanding anything to the contrary set forth in this Declaration, any issue relating to the following (the "**Commercial Owner Issues**") shall require the approval (by simple majority vote) of only the Commercial Owners:

1. Any matter requiring a vote of Owners relating exclusively to the Commercial Units or the Commercial Common Elements, such as Section 9.3, or any matter that materially limits any the ability of the Owner or tenant of a Commercial Unit to operate its business in a lawful manner.
2. The election of one of the Directors of the Board, pursuant to Section 23.4.

(c) Vote on Budget Issues. The Association shall not, without the consent of at least seventy five percent (75%) of the Commercial Unit Owners, modify the categories of expenses to be assessed against the Commercial Units as set forth in the Budget. Nothing herein, however, shall be interpreted as requiring approval of the Commercial Unit Owners for any increase in Assessments according to the terms of this Declaration, except as otherwise provided herein.

Section 2.11 Proxies. Except as otherwise provided herein or in the Act, votes allocated to a Unit may be cast pursuant to a proxy executed by a Member. The use of proxies is subject to the following requirements:

(a) Eligibility. A Member may give a proxy only to a member of his or her Family, a tenant of the Member who resides in the Property or another Member who resides in the Property.

(b) Directed Proxies. A proxy is void if it is not dated, purports to be revocable without notice, does not designate the meeting for which it is executed, or does not designate each specific item on the agenda for the meeting for which the Member has executed the proxy, except that the Member may execute the proxy without designating any specific items on the agenda of the meeting if the proxy is to be used solely for determining whether a quorum is present for the meeting. If the proxy designates one or more specific items on the agenda of the meeting for which the Member has executed the proxy, the proxy must indicate, for each specific item designated in the proxy, whether the holder of the proxy must cast a vote in the affirmative or the negative on behalf of the Member. If the proxy does not indicate whether the holder of the proxy must cast a vote in the affirmative or the negative for a particular item on the agenda of the meeting, the proxy must be treated, with regard to that particular item, as if the Member were present but not voting on that particular item.

(c) Term. A proxy terminates immediately after the conclusion of the meeting for which it was executed. If a meeting cannot be held because a quorum is not present and the meeting is adjourned, then the proxy is valid at the reconvened meeting. A Member's proxy with respect to a particular Unit shall automatically terminate upon conveyance by that Member of his fee title interest in that Unit or the death of such Member.

(d) Restrictions on Use of Proxy. A proxy may not be used for the election of any Director. Additionally, the holder of a proxy may not cast a vote on behalf of the Member who executed the proxy in a manner contrary to the proxy.

(e) Multiple Owners. If a Unit is held jointly or in common by more than one (1) Person, each Co-Owner of the Unit may vote, subject to Section 2.9, or register protest to the casting of votes by the other Co-Owners of the Unit through an executed proxy.

(f) Revocation. A Member may revoke a proxy only by actual notice of revocation to the person presiding over a meeting of the Association.

Section 2.12 Actions. If a quorum is present, the affirmative vote, on a matter properly before the Members, of the majority of the votes represented at the meeting shall be the act of the Members, unless the vote of a greater number is required by the Act or by the Governing Documents.

Section 2.13 Unsegregated Real Property Taxes. To the extent not assessed to the Owners, the Association shall pay all real and personal property taxes and assessments levied against any portion of the Property. In addition, if more than one Unit is taxed under a blanket tax bill, each Owner shall pay a proportionate share of any installment due under the blanket bill to the Association at least ten (10) days prior to the delinquency date, and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated among the Owners and their Units, based upon the ratio of the approximate square footage of each Unit to the total square footage of all Units covered by any particular blanket tax bill. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment or, if a blanket tax bill is received by the Association less than forty-five (45) days before the delinquency date, no later than five (5) days after receipt, deliver to each Owner subject thereto a copy of the tax bill, along with a written

notice setting forth the Owner's obligation to pay its proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his or her proportionate share. The Association shall add to the Base Assessment of a delinquent Owner the amount of any sum advanced, plus interest, and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his or her proportionate share of the taxes. Until the Close of Escrow for the sale of seventy five percent (75%) of the Units that may be created in the Community, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Community may not be amended without the express written consent of Declarant.

Section 2.14 Use of Manager; Declarant Contracts. The Board, on behalf of the Association, shall contract with a Manager for the performance of the Association's maintenance and repair obligations and for conducting other activities on behalf of the Association, as may be determined by the Board. There is no maximum term of any such contract ("**Management Contract**"), however, any Management Contract or contract providing for Declarant's services to the Association or the Property shall provide for its termination by either party upon no more than ninety (90) days' written notice to the other party. Each Manager the Association employs must hold all Permits required by applicable Laws.

Section 2.15 Rules:

(a) Adoption. The Board may, from time to time, adopt, amend and terminate Rules. The Rules shall become effective thirty (30) days after they are distributed to the Owners.

(b) Purpose. The Rules of the Association must be reasonably related to the purpose for which they are adopted and sufficiently explicit in their prohibition, direction, or limitation to inform a Member or other individual of any action or omission required for compliance. In addition, the Rules of the Association must not be adopted to evade any obligation of the Association and they must be consistent with the Declaration, Articles, and Bylaws. The Rules may not arbitrarily restrict conduct or require the construction of any capital Improvement by an Owner that is not required by the Declaration, Articles, or Bylaws. The Association may adopt different Rules for (i) the Commercial Units and Commercial Common Elements and (ii) the Residential Units and the Residential Common Elements.

Section 2.16 Acceptance and Control of Association Property:

(a) Acquisition, Holding and Disposing of Property. The Association, through action of the Board, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) Declarant Conveyance of Property. Declarant and its designees may convey to the Association, and the Association, through action of the Board, shall accept personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B". The Association shall accept and maintain such Association Property at its expense for the benefit of its Members, subject to any

restrictions set forth in the Deed or other instrument transferring such property to the Association. The Association shall maintain and operate, as applicable, all Improvements located on any conveyed real property as intended from and after the date of completion of construction of the Improvements (including but not limited to the completion of separate meters for water, power, or other utility) and the issuance of a certificate of occupancy, if applicable. Upon written request of Declarant, the Association shall reconvey to Declarant any vacant portions of Association Property originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in real property lines.

ARTICLE 3 DESCRIPTION OF PROPERTY

The Property is situated in the County of Clark, State of Nevada, and is more particularly described on Exhibit "A" attached hereto and in any Supplemental Declaration.

ARTICLE 4 UNIT AND BOUNDARY DESCRIPTIONS

Section 4.1 Maximum Number of Units. When created, the Community shall contain three hundred and twenty (320) Residential Units and one (1) Commercial Unit. Declarant reserves the right to add a maximum of eleven hundred (1100) additional Residential Units and seventy-six (76) Commercial Units to the Community.

Section 4.2 Boundaries. The Boundaries of each Unit created by the Declaration are the Unit lines shown or described on a Plat as numbered Units, along with their identifying number, and are further described as follows:

(a) Upper Boundary. The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends past the end of the upper boundary, the upper boundary shall include that portion of the unfinished ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).

(b) Lower Boundary. The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends past the end of the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the lower floor directly below the floor of such top floor).

(c) Interior Divisions. Except as provided in (a) and (b) above, no part of the floor above the top ceiling, ceiling below the bottom floor, stairwell adjoining the multi floors, in

all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.

(d) Vertical Perimetrical Boundaries. Except as provided herein, the perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries. Where, however, the perimetrical walls (as initially constructed by Declarant) consist of sheetrock, the perimetrical boundaries of that portion of the Unit shall be the vertical planes of the unfinished exterior surface of the sheet rock bounding the Unit (such that the Unit extends up to, but does not include, the face of any support studs in the walls) extended to their planar intersections with each other and with the upper and lower boundaries. Only for the purpose of calculating total square footage of each Unit, the dimensions shall be taken from (and shall include all areas bounded within) the centerline of any shared party wall, and from the exterior surface of the condominium building for any non-shared walls.

(e) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, except that exterior surfaces made of glass or other transparent materials and exteriors of any and all doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO POST TENSION WIRING CONTAINED IN THE BUILDING SHALL BE CONSIDERED A PART OF A UNIT. AS SUCH WIRING IS ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING, ALL POST TENSION WIRING SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED WITHOUT THE WRITTEN CONSENT OF THE BOARD.

(f) Exclusions. Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in (a), (b), (c), (d) and (e) above; central heating and other central services; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both (except the openings and outlets thereof when located in the Unit); the interior contents of any portion thereof designated on a Plat as a "utility shaft," whether or not otherwise located within the boundaries of the Unit (it being the intent that such shall be treated as Common Elements hereunder); and the contents of any wall. Any utility fixtures that are located partially within the Unit and partially in the Common Elements, such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling that contain utilities that serve two or more Units are Limited Common Elements and not part of the Unit.

(g) Noncontiguous Portions. Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semi-detached from the Building containing the principal occupied portion of the Units. These special

equipment and storage portions are a part of the Unit, even though they are not contiguous with the residential portions.

(h) Inconsistency with Map. Notwithstanding anything to the contrary contained in this Declaration, if the boundaries of a Unit, as described in this Section, is inconsistent with the information contained in the Recorded final subdivision map describing the Unit (including Recorded amendments), then the Recorded final subdivision map (including recorded amendments) definition will control.

Section 4.3 Boundary Relocations.

(a) Procedure. The boundaries between adjoining Units may not be relocated without the approval of the Declarant or the ARC under Article 12. In addition to the Plans required for approval under Section 12.7, a request for a boundary adjustment must be accompanied by the written consent of all Owners of the Units affected by the relocation. If the Owners of the adjoining Units have specified a reallocation between their Units of their Allocated Interests, the application shall state the proposed reallocation. In the event that the Declarant or the ARC approves the request for boundary adjustment, the Association shall prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners affected and contain words of conveyance between them. The approval of all holders of Security Interests in the affected Units shall be endorsed on the conveyance. On Recordation, the amendment shall be indexed in the name of the grantor and the grantee, and also in the grantee's index in the name of the Association.

(b) Plat Amendments. The Association shall prepare and Record an amendment to the Plat as necessary to show the altered boundaries between adjoining Units, along with the Units' dimensions and identifying numbers. The applicants will pay for the costs of preparation of the amendment and its Recording, as well as any reasonable consultant fees incurred by the Association.

Section 4.4 Restraint upon Separation and Partition of Common Elements. The undivided share in the Common Elements which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements and Exclusive License Areas, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements, and the exclusive right to use all Limited Common Elements and Exclusive License Areas appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Community.

ARTICLE 5
LIMITED COMMON ELEMENTS AND LICENSE AREAS

Section 5.1 Assigned Limited Common Elements. The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(a) If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

(b) Any shutters, awnings, window boxes, doorsteps, storage areas, entry areas, stoops, porches, balconies, patios and exterior doors and windows or other fixtures designed to serve a single Unit and identified on a Plat as Limited Common Areas, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(c) Entry areas, service area, elevators and secured elevator lobbies, stairs, and in steps the Building which provide access to less than all Units, the use of which is limited to the Units to which they provide access in accordance with Exhibit "F".

(d) Exterior surfaces, trim, siding, doors and windows will be Limited Common Elements allocated to the Units sheltered.

(e) Mailboxes, and name plates will be Limited Common Elements allocated to the Units served.

(f) The Parking Space(s) allocated to a single Unit in accordance with Exhibit "E".

Section 5.2 Commercial Parking Spaces: The 19 unassigned Parking Spaces within Common Element 1, between Dean Martin Drive and Building 4 (Commercial Unit C-1), as set forth on the Phase 1 Plat, are reserved for the exclusive benefit of the Commercial Unit for no additional charge, but shall be maintained by the Association as part of the Common Areas. The Board shall also maintain the availability of such additional Parking Spaces within the Parking Garage as may be necessary for the lawful use and operation of the Commercial Unit; however, any Parking Spaces located in the Parking Garage made available for the benefit of the Commercial Unit shall be subject to the payment by the Commercial Owner to the Association of the reasonable rental value of such Parking Spaces, as determined by the Board in its sole discretion.

Section 5.3 Unassigned Parking and Storage Spaces:

(a) Parking Spaces. Subject to Section 5.2, any Parking Spaces which are unassigned to specific Units or Owners may be subsequently allocated as Limited Common Elements by Declarant in accordance with Article 7, or may be assigned or limited to visitor

parking only by the Board, with the approval of Declarant so long as Declarant owns any of the real property described in Exhibits "A" or "B". Until such time as Developer is no longer offering Units for sale in the ordinary course of business, Developer hereby reserves and shall have the right to assign, with or without consideration, the exclusive right to use any parking space located within the Common Elements of the Condominium to one or more Units. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association. Declarant is also expressly authorized to withhold from assignment to individual Owners Parking Spaces as it deems necessary to effectuate the efficient management and operation of the Property, including (but without binding Declarant to provide such parking) parking to accommodate the needs of visitors and guests. Subject to the preceding sentence and Section 5.2, any unassigned Parking Spaces shall be controlled by the Association, which shall maintain them and shall have authority to lease, license or enter into other similar arrangements, on such terms that the Board, in its sole discretion, shall determine, for the use thereof.

(b) Storage Spaces. Declarant hereby reserves the exclusive right to assign, with or without consideration, the exclusive right to use any unassigned Storage Units or any other unassigned storage space located within the Common Elements to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element or Exclusive License Area of the Unit(s) to which it is assigned. Subject to the preceding sentence, any unassigned Storage Units shall be controlled by the Association, which shall maintain them and shall have authority to lease, license or enter into other similar arrangements, on such terms that the Board, in its sole discretion, shall determine, for the use thereof.

(c) No Requirement. Declarant makes no representation or warranty with respect to the assignment of Parking Spaces or Storage Units to any particular Unit, or to the reservation of any particular number or location of guest or visitor Parking Spaces or available Storage Units. Nothing contained in Section 5.3(a) or (b) is intended to require the Association or Declarant to assign unassigned Parking Spaces or Storage Units.

Section 5.4 Assigned Parking and Storage Spaces:

(a) Storage Units. The maintenance of any Storage Space assigned to a particular Unit, the screening of such space, as well as the insurance of its contents, shall be the sole responsibility of the Owner of the Unit(s) to which it is assigned in accordance with requirements established by the Board.

(b) Assignment of Extra Parking Spaces and Storage Units. Each Residential Unit must have assigned to it the minimum number of Parking Spaces required by Law ("**Minimum Residential Parking Spaces**"). Subject to the foregoing, (a) any Parking Spaces assigned to a particular Unit as a Limited Common Element which are in excess of a Unit's Minimum Residential Parking Spaces ("**Extra Assigned Parking Space**") and (b) any Storage Units which have been assigned to a particular Unit as a Limited Common Element ("**Assigned Storage Unit**") may be reallocated by the Owner of the Unit to which the Extra Assigned Parking Space or Assigned Storage Unit is appurtenant to another Owner pursuant to an amendment in accordance with the provisions of Article 11. Following, but not before,

Recordation of such amendment, the Extra Assigned Parking Space or Storage Unit, as applicable, shall be appurtenant to the grantee Owner of such Deed and its Unit.

Section 5.5 Handicap Parking Spaces. The Property will contain handicap parking spaces. The Board shall permit an Owner or Occupant who is or becomes handicapped for an extended and continuous period (regardless of whether the handicapped Owner is a new Owner) the exclusive right to use a handicap parking space; provided such handicapped person makes available to the Association the exclusive use of the Parking Space assigned to the Unit in which the handicapped person resides. Such rights to use the handicap parking space shall terminate when such person ceases to be handicapped. Evidence of handicap status shall be by distinguishing license plate or placard issued by a state's department of motor vehicles. The Association shall have the authority and be responsible for coordinating the exchange of parking spaces pursuant to this paragraph and shall adopt Rules with respect thereto, including the procedure to be followed should an Owner or Occupant be handicapped and wish to use a handicapped parking space. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence supporting a person's handicapped status.

Section 5.6 Grant of Exclusive Licenses. Subject to the rights Declarant and the Association, the Declarant expressly reserves for the benefit of certain Owners and their Units, exclusive licenses ("**Exclusive Licenses**") over the Limited Common Elements. In Supplemental Declarations, the Declarant shall also have the right to grant to one or more Owners as Declarant deems appropriate, an exclusive license to use portions of the Limited Common Elements adjacent to such Owner's Unit (i) in the case of Residential Units located within the Tower, to Owners on the same floor that portion of the Limited Common Elements lying within the elevator lobby on such floor and (ii) in the case of Units other than those in the Tower (whether Residential or Commercial), to the Owners of such Units, a reasonable portion of the Common Elements lying within the area to the front, rear or side of such Unit as may be necessary or convenient for the use and enjoyment of that Unit (each, an "**Exclusive License Area**"). Exclusive Licenses may be granted pursuant to a Plat or a Supplemental Declaration or designated by Declarant or the Association in a Deed or other Recorded instrument. Each Exclusive License to use a portion of the Limited Common Elements shall be appurtenant to the Unit owned by the applicable Owner licensee and shall be used for such purposes, and shall be subject to such terms and conditions, as are set forth herein or in the terms of any license or other agreement. No Exclusive License shall be transferred apart from the Unit to which it is appurtenant, and each appurtenant Exclusive License shall automatically pass with the conveyance of the Unit whether or not such Exclusive License is mentioned in the Deed. Each Owner shall have the exclusive right of use and enjoyment of such Owner's or Owners' Exclusive License Area.

Section 5.7 Low Emitting and Fuel Efficient Vehicles. In the interest of encouraging residents towards environmentally conscience alternative transportation, the Board shall provide optional preferred parking for low-emitting and fuel efficient vehicles owned by residents. For the purposes of this section, low-emitting or fuel-efficient vehicles ("**Low-Emission Vehicles**") are defined as vehicles that are either classified as Zero Emission Vehicles by the California Air Resources Board or have achieved a minimum green score of 40 on the American Council for an Energy Efficient Economy annual vehicle rating guide. Preferred parking is defined herein as those spaces on the fourth floor reserved as guest or valet parking

which spaces are closest to the front entrance on the fourth floor ("**Preferred Parking**"), and which may be reassigned at the residents option, in exchange for the residents former assigned parking space, to a resident driving a Low-Emission Vehicle. The Preferred Parking shall not exceed five percent (5%) of the total vehicle parking capacity of the Project. Upon the assignment of the Preferred Parking, the residents' former assigned parking space shall be reassigned as a guest/valet parking space until such time that the resident shall no longer qualify for Preferred Parking or the resident, at its option, should choose to exchange the Preferred Parking space for the residents' former assigned parking space.

ARTICLE 6 MAINTENANCE

Section 6.1 Common Elements. The Association shall maintain, repair and replace all of the Common Elements, except (i) the portions of the Limited Common Elements which are required by this Declaration or the Act to be maintained, repaired or replaced by an Owner and (ii) those portions of the Common Elements which are required by the Declaration or the terms of an Exclusive Use License to be maintained, repaired or replaced by one or more Owners. Except to the extent (a) expressly provided to the contrary herein, or (b) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements or Common Elements to be maintained by the Owners as provided in Section 6.4) shall be performed by the Association and the cost and expense thereof shall be charged to all Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of a specific Owner, in which case such cost and expense shall be paid solely by such Owner or a Specific Assessment. Repairs to Common Elements providing access to a Unit or otherwise affecting the reasonable use and enjoyment of a Unit shall be at such time and in such manner as to reasonably limit the disruption to the Occupants of the Unit, and, in the case of a Commercial Unit, the repair must be performed at such time and in such manner as to reasonably limit the disruption to the business conducted at the Commercial Unit.

Section 6.2 Preventive Maintenance Workbooks. In the event that Declarant has caused preventive maintenance workbooks containing minimum maintenance or other standards applicable to some or all of the Property ("**Preventive Maintenance Workbooks**") to be prepared and delivered to the Association (which right is hereby reserved by Declarant), the Board shall cause any Common Elements subject to such Preventive Maintenance Workbooks to be maintained in accordance with the requirements of the Preventive Maintenance Workbooks and cause any Preventive Maintenance Workbooks applicable to Units to be distributed to the Owners. The requirements set forth in any Preventive Maintenance Workbooks shall be in addition to the requirements of any warranty or other operating guidelines or instructions.

Section 6.3 Specific Maintenance Requirements. In order to ensure that the Common Elements are maintained, repaired and replaced, the Association shall have the following specific obligations:

(a) Specific Maintenance Obligations (Roof). The Board shall cause the roofs of the Buildings to be inspected semi-annually, and at least one such inspection each year shall

be conducted by a licensed Nevada roofing contractor, who shall provide a written report to the Board. The Board shall cause any necessary or prudent repairs to be undertaken and completed without delay in a manner and to the extent necessary to prevent avoidable deterioration.

(b) Specific Maintenance Obligations (Painting). The Board shall cause all exterior portions of the Building and other Improvements in the Property to be repainted as necessary to maintain the original appearance thereof (minor wear and fading excepted), and in any event such repainting shall be undertaken at least once every six (6) years.

(c) Specific Maintenance Obligations (Drainage and Landscaping). The Board shall cause all drainage related systems and related landscape installations on the Property to be inspected at least monthly, and at least one such inspection each year shall be done by a licensed and qualified contractor or architect with expertise in the construction and maintenance of such drainage and landscape installations, who shall provide a written report to the Board. The Board shall cause any and all necessary or prudent repairs to be undertaken and completed without delay in a manner and to the extent necessary to prevent avoidable deterioration or property damage.

(d) Specific Maintenance Obligations (Inspections). Within thirty (30) days after the date which is one (1) year after the first Close of Escrow and annually thereafter, the Board and representatives of Declarant and the Manager shall jointly conduct a thorough walk-through inspection of the Property, including the Common Elements, Limited Common Elements, facilities and all exterior portions of the Building, including roofs. If at the time of such inspection there are no Directors who are Unit owners, then not more than two Unit Owners shall be permitted to attend such inspection. Following each inspection the Board shall prepare a detailed written description of the existing condition of all such areas, facilities and Buildings, including a checklist of all items requiring repairs or special attention. A videotape of the inspection (or similar electronic recordation) required hereunder shall be conducted and a similar checklist shall be prepared and signed by the Board and Manager at the time of Declarant's transfer of control of the Association to the Members upon the termination of the Declarant Control Period, and on an annual basis thereafter. It shall at all times be an express obligation of the Board (acting through the Manager) to properly inspect, repair, maintain and/or replace such items, facilities, structures, landscaping and areas as are required to maintain the Property in accordance with the condition evidenced by the initial checklist (reasonable wear and tear accepted). Failure of the Association to fully and timely accomplish such maintenance and repair responsibilities may result in deterioration and/or damage to Improvements, and such damage and/or deterioration shall in no event be deemed to constitute a "constructional defect" as defined in NRS Chapter 40.

(e) Notice to Declarant. Notwithstanding anything to the contrary contained in this Declaration, Declarant or its representative shall be entitled to no less than five (5) business days advance written notice of any inspection of the Property conducted by the Board or authorized by the Board.

(f) Reports to Declarant. Throughout the term of this Declaration, the Board shall provide to Declarant copies of all inspection reports (in whatever form) and checklists rendered pursuant to Sections 6.3(a), (b), (c) and (d), above. Such reports (in all forms) and

checklists shall be delivered to Declarant within ten (10) days after they are received by the Board.

Section 6.4 Units and Limited Common Elements. Each Owner shall maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced and restored, at such Owner's sole expense all portions of such Owner's Unit and any Limited Common Elements balconies appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including inspection, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, the interior side of any entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Owner. Such maintenance, repairs, replacements, restoration for finish shall be performed by the Owner of such Unit at the Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Failure to repair, maintain, replace or finish as required could result in damage to the Unit. Notwithstanding the classification of any windows, doors and balconies located in or adjacent to the Units as Common Elements, the maintenance of such windows, doors and balconies (to the extent that same are reasonably accessible from the applicable Unit), other than exterior windows on any Tower, shall be the sole responsibility of the Owner of the Unit in which, or adjacent to which, the same are located. Notwithstanding the foregoing, the obligation to maintain and repair any heating or air conditioning equipment, plumbing or electrical fixtures or other items of property which service only a particular Unit or Units shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units. Owners shall not make any structural changes to the Limited Common Elements, and further no Owner shall make any aesthetic changes to the Limited Common Elements without first obtaining the approval of the Board.

Section 6.5 Right of Access. Any Person authorized by the Board of Directors shall have the right of access to all portions of the Community for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Community, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

Section 6.6 Repairs Resulting From Negligence. Each Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or to those Limited Common Elements for which such Owner is responsible under this Declaration. If such damage is caused by misconduct, it will be assessed following Notice and Hearing. The Association will be responsible for damage to Units which is caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements in accordance with the requirements of this Declaration.

ARTICLE 7
DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 7.1 Reservation of Development Rights. Declarant reserves the following Development Rights:

(a) The right, but not the obligation, by amendment, to expand the Community to include all or part of the Annexable Property and any additional real property not described in Exhibit "B" to the extent allowed by the Act. Declarant shall have the unilateral right to transfer to any other Person the right to expand which is herein reserved. Declarant shall pay all taxes and other governmental assessments relating to the Annexable Property owned by Declarant until expansion. Nothing in this Declaration shall (a) be construed to require Declarant or any successor to subject additional real property to this Declaration or to develop any of the Annexable Property in any manner whatsoever or (b) affect the Annexable Property unless and until annexed into the Community pursuant to a Supplemental Declaration.

(b) The right, but not the obligation, by amendment, to create Units, Common Elements and Limited Common Elements upon all or part of the Annexable Property.

(c) The right, but not the obligation, by amendment, to subdivide Units located on the Property or convert such Units into Common Elements or Limited Common Elements.

(d) The right, but not the obligation, to construct underground Utility Facilities, utility lines, pipes, wires, ducts, conduits and other facilities upon or within the Property, for the purpose of furnishing utility or other services to the Buildings and Improvements (or any portion of either) to be constructed within the Property or the Annexable Property. Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Community not occupied by a Building, for the purposes mentioned in this paragraph.

(e) The right, but not the obligation, to withdraw any Unit or other real estate from the Community at any time prior to the sale or conveyance of such Unit or real estate by Declarant. Such withdrawal shall be accomplished by Recording a declaration of withdrawal in the Recording Office, describing the real property to be withdrawn, and providing for the readjustment of voting rights and Assessment allocations provided for herein. Such declaration of withdrawal shall not require the consent of the Owners other than Declarant. Any such withdrawal shall be effective upon the filing for Record of such declaration of withdrawal, except as provided therein. The withdrawal may be accomplished in stages by successive declarations or in one declaration of withdrawal.

(f) The right, but not the obligation, to unilaterally amend this Declaration at any time prior to the first Close of Escrow.

(g) The right, but not the obligation, to create subassociations and supplemental or separate declarations applicable to some, but less than all of the Units.

Section 7.2 Exercise of Developmental Rights; Annexation Procedure. Unless otherwise expressly required by the Act or this Declaration, exercise of any Developmental Right by Declarant shall not require the Consent of any Owner. Expansion of the Community through annexation in accordance with Section 7.1 may be accomplished by Recording a Supplemental Declaration in the Recording Office in accordance with Section 7.3, describing the real property to be annexed, submitting it to the covenants, conditions, restrictions and easements contained herein, and providing for the readjustment of voting rights and Assessment allocations provided for herein on the basis of formulas provided herein. Such Supplemental Declaration shall not require the consent of the Owners. Any such expansion shall be effective upon the Recording of the Supplemental Declaration, except as otherwise provided therein. The expansion may be accomplished in stages by successive Supplemental Declarations. Upon the Recordation of a Supplemental Declaration, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property as expanded. A Supplemental Declaration may add, delete, or modify provisions of this Declaration as it applies to all or any portion of the Annexable Property or other real property then being subjected to this Declaration, provided, however, that this Declaration may not be modified with respect to the Property previously subject to the Declaration, except as provided herein for amendment.

Section 7.3 Supplemental Declaration. Each Supplemental Declaration which subjects real property to the Declaration shall contain the following information, as applicable:

- (1) A legal description of the real property to be annexed, including an identifying number applicable to each Unit;
- (2) Whether the Units contained within the real property to be annexed are Residential Units or Commercial Units;
- (3) If applicable, a designation of any specific Common Areas and Residential Areas contained within the real property to be annexed;
- (4) A legal description of the Common Elements included therein, and whether such Common Elements are Residential Common Elements or Commercial Common Elements;
- (5) If any part of the Common Elements to be annexed is designated as Limited Common Elements or includes a Cost Center or Cost Center Improvements then the Supplemental Declaration shall identify the Limited Common Elements, Cost Centers or Cost Center Improvements and the Units to which such Limited Common Elements, Cost Centers and/or Cost Center Improvements are assigned provided that the failure to include any such information shall not preclude the subsequent description or allocation of Limited Common Elements or Cost Centers in accordance with this Declaration;
- (6) A designation of any Recreational Facilities contained with such real property;

(7) State that the real property to be annexed is submitted to the covenants, conditions, and restrictions contained herein;

(8) Provide for the readjustment of voting rights and Assessment allocations in accordance with the formulas provided herein and any special voting rights or restrictions applicable to the annexed property;

(9) State that any such expansion shall be effective upon the Recordation of the Supplemental Declaration except as provided therein; and

(10) Contain such other information as may be necessary to comply with the applicable provisions of the Act or as Declarant deems appropriate.

Section 7.4 Limitations on Development Rights. The Development Rights reserved in Section 7.1 are limited as follows:

(a) The Development Rights may be exercised at any time within seven (7) years after the initial Recording of the Declaration;

(b) Not more than 1,176 additional Units may be created under the Development Rights;

(c) The construction of any Buildings and Improvements to be built and annexed into the Community shall be consistent with the quality of the Buildings and Improvements constructed in Phase 1 (this limitation shall not prevent Declarant from having the right to substitute materials of like durability and strength); and

(d) All taxes, assessments, mechanic's liens and other charges affecting the Community arising during Declarant's ownership of, or in connection with Declarant's construction of Improvements upon, any of the Annexable Property or Common Elements which may adversely affect the rights of existing Owners, or the priority of any Eligible Mortgagee on Units in the Community, are to be paid or otherwise satisfactorily provided for by Declarant.

Section 7.5 Phasing of Development Rights. No assurances are made by Declarant as to the Annexable Property, as to whether Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise its Development Rights as to other portions.

Section 7.6 Special Declarant Rights. Without limiting any other provisions in this Declaration, including Declarant's Rights under Article 12, Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Community in the sole discretion of Declarant:

(a) To complete any Improvements indicated on a Plat, including Phase 2;

- (b) To exercise any Development Right reserved in this Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Community and models necessary or desirable in Declarant's judgment to market the Units or any other real property owned by Declarant or its affiliates regardless of whether such real property is part of the Community;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Community or within real estate which may be added to the Community or any other real property owned by Declarant regardless of whether such real property is part of the Community;
- (e) To make the Community subject to a master association;
- (f) To merge or consolidate the Community with another common interest community of the same form of ownership;
- (g) To appoint or remove any officer of the Association or Director during the Declarant Control Period; and
- (h) To make reasonable repairs upon the Units, Common Elements or Limited Common Elements.

Section 7.7 Special Declarant's Rights Easements. Without limiting Sections 10.9 and 10.10, Declarant hereby reserves, as Special Declarant's Rights, the following easements:

(a) Construction; Maintenance. The Declarant (including its affiliates and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, so long as the Development Rights exist, to enter the Property and the Community and take all other action necessary or convenient for the purpose of undertaking and completing the construction thereof, or any part thereof, or any Improvements, including Units and Common Elements, located or to be located thereon, and/or any Improvements to be located adjacent thereto and/or for repair, replacement and maintenance or warranty purposes or where the Declarant, in its sole discretion, determines that it is required or desires to do so.

(b) Sales Activity. For as long as the Declarant (and its sales agents and representatives) retains any ownership interest in any portion of the Property or the Annexable Property, and notwithstanding any leasing restriction contained elsewhere in this Declaration, the Declarant, its designees, successors and assigns, shall have the right to use any Units and parts of the Common Elements or the Property, with the right to relocate, for guest accommodations, model suites and sales and construction offices, to show model suites and the Common Elements to prospective purchasers and tenants of Units, to erect on the Property signs and other promotional material to advertise, among other things, Units for sale or Lease and the right to keep access to the Property open and unrestricted through the entry gates during business hours, seven (7) days a week.

(c) Support of Adjacent Structures. In the event that any Building is or will be constructed so as to be connected in any manner to any other structure or Building, then there shall be (and there is hereby declared and reserved) an easement of support for such Building as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent Building which are necessarily or conveniently located within the Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of any burdened portion of the Property).

(d) Warranty. For as long as Declarant remains liable, whether pursuant to statutory, express or implied warranty, common law liability or any other reason, for any act or omission of Declarant in the design, development, construction, repair, sale and marketing of the Community, then Declarant and its contractors, agents and designees shall have the right, in Declarant's sole discretion and from time to time, to enter the Property for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Declarant can fulfill any of its warranty or other repair obligations. **Nothing in this paragraph is intended to imply that Declarant makes or offers any warranty or undertaking, all of which are disclaimed (except to the extent the same may not be by law) as set forth in Section 27.3.**

Section 7.8 Declarant's Personal Property. Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Community that has not been represented as property of the Association. Declarant reserves the right to remove from the Community (promptly after the Close of Escrow of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 7.9 Declarant Control of the Association:

(a) Declarant Control Board. Subject to Section 7.9(b), there shall be a Declarant Control Period during which the Declarant, or Persons designated by Declarant, may appoint and remove the officers and members of the Board of Directors. The Declarant Control Period terminates no later than the earliest of:

(i) sixty (60) days after conveyance of 75% of the Units that may be created to Owners other than a Declarant; or

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

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

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

(b) Board Transition. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Owners other than a Declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board of Directors must be elected by Owners other than Declarant. Not later than the termination of the Declarant Control Period, each member of the Board of Directors must have been elected by the Owners as provided in the Bylaws.

(c) Declarant as Owner. Notwithstanding any provision of this Declaration to the contrary, the termination of the Declarant Control Period shall not affect Declarant's rights as an Owner to exercise the vote allocated to Units which Declarant owns.

Section 7.10 Limitations on Special Declarant Rights. Subject to any specific limitation set forth in this Declaration with respect to particular Declarant Rights, unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant until the last of the following: as long as Declarant (a) is obligated under any warranty or obligation to the Owners, the Association or the Community, (b) holds a Development Right to create additional Units or Common Elements, (c) owns any Unit; (d) owns any Security Interest in any Units; or (e) fifty (50) years have elapsed after Recording of this Declaration. Earlier termination of certain rights may occur by statute.

Section 7.11 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant. No provision contained in this Declaration shall be applicable to or prohibit any acts or activities by Declarant (and its agents, suppliers and contractors) in connection with or incidental to Declarant's improvement, development and sale of all or part of the Property.

Section 7.12 Rights of Lenders to Declarant. Additional limitations on the right of Declarant to exercise Development Rights may be found in Article 16 of this Declaration.

Section 7.13 Declarant's Rights to Complete Development. No provision of this Declaration shall be construed to prevent or limit Declarant's rights: (i) to complete the development, construction, promotion, marketing, sale and leasing of properties within the boundaries of the area comprised of the Property and the Annexable Property; (ii) to construct or alter Improvements on any property owned by Declarant within such boundaries; (iii) to maintain model suites, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within such boundaries; or (iv) to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within such boundaries. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any Improvements on any part of the Property or any property owned by Declarant; (b) use any structure on any part of the Property or any property owned by Declarant as a construction, model suite or real estate sales or leasing office in connection with the sale of any property within such boundaries; or (c)

require Declarant to seek or obtain the approval of the Board of Directors, the ARC or the Association for any such activity or Improvement to property by Declarant on any part of the Property or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provide in this Declaration.

Section 7.14 Priority of Declarant's Rights and Reservations. Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration with respect to the Association and the Community. The rights and reservations of Declarant set forth in this Declaration shall be deemed excepted and reserved in each Recorded Supplemental Declaration, in each conveyance of property by Declarant to the Owners and the Association and in each Deed or other instrument by which any property encumbered hereby is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Article 7 or elsewhere in this Declaration shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including any amendment of this Section. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

Section 7.15 Assignment of Declarant's Rights and Duties. Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any Person which will assume any or all of the duties of Declarant hereunder, and upon any Person's evidencing its consent in writing to accept such assignment, the assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder. In the case of an assignment by less than all of the Persons constituting the Declarant, such assignment shall not affect in any manner the Rights of the other Declarant under this Declaration.

Section 7.16 Listing Not Exclusive. The rights granted to Declarant in this Article 7 is in addition to and not in limitation of any other rights granted to Declarant by applicable Law, including the Act, or elsewhere in this Declaration.

Section 7.17 Authority of Declarant. Each Person constituting a Declarant is developing its portion of the Property and nothing contained in this Declaration is intended to create a partnership, joint venture or other similar arrangement between the Persons constituting the Declarant. Any Person constituting a Declarant shall have the exclusive Right to exercise the rights of the Declarant hereunder and shall have the duties and responsibilities of the Declarant hereunder (and a declarant under the Act) only with respect to that portion of the Property originally owned by it (i.e., Panorama Towers I, LLC and its successors and assigns with respect to the real property described in Exhibit "A" and Panorama Towers II, LLC and its successors and assigns with respect to the real property described in Exhibit "B"). The exercise or the failure to exercise any Right of Declarant hereunder by any Person constituting a declarant shall not in any manner affect the Rights hereunder of any other Person constituting a Declarant. Without limiting the foregoing, the termination, release, surrender or delegation by a Person constituting a Declarant of any Declarant Rights hereunder shall not affect the Rights of any other Person constituting a Declarant.

ARTICLE 8
ALLOCATED INTERESTS

Section 8.1 Allocation of Interests. The table showing Unit numbers and the Allocated Interest in the Common Elements and liability for Common Expenses attributable to each Unit is attached hereto as Exhibit "D". Such Allocated Interests have been allocated and calculated in accordance with the formulas set forth in this Article. The same formulas are to be used in reallocating interests if Units are added to the Community pursuant to Section 7.1 of this Declaration.

Section 8.2 Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated by the following formulas:

(a) Undivided Interest in the Common Elements. The undivided interest in the Common Elements allocated to each Unit is based the square footage of each Unit as shown on the Plat creating that Unit as compared with the square footage of all Units in the Property as shown on the applicable Plats. The maximum possible undivided interest in the Common Elements in Phase 1 is equal to the fractions listed on Exhibit "D" attached hereto. The minimum possible undivided interest in the Common Elements allocable to a Unit is equal to the square footage of the Unit divided by the total square footage of all Units anticipated in the Property.

(b) Liability for Residential Areas Common Expenses. The Liability for Common Expenses for the Residential Areas allocated to each Residential Unit is based on the square footage of each Residential Unit as shown on a Plat as compared with the square footage of all Residential Units in the Community as shown on a Plat. The maximum possible Liability for Common Expenses allocatable to a Residential Unit in Phase 1 is equal to the fractions listed on Exhibit "D" attached hereto. The minimum possible Liability for Common Expenses allocatable to a Residential Unit is equal to the square footage of the Residential Unit divided by the total square footage of all Residential Units anticipated in Community (estimated to be 648). Nothing contained in this paragraph shall prohibit certain Common Expenses from being apportioned to particular Units under this Declaration.

(c) Liability for Common Areas Common Expenses. The Liability for Common Expenses for the Common Areas allocated to each Unit is based on the square footage of each Unit as shown on a Plat as compared with the square footage of all Units in the Community as shown on a Plat. The maximum possible Liability for Common Expenses allocatable to a Unit in Phase 1 is equal to the fractions listed on Exhibit "D" attached hereto. The minimum possible Liability for Common Expenses allocatable to a Unit is equal to the square footage of the Unit divided by the total square footage of all Units anticipated in Community (estimated to be 648). Nothing contained in this paragraph shall prohibit certain Common Expenses from being apportioned to particular Units under this Declaration.

Section 8.3 Assignment of Allocated Interests Pursuant to Exercise of Development Rights. The effective date for assigning Allocated Interests to Units created

pursuant to Section 7.1 of this Declaration shall be the date on which the Supplemental Declaration creating the Units is Recorded in the Recording Office.

ARTICLE 9
RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 9.1 Use Restrictions. Subject to the rights and exemptions of Declarant as set forth in this Declaration, all real property within the Property shall be held, used and enjoyed subject to the limitations, restrictions and other provisions set forth in this Article 9. Any other provision herein notwithstanding, neither Declarant, the Association, the ARC, nor their respective managers, 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 Restriction or for the granting or withholding of a waiver or modification of a Restriction as provided herein. Additional or supplemental Restrictions may be promulgated from time to time in Recorded Supplemental Declarations. Any Supplemental Declaration or any additional Recorded covenants may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

Section 9.2 Residential Units Shall Be Used for Residential Use. Residential Units shall be used only for residential and ancillary recreational and related purposes. Related purposes may include, without limitation, offices for any management agent or agents retained by the Association, business offices for Declarant or the Association consistent with this Declaration and any Supplemental Declaration and the leasing of Residential Units pursuant to Section 9.2. In addition, any commercial activity that directly advances the residential and recreational character of the Property may be authorized by Declarant or the Association, unless prohibited by the Governing Documents. In addition each Residential Unit shall be subject to the following restrictions:

(a) Non-Business/Models, Offices. No Residential Unit shall be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business or trade or for any commercial, manufacturing, mercantile, storing, vending, garage sale, rummage sale or any similar activity, except as set forth in this subsection. Declarant, its successors or assigns may use Residential Units in each Phase for model homes, display and sales offices in accordance with this Declaration and the Act. Leasing a Residential Unit consistent with Section 9.2(h) of this Declaration shall not be interpreted as a commercial or non-residential use of the Residential Unit. Notwithstanding the foregoing, an Owner or Occupant may conduct business activities within a Residential Unit so long as:

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

(ii) the business activity conforms to all zoning, business licensing and other land use requirements applicable to the Property and the activity;

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

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

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

(b) Exceptions. Section 9.2(a) shall not prohibit or restrict: (i) any activity permitted under Article 7 hereof; or (ii) any other activity conducted by the Association or a Person approved by the Association for the purpose of operating, maintaining or advancing the residential character of the Property; (iii) the leasing and management activities of the Owner of any Commercial Unit; or (iv) the leasing activities by Declarant permitted under Section _____ hereof.

(c) Signs. No sign or billboard of any kind shall be displayed to the public view on or from any Residential Unit or Limited Common Element relating thereto, except for one professionally created sign for each Residential Unit, of not more than eighteen (18) inches by twenty-four (24) inches, advertising the Residential Unit for sale or rent, or except signs used by Declarant, its successors or assigns, to advertise Residential Units for sale or the development of the Community generally. To the extent the Act permits signs other than as provided by this Section, such permission shall be in effect only during such time as the Act shall so provide and the Association shall be the sole arbiter of whether such Act-permitted sign satisfies the requirements of the Act.

(d) Pets. Livestock, poultry, insects, and reptiles shall not be raised, bred or kept in any Residential Unit, or elsewhere within the Community. A Residential Occupant may keep and maintain at a Residential Unit not more than two (2) cats or two (2) dogs (and no more than two (2) such animals total, in any combination, at any time). The weight limit for any permitted dog shall be 50 pounds. No animal may be kept, bred or maintained at any Residential Unit for any commercial purpose. Permitted pets shall be kept within the Residential Unit, unless within an enclosure while being transported on or off the Property or when under leash or when held by a Person capable of controlling the animal. Pets that become a nuisance or an annoyance to other Owners or Occupants (as reasonably determined by the Board) may be muted, confined or removed by the Board at the Owner's expense. Domestic birds (not to exceed two (2)) and fish in an aquarium shall be permitted in a Residential Unit so long as such animals are kept in the interior of a Residential Unit and are (i) kept as household pets, (ii) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Residential Unit,

as determined by the Board, (iii) are not kept, bred or raised for commercial purposes or, as determined by the Board, in unreasonable numbers, (iv) do not constitute a nuisance or threat to the personal safety of other Owners and their Occupants and Guests, as determined by the Board, and (v) with respect to any fish in an aquarium or other container, no Owner shall maintain any aquarium or other container which contains or can hold more than fifty-five (55) gallons of water. All pets must be registered in writing on a form to be provided by the Manager or the Board. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner, Occupant, Guest or other Person, or to be a threat to the personal safety and welfare of any Owner, Occupant or Guest or other Person. Additionally, and notwithstanding anything contained herein to the contrary, no Owner is permitted to keep any pet known to be involved in any incident resulting in major property damage (above \$250), injury or death to any person, any pet that is of a type or breed that is commonly known to be aggressive or dangerous, or any pet the damages caused by which is not or would not be covered by the homeowner's insurance policy. Each Person bringing or keeping an animal within the Community shall be liable to other Owners and their Occupants, Guests and other Persons for any damage to Persons or property caused by any pet brought upon or kept upon the Property by such Person or by its Occupants, or its Guests, and it shall be the immediate duty and responsibility of each such Owner to clean up after such animal(s) that have deposited droppings or otherwise used any portion of the Property or public street abutting or visible from the Property. The Board may adopt additional Rules regarding the foregoing, including regulations relating to the size, breed, weight and other characteristic of permitted pets. Pets are not permitted to be left unattended in the Common Elements or upon a Balcony where from they may become a nuisance to others or a danger to themselves. No dog or other animal is allowed inside any pool/spa area enclosure at any time. All animals must have a current license, name tags and updated vaccinations.

(e) Window Coverings. No window tinting or coverings shall be permitted, including any appliques, decals, or other materials, and including any glass railing or balcony, that would be visible from the exterior of any Residential Unit, and that would in any manner change the exterior appearance of any glass or window, in terms of color, reflectivity, tint or appearance, as determined by Declarant or the ARC, as applicable. Any window covering that would be visible from outside the Residential Unit shall be subject to approval by Declarant or the ARC, as applicable. In the event of any replacement of any glass pane, including with respect to any window, railing or glass door, the pane shall be replaced with glass of the same brand and type of the original glass installed, or shall in the alternative, meet the standards of tint, color, reflectivity, insulation, UV protection, soundproofing, and wind load. This paragraph shall be interpreted in such manner as to favor and facilitate a uniform appearance of the Property from the exterior thereof. Acceptable window coverings are vertical blinds, mini-blinds, draperies, curtains, shutters and other such items. Items including, but not limited to aluminum foil, newspaper, sheets, cardboard, reflective tint, paint, etc. are not permitted to be used as window covering.

(f) Water Beds. No water beds shall be permitted in any Residential Unit. Each Owner acknowledges that substantial damage to other Units and/or Common Elements may occur as a result of a violation of this restriction.

(g) Outside Drying and Laundering. No exterior clothesline shall be erected or maintained anywhere within the Property, including Balconies and railings and there shall be no exterior drying or laundering of clothes (including towels and bathing suits) or any other items on any Balcony, any Limited Common Elements, Common Elements, or elsewhere within the Property.

(h) Leases.

(1) Leasing of Units by Owners. No portion of a Residential Unit (other than the entire Residential Unit) may be leased. All Leases shall be in writing, on a form approved in advance by the Board and shall provide, or be deemed to provide, that the Board shall have the right to terminate the Lease upon default by the tenant in observing any provisions of the Governing Documents or other applicable provisions of any agreement, documents or instrument governing the Residential Unit. The Board may deny permission to Lease any Residential Unit on any grounds the Association in good faith deems reasonable. No single Residential Unit may be Leased more than once in any one (1) calendar year with a minimum lease period of six (6) months. The Board shall have the right to require that all tenants of a Residential Unit deposit into escrow with the Association an amount not to exceed one (1) month's rental fee paid for the Residential Unit. The deposit may be used by the Association to repair any damage to the Common Elements or any other property located within the Community resulting from acts or omission by the tenants (as determined in the sole discretion of the Association). Regardless of whether or not expressed in the applicable Lease, all Owners of a Residential Unit shall be jointly and severally liable with the tenants and other Occupants of such Residential Unit to the Association for any amount which is required by the Association to effect such repairs or to pay any claim for any injury or damage to property caused by the negligence of the tenant of such Residential Unit or for the acts or omissions of the tenant(s) of such Residential Unit which constitute a violation of, or non-compliance with, the provisions of the Governing Documents. All Leases shall comply with and be subject to the provisions of the Governing Documents and the provisions of same shall be deemed expressly incorporated into any Lease of a Residential Unit. This Section shall also apply to assignments and renewals of Leases. No Lease approved by the Board shall be amended or modified without the Board's approval. The Board may charge a Lease approval fee to be determined by the Board, however, no fee shall be charged for the approval of an amendment, modification or extension of a previously approved Lease. In making its determination as to whether to approve a Lease of a Residential Unit to a particular tenant, the Board shall not discriminate on the grounds of race, gender, religion, national origin, familial status or physical or mental handicap; provided, however, nothing herein shall be construed to require the Association to furnish an alternate tenant to the Owner in the event the Board disapproves a Lease or tenant. Prior to entering into a Lease of a Residential Unit, the Owner (other than Declarant) shall provide written notice to the Board, or its designee, of the Lease and furnish the names of the prospective tenant and both parties' real estate brokers and/or agents, including the brokers and/or agents' telephone numbers.

Within five (5) business days of receipt of a prospective tenant's name and address, the Board, or its designee, shall either deliver in person or forward, by certified, registered mail to the prospective tenant, a copy of the Governing Documents, including a summary of the Restrictions, a receipt for the Governing Documents (in a form to be determined by the Board), and a return envelope, postage prepaid, for return of the receipt. Furthermore, each Owner (other than Declarant) shall inform, and shall cause the tenant to inform, the Board when the parties have executed the Lease of the Residential Unit. The Board shall have the right to charge each Owner (other than Declarant) a reasonable fee for the processing of Leases of Residential Units, including, but not limited to, the costs associated with the copying and delivery of the Governing Documents to a tenant or prospective tenant.

(2) By Declarant. Declarant shall have the right to lease up to _____ () Residential Units on a temporary basis to prospective purchasers of Residential Units. Notwithstanding any provision contained herein to the contrary, Leases of Residential Units under Section 9.2(h)(1) may be for a term less than twelve (12) months and all such Leases shall not be required to be given to the Association or the Board; provided, however, that the Association shall be given written Notice of each such Lease, the name of the tenant(s), the term of the Lease and any additional information as may be reasonably required by the Board.

(i) Appliances. No appliances shall be installed or maintained in a Unit that are inconsistent in terms of energy source or energy usage from those utility lines and hookups initially installed by Declarant with respect to a Residential Unit. By way of illustration, but not of limitation, if and to the extent that the Unit was originally equipped with a gas utility hookup for clothes driers, stoves, ovens, or other appliances, no modifications shall be permitted for the installation of electricity powered clothes driers, stoves, ovens or other appliances. Likewise, if the Residential Unit was originally equipped and designed for any electrical appliances, no modifications shall be permitted for the installation of gas-powered appliances. The Board reserves the right to designate specific Rules pertaining to the minimum design and performance characteristics of appliances to be installed in the Residential Units. The Board further reserves the right to designate specific maintenance procedures and rules in the Rules, warranty guidelines or Preventive Maintenance Workbooks. All installation and use of any appliances shall comply with and not violate the terms of any warranty guidelines, or manufacturers' guidelines or recommendations.

(j) Use of Balcony. No wood burning devices or charcoal barbecues shall be placed on any patio, deck, or Balcony. Propane or electric barbecues may be allowed unless they cause a nuisance or constitute a fire hazard. Any plants or similar items to be kept on Balconies shall be subject to approval by Declarant or the ARC, as applicable, shall be watered and maintained in good condition, and dead plants, leaves, and other items shall be removed. No over-watering of any plants on the Balconies (i.e., of such a nature to cause water run-off) shall be permitted. The Balconies shall be kept in a clean and orderly fashion.

(k) No Interval Ownership or Transient Use. Each Residential Unit may only be used for single family residential purposes and timesharing, interval ownership, and other short term occupancy or transient commercial use based on, without limitation, club membership or points is not permitted. Notwithstanding the above, corporate use of a Residential Unit shall be permitted unless such use shall be determined by the Board to be a nuisance or result in unreasonable use of the Common Elements.

(l) Parking Spaces. The assignment of a Parking Space to an Owner of a Unit shall entitle the Owner to park no more than one (1) motor vehicle within the Parking Space for each such Parking Space assigned. So long as not prohibited by applicable Law, the Owner of a Unit may lease to other Owners in the Community the Parking Space(s) assigned to his or her Unit, subject to all the requirements of this Declaration and the Rules, as such documents may be amended from time to time, as well as other specific requirements imposed by Declarant or the Association. To the extent that an Owner has an additional Parking Space, that Owner may assign the Parking Space to another Unit by written instrument delivered to the Association. The conveyance of the Unit by an Owner shall terminate the lease of a Parking Space. Rental of a Parking Space shall not give to any tenant the right to vote or any other rights of Membership in the Association.

Section 9.3 Commercial Units Shall Be Used for Commercial Use. Subject to the provisions of this Section 9.3, all property existing or annexed into the Association as Commercial Units shall be used for no purpose other than lawful commercial uses. In addition each Commercial Unit shall be subject to the following restrictions

(a) Prohibited Commercial Uses. No Commercial Unit and no part of the Property shall be used by any Commercial Owner or its Occupants or Guests for any activity or purpose considered by the Board to pose a safety hazard or health risk within the Community, including:

(i) Noise. Any noise or sound that is reasonably objectionable due to intermittence, beat, frequency; shrillness or loudness in relation to commercial use of the Unit.

(ii) Dangerous Hazards.

1. Any use or storage of Hazardous Materials;
2. Any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosives or fireworks; or
3. Any distillation or refinery facility.

(iii) Dumping. Any dumping of garbage or refuse, except in places designated for disposal by the Association.

(iv) Vehicle Repair. Any mechanic or motorized vehicle repair shop.

(v) Indecent Uses. Any indecent or pornographic uses, massage parlor, adult bookstore, peepshow store or any other similar store or club (as determined by the Board in its sole discretion), and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances.

(vi) Dry Cleaning. Any laundromat or dry cleaning facility or store, except that of a "drop off" service for dry cleaning (e.g., "Pressed-For-Time") shall be permitted so long as the actual dry cleaning is conducted at a site outside the Property, and so long as all on site activities comply with applicable Laws.

(b) Additional Commercial Unit Restrictions. In addition to the foregoing, the Commercial Units shall be subject to the following restrictions:

(i) Commercial Signage. Any signage related to Commercial Units shall be subject to the following limitations: (i) each sign shall be in accordance with the Commercial Signage Criteria set forth by Declarant or the ARC; (ii) the sign shall not generate any noise or sound; (iii) the sign shall not violate or infringe in any manner any copyright, trademark, patent or other intellectual property right of any Person (and the Commercial Unit Owner shall protect, defend, indemnify and hold harmless Declarant, the Association, the Board and the ARC from any and all liabilities, losses, costs, and damages arising out of the failure of the sign to comply with the foregoing requirement); (iv) the sign shall be in compliance with all applicable Laws and matters of record, including restrictions applicable to the Property (and the Commercial Unit Owner shall protect, defend, indemnify and hold harmless Declarant, the Association, the Board and the ARC from any and all liabilities, losses, costs, and damages arising out of the failure of the sign to comply with the foregoing requirement); (v) the sign shall not be vulgar or offensive (as determined by the Board); and (vi) the sign shall be subject to ARC review by Declarant or the ARC.

(ii) Commercial Parking. Parking for any patrons with respect to the Commercial Units shall be solely in spaces designated for such use as provided in Section 5.2.

(iii) Music. No music or amplified voices or other sounds shall be permitted from any Commercial Unit that can be heard from the outdoors or from any other Unit. Notwithstanding the foregoing, the Commercial Units shall be permitted to play music that may be heard from street level, through external speakers approved by Declarant or the ARC pursuant to Article 12, in connection with the commercial uses thereof, provided that such music shall not have a decibel rating of more than one hundred (100) dB (as measured within the Commercial Unit). The playing of music must be in compliance with all County and other applicable Laws, the Owner shall have obtained all necessary Permits, and the types of music shall be appropriate to the residential nature of the

Property, as determined by the Board, and in any event shall not constitute a nuisance as determined by the Board.

(iv) Government Regulation. Any and all commercial uses with respect to the Commercial Units shall be in accordance with and in strict compliance with applicable Laws and Permits, including liquor licenses, use permits, variances, health department approvals as may be required by Governmental Authorities.

(v) No Residential Use. No Commercial Unit may be occupied or used as a residence. No temporary (e.g., overnight) or permanent residential use of any Commercial Unit or any portion thereof shall be permitted.

(vi) Operating Hours. Subject to *force majeure*, the Commercial Units shall be continuously operated for business purposes during ordinary and customary business hours for businesses of the type of business there maintained, and in any event, from the hours of 8:00 a.m. to 5:00 p.m., on Monday through Friday, excluding federal and state holidays. Notwithstanding the foregoing, the Board may authorize any Commercial Unit to be used or operated up to twenty-four (24) hours per day, seven (7) days per week.

(vii) Trash. Trash shall be maintained in sealed trash bins or containers, and shall be emptied and cleaned regularly. No trash receptacle shall be located in any portion of the Community except in areas approved by the Board.

(viii) Going out of Business Sales. No Commercial Unit shall be permitted to hold "going out of business" or similar sales or functions.

(ix) Commercial Leases. Commercial Leases shall require the tenants thereof to comply with the Governing Documents, and shall provide that a failure to do so constitutes a violation of the Lease. Commercial Leases shall not be subject to review or to minimum or maximum time restrictions.

(x) Use of Common Elements. Commercial Owners, and their Occupants and Guests, by reason of ownership or use of a Commercial Unit, shall have only the use of the Common Areas and the Commercial Common Elements, and shall not have access to or use of any Residential Common Elements or Residential Areas, except as a Guest of a Residential Occupant pursuant to other provisions of this Declaration or the Governing Documents. Any permitted use of Commercial Common Elements shall be subject to the Governing Documents.

(xi) Insurance. Commercial Owners and Commercial Occupants shall at all times maintain property and casualty insurance, premises liability insurance, general commercial liability insurance, workers' compensation insurance, and other insurance coverage reasonably satisfactory to the Board and comparable to the types of insurance maintained by owners and operators of similar commercial uses in metropolitan Clark County, as determined by the Association.

(xii) Improvements. All proposed Improvements to a Commercial Unit, including any proposed use of or improvement to any Common Elements or Limited Common Elements shall be subject to the requirements of the Governing Documents, including prior Declarant or ARC approval.

(xiii) Sidewalks. No use of any Common Elements, such as sidewalk or outdoor area shall be permitted without first obtaining Declarant or ARC approval or approval of the Board, and, so long as Declarant owns any of the Property described in Exhibits "A" or "B", approval of Declarant. All outdoor or sidewalk use shall be in accordance with and subject to applicable Laws, and the Commercial Occupants shall be required to obtain any and all necessary Permits.

(xiv) Deliveries. Deliveries of inventory and other materials as required for the operation of the businesses at Commercial Units shall be performed at areas specified for that purpose and only between the hours of 8:00 a.m. to 6:00 p.m.

(xv) Attire. All Guests to any Commercial Unit shall be required to wear appropriate attire, including shirts and shoes.

(xvi) Applicability. Notwithstanding anything contained in this Section 9.3 or the Declaration to the contrary, and without limiting the applicability of any of the restrictions contained in this Section 9.3, Sections 9.2(d), (e), (f), (g), (i) and (j), as well as any generally applicable restrictions contained in this Declaration, shall apply with respect to the Commercial Units, or as the context may require, the Commercial Owners and Commercial Occupants, and their respective Guests.

Section 9.4 Restrictions Applicable to All Units. The following provisions of this Section 9.4 apply to both Residential Units and Commercial Units and their respective Owners, Occupants and Guests.

(a) Inside and Outside Installations. Nothing shall be done in or to any Unit which will or may tend to impair the structural integrity of any other Unit or other Improvement in the Property or which would structurally alter any Building except as otherwise expressly provided herein. In addition to the foregoing and without limiting Article 12, all Improvements installed or constructed by an Owner within the Community must be completed in accordance with applicable Laws. Any work shall be performed by a licensed Nevada contractor. All work shall be performed expeditiously, in a good and workmanlike manner and at such time (e.g., during daytime hours) and in such manner as to limit the possible disturbance to other Owners and Occupants.

(b) No Mechanics' Liens. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Property for labor or materials alleged to have been furnished or delivered to the Property, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If the Owner fails to remove such mechanic's lien, the Board may discharge the lien, whether by posting a

bond or paying the same without, in any case, the necessity of determining the validity thereof, and charge the Owner a Specific Assessment for the cost of discharge, and the Association's reasonable attorney's fees and costs, including the costs of paying or bonding the lien.

(c) Decorating by Owner. Each Owner of a Residential Unit shall have the right, at its sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Residential Unit, and the surfaces of the bearing walls and partitions located within the Residential Unit, without Declarant or ARC consent, provided that if such work will result in a penetration of the unfinished surfaces of the ceilings, walls or floors, or includes painting surfaces of the ceiling or areas within proximity of sprinkler heads or is visible from outside the Unit, the Owner must obtain the prior written consent of Declarant or the ARC in accordance with Article 12. A Commercial Owner or Commercial Occupant shall have the right to improve the interior of a Commercial Unit only upon prior written Declarant or ARC consent. No modifications shall be permitted with respect to the color or appearance of any outside door of a Residential Unit (i.e., the outside surface of a door to a Residential Unit). No drilling shall be permitted with respect to any such outside door. Temporary seasonal or holiday decorations (e.g., Christmas wreaths) for holidays approved by the Board shall be permitted with respect to an outside door only to the extent that such decorations are immediately removable without any damage to the door or its paint or coloring, and are installed not more than twenty-five (25) days prior to the holiday in question, and are removed not more than ten (10) days after the holiday in question. Notwithstanding anything to the contrary contained in this Section, no Owner shall install, store or locate any furniture, furnishings, decorations, equipment or appliance anywhere within a Unit (including replacements of existing electrical or other fixtures or appliances) if the placement or location of such furniture, furnishing, decoration, equipment or appliance would interfere with any fire or safety device or system (including ceiling fire sprinklers) or result in the violation of any applicable Law (including ADA and health and safety codes) or Permit.

(d) Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Unit shall be positioned, screened or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the Occupants of any other Unit(s). Further Rules regarding exterior lighting may be promulgated by Declarant or the ARC. No holiday lights or other decorations shall be installed on any Common Elements or Limited Common Elements. Holiday lights installed from within a Unit and visible from the exterior (e.g., lights installed on the interior surface of a window) shall not be permitted unless approved by Declarant or the ARC or in accordance with the Architectural Guidelines. The installation of any exterior lighting fixtures shall be subject to Declarant or ARC consent pursuant to Article 12.

(e) Drainage. All Limited Common Elements, including Balconies on any Unit shall be maintained so as to prevent any drainage upon adjacent Units. There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written consent of Declarant or the ARC. For the purpose hereof "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of a Unit, or that which is shown on any plans approved by Declarant or the ARC. Each Owner shall have the duty and obligation to maintain the drainage situated within any Balcony area free of debris and any other material which may impede the flow of water and to clean such drainage, as may be necessary. No Owner shall

dispose of any Hazardous Materials in any drains. If an Owner fails to maintain such drainage and, as a result, imminent danger or damage to Person or property may result to the other Owners, then the Association shall have the right of access onto such area for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to Persons and property and the entering Person shall use reasonable care so as to not cause any damage to the affected areas. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris. Notwithstanding the foregoing, the Board and its agents shall, after giving reasonable notice, have the right to enter any Limited Common Elements, including Balconies, to conduct a cleaning of and to inspect the established system of drainage located thereon, provided that the Association repairs any damage which might result from such inspection.

(f) Control Parking. Subject to the provisions of this Declaration, the Board shall have the right to control parking within the Parking Area and to promulgate Rules to control parking in a manner consistent with this Declaration. The Board's right to control parking is subject to Declarant's rights elsewhere in this Declaration, including the right to assign Parking Spaces and Storage Spaces.

(g) Parking and Vehicular Restrictions. Owners shall not park, store or keep on any street (public or private) or driveway within the Property or any Parking Space any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any recreational vehicle (including, but not limited to, any camper unit, oversized off-road vehicles, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, or mobile home; or any inoperable vehicle. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for daily transportation and subject to approval by the Board. No Person may conduct vehicle repairs or restorations of any kind, including oil changes, car washing and cleaning, or mechanical repairs of any nature, with respect to any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Unit or elsewhere within the Property, or within the Parking Areas or any Parking Space. No activity that would be contrary to any Law shall be permitted in the Parking Area or any Parking Space. No vehicle may enter the Parking Area or be parked within any Parking Space which exceeds the maximum height for such vehicles which may be posted from time to time by the Board, and in any event, no vehicle of more than seven feet, two inches (7' 2") in height or 18 feet in length shall be permitted. THERE SHALL BE NO PARKING FOR RECREATIONAL VEHICLES AVAILABLE ANYWHERE WITHIN THE PROPERTY.

(h) Nuisance. There shall be no disturbing noises in or about the Common Elements which would interfere with the use or enjoyment by any Occupant or Guest of the Common Elements or a Unit. Without limiting the foregoing, there shall be no musical instruments, audio or video equipment used in or around the Common Elements in such a manner as to disturb other Owners, Occupants or Guests. Without limiting any other provision of this Declaration, no disturbing odors, including odors from refuse, food preparation, pets or any odors the release of which would constitute a nuisance under applicable Law, shall be permitted or caused to exist on or about any Unit, the Common Elements or any other portion of the Property. No noxious or offensive trade or activity shall be carried on in or upon any Unit or any part of the Property, nor shall anything be done thereon which may be, or may become, an unreasonable annoyance or nuisance to the other Owners, or which shall in any way

unreasonably interfere with the quiet enjoyment by other Owners of their Units or will increase the rate of insurance, all as determined by the Board. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of such Owner's Guests and Family members residing in or visiting such Owner's Unit, and any damage to the Common Elements, or property of another Owner caused by such Occupants, Guests or Family members, shall be repaired at the sole expense of the Owner of the Unit where such Occupants, Guests or Family members are residing or visiting.

(i) Storage. No Balcony or Parking Space shall be used for storage purposes, including for the storage of bicycles, barbecue cookers or equipment, boxes, storage sheds, and so forth. All materials to be stored shall be maintained either wholly within the interior of a Unit or within the Storage Unit or other designated storage areas as shown in a Map or designated by the Board. Plants, of a type and nature approved by Declarant or the ARC may be maintained on the Balcony, provided that such are properly watered and otherwise maintained. Patio furniture shall not be permitted unless approved by Declarant or the ARC or in accordance with the Architectural Guidelines or Rules.

(j) Toxic or Noxious Matter. No Person shall discharge into the Community's sewer system or storm drain any Hazardous Material in such concentrations as to be detrimental to or endanger the public health, safety or welfare, violate any Law, subject the Association or any Owner to liability under any Law for any clean-up or cause injury or damage to neighboring property or businesses or other property elsewhere on the Community.

(k) Smoking. Smoking shall not be permitted in any of the interior Common Elements including, but not limited to, the lobby, elevators, corridors, Storage Units and covered parking areas, unless such area is designated as a "smoking area" by the Board. Smoking shall be permitted on certain exterior Common Elements as determined by the Board, but any Person smoking thereon shall pick up all waste generated thereby and dispose of the same in an appropriate manner.

(l) Air Pollution. No air pollutants or contaminants sufficient to create a nuisance shall be discharged, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the emission or contaminates, and such controls are applied by the Board.

(m) Structural Alterations. No structural alterations to Common Elements or Limited Common Elements, whether or not surrounding or serving any Unit shall be made and no plumbing, electrical or other work which would result in the penetration of the unfinished surfaces of the ceilings, walls or floors shall be performed, in either case, by any Owner without the prior written consent of the ARC and the Declarant, so long as Declarant owns any Unit or any of the Annexable Property. An Owner who acquires fee title to two (2) or more adjoining Units may not remove the demising wall dividing any Unit from another Unit, unless the Owner has complied with the requirements and obtained the approvals required under Article 12. Any Units(s) so combined shall pay Assessments in the manner and amount paid prior to the removal of the demising wall, and shall continue to be counted for such purposes as multiple Units. No fixture may be hung from the ceiling of any Unit without the Owner obtaining Declarant or ARC

approval pursuant to Article 12. No penetration to any floor or ceiling may occur without Declarant or ARC approval, which shall require also the approval of the structural engineer responsible for the design of the Units, or its successor retained by Declarant or the ARC.

(n) Compliance with Laws. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Community, which use or operation violates applicable Laws or the provisions of this Declaration or any matter of Record affecting the Property. Nothing shall be done or kept in any Unit or in the Common Elements or elsewhere within the Property that might increase the rate of, or cause the cancellation of, insurance for the Community, or any portion of the Community. No Owner shall permit anything to be done or kept in his or her Unit that violates any Law, including any Laws pertaining to the use or storage of any Hazardous Materials, and including applicable building, plumbing and other codes. No Owner shall allow furniture, furnishings or other personal belonging to such Owner to remain within any portion of the Common Elements except as may otherwise be permitted by the Board.

(o) Vibrations. No Owner shall attach to the walls, ceilings or floors of any Unit any fixtures or equipment, including speakers and sub-woofers, which will cause vibrations or noise or unreasonable annoyance to the Owners of the other Units or to the Common Elements.

(p) Hard Surface Flooring. No Owner shall install any hard surface flooring (including tile or hardwood floors) or replace any flooring with any hard surface flooring unless the prior approval of Declarant or the ARC has been obtained. As a condition to approving the installation or replacement of hard surface flooring, the Owner shall submit to Declarant or the ARC a construction drawing clearly indicating the type of flooring to be installed and the underlayment to be provided to mitigate against impact noises such as footfalls. A sound underlayment which achieves a total floor assembly minimum Impact Insulation Class (IIC) rating of 60 or above must be installed under all hard surface flooring. Replacement and any new flooring is subject to Declarant or ARC approval, including the soundproofing quality thereof.

(q) Water and Sewer Systems. No exterior individual water supply system, system, water conditioner system or sewage disposal system shall be permitted unless previously approved in writing by the Board and such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of the applicable water or sewer district and any applicable Governmental Authority having jurisdiction over matters of health.

(r) Drilling. No oil, drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Unit or the Property, nor shall oil wells, tanks, tunnels, or mineral excavations or shafts be permitted upon the surface of any Unit or the Property or within five hundred (500) feet below the surface of the Property. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon any Unit or the Property.

(s) Trash. All rubbish, trash and garbage shall be regularly removed from the Units and the Common Elements, and shall not be allowed to accumulate thereon. All rubbish,

trash, and garbage shall be either placed in trash bins or down trash chutes, such rubbish, trash and garbage placed down trash chutes shall reasonably fit within the diameter of the trash chutes. Each Owner shall immediately notify the Association or the Manager of any blockage of the trash chutes. Only those trash receptacles designated by the Association for Owner use from time to time shall be used for trash disposal. No other use of any trash receptacles (e.g., for disposal of large or bulky items, for the disposal of Hazardous Materials) or for disposal of items of a nature (in terms of type or volume of trash, or otherwise) not reasonably generated through the ordinary, permitted, and legal use of the Units, shall be permitted without prior express approval of the Board, which may be approved or denied in the Board's sole discretion, or may at the Board's discretion be conditioned upon payment of a fee or the performance of other remedial measures intended to offset any cost, risk, or other harm threatened by such activities. Trash shall be contained within leak-proof plastic bags when transported to the trash chutes located on each floor. Oversize articles or excessive trash shall be disposed of regularly, and at least bi-weekly, by transporting to the overflow dumpsters located at designated areas within the Community. At no time shall any trash or trash container be left unattended outside of any Unit.

(t) Satellite Dishes, Antennas. Any satellite dish, antenna, or other video programming service ("Antenna") that does not fall within the scope of, or is otherwise not covered by, the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent Law applicable to common-interest communities, shall not be placed, permitted or maintained on any Unit or Limited Common Element, without the prior written consent of Declarant or the ARC, as set forth in Article 12. Any Antenna that falls within the scope of, or is otherwise covered by, the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent Law applicable to common-interest communities, may be installed without the prior consent of Declarant or the ARC. Notwithstanding the foregoing, prior to installing any Antenna, the Owner or occupant installing the Antenna must notify the Association, in writing, of its intent to install the Antenna, the type of Antenna being installed and the location where the Antenna will be installed. The Association reserves the right to establish preferred antennae placement locations for any Antenna subject to the provisions of 47 C.F.R. 1.4000, which establishment shall become effective upon notice to all Owners. The Association further reserves the right to object to the location of the Antenna consistent with the provisions of 47 C.F.R. 1.4000 and the published preferred antennae placement locations, as may be amended from time to time. The Association (and Declarant and the ARC) also reserves the right to require that the Antenna be located, placed, and modified in color or appearance as to minimize visibility.

(u) Window Air Conditioning. No window air conditioning unit may be installed in a Unit.

(v) Alterations/Sports Apparatus. No Balcony, fence, entry gate or wall may be altered in height or modified in any other way without the prior written approval of Declarant or the ARC, except by Declarant. No basketball backboard or other sports apparatus shall be constructed or maintained on any Unit or within its Limited Common Elements or elsewhere on the Property without the prior written approval of Declarant or the ARC. No basketball backboard or other sports apparatus shall be constructed, placed or used in the streets located within the Property, or within any Parking Area, or on the Recreational Facility (except as may be installed by Declarant as a Common Element), or on any Balcony or within any Unit.

(w) Unit and Landscape Maintenance. Each Owner shall keep and maintain in good repair and appearance all portions of his or her Unit and Improvements thereon, including the appurtenant Limited Common Elements and Balconies.

(x) Planting. No planting may be done in the Common Elements or Limited Common Elements by any Owner, except upon the approval of Declarant or the ARC.

(y) Interference with TV or Radio. Items which may interfere with television or radio reception of any Owner are not permitted to be used or located on any portion of a Unit.

(z) Listing Unit for Sale or Lease. An Owner must inform in writing the Manager or other individual designated by the Board when listing his or her Unit for sale or Lease. Owners must also provide the names of their real estate brokers and/or agents, including their telephone numbers. No agents or brokers will be permitted to conduct any business on the Property except when this rule has been observed.

(aa) Service Vehicles and Personnel. All workers must park their service vehicles as directed by the Manager or other authorized Person. No debris shall be stored in the hallways or other Common Elements. Workers must clean up and remove all debris daily. No building debris may be discarded in the trash chutes or trash bins belonging to the Association.

(bb) Moving. All individuals moving in or out of the Building must notify the Manager or other Person designated by the Board not less than one (1) week in advance and must coordinate with the Manager or such other Person for a convenient day and time during which the move may occur. Moving and deliveries shall only be allowed between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday, unless otherwise approved by the Board. Moving may be restricted to specific entrances and elevators. Moving and deliveries shall occur only with the use of proper moving devices and/or the sufficient personnel necessary to facilitate a quick and efficient move-in/out or delivery. Moving and delivery trucks must only park in the area so designated by the Manager or other individual designated by the Board to coordinate such activities. Each Owner shall be responsible to the Association for any damages caused by move-in or move-out. The Association may require a moving deposit.

Section 9.5 Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the exercise by Declarant or its duly authorized agents within the Property or the Common Elements of any rights granted to Declarant hereunder, including the right to develop and construct additional Units and Improvements on real property which is not part of the Property and annex such property into the Property pursuant to Article 7.

ARTICLE 10 EASEMENTS AND LICENSES

Section 10.1 Easements of Record. All easements or licenses to which the Community is presently subject are shown on a Plat or otherwise contained herein. In addition, the Community may be subject to other easements or licenses, including easements or licenses

granted by Declarant pursuant to its powers under Article 7 and easements granted by the Association pursuant to its powers under Article 2.

Section 10.2 Support. Each Unit, each Building and all Improvements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and any other Building or Improvement which abuts any Unit, any Building or any Improvements.

Section 10.3 Utility and Other Services. Declarant reserves for itself, so long as Declarant owns any real property described in Exhibits "A" or "B" of this Declaration, and grants to the Association and all utility providers (including cable and telecommunication providers), perpetual non-exclusive easements throughout all of the Property (but not through a structure) to the extent reasonably necessary for the purpose of (a) installing utilities and infrastructure to serve the Property, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways, drainage systems, street lights, and signage on real property that Declarant owns or within public rights-of-way or easements reserved for such purpose on a Plat; (b) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements described in the preceding clause (a) of this Section; and (c) reading utility meters. An Owner shall do nothing within or outside his or her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications and security systems, or other service or drainage facilities or the use of these easements. The Association shall have a right of access to each Unit to maintain, repair or replace Utility Facilities and all pipes, wires, ducts, vents, cables, conduits and other utility, cable television, communications and similar systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Community, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).

Section 10.4 Encroachments. If (i) any portion of the Common Elements encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements; or (iii) any encroachment shall hereafter occur as a result of (A) construction of the Improvements; (B) settling or shifting of the Improvements; (C) any alteration or repair to the Common Elements or Limited Common Elements made by or with the consent of the Association or Declarant, as appropriate, or (D) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain Proceedings (or threat thereof) of all or any portion of any Unit or the Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.

Section 10.5 Ingress and Egress. A non-exclusive easement in favor of each Owner and Occupant, and their Families and Guests, shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements and the Community as from time to time may be intended and designated for such purpose and

use by Declarant or the Board; and for vehicular and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and the Community as from time to time may be paved and intended for such purposes.

Section 10.6 Easements in Common Elements. Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Elements which right and easement shall be appurtenant to the title to each Unit, subject to:

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

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

(c) the Board's right to:

(1) adopt Rules regulating the use and enjoyment of the Common Elements, including Rules limiting the number of Guests who may use the Common Elements;

(2) suspend the right of an Owner to use Recreational Facilities:

(a) for any period during which any charge against such Owner's Unit remains delinquent after a period of thirty (30) days; and,

(b) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after Notice and Hearing pursuant to the Rules;

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

(4) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any Recreational Facilities;

(5) permit use of any Recreational Facilities by persons other than Owners, their Families and Guests upon payment of use fees established by the Board;

(6) mortgage, pledge, or hypothecate any or all of the Common Elements or Association Property as security for money borrowed or debts incurred, subject to such approval requirements as may be set forth in this Declaration and the Act;

(7) limit the use of those portions of the Common Elements designated Limited Common Elements or Exclusive License Areas, as described in Article 5 to the exclusive use of certain Owners; and

(d) the right of the Association to rent or lease any portion of any clubhouse or other Recreational Facilities within the Common Elements on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's Family and Guests.

Notwithstanding the foregoing, or anything contained in this Declaration to the contrary, no Owner, Occupant, Family or Guests, shall be permitted to use or enter upon any Common Element identified as for mechanical or utility purposes, including those areas identified on a Plat as "Utility Deck," "Mech Area," "water storage tank," "electrical room" or "emergency generator."

Section 10.7 Maintenance of Building. The Association shall have the right to enter Units (after reasonable advance notice, except in the event of an emergency) and upon the Limited Common Elements appurtenant thereto in order to provide exterior maintenance (e.g. painting, window washing) of, or to effect repairs, replacements or alterations of, any Building.

Section 10.8 Additional Easements. The Association, through the Board, on the Association's behalf and on behalf of all Owners (each of whom hereby appoints the Association as its attorney in fact for this purpose), shall have the right to grant additional easements, in accordance with its general powers, including such additional general ("blanket") and specific electric, gas or other utility, cable television, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements, Utility Facilities or drainage facilities, in any portion of the Community or Property, and to grant access easements or relocate any existing access easements in any portion of the Community or Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Owners or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units.

Section 10.9 Right to Develop; Construction Easements. Declarant and its employees, agents and representatives shall have a right of access and use and an easement over and upon all of the Property for the purpose of making, constructing, and installing such Improvements to the Property as Declarant deems appropriate in its sole discretion. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any real property described in Exhibits "A" or "B".

Section 10.10 Easement to Inspect and Right to Correct:

(a) Easement. Declarant reserves, for itself and such other Persons as it may designate, perpetual, non-exclusive easements throughout the Property to the extent reasonably