Case No. 84345

IN THE SUPREME COURT OF THE STATE OF NEVADA

CITY OF LAS VEGAS, a political subdivision of the State of Nevada,

Appellant,

v.

180 LAND CO, LLC, a Nevada limited-liability company, and FORE STARS LTD., a Nevada limited-liability company,

Respondents.

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Elizabeth A. Brown
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Eighth Judicial District Court, Clark County, Nevada
Case No. A-17-758528-J
Honorable Timothy C. Williams, Department 16

APPENDIX TO OPPOSITION TO APPELLANT'S MOTION TO STAY

VOLUME 4

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPENDIX TO OPPOSITION TO APPELLANT'S MOTION TO STAY - **VOLUME 4** was filed electronically with the Nevada Supreme Court on the 18th day of March, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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CHRIS KAEMPFER
Yes.

COUNCILWOMAN TARKANIAN
And doggone it, they've worked their heads off over that, and I understand that. It's just that I just feel that responsibility that I need to know this. My goodness, look how important this issue is to everybody that lives up in the northwest. So I just wanted to tell you that.

MAYOR GOODMAN
Okay. All right. There's been a motion and a call for the vote. And we're waiting for Councilman Coffin and then please post it on Agenda Item 131 (Motion passed with Tarkanian, Goodman and Anthony voting No). The motion carries.

COUNCILWOMAN TARKANIAN
Which I thought it would.

COUNCILMAN COFFIN
I'm sorry. I pushed the wrong button. I'm really sorry.

MAYOR GOODMAN
No. No.

BRAD JERBIC
There's been a mistake. If the Clerk could reset the voting machine and recast the votes.

COUNCILWOMAN TARKANIAN
Or if the fact we've no board meeting.

MAYOR GOODMAN
Okay. So we are polling. Just revote.

BRAD JERBIC
We need the Clerk to reset and revote on the motion. **The motion is to approve 131**, and Councilman Coffin indicated he hit a wrong button, and so you need to revote.

MAYOR GOODMAN
And please post **(Motion failed with Coffin, Tarkanian, Goodman and Anthony voting No)**. The motion does not pass.

BRAD JERBIC
The motion fails.

MAYOR GOODMAN
The motion passes. Please, don't do this. I mean this is such a privilege.

BRAD JERBIC
Excuse me, there was a motion to approve that did not pass. There now needs to be a motion to deny. So somebody who voted in the majority needs to make a motion to deny 131.

COUNCILWOMAN TARKANIAN
That's got to be Coffin.

MAYOR GOODMAN
Okay. There needs to be a motion to deny made.

COUNCILMAN COFFIN

Your Honor, I'll make a motion to deny Item 131.

MAYOR GOODMAN

Okay. There's a motion to deny 131. Please vote on Agenda Item 131 to deny on 131 and then please post **(Motion passed with Ross and Beers voting No)**.

BRAD JERBIC

That motion passes. **The motion, the 131 is denied.** We need a motion on 132.

MAYOR GOODMAN

And on 132?

COUNCILMAN BEERS

Why don't we let Councilman Coffin make the motions?

MAYOR GOODMAN

Okay, Councilman Coffin on 132.

COUNCILMAN COFFIN

Your Honor, I move to deny 132.

MAYOR GOODMAN

There's a motion on Agenda Item 132 to deny. Please vote and please post **(Motion passed with Barlow, Ross and Beers voting No)**.

COUNCILWOMAN TARKANIAN

We take that back. Thanks.

MAYOR GOODMAN

This is a motion to deny on Agenda Item 132, and that carries. On Agenda Item Number 133.

COUNCILMAN COFFIN

Your Honor, I move to deny Item 133.

MAYOR GOODMAN

There's a motion on Agenda Item 133 to deny. Please vote and please post **(Motion passed with Barlow, Ross and Beers voting No)**. The motion carries. And Agenda Item 134?

COUNCILMAN COFFIN

Your Honor, **I move to deny Item 134.**

MAYOR GOODMAN

And there's a motion on Agenda Item 134 to deny. Please vote. Please post **(Motion passed with Barlow, Ross and Beers voting No)**. The motion carries.

ITEM 130

MAYOR GOODMAN

Agenda Item 130, not to be heard, oh that's that, DIR-70539, director's business, public hearing, Applicant/Owner 180 LAND CO, LLC, ET AL, for possible action on a request for a Development Agreement between 180 Land Company, LLC, et al. and the City of Las Vegas on 250.92 acres at the southwest corner of Alta and Rampart Boulevard. This is a public hearing, I declare it open. Do we, now, Counsel?

BRAD JERBIC

What I'd like to do, and I know there's gonna be some active discussion on this, but if I could begin. As the record has already been made, there has been an awful lot of discussion, and it's really funny every time I talk to the developer, people think that he's pulling my strings; every time I talk to the neighborhood, they think they are pulling my strings. I can tell you right now, the only one pulling my strings, Mayor, is you and your request to bring back a development agreement. And so, I've been working very, very hard to work with neighbors and work with anybody who will talk and what they would like to see in their neighborhood.

I can tell you that Elaine and Dale Weisner have been incredible. Elaine is head of the board, and they've had a very, very difficult decision and a very, very difficult time having to try and gather information only to find out they don't have the authority to negotiate.

Ann Smith and her neighbors on Ravel Court are just wonderful people, who I have tried very, very hard to try and find a solution to what I think is a uniquely burdensome situation into their area.

I'm looking out and I see Eddie and Alise on Tudor, and all of you, there's a special situation out there, that I think we're very, very close to having that resolved.

There's a fourth situation, a fourth situation, that came to my attention through a neighbor that lives in an area that's gonna receive the two-acre lots; and that request was to have some kind of agreement to keep critical, and I'm using that word deliberately, critical parts of the golf course green until development. And the reason was pretty simple: The reason is that if you have a house for sale in Queensride, you're going to enter through the north gate or the south gate. And for any of you who have been out there, you will drive past open parts of the golf course that are normally very green. And the fear that this neighbor expressed to me is if those critical areas, not the whole golf course, but those critical areas, if they were to turn brown and full of weeds, the person who drives in to go look at a home for sale is going to turn right around and leave, because that sets a statement for what the community is and would lower property values.

I thought those were valuable issues. I thought they were righteous issues. I don't think that they were issues that people made up. And I still think to this moment they are solvable issues. I don't think we – there probably are more that people will open up. And I will address everyone individually. So if anybody has a list of things they think should be in this agreement that are not, I say these words, speak now or forever hold your peace, because I will listen to you and we'll talk about it. And if it needs to be in that agreement, we'll do our best to get it in it.

But I do not like the tactics that look like we're working, we're working, we're working and, by the way, here's something you didn't think of I could have been told about six months ago. So I understand Mr. Lowie's frustration. There's some of that going on. There really is. And that's unfortunate. I don't consider that good faith, and I don't consider it productive.

So I say now to the neighbors that are out here, and this is not, that comment was not aimed at you. You've been wonderful in meeting with me and talking with me, and you've been very wonderful in giving the ground that you can give and not giving the ground that you can't give to protect your homes and your property values.

Having said that, we have constantly been accused of changing this Development Agreement. And I hear it every single Development Agreement meeting. Once again, it's changed again. It's changed again. But, you know, it's really funny. This Development Agreement has changed because people have requested changes. And so when you request to get a change request and you incorporate it, you can't get a rock thrown at your head for doing that. And that's not fair.

And I can also say one more thing, because I just want to say it publicly. I have enormous respect for both parties. I also have respect for people in the litigation. And it's a fact that when Mr. Schreck was attacked in the litigation, I defended him. It was a fact that when Shauna was given a subpoena for a deposition, I got her out of it. I'm not trying to hurt anybody in this negotiation. For anybody in this room that thinks otherwise, you're just plain wrong. Okay?

So let me go on to the Development Agreement. We deliberately left it on the website in the form that it was last submitted, without changes. And I did that to avoid one more time having neighbors come here and say it's changed again. The goal was this. Leave that agreement on the website, and then when we had changes from the Planning Commission, changes from the

Recommending Committee, which there was one, and changes that I hoped to negotiate last night and over the weekend; if we got all those, we'd roll them all into just one last change. That's why the agreement that's on the website right now doesn't reflect all those changes that have occurred to date and clearly don't reflect the changes for Ravel, for Tudor Park, for the greening of the golf course, and the other issue I mentioned.

I think that because we are this close, I think that it would be wrong to have the Council consider an agreement that you haven't even seen. We haven't presented you with a final version of it. I don't think it would be right to go forward with open issues that I think could be resolved.

Now, I can be, I'll be proven right or wrong pretty darn quick. There's no doubt about it. If everybody thinks that this can't be resolved, I'm going to look like an idiot in a month, and I deserve it. Okay?

But the fact of the matter is I don't believe that. I do believe that it can be resolved. I do believe there's an awful lot of good faith that's been shown, and I think we are very close. But for that reason, I don't think it's appropriate right now, well I won't say appropriate, I don't think it's ready to be heard by the Council right now. I'm certainly not ready to have an agreement approved with those areas still not completely nailed down.

MAYOR GOODMAN

Well, and we have not, if I might, Mr. Jerbic, we have not been privy to the information regarding those three items and then the fourth one you just brought up, which was brought up tonight. And my biggest concern is going forward with this and having these two wonderful Council persons, who have been through the beginning, two years or a year and a half of this, this is their last Council meeting.

And so to have new members brought on and expect them to be brought up to speed in 24 hours from their swearing in is an impossibility. So that's beyond our control to have any reasonable way of bringing two new people on this board up to speed. And they need to have the information. And the next, unless we call, which I'm going to ask you, instead of, let's say they're

sworn in, the date is the 19th of July, the following, next scheduled Council meeting is the 21st, correct?

BRAD JERBIC
The 2nd of August.

MAYOR GOODMAN
I mean 2nd of August. Sorry. What if? This may be an open-ended question that you can't even possibly answer. But with everything working as best as it can for two new Council members to be brought up to speed on a development agreement, what is reasonable to assume, and can we hold a special meeting so we don't have to wait that long, because every day we wait, Mr. Lowie is having financial pursuit, to put it that way? What is reasonable, and when can we have a special session?

BRAD JERBIC
That's a good question. I can't read anybody's mind. I know Mr. Seroka is here today, and we have not had an opportunity to meet yet. I met Ms. Fiore very briefly, just to shake hands a couple of days ago. And so I haven't had the opportunity to ask them that question – how long will it take you to really get up to speed?
I can say that I am prepared now to get everything to whoever is going to be sitting here on the 19th of July as soon as it's drafted. And, but the real problem is I am not able to have an attorney/client conversation with either of the new members of Council until they are technically sworn in.

MAYOR GOODMAN
I was just going to say they're not sworn in.

BRAD JERBIC
So I can talk with them. I can provide them with the documents. I can answer questions. But if it gets into an attorney/client conversation about litigation or something, I won't be able to do that until the swearing in occurs.
So I'm more than happy to finish this deal. I'm more than happy to accelerate it and get it to the new members as soon as possible so they can ask all the questions that they need to. But I don't know if that right number is two weeks, or four weeks, or one day. I don't know.

MAYOR GOODMAN
Councilwoman?

COUNCILWOMAN TARKANIAN
Mr. Jerbic, we have in the past sworn in new members at a special meeting, not at the Council meeting, not the regular Council meeting. We didn't even do it in Council chambers. In fact, I think I was one of them. We did it in a smaller room someplace in the City. So I think you could call a special meeting. I mean you might want to check that out. But I know that I was, when I was, well maybe it was – I don't know. I could be wrong.

BRAD JERBIC
You may be different. I need to look at this.

COUNCILWOMAN TARKANIAN
I'm very tired. It's been over 12 hours now.

BRAD JERBIC
You won in a recall election, and I think the recall election was a little bit different. But I'll look into it and find out if that's a possibility. Then, of course, we'd want to consult with the new members of Council to see if that's what they would want to do. I don't know.

I do know that right now, if it went on its ordinary trajectory, the swearing in would be July 19th, and the next meeting after that would be August 2nd.

And so I can tell you I personally believe I will know very quickly, in less than a week, I hope, whether or not these issues will be resolved or not. And if they are resolved, that written agreement will be distributed to everybody, including the new members of Council, so that they can look at it and meet with neighbors and see what the support is, if it's there or not.

CHRIS KAEMPFER

Well, Your Honor, if I might chime in here just for a minute. I will not deny the efforts that Brad has put into this. I mean, it's incredible. And he's not helped us. I mean, if he was here to help us, we wouldn't have taken it from 3,000 units down to 2,100 units. Thanks, Brad, very much for knocking 900 units off the project. All right. We wouldn't have two-acre lots everywhere. All of those things are driven by him and agreed to by us.

But as hard as he worked and as good a man as he is, I'm telling you right now and you – if I'm wrong, you can say Chris, you're wrong – I don't care what agreement we reach. I don't care. There will be the same people who come up here and tell you that the Development Agreement is defective, that it doesn't have this. I've never seen any kind of development agreement that is this sloppily done. You can't even approve it because this.

We don't want to go through that. We don't want any of that anymore. We're tired. All of us are tired. All right. Those of us who live in this community are tired.

And what I was hoping the Development Agreement could do was put to rest the uncertainty that has made living there unbearable for a lot of people, especially like I said, when you're selling your home and they say, what's happening with the golf course, and you go, I don't know. It may be developed. It may not be.

There is a mentality on the other side, not the neighbors necessarily, but there's a mentality that they still want to see, if they can, no development. I was told early on by someone I respect very much that he would rather see it a desert than a single home built.

Now, that position may have changed, but that's what I'm dealing with. That's what all of us are dealing with. And I am just so much, I am so afraid that if we don't approve something tonight, that we'll get nothing. And that's what I think is gonna happen.

I think what's gonna happen on August 2nd, and maybe rightfully so, our new people are going to look at you and they're going to say: Mayor, Council people, we've only been here two weeks. We need to hold it another 30 days. And I'm not blaming them. I would probably, you know, think about saying the same thing. So now another $80,000 goes out. We're dying. And maybe that's what they want. Maybe they want this guy to die, so what, you know, I don't know. But I'm just telling you that's what I've been told to say.

I believe it for Mr. Lowie, and I'm very concerned about the fact if we were to say those three issues, Tudor, keep it green, Ravel Court, we resolve those three issues, that's not, I mean, I just don't believe that's going to be it. I think there is going to have the same people come up and say: Don't you realize the Master Plan and the General Plan and the zoning and all. Forget what these people think. We're experts. You guys here, you're just the guys that work for the City of Las Vegas.

To me, I've never seen a situation where you say I disregard completely what these gentlemen, who are as smart as you'll ever find, as thorough as you'll ever find, and would believe somebody else who says they're wrong. So whatever you do, God love you and bless you and keep you, but I'm just saying I can't guarantee what happens with a hold.

I think you ought to approve it, and I think you ought to say I trust you'll work those other issues out, and that will provide those people, most of us who live on that golf course, with two-acre lots guaranteed under a development agreement. Thank you.

YOHAN LOWIE

Mr. Jerbic, I just want to say, add one more thing. Condition number four is unacceptable. The golf course is dead. As of today, we cannot, no longer support irrigating and maintaining green on the golf course. So if you want to continue negotiation, item number four cannot be a part of this, a part of the negotiation.

Mayor, as I told you, you know, elections have consequences and so does continual denial of our application, and the ability of us financing this piece of property has consequences. And we cannot irrigate no longer.

MAYOR GOODMAN

All I can tell you is I said what I said very clearly, and I've said it to Mr. Jerbic. Every time he's gone in to try again with something, and last week he came to me and I said, How are we? And he said we are so close to this.

And I said it at the time that we voted on the corner of Rampart and Alta. I said it clearly. I cannot vote for any other project until we've got this resolved. And I believe this man; I've known him for 35 or 40 years. That puts you older than probably you are. But the reality is he delivers. He tells the truth to me. I'm not saying you have ever, but we don't have that length of the relationship. And because he's an attorney and because he's worked with you and your team and with the residents, and because I made a commitment that I didn't want it piecemeal – I'm not denying that anything that you touch you haven't – everything that I've seen, contrary to comments that aren't true, everything I know you will deliver the finest. You will deliver it.

I want to abey this. I want you to hang in to August 2nd. You can do that.

YOHAN LOWIE

No, I can't and I will not. And I just want to tell you something. I want to ask you a question. Under which legal theory are you forcing me to bring three different companies under one agreement and to give you one holistic project? I've tried it for two years. It doesn't work.

MAYOR GOODMAN

No, no, no. I know –

YOHAN LOWIE
You don't have – under which, on what are you relying? Which law are you relying to, to force me to do it?

MAYOR GOODMAN
No, no, no. I'm not. All I'm relying on the fact is I know the numbers have to pencil out for you. So when you reduce an area, in order to make it work for you as the developer, you've got to put more people in another area. It needs to be compatible with people that are homeowners, with the feeling of beauty – you can do it. You can do it.

YOHAN LOWIE
The 61 lot is compatible. The 61 lot you just denied is compatible.

MAYOR GOODMAN
I'm not saying it isn't.

YOHAN LOWIE
And every application from now on –

MAYOR GOODMAN
I'm not saying it isn't.

YOHAN LOWIE
Let me finish. Any other application we're going to bring from now on will be compatible. We are only going to bring R-PD7. You don't have to worry about development agreement. There is no development agreement, because we're going to bifurcate this property. I can no longer trust this Council to ever give us to develop the property.

MAYOR GOODMAN
Okay. Oh, wait a minute.

YOHAN LOWIE
Wait a minute. To ever allow us to develop the property.

MAYOR GOODMAN
No, no, no.

YOHAN LOWIE
It's a continuous denial.

MAYOR GOODMAN
If you want to divide the property, then we have something.

YOHAN LOWIE
What do you have?

MAYOR GOODMAN
Well, you just said you could bifurcate the property. You're not going to develop –

YOHAN LOWIE
Bifurcate it and sell it off in pieces. But do you think that the next applicant is going to come in and is going to come in here –

MAYOR GOODMAN
No –

YOHAN LOWIE

– and you're going to tell him about development agreement and the dream?

MAYOR GOODMAN

We're saying we are so close to this.

YOHAN LOWIE

Your Honor, we're not so close to it. Now you got further, further than any, because I cannot no longer hold the property. That's all. You made a decision, and I just want you to know that item number four cannot be negotiated, because we don't have the funding to do it.

MAYOR GOODMAN

Okay. All right. So where are we on this, Mr. Jerbic? What do we vote on this? I don't want to go into more public comment. I was hoping that we could just go ahead, abey everything, because we want to get the new Council person seated, have you and Tom Perrigo bring everybody up to speed, and then move this on the 2nd of August or earlier. But I did look at my calendar, and literally from the 19th to the 2nd, it is the proper two weeks.

BRAD JERBIC

Let me say my recommendation is still for abeyance. I will say that a lot of things Mr. Kaempfer said are correct. I think that I really do believe and it's true that there are going to be people that are going to oppose this. No matter what it is, no matter how many people like it, there's going to be a group that will never like it, and that's a given.

There's also this fear that issues will continue to open up, and there will be more and more demands. And that's where I have to use my skills to say enough is enough. And that's why I said tonight, speak now or forever hold your peace.

I think that they have these issues. If somebody comes to me now with an issue they should have come to me with months ago, I'm going to ignore them, because that's just not fair either. You

can't continue to whittle away at this agreement by throwing new things at it all the time. There's been two years for people to make their comments. I think that we are that close.
I know Yohan disagrees with me, but I do believe that – and if at the end of the day, and I'll make you this promise, Yohan, if at the end of the day, we're down to that one issue and that is the greening of the golf course and there's no agreement on that, I'll present it to the Council for their decision.

MAYOR GOODMAN
So is my comment –

BRAD JERBIC
I will not stop it from going to this Council, because we can't get an agreement on the greening of the golf course. I'll let them make the decision.

MAYOR GOODMAN
Okay.

BRAD JERBIC
And if the Council says greening is so important to us, we don't like it, they'll vote you down. And if they say the greening is something that, in the scheme of the entire agreement, isn't a hill to die for, then they'll vote you up. But that's how I plan to handle those issues that we can't negotiate through.

COUNCILMAN COFFIN
Your Honor?

BRAD JERBIC
I don't plan to use that as an excuse in the future to stop this Council from looking at an agreement. You've got my word on that.

COUNCILMAN COFFIN
Your Honor?

MAYOR GOODMAN
Please.

COUNCILMAN COFFIN
I'm afraid we've put our Council in a bad position using him as a negotiator. I think the fact is that he's done all he can, and I think that he should now be our counsel, and that if any negotiating happens, it should be between the members of the Council and the interested parties. He's at a point now where I don't want him to be compromised. Not only is he tired, but he also feels, you know, I'm sure he feels that it's futile.
But I remarked, I earlier remarked that I will still continue to work. And, you know, I may be heard to be just flapping my gums, but I'm still where I was in December that there could be something easy on the eyes, something very nice for these people and that land out there. So now that's my position. I'm still open minded, but I must continue –

MAYOR GOODMAN
Okay. What I'd like to do is move a question, with your permission down there, I am going to move to abey Agenda Item 130 to August 2nd, and then we're going to read into – **I'm going to make that motion to abey this Item 130 to August 2nd.** So that's my motion. Please vote. Where is Mr. Beers?

JAMES JIMMERSON
May we be heard? May the applicant be heard on this motion?

MAYOR GOODMAN
Mr. Beers. There's a motion to abey to August 2nd on Agenda Item 130.

JAMES JIMMERSON
Can we not be heard on that? Can both sides be heard on that matter, just for three minutes?

MAYOR GOODMAN
No, no. No. No. No.

JAMES JIMMERSON
We've not been heard on this matter at all.

YOHAN LOWIE
Your Honor, we're objecting to the abeyance under the law. Under 278A 0233, we're objecting to it. 278, I'm sorry, 0233. We're objecting to it. We're asking you, we’re asking for a vote.

MAYOR GOODMAN
Okay. So you've made your record, and that's what's the most important thing. Could we please post the vote on the abeyance?

JAMES JIMMERSON
With our statement of law and rights in our final decision.

MAYOR GOODMAN
Okay. And so that motion carries **(Motion carried with Ross and Beers voting No)**. We are abeyed.

ITEM 82

MAYOR GOODMAN
I'm going to go to Agenda Item 82, Bill number 2017-27, for possible action, adopts that certain development agreement entitled "Development Agreement For The Two Fifty", entered into between the City and 180 Land Co, LLC, et al., pertaining to property generally located at the southwest corner of Alta and Rampart. Sponsored by: Councilman Bob Beers.
I am going to make the motion. Oh, do we have to read that in? Yes, we'll read that in, please.

BRAD JERBIC
Your Honor, bill number 2017-27, an ordinance to adopt that certain development agreement, entitled "Development Agreement For The Two Fifty", entered into between the City and 180 Land Co, LLC, et al., and to provide for other related matters.

MAYOR GOODMAN
I'm going to move this be abeyed to August 2nd, with the new Council seated, please. That's my motion. Please vote, and please post. And that motion carries **(Motion carried with Ross voting No)**.
So, at this point –

CHRIS KAEMPFER
Your Honor?

MAYOR GOODMAN
– I'm gonna ask you, Mr. Jerbic –

BRAD JERBIC
Yes.

MAYOR GOODMAN
– as you speak with the developer team that you continue to do your best, depending upon where they come with this, and that you will meet, if, in fact, everything can move forward with the new seated Council, Ms. Fiore and Mr. Siroka, and make appointments for them to get up to speed with all these items so that they are ready to move forward on August 2nd, pending how you work forward and where needed with Mr. Perrigo joining in.

CHRIS KAEMPFER
Your Honor –

BRAD JERBIC
Thank you. We will.

MAYOR GOODMAN
Please. Could you speak –

CHRIS KAEMPFER
May I say a couple of words –

MAYOR GOODMAN
It's up to Councilman –

CHRIS KAEMPFER
– to the Councilman?

MAYOR GOODMAN
– my Council over here. Is that alright, more?

BRAD JERBIC
Oh, yes.

CHRIS KAEMPFER
I just want to say a couple of words to the departing Councilmen, if I might.

MAYOR GOODMAN
Yes, but please get closer ‘cause you’re so far up.

CHRIS KAEMPFER
Okay. I just wanted to say, Councilman Ross, Councilman Beers, thank you very much for all of the years of working together. The hard work, the compromise, whatever, you are both class gentlemen, and I know wherever, whatever you do, whatever you decide is better than this, you’re gonna have a great time.
And I just want to say seriously, thank you for all of your hard work and for being such good people. And although it’s not really cool any more to say it, I want to say God bless you and keep you well. Okay. Thank you.

COUNCILMAN ROSS
With your permission, Mayor? Thank you, Mr. Kaempfer.

MAYOR GOODMAN
Yes. Please, wait Mr. Kaempfer, he’s responding.

COUNCILMAN ROSS
Thank you, Mr. Kaempfer.

STEPHANIE ALLEN
I just wanted to echo that. We'll miss you, and we appreciate all of your hard work and time and dedication. So thank you so much for everything you've done for the City of Las Vegas to make it so great.

COUNCILMAN ROSS
Thank you.

STEPHANIE ALLEN
We appreciate it.

MAYOR GOODMAN
Thank you.

COUNCILMAN ROSS
Thank you.

MAYOR GOODMAN
And I can assure you the Council feels the same way. We're very proud of these gentlemen and everything that they have done as public servants, both with the legislature and City Council. Mayor Pro Tem Ross, for his 12 years here and devotion to the citizens and people and development, just kudos.

(END OF DISCUSSION)

/ac

Exhibit 34

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. At all times, I have served as a manager of each of 180 Land Co LLC, Seventy Acres and Fore Stars, (collectively "the Landowners"). I make this declaration in support of Plaintiff Landowners Opposition to the City's Motion for Summary Judgment and Countermotions to Determine the Two Inverse Condemnation Sub-Inquiries in the Proper Order. I have personal knowledge of the facts stated herein and, if called to testify as a witness, I could and would competently testify as set forth below.

2. I have constructed and developed properties both independently and with my partners, principals of the Landowners for over 25 years. My partners and I have extensive experience developing luxurious and distinctive commercial and residential projects in Las Vegas, including but not limited to: (1) One Queensridge Place, which consists of two 20-floor luxury residential high rises; (2) Tivoli Village at Queensridge, an Old World styled mixed-used retail, restaurant, and office space shopping center; (3) over 300 customs homes, and (4) the Nevada Supreme Court and Appellate Court building located in downtown Las Vegas at 408 East Clark Avenue to name a few. We all live in the Queensridge common interest community and One Queensridge Place and are the single largest owners within both developments having built over 40% of the custom homes within Queensridge. There is no other independent developer that has contributed more to, or had a larger impact on, the Queensridge CIC and the surrounding area than my partners and myself.

3. I began working with the Peccole family and developing lots within the Queensridge CIC in 1996 and consistently worked with them thereafter.

4. In or about 2001, I was informed by Peccole family members that the Badlands Golf Course was zoned R-PD7 and intended for residential development. I further learned that the original owners of the various parcels that comprised the Badlands Golf Course (sometimes referred to as "the Land" or the "250 Acre Residentially Zoned Property") had never imposed any restrictions on the use of the Land and that the Land would eventually be developed. I was further informed that the Land is "developable at any time" and "we're never going to put a deed restriction on the property." The Land abuts the common interest community commonly known as "Queensridge" (the "Queensridge CIC").

5. Thereafter in 2001, I retained counsel and learned that the Land is "Not A Part" of the Queensridge CIC, the Land was residentially zoned, there existed rights to develop the Land, the Land was intended for residential development and that as a homeowner within the Queensridge CIC, according to the Covenants, Conditions and Restrictions (the "CC&Rs") I had no right to interfere with the development of the Land.

6. In or around 2006, I met with the head planner at the City of Las Vegas, Mr. Robert Ginzer, and was advised that the Land was zoned R-PD7 and that there were no restrictions that would prevent development of that zoning on the Land. Thereafter, in or around 2007 through various other transactions with the Peccole family, I obtained the right to purchase all five parcels that encompassed the Badlands Golf Course. Thereafter, I continued my due diligence on the Land.

7. In or around June of 2014, the Peccole family gave me six months' notice to exercise the right to purchase the entire 250 Acres of Residentially Zoned Land. In doing so, we conducted further due diligence which included meeting with the City Planning Department including Mr. Tom Perrigo and Mr. Peter Lowenstein, the highest ranking planners at the City

of Las Vegas, to confirm whether the Land was developable and if there was anything that would otherwise prevent development. The City Planning Department agreed to do a "study" which took approximately three weeks.

8. After three weeks the City Planning Department reported that: 1) the 250 Acre Residential Zoned Land had hard zoning and vested rights to develop up to 7 units an acre; 2) "the zoning trumps everything;" and, 3) any owner of the 250 Acre Residential Zoned Land can develop the property.

9. My team and I requested that the City adopt its three-week study in writing as the City's official position in order to conclusively establish the developability of the property prior to closing on the property sale. The City agreed and provided the City's official position through a "Zoning Verification Letter" issued by the City Planning & Development Department on December 30, 2014, stating: 1) "The subject properties are zoned R-PD7 (Residential Planned Development District – 7 units per acre;" 2) "The density allowed in the R-PD District shall be reflected by a numerical designation for that district. (Example, R-PD4 allows up to four units per gross acre.);" and, 3) "A detailed listing of the permissible uses and all applicable requirements for the R-PD Zone are located in Title 19 ("Las Vegas Zoning Code") of the Las Vegas Municipal Code." The Zoning Verification Letter is the way in which a potential buyer can confirm the zoning of land and is a standard item lenders and title companies request. Lenders and title companies do not and have not in my experience ever inquired about land use designations.

10. Thereafter, I also obtained information that the entire 250 Acre Residential Zoned Land had been zoned R-PD7 since at least 1990. This zoning was reconfirmed in subsequent research by the City through Ordinance 5353 that was passed in 2001.

11. In all my years of developing in the City of Las Vegas, the process involves meeting with the Planning Department to discuss conceptual plans wherein the City directs what applications are required in order to develop that plan. Thus, we began meeting with the City officials and Planning Department officials in or around September of 2014.

12. In March 2015, my partners and I acquired the membership interests of Fore Stars which at that time owned the entirety of the parcels (then five parcels) that comprise the 250 Residentially Zoned Land. Immediately after acquiring Fore Stars, we began the process with the City of Las Vegas Planning Department for development of the land.

13. In June 2015, Fore Stars re-drew the boundaries of the various parcels that comprised the 250 Acre Residentially Zoned Land pursuant to the City's request and direction. The City required the filing of parcel maps to separate the land for every area of development.

14. In November 2015 ownership of approximately 178.27 acres of the property was transferred to 180 Land Co and approximately 70.52 acres of the property was transferred to Seventy Acres. Fore Stars retained ownership of approximately 4.5 acres of the Property.

15. Today, 180 Land Co owns the parcels with the following Clark County Assessor Parcel Numbers ("APNs"): APNs 138-31-201-005 (totaling 34.07 acres), 138-31-601-008 (totaling 22.19 acres), 138-31-702-003 (totaling 76.93 acres), 138-31-702-004 (totaling 33.8 acres), and 138-31-801-002 (totaling 11.28 acres).

16. Today, Seventy Acres owns the parcels more particularly described by the Clark County Assessor as APNs 138-31-801-003 (totaling 5.44 acres), 138-32-301-007 (totaling 47.59 acres), and 138-32-301-005 (totaling 17.49 acres).

17. Today, Fore Stars owns the parcels more particularly described by the Clark County Assessor as APNs 138-32-210-008 (totaling 2.37 acres); and 138-32-202-001 (totaling 2.13 acres).

18. In 2015 the Las Vegas residential real estate market was booming and there was a great demand for single-family and multi-family residential. Additionally, the golf course operations on the Land were failing. Thus, it was our intent to develop as quickly as possible to not only meet market demands, but to reduce the substantial carrying costs. We started with Seventy Acres because developing Seventy Acres was the most financially feasible way to commence development of the Land.

19. On or around December 16, 2015, I attended a meeting at City Hall with Mayor Caroline Goodman, Councilman Beers, Chris Kaempfer, Frank Pankratz, City Attorney Brad Jerbic, Planning Director Tom Perrigo and others from my office. During that meeting Mayor Goodman informed that due to neighbors' concerns the City would not allow "piecemeal development" of the Land and that one application for the entirety of the 250 Acre Residentially Zoned Land was necessary by way of a Master Development Agreement ("MDA").

20. Initially we acquiesced to the City's requirement of a development agreement, but as the process continued we strongly opposed this City mandated MDA, because it was significantly increasing the time and cost to develop the entire 250 Acre Residential Zoned Land. Additionally, the City was imposing extraordinary requirements causing further delay and costs. Every single time we agreed to the MDA, which included how the 65 Acre Property would be developed, the City would change the requirements demanding more from us. In an effort to comply so that development could occur, we agreed to the City's demands.

21. These demands include, but are not limited to detailed architectural drawings including 3d digital models for Seventy Acres for topography, elevations, etc., regional traffic studies, complete civil engineering packages, master detailed sewer studies, drainage studies, school district studies. These additional demands caused us to incur more than an additional 1 million dollars in fees and costs. In all my years of development and experience such costly and timely requirements are never required prior to the application approval because no developer would make such an extraordinary investment prior to entitlements, ie. approval of the application by the City.

22. The MDA was drafted almost entirely by the City of Las Vegas and included all of the requirements the City demanded.

23. After the City delayed the MDA, in late 2016 we met with the City Planning Department regarding development of the 35 Acre Property as a stand-alone parcel and asked the City Planning Department to set forth all requirements the City could impose to develop the 35 Acre Property as an individual parcel, rather than as part of the MDA.

24. The City Planning Department worked closely with us to prepare the residential development applications for the 35 Acre Property and submitted a Staff Report recommending approval of the applications to develop the 35 Acre Property. The City Planning Commission unanimously approved the development of the 35 Acre Property, but the City Council denied those applications citing at the time of the hearing that they did not want "piecemeal development" and over my objections refused to consider the MDA which was on the agenda for consideration. Thereafter, the City continued to make it clear to us that it would not allow development of individual parcels, but demanded that development only occur by way of the MDA. Therefore, we continued our work with the City on the MDA.

25. On August 2, 2017, the MDA was presented to the City Council for approval. Despite offering the MDA as the only application the City would accept to develop the 65 Acre Property, the City's own Planning Staff and Planning Commission recommending approval, repeated assurances from the City, and the fact that the City itself almost entirely drafted the MDA, the City denied the MDA altogether.

26. The City did not ask us to make more concessions, like increasing the setbacks or reducing the units per acre, it just simply rejected the MDA altogether.

Dated this 23rd day of November 2020.

/s/ Yohan Lowie

Yohan Lowie

Exhibit 35

DECLARATION OF YOHAN LOWIE

I, Yohan Lowie, declare under penalty of perjury that the foregoing is true and correct:

1. I Make this Declaration in support of Plaintiff Landowners' Motion for a New Trial and to Amend Related to: Judge Herndon's Findings of Fact and Conclusions of Law Granting City of Las Vegas Motion for Summary Judgment, Entered on December 30, 2020. This Declaration supplements my previous Declaration submitted in this matter, dated November 23, 2020, and identified as Exhibit 22.

2. The consideration for the acquisition of the membership interest of Fore Stars Ltd comprised of all the assets and liabilities which included five parcels of land amounting to approximately 250 acres of residentially zoned land "250 Acre Residential Zoned Land" or "Land" which was being leased by a third party golf course operator at the time. This acquisition was significant and included : 1) approximately 15 years of work, resources, sacrifice and effort; 2) entering into an approximately $100 million deal with Peccole (the original owner of the Land) and a third party that involved complex land transactions related to large tracts of land, including Tivoli Village, the Queensridge Towers, Hualapai Commons (at Sahara and Hualapai Way), and Fore Stars Ltd, to obtain the right to acquire the 250 Acre Residential Zoned Land. Within this complex deal, $45 million was directly allocated to the acquisition of Fore Stars which included the 250 Acre Residential Zoned Land.

3. Additionally, the acquisition of Fore Stars Ltd., which owned the 250 Acre Residential Zoned Land, comprised all of its assets and liabilities, which included the Land, which the golf course was operating on at a substantial loss; the post-closing obligation to resolve a lot line dispute wherein the Queensridge Towers were constructed on part of the 250 Acre Residential Zoned Land; any liabilities of Fore Stars, Ltd.; all existing contracts with suppliers and vendors; and, all leases and agreements associated with any equipment on the land.

4. In all my years of dealings with the Peccoles and with the surrounding properties (since 1996 to the present) that involved a multitude of real estate transactions, the Peccole Ranch Master Plan north of Charleston Blvd. was never mentioned; it never appeared on any document, never appeared on any title to land, never in any CC&Rs, never on any entitlement package, and never on any lenders document. The Peccole Ranch Master Plan was then later used by the

representatives of the Queensridge Community to hold up development on the 250 Acre Residential Zoned Land after we purchased it.

5. Within months of acquiring the 250 Acre Residential Zoned Land, then-councilman Bob Coffin informed me that a few of the homeowners in the Queensridge Community were demanding that no development occur on the 250 Acre Residential Zoned Land, but that Councilman Coffin would "allow" me to build "anything I wanted" on 70 of the 250 acres if we handed over to these few homeowners 180 Acres of land with the water rights for free.

6. Several months later, in April 2016, Councilman Coffin told me that he would get me 1,000 more units on the 70 acres if I would "hand over" the 180 acres, and all water rights, to these a Queensridge homeowner in perpetuity, for free. I offered the 180 acres for a one dollar per year lease as long as it included a deed restriction to operate as a golf course. Coffin responded it's not going to work and I needed to hand it over for free without the restriction.

7. In 2018, Councilman Seroka told me that I should have negotiated with the Queensridge Community and if I had given them what they wanted, I could have already been building. He suggested that if I negotiated with Frank Schreck, a Queensridge representative, all the lawsuits would go away.

DATED this 27th day of January, 2021.

/s/ Yohan Lowie

_____

Yohan Lowie

Exhibit 36

Master Declaration Of Covenants, Conditions, Restrictions And Easements For Queensridge.

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MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR QUEENSRIDGE

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (the "Master Declaration") is made as of May 10, 1996, by Nevada Legacy 14, LLC, a Nevada limited liability company, ("Declarant"), with reference to the following Recitals and is as follows:

RECITALS:

A. Declarant is the owner of certain real property in the City of Las Vegas, County of Clark, State of Nevada, more particularly described in **Exhibit "A"** attached hereto and incorporated herein. Declarant and Persons affiliated with Declarant, are the owners of additional land more particularly described in **Exhibit "B"** attached hereto ("Annexable Property"). The Annexable Property, or portions thereof, may be made subject to ("annexed to") the provisions of this Master Declaration by the Recordation of a Declaration of Annexation pursuant to the provisions of Section 2.3, below. Reference to "Property" herein shall mean and include both of the real property described in **Exhibit "A"** hereto and that portion of the Annexable Property which may be annexed from time to time in accordance with Section 2.3, below. In no event shall the term "Property" include any portion of the Annexable Property for which a Declaration of Annexation has not been Recorded or which has been deannexed by the recordation of a Declaration of Deannexation pursuant to the provisions of Section 2.4, below.

B. Declarant intends, without obligation, to develop the Property and the Annexable Property in one or more phases as a planned mixed-use common interest community pursuant to Chapter 116 of the Nevada Revised Statutes ("NRS"), which shall contain "non-residential" areas and "residential" areas, which may, but is not required to, include "planned communities" and "condominiums," as such quoted terms are used and defined in NRS Chapter 116. The Property may, but is not required to, include single-family residential subdivisions, attached multi-family dwellings, condominiums, hotels, time share developments, shopping centers, commercial and office developments, a golf course, parks, recreational areas, open spaces, walkways, paths, roadways, drives and related facilities, and any other uses now or hereafter permitted by the Land Use Ordinances which are applicable to the Property. The Maximum Number of Units (defined in Section 1.57, herein) which Declarant reserves the right to create within the

Property and the Annexable Property is three thousand (3,000). The existing 18-hole golf course commonly known as the "Badlands Golf Course" is not a part of the Property or the Annexable Property.

C. The name of the common interest community created by this Master Declaration is Queensridge. This Master Declaration is intended to create equitable servitudes and covenants appurtenant to and for the benefit of all of the Property, and the owners and residents thereof, and to provide for the formation of a master association (the "Association") to administer and enforce the provisions of this Master Declaration as set forth herein and in the Articles and the Bylaws.

D. Declarant may, in Declarant's sole discretion, execute, acknowledge and Record, as to all or any portion of the Annexable Property, a Declaration of Annexation. The Declaration of Annexation may include, or Declarant may Record as a separate declaration, a Supplemental Declaration (as hereinafter defined) which imposes further covenants, conditions, restrictions and equitable servitudes for the operation, protection and maintenance of the Annexed Property, taking into account the unique aspects of such Annexed Property, which are not in conflict with this Master Declaration. Such Supplemental Declaration may, but need not, provide for a Project Association to govern one or more Projects of the same Project Type within the Annexed Property, with rights and powers reasonably necessary therefor, including, without limitation, the right of the Project Association to assess its members.

E. As part of the various phases of development of the Property, Declarant intends, without obligation, to dedicate or transfer portions of the Property to public entities and utility companies for purposes such as streets, roadways, drainage, flood control, water storage, utility service and such other purposes which may enhance the Property as a whole or which are required pursuant to any Land Use Ordinance or other applicable law.

DECLARATION:

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, transferred, leased, used, occupied and improved subject to the easements, restrictions, covenants, conditions and equitable servitudes contained in this Master Declaration, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement, sale, lease, care, use and management of the Property, or any portion thereof. The

covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Property and interest therein; shall inure to the benefit of and be binding upon each Owner (including Declarant), and their respective successors-in-interest, and may be enforced by the Persons described in Section 13.3.1, below. This Master Declaration and any and all Declarations of Annexation and Supplemental Declarations are declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof.

ARTICLE I

INCORPORATION OF RECITALS AND DEFINED TERMS

Recitals A through E above are by this reference incorporated into this Master Declaration. The words, phrases or terms set forth in this Article I, when used in this Master Declaration, shall have the meanings ascribed thereto in this Article I. Certain other capitalized terms in this Master Declaration are defined in the specific sections of this Master Declaration to which such defined terms pertain, and shall have the meanings ascribed thereto in such sections throughout this Master Declaration.

1.1 Annexable Property. "Annexable Property" shall have the meaning ascribed to such term in Recital A, hereof.

1.2 Annual Assessment. "Annual Assessment" shall mean the assessment levied and assessed annually by the Association against the Owners, jointly and severally, of each Unit pursuant to Section 8.4, hereof, for the purpose of defraying the Common Expenses (defined in Section 8.4, hereof).

1.3 Applicable Declarations. "Applicable Declarations" shall mean, collectively, with respect to each Unit, this Master Declaration, and any Declaration of Annexation, Supplemental Declaration or Development Covenants affecting such Unit.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

1.5 Assessments. "Assessments" shall mean collectively, the Annual Assessment and any Special Assessment, any Capital Improvement Assessment, any applicable Special Benefits Area Assessment, and any applicable Violation Assessment.

1.6 Assessment Lien. "Assessment Lien" shall mean the lien in favor of the Association created and imposed by Article VIII, hereof.

1.7 Assessment Unit. "Assessment Unit" shall mean a fraction, the numerator of which is one (1) and the denominator of which is the total number of Assessment Units attributable to all Phases of the Property for which Assessments have commenced pursuant to Section 8.4.2, hereto, which fraction shall be adjusted from time to time as set forth in Section 8.3 hereof.

1.8 Association. "Association" shall mean Queensridge Owners Association, a Nevada non-profit corporation, and its successors and assigns, organized or to be organized by Declarant or Declarant's representatives pursuant to NRS Chapter 82 to administer and enforce the provisions of this Master Declaration and to exercise the rights, powers and duties set forth in this Master Declaration.

1.9 Association Property. "Association Property" shall mean (i) all land, including the Improvements thereon, which is within the Property, designated as "common area", "common elements" or similar designation on a Final Map or in a Declaration of Annexation and owned in fee simple or leased at any time by the Association, and (ii) any and all personal property owned or leased by the Association. Title to all or any portion of the Association Property which is real property may be subject to an offer of dedication to a governmental body.

1.10 Board; Board of Directors. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

1.11 Builder. "Builder" shall mean an Owner of Lots or a Condominium Project, or a portion thereof, other than Declarant, who acquired title thereto from Declarant (or any Successor Declarant) and who is licensed as a general contractor in the State of Nevada.

1.12 Budget. "Budget" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under the Master Declaration prepared pursuant to the provisions of Article VIII hereof.

1.13 Bylaws. "Bylaws" shall mean the Bylaws of the Association, as the same may be amended from time to time.

1.14 Capital Improvement Assessment. "Capital Improvement Assessment" shall mean the assessment levied by the Association against the Owners, jointly and severally, of each Unit, pursuant to Section 8.6, hereof, for the purpose of installation or construction of Improvements on the Common Area.

1.15 City. "City" shall mean the City of Las Vegas, Nevada.

1.16 Commercial Areas. "Commercial Areas" shall refer collectively to the areas of the Property designated in the Master Plan, any Declaration of Annexation or Supplemental Declaration for use as Commercial Project Types.

1.17 Commercial/Office Project. "Commercial/Office Project" shall mean a Parcel or Parcels restricted by a Declaration of Annexation to be used for commercial and/or office uses and related uses in accordance with applicable Land Use Ordinances.

1.18 Commercial Project Type. "Commercial Project Type" shall refer to any of the following Project Types: Commercial/Office Project, Shopping Center Project, Hotel/Time Share Project, or any other use designated by Declarant for which a commercial zoning classification is required by the applicable Land Use Ordinances.

1.19 Common Area/Common Areas. "Common Area" or "Common Areas" shall mean (a) the Association Property which is real property; (b) all land within the Property, together with the Improvements thereon, which is not owned or leased by the Association, but which is designated in this Master Declaration for management, repair and maintenance by the Association including, but not limited to, Perimeter Maintenance Easement Areas; (c) any and all areas on a Lot or Parcel or areas outside of the Property within easements granted to the Association or its Members for purposes of location, construction, maintenance, repair and replacement of a public road, wall, fence, sidewalk, landscaped area or utility, for utility easement access, general access or other uses, and (d) all land, together with the Improvements thereon, located outside the Property which is owned privately or by a governmental agency for which the Association has accepted responsibility for maintenance, and for which the Association or the Members benefit by limited use, full use, or aesthetic consistency, including, but not limited to, any median strips within any public street which provides access to any portion of the Property. The terms "Common Area" and "Common Areas" shall exclude Project Common Areas.

1.20 Common Fence. "Common Fence" shall mean a free-standing wall or fence constructed by Declarant or a Builder pursuant to a contract with Declarant or constructed by an Owner other than Declarant and approved by the Design Review Committee, which is located on the common boundary of any combination of the following: Lots, Parcels and Common Areas.

1.21 Condominium. "Condominium" shall mean a Condominium Unit, together with an undivided tenancy-in-common interest in the Parcel designated as common area, common elements or similar designation, on the Final Map of a Condominium Project which is created under NRS Chapter 116, or any successor statute thereof.

1.22 Condominium Project. "Condominium Project" shall mean a Parcel or Parcels the use of which is restricted to a Condominium form of ownership by a Declaration of Annexation or Supplemental Declaration and for which a Final Map creating two or more Condominiums has been recorded. A Condominium Project may be used for residential, office, commercial, hotel or time share uses or any other uses in conformance with applicable Land Use Ordinances.

1.23 Condominium Unit. "Condominium Unit" shall mean each portion of a Condominium Project which is designated for separate ownership, the boundaries of which shall be as defined in NRS Chapter 116, the Final Map of the Condominium Project and in the Applicable Declarations.

1.24 County. "County" shall mean the County of Clark, State of Nevada.

1.25 Custom Lot. "Custom Lot" shall mean a Lot so designated on the Master Plan or in a Declaration of Annexation or Supplemental Declaration intended for construction of a custom house, whether or not the house is constructed.

1.26 Declarant. "Declarant" shall have the meaning ascribed thereto at page 1, hereof. "Declarant" shall include any and all Successor Declarants.

1.27 Declarant's Control Termination Date. "Declarant's Control Termination Date" shall have the meaning set forth in Section 6.2.3(e) hereof.

1.28 Declarant's Rights. "Declarant's Rights" shall mean all rights reserved by Declarant for itself under this Master Declaration which are personal to Declarant and may be exercised only by Declarant or any Successor Declarant, including, but not limited to, Declarant's voting class for specified purposes as set forth in Article VI

hereof, Declarant's developmental rights set forth in Articles II and IV, hereof, and the Special Declarant's Rights set forth in Article XII, hereof.

1.29 Declarant's DRC Appointment Rights Termination Date. "Declarant's DRC Appointment Rights Termination Date" shall have the meaning set forth in Section 4.3.1 hereof.

1.30 Declarant's Rights Termination Date. "Declarant's Rights Termination Date" shall mean the later to occur of the following events, unless a later date with respect to any specific Declarant Right is expressly set forth herein: (i) Declarant's DRC Appointment Rights Termination Date; (ii) Declarant's Control Termination Date; or (iii) the date on which no Recorded Development Covenants remain in effect.

1.31 Declaration of Annexation. "Declaration of Annexation" shall mean each Recorded instrument executed by Declarant whereby a portion of the Annexable Property becomes subject to the provisions of this Master Declaration, the minimum contents of which are identified in Section 2.3.3, hereof.

1.32 Declaration of Deannexation. "Declaration of Deannexation" shall mean each recorded instrument executed by Declarant whereby a portion of the Property is removed from the effect of this Master Declaration, the minimum contents of which are identified in Section 2.4, hereof.

1.33 Deed. "Deed" shall mean a deed or other instrument of conveyance which conveys fee simple title to any portion of the Property.

1.34 Design Review Committee. "Design Review Committee" shall mean the committee described in Article IV, hereof, which is formed to review and approve plans and specifications for Improvements constructed within the Property and to administer the Master-Planned Community Standards.

1.35 Development Covenants. "Development Covenants" shall mean a recorded agreement between Declarant and a Builder or a recorded Declaration executed by a Builder pursuant to an agreement with the Declarant creating covenants running with the land pertaining to the construction of Improvements on a portion of the Property owned by such Builder.

1.36 DRE. "DRE" shall mean each of the Nevada Real Estate Division, the Department of Real Estate of the State of California, the United States Office of Interstate

Land Sales Registration, or such other successor governmental agency, which administers the sale of subdivided lands pursuant to Nevada law, California law, or federal law, or the governmental agency which regulates the sale of subdivided land in any other jurisdiction in which portions of the Property may be offered for sale.

1.37 Dwelling Unit. "Dwelling Unit" shall mean any building or portion thereof (including the airspace within a Condominium Unit) situated upon a Lot or within a Condominium Project designed and intended for use and occupancy as a residence by a single Family, but shall exclude any model home until such model home has been sold or leased as a residence of a single Family, and shall exclude rooms or suites of rooms in a Hotel/Time Share Project.

1.38 Eligible Insurer. "Eligible Insurer" means an insurer or guarantor of a Residential First Mortgage which has requested notification pursuant to the provisions of Sections 11.5 and 13.5 hereof.

1.39 Eligible Mortgage Holder. "Eligible Mortgage Holder" means the holder of a Residential First Mortgage which has requested notification pursuant to the provisions of Sections 11.5 and 13.5 hereof.

1.40 Family. "Family" shall mean (i) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or (ii) a group of natural persons not all so related who maintain a common household.

1.41 FHA. "FHA" shall mean the Federal Housing Administration of the United State Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

1.42 FHLMC. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

1.43 Final Map. "Final Map" shall mean a Recorded map of any portion of the Property, including, but not limited to, subdivision maps, parcel maps, condominium plats, and any and all amendments thereto, or boundary line adjustments of the lots, parcels or condominiums created thereby, which is recorded pursuant to statute for the purpose of dividing land into legally created parcels, lots or condominiums.

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1.44 **First Mortgage**. "First Mortgage" shall mean a Mortgage having priority over all other Mortgages encumbering the same portion of the Property.

1.45 **FNMA**. "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

1.46 **GNMA**. "GNMA" shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

1.47 **Hotel**. "Hotel" shall mean a building or buildings containing rooms or suites of rooms intended for overnight occupancy by guests.

1.48 **Hotel/Time Share Project**. "Hotel/Time Share Project" shall mean a Parcel or Parcels restricted by a Declaration of Annexation to either or both a Hotel use or Time Share form of ownership and/or use, either or both of which may include gaming areas. For purposes of this Master Declaration, each Hotel/Time Share Project shall be deemed to be one (1) Unit, whether or not a condominium plat or plan has been recorded establishing each room or suite of rooms as a separate condominium unit. Each Hotel/Time Share Project with the Property shall be allocated the number of Assessment Units set forth in the Declaration of Annexation for such Project.

1.49 **Improvement**. "Improvement" shall mean all structures and other works of improvement of every type and kind, including, but not limited to, buildings, outbuildings, garages, carports, roads, driveways, walkways, trails, parking areas, fences, screening walls, retaining walls, stairs, decks, patios, landscaping, sprinklers, hedges, windbreaks, poles, signs, free-standing lighting fixtures, exterior air conditioning, and water softener fixtures or equipment, the exterior surfaces, including the surface finish of all works of improvement, waterways, sprinkler pipes, storm drainage systems, swimming pools, tennis courts and other recreation facilities, golf courses, and fire breaks; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; the grading, excavation, filling, or similar disturbance to the surface of the land including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed; landscaping, planting, clearing, or removing of trees, shrubs, grass, or plants; and any change, alteration or reconstruction, including any change of exterior appearance, color or texture.

1.50 Land Use Ordinance. "Land Use Ordinance" shall mean any zoning law, regional master plan or other ordinance or regulation governing the use of land adopted by the City, County or State.

1.51 Limited Common Elements. "Limited Common Elements" shall mean a portion of the Common Areas designated in a Final Map, Declaration of Annexation or Supplemental Declaration for the exclusive use of the Owners of one or more, but fewer than all, of the Units.

1.52 Lot. "Lot" shall mean an area of land within the Property designated for separate ownership on a Final Map and intended for improvement with a Residence, whether or not the Lot is so improved, which is restricted by a Declaration of Annexation or a Supplemental Declaration to either a Single-Family Residential Project or Multiple Dwelling Project, together with the Improvements, if any, thereon.

1.53 Manager. "Manager" shall mean a professional manager employed or engaged as an independent contractor by the Association pursuant to the terms of this Master Declaration to manage the affairs of the Association and to perform various functions and duties of the Association as may be delegated by the Board pursuant to the provisions hereof, including, but not limited to, the administration of any Special Benefits Areas.

1.54 Master Declaration. "Master Declaration" shall mean this Master Declaration of Covenants, Conditions, Restrictions, and Easements for Queensridge, as amended or supplemented from time to time.

1.55 Master Plan. "Master Plan" shall mean the Queensridge Master Plan proposed by Declarant for the Property and the Annexable Property which is set forth in Exhibit "C," hereto, as the same may be from time to time supplemented and amended by Declarant, in Declarant's sole discretion, a copy of which, and any amendments thereto, shall be on file at all times in the office of the Association.

1.56 Master-Planned Community Standards. "Master-Planned Community Standards" shall mean the design standards, landscape standards and signage standards for the Property adopted pursuant to the provisions of Section 4.2.1 hereof.

1.57 Maximum Number of Units. "Maximum Number of Units" shall mean the maximum number of Units which Declarant reserves the right to create within the Property and the Annexable Property as set forth in Recital B hereof.

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1.58 Member. "Member" shall have the meaning set forth in Section 6.2.1 of this Master Declaration.

1.59 Mortgage. "Mortgage" shall mean a deed of trust or mortgage encumbering all or any portion of the Property.

1.60 Mortgagee. "Mortgagee" shall mean the beneficiary under a deed of trust or the mortgagee under a mortgage, or the assignee of such beneficiary or mortgagee.

1.61 Multiple-Dwelling Project. "Multiple-Dwelling Project" shall mean a portion of the Property which is to be subdivided into Lots and Project Common Area which is improved or to be improved pursuant to Development Covenants, a Declaration of Annexation or Supplemental Declaration with attached Dwelling Units which share one or more Party Walls with the other Dwelling Units, each of which Dwelling Units occupies one Lot. A Multiple-Dwelling Project may include those types of attached residential housing arrangements known as townhouses, zero-lot line housing and similar arrangements, together with related areas. The term "Multiple-Dwelling Project" does not include Residential Condominium Projects.

1.62 Nevada Real Estate Division. "Nevada Real Estate Division" shall mean the Real Estate Division of the Department of Business and Industry of the State of Nevada.

1.63 Owner. "Owner" shall mean a Record holder of fee simple title to a Unit, including Declarant, but excluding a seller under a Recorded contract of sale, or one who holds such title merely as security for an obligation. "Owner" shall include a buyer under a Recorded contract of sale.

1.64 Parcel. "Parcel" shall mean an area of land within the Property which is created as a legally separate lot or parcel and which is restricted by applicable Land Use Ordinances, a Declaration of Annexation, Supplemental Declaration or Development Covenants to a Project Type other than a Single-Family Residential Project or a Multiple-Dwelling Project. "Parcel" shall include each parcel of land which comprises the Common Area within a Condominium Project.

1.65 Party Wall. "Party Wall" shall mean a common wall of a building which is placed on or abutting the property line between contiguous Lots or Parcels, the ownership of which is shared by the Owners of such contiguous Lots or Parcels. "Party Wall" does not include the walls between Condominium Units.

1.66 Perimeter Maintenance Easement Areas. "Perimeter Maintenance Easement Areas" shall mean those portions of the Lots and Parcels along the perimeter boundaries of the Property or the perimeter boundaries of a Project, which are designated by the Declarant on any Final Map, Declaration of Annexation, or Supplemental Declaration for maintenance by the Association as Common Areas pursuant to the provisions of this Master Declaration.

1.67 Perimeter Walls. "Perimeter Walls" shall mean walls constructed by Declarant or by a Builder pursuant to an agreement with the Declarant, along the perimeter boundaries of the Property and along or near the boundaries of the main roads within the Property. As used in this definition, "main roads" shall mean the private roads within the Property which intersect with West Charleston Boulevard, Rampart Boulevard, Alta Drive or Hualapai Way, and shall exclude loop roads or roads terminating in a cul-de-sac which intersect with the main roads.

1.68 Person. "Person" shall mean a natural person, a corporation, a partnership, a trustee of a trust, limited liability company or any other legal entity as recognized by Nevada law.

1.69 Phase. "Phase" shall mean any development increment or sales increment within the Property, which may be a portion of a Project, whether developed by Declarant or a Builder.

1.70 Project. "Project" shall mean each portion of the Property developed or to be developed as one Project Type.

1.71 Project Association. "Project Association" shall mean each Nevada nonprofit corporation, or its successor-in-interest, organized and established pursuant to NRS Chapter 82 and authorized pursuant to one or more Declarations of Annexation or Supplemental Declarations. The membership of each Project Association shall be composed solely of Owners of Parcels, Lots or Condominiums within one or more Projects of the same Project Type. Each Project Association shall be conferred with the rights and powers necessary for the administration, operation, repair and maintenance of the Project Common Area within the Project or Projects for which it is established including, but not limited to, the power to assess the Owners within such Project or Projects.

1.72 Project Common Area. "Project Common Area" shall mean any portion of the Property within a Project or Projects designated as "common area," "common

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elements," or "common easement areas", or similar designation, in a Final Map and which is designated in a Declaration of Annexation or Supplemental Declaration for administration, management, repair and maintenance by a Project Association.

1.73 **Project Delegate**. "Project Delegate" shall mean, as to each portion of the Property managed by a Project Association, each member of the board of directors of such Project Association. Project Delegates shall be entitled to cast the votes of Members who own Units within such Project or Projects governed by the Project Association at the annual or special meetings of the Members of the Association or by written ballot.

1.74 **Project Type**. "Project Type" shall mean any one of the types of land uses within the Property. The initial Project Types include: Single-Family Residential Projects, Multiple-Dwelling Projects, Residential Condominium Projects, Commercial/Office Projects, Shopping Center Projects, and Hotel/Time Share Projects.

1.75 **Property**. "Property" shall have the same meaning as set forth in Recital A, above.

1.76 **Recorded; Recordation; or Recording**. "Recorded," "Recordation" or "Recording" shall mean, with respect to any document or map, that such document or map has been filed for record in the real property records of the County.

1.77 **Reserve Account; Reserves**. "Reserve Account" or "Reserves" shall mean the funds set aside by the Association pursuant to this Master Declaration for funding of the maintenance, upkeep, repair and replacement of the major components of the Association Property or Common Areas, including Special Benefits Area Amenities or other expenses of the Association which would not reasonably be expected to recur on an annual or less frequent basis, such amounts to be determined annually by the Board in accordance with prudent property management practices generally applied throughout the geographic region in which the Property is located.

1.78 **Residence; Residential; Residential Areas**. "Residence" shall mean an attached or detached Dwelling Unit including a Condominium Unit, located on a Lot or within a Residential Condominium Project. "Residential" shall mean restricted to or occupied by Residences. "Residential Areas" shall refer to areas containing one (1) or more Residential Project Types.

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1.79 Residential Condominium Projects. "Residential Condominium Projects" shall mean a Condominium Project restricted to Residential use. "Residential Condominium Projects" shall not include Hotel/Time Share Projects.

1.80 Residential First Mortgage. "Residential First Mortgage" shall mean a First Mortgage encumbering a Residence.

1.81 Residential Products. "Residential Products" shall mean any of the following categories of development, each of which is or may be designated on the Master Plan: "Custom Lots," "Luxury Lots," "Executive Lots," "Upgrade Lots," "Luxury Condominiums," "Executive Condominiums," "Upgrade Condominiums," "Move-up Condominiums," or any other type of development to be used for residential purposes which may be designated by Declarant on the Master Plan, Declaration of Annexation or Supplemental Declaration.

1.82 Residential Project Type. "Residential Project Type" shall mean any of the following Project Types: Single-Family Residential Project, Multiple-Dwelling Project, or Residential Condominium Project.

1.83 Responsible Party. "Responsible Party" shall be the Person responsible for maintenance of a portion of the Property. The Owners of a Lot, Parcel or Condominium Unit are responsible for the maintenance of such Lot, Parcel or Condominium Unit and any Limited Common Elements designated for exclusive use by such Owners, and all Improvements (including landscaping) thereon, unless otherwise provided in this Master Declaration, a Declaration of Annexation or Supplemental Declaration, in which case the Responsible Party shall be as defined in such Declaration of Annexation or Supplemental Declaration. The Responsible Party with respect to the Improvements on the Project Common Area shall be the applicable Project Association. Subject to the provisions of Section 3.2.5 hereof, the Responsible Party with respect to the Common Areas and such Limited Common Elements which are Special Benefits Area Amenities shall be the Association.

1.84 Rules and Regulations. "Rules and Regulations" shall mean the rules and regulations for the Property adopted by the Board pursuant to Section 7.1.5, hereof.

1.85 Shopping Center Project. "Shopping Center Project" shall mean a Parcel restricted by a Declaration of Annexation or Supplemental Declaration for use as a regional, community, neighborhood or other retail shopping center, subject to the provisions of this Master Declaration.

1.86 Single-Family Residential Project. "Single-Family Residential Project" shall mean a group of Lots within a subdivision restricted by a Declaration of Annexation or Supplemental Declaration to single-family detached housing.

1.87 Special Assessment. "Special Assessment" shall mean any assessment by the Association levied and assessed against the Owners, jointly and severally, of each Unit pursuant to Section 8.5, hereof, to defray shortfalls in the Annual Assessment.

1.88 Special Benefits Area. "Special Benefits Area" shall mean a group of Lots, Parcels or Condominiums within the Property designated as a Special Benefits Area in a Declaration of Annexation or Supplemental Declaration, the Owners of which are granted the exclusive right to use certain Special Benefits Area Amenities or to receive special services not afforded all Owners within the Property, or both.

1.89 Special Benefits Area Amenities. "Special Benefits Area Amenities" shall mean the Limited Common Elements which are designated for use exclusively by Owners within a Special Benefits Area.

1.90 Special Benefits Area Assessment. "Special Benefits Area Assessment" shall mean the assessment levied by the Association pursuant to Section 8.8, hereof, against the Owners, jointly and severally, of Units within a Special Benefits Area to defray the cost of the maintenance of the Special Benefits Area Amenities and any special services to be provided to such Special Benefits Area by the Association, including a special Reserve fund.

1.91 State. "State" shall mean the State of Nevada.

1.92 Subsidy Agreement. "Subsidy Agreement" shall mean an agreement between the Association and the Declarant pursuant to which Declarant agrees to provide financial assistance to the Association in lieu of paying Annual Assessments and Special Assessments.

1.93 Successor Declarant. "Successor Declarant" shall mean any and all successors-in-interest of Declarant which acquire Declarant's entire interest in the Property, and to whom Declarant's Rights under the Master Declaration have been assigned and which assume all of Declarant's obligations hereunder pursuant to a written agreement executed by the transferor Declarant and the transferee Successor Declarant and which is Recorded. Declarant and each Successor Declarant who is a transferor

Declarant shall cease to be the Declarant hereunder upon Recordation of such written assignment.

1.94 Supplemental Declaration. "Supplemental Declaration" shall mean a Recorded written instrument executed by Declarant or jointly by Declarant and a Builder pursuant to Article II, hereof, which affects a particular Phase, Project or Projects within the Property, which refers to this Master Declaration and which supplements this Master Declaration, but is not in conflict with its terms. The Supplemental Declaration may amend the Declaration of Annexation so long as such amendment does not delete the minimum requirements for the Declaration of Annexation set forth in Section 2.3.3, hereof.

1.95 Time Share. "Time Share" shall mean the right to use and occupy a room or suite of rooms on a recurrent periodic basis according to an arrangement among various Persons.

1.96 Unit. "Unit" shall mean a Parcel, Lot or Condominium Unit within the Property designated for separate ownership, the boundaries and identifying number of which are or will be defined on a Final Map, and in the case of a Condominium Unit, in the Project Declaration for such Unit. Unit shall not include a room or suite of rooms in a Hotel/Time Share Project, whether or not a condominium plat or plan has been Recorded establishing each room or suites of rooms as a separate condominium unit. In the case of a Hotel/Time Share Project, the entire Project shall be deemed to be one Unit. "Unit" shall not include any Common Areas or Limited Common Elements.

1.97 VA. "VA" shall mean the Veterans Administration of the United States of America and any department or agency of the United States government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

1.98 Violation Assessment. "Violation Assessment" shall mean any assessment by the Association levied and assessed in accordance with Section 8.7 hereof.

1.99 Visible From Neighboring Property. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible from outside the boundaries of the Lot or Parcel on which such object is located to a Person six (6) feet tall, standing at ground level.

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ARTICLE II

DEVELOPMENT, ANNEXATION AND DEANNEXATION

2.1 General Intent. This Article II describes Declarant's overall concept in the development of Queensridge as an exclusive master-planned community of homes, shopping centers, offices and other commercial uses and Common Areas. Article II provides, among other things, for the phased development of the community, describes the types of development which may be included in the community and the manner in which each phase is added to Queensridge. Certain Common Areas of the Property, to be designated by the Declarant on a Final Map, in a Declaration of Annexation or Supplemental Declaration, are intended for the use, benefit and enjoyment of all Owners. Portions of the Common Areas may be designated for use as maintenance or service areas to enable the Association to maintain the Queensridge community in a manner consistent with the highest standards of quality. Other Common Areas may be designated as Limited Common Elements for the exclusive use, benefit and enjoyment of Owners within the Residential Areas of the Property or for the exclusive use, benefit and enjoyment of Owners within a Special Benefits Area. Certain Project Types, such as Condominium Projects (whether residential or commercial), Multiple-Dwelling Projects and some Commercial Project Types, are intended to have Project Common Areas for the exclusive use and benefit of one or more Projects of the same Project Type. This Master Declaration provides that maintenance of each of the Project Common Areas is the sole responsibility of the Project Association established pursuant to a Declaration of Annexation or Supplemental Declaration to administer such Project Common Area.

2.2 Project Types. The Project Types which, in Declarant's sole discretion, may be included within the Property are as follows:

(a) Single-Family Residential Projects which may contain one (1) or more of the following Residential Products:

(i) Custom Lots;

(ii) Luxury Lots;

(iii) Executive Lots;

(iv) Upgrade Lots; or

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(v) Such other Residential Products which may be designated by Declarant in any Declaration of Annexation, Supplemental Declaration or Master Plan and which are consistent with the applicable Land Use Ordinances;

(b) Multiple-Dwelling Projects;

(c) Residential Condominium Projects which may contain one (1) or more of the following Residential Products:

(i) Executive Condominiums;

(ii) Upgrade Condominiums;

(iii) Move-up Condominiums; or

(iv) Such other Residential Products which may be designated by Declarant in any Declaration of Annexation, Supplemental Declaration or Master Plan, and which are consistent with applicable Land Use Ordinances;

(d) Commercial/Office Projects;

(e) Shopping Center Projects;

(f) Hotel/Time Share Projects; and

(g) Such other Project Types as may be designated by Declarant in any Declaration of Annexation or Supplemental Declaration or Master Plan which are consistent with the applicable Land Use Ordinances.

2.3 Annexation.

2.3.1 Declarant's Right of Annexation. Declarant, and Declarant alone, may, but shall not be required to, at any time or from time to time and without the consent of the Members, add to the Property covered by this Master Declaration all or any portion of the Annexable Property then owned by Declarant, by Recording a Declaration of Annexation executed by Declarant with respect to real property which is being annexed (the "Annexed Property"). Declarant's exclusive right to annex portions of the Annexable Property not previously annexed shall terminate only if neither of the following events occurs within any ten (10)-year period: (i) the issuance by any DRE of

a property report, public offering statement, permit, exemption or waiver, for the sale of any Phase of Lots, Condominiums or Time Share interests within the Property; or (ii) the Recordation of a Declaration of Annexation for any portion of the Property (herein "Declarant's Annexation Rights Termination Date"). The provisions of this Section 2.3.1 are collectively referred to herein as "Declarant's Annexation Rights." Declarant's Annexation Rights and other developmental rights may be exercised with respect to portions of the Annexable Property at different times. No assurances are made by Declarant as to the boundaries of those portions or the order of any annexation of such portions. If Declarant's Annexation Rights or other developmental rights are exercised in any portion of the Annexable Property, there is no requirement that such rights be exercised in all or any portion of the remaining Annexable Property.

2.3.2 Annexation With the Approval of the Membership. From and after Declarant's Annexation Rights Termination Date, any annexation of Annexable Property shall require the approval of Declarant and the non-Declarant Members entitled to exercise a majority of the voting power of the Association. In such cases where the Declarant and the Members have such right of approval, the Declaration of Annexation must be signed by the Declarant and at least two (2) officers of the Association, certifying that the approval of such required percentage of Members has been obtained.

2.3.3 Contents of Declaration of Annexation. In addition to any requirements imposed by Chapter 116 of the Nevada Revised Statutes ("NRS"), the Declaration of Annexation shall contain the provisions described in this Section 2.3.3 and such other provisions not inconsistent with the provisions of this Master Declaration which the Declarant shall deem to be appropriate.

a. Master Declaration Reference. A reference to this Master Declaration, which reference shall state the date of Recordation of this Master Declaration and the instrument number or other relevant Recording data of the official records of the County.

b. Extension of General Plan. A statement that the provisions of this Master Declaration shall apply to the Annexed Property and that the provisions of the Master Declaration are incorporated by reference.

c. Description. A sufficient description of the Annexed Property incorporating by reference the Final Map under which the Units in the Annexed Property were created, including the identifying number of each as shown on the Final Map. If the Annexed Property is an unmapped Phase, then a Supplemental Declaration shall be

recorded after the subdivision or condominium Final Map is Recorded which states the identifying number for each Unit.

d. Project Type. A designation of the Project Types within the Annexed Property and the location within the Annexed Property of each Project Type, including, as applicable, the number of Condominium Units, Single-Family Residences, the maximum number of square feet of interior floor area of the buildings which are or may be constructed within a Commercial Project Type, and such other information as is necessary for purposes of the computations described in Section 8.3, hereof.

e. Limited Common Elements. A description of the Limited Common Elements (including any Special Benefits Area Amenities) within the Annexed Property.

f. Voting Classes. Except as otherwise provided in subsection (m) of this Section 2.3.3, a designation of the Voting Class(es) (defined in Section 6.2.3, hereof) attributable to the Annexed Property, and if more than one (1) Voting Class is attributable to the Annexed Property, then a description of the portions of the Annexed Property to which each Voting Class is attributable.

g. Reallocation. Except as otherwise provided in subsection (m) of this Section 2.3.3, a reallocation of the allocated interests among all Units within the Property using the formula set forth in Section 8.3, hereof.

h. Assessment Units. Except as otherwise provided in subsection (m) of this Section 2.3.3, the Declaration of Annexation shall state the number of Assessment Units attributable to the Annexed Property in accordance with the provisions of this Master Declaration. If the Annexed Property is a Commercial Project Type, the number of Assessment Units to be allocated to each Unit within such Annexed Property shall be established in the Declaration of Annexation, and if such allocation is based on the square footage of building space, then the maximum building square footage within such Project.

i. Association Property. A designation of any property within the Annexed Property which is to become Association Property, and a description of all liens and encumbrances (other than this Master Declaration, the Declaration of Annexation and any Supplemental Declaration) which will affect such Association Property at the time of its transfer to the Association. As to each Project, control over

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the completed Association Property therein, if any, shall be transferred to the Association in accordance with the provisions of this Master Declaration.

j. **Project Association**. A statement of whether the Annexed Property (or any portion thereof) will be governed by a Project Association, and, if so, a designation of the Project Common Area, if any, which is to be maintained by such Project Association. A Project Association shall be established when the Annexed Property is to be developed as: (i) a Condominium Project, (ii) a Multiple-Dwelling Project, (iii) a Time Share Project, or (iv) as any Commercial Project Type containing, or which may contain, more than one (1) Unit. In all other cases, a Declaration of Annexation or a Supplemental Declaration may, but need not, provide for a Project Association. In the event a Project Association is established, the Declaration of Annexation may provide for the right of Declarant to annex to the Project(s) covered by such Declaration of Annexation, additional Projects of the same Project Type all of which are to be governed by one Project Association.

k. **Special Benefits Area**. If the Annexed Property or any portion thereof is to be within a Special Benefits Area, then a statement of that fact and an identification of any Special Benefits Area Amenities or special services initially to be provided by the Association to the Special Benefits Area, the cost of which shall be defrayed by a Special Benefits Area Assessment. Such Special Benefits Area services provided by the Association may include, for example, concierge services, exterior painting of residences or front yard landscape maintenance.

l. **Amendment**. Declarant may amend any Declaration of Annexation by a written amendment executed by Declarant and Recorded, provided that (i) Declarant is the owner of all of the Annexed Property (other than publicly owned property) affected by such Declaration of Annexation, or (ii) the amendment is required by any DRE or the provisions of NRS Chapter 116. Notwithstanding anything to the contrary contained herein, Declarant may unilaterally amend the provisions in any Declaration of Annexation to change the types of Residential Products to be constructed on any Lot or Parcel owned by Declarant and the Voting Classes assigned thereto pursuant to Section 6.2.3, hereof; and Declarant and a Builder may jointly amend such provisions in a Declaration of Annexation for Lots governed thereby which are owned by such Builder. The amendment rights conferred upon the Declarant solely and the Declarant and a Builder jointly shall exist whether or not Declarant or such Builder own all of the Units within the Phase in which the affected Units are located.

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m. Annexation of "Super-Pads". In the event the Annexed Property is a parcel which is intended by the Declarant to be further subdivided (herein referred to as a "Super-Pad"), then Declarant shall have the unilateral right to supplement the Declaration of Annexation upon the recordation of a Final Map for the subdivided Super-Pad with such information as may be necessary to comply with the provisions of this Section 2.3.3. The Owner of a Super-Pad shall have no voting rights in the Association until the Final Map subdividing the Super-Pad has been Recorded. The term "Super-Pad" shall include a Parcel which is a Condominium Project Type for which a Final Map has not been Recorded.

2.3.4 Effect of Recording Declaration of Annexation. The Recording of a Declaration of Annexation covering any portion of the Annexable Property shall cause such Annexed Property to become a part of the Property and subject to the provisions of this Master Declaration and any other Applicable Declarations, and effective upon such Recording, such Annexed Property shall be subject to the functions, powers and jurisdiction of the Association.

2.3.5 Supplemental Declarations. Declarant may, in its sole discretion, for Annexed Property owned solely by Declarant, execute and Record as a separate declaration or as part of any Declaration of Annexation, one or more Supplemental Declarations which incorporate this Master Declaration therein by reference and impose such additional and further covenants, conditions and restrictions for the operation, protection and maintenance of the Annexed Property as Declarant may deem advisable, so long as the provisions of such Supplemental Declaration are not in conflict with this Master Declaration, taking into account the particular requirements of the Project(s) for which the Supplemental Declaration shall be recorded. Declarant and a Builder jointly may execute and Record a Supplemental Declaration for any Project owned solely by such Builder. Declarant or the Owner of a Hotel converted to a Condominium Project shall record a Supplemental Declaration as provided in Section 12.8 hereof. If there is any conflict between any Supplemental Declaration and the provisions of this Master Declaration, the provisions of this Master Declaration shall control, although such documents shall be construed to be consistent with one another to the extent possible. If there is any conflict between the terms of any Declaration of Annexation and any Supplemental Declaration covering the same portion of the Property, then the Declaration of Annexation shall control. If there is any conflict between any Development Covenants and a Declaration of Annexation or Supplemental Declaration covering the same portion of the Property, the Development Covenants shall control until their termination or expiration. The inclusion in any Supplemental Declaration of conditions, covenants, land uses and limitations which are more restrictive or more

inclusive than the provision of this Master Declaration shall not be deemed to constitute a conflict with the provisions of this Master Declaration or the applicable Declaration of Annexation. The Declarant may amend a Supplemental Declaration, including the designation of any Project Type or Residential Product therein, by a written amendment, executed by Declarant and Recorded, provided that: (i) Declarant is the owner of all of the property (other than publicly owned property) affected by the Supplemental Declaration, or (ii) the amendment is required by any DRE or the provisions of NRS Chapter 116. All other amendments to the Supplemental Declaration shall be governed by the provisions of the Supplemental Declaration.

2.3.6 **Supplemental Declaration for Property Described in Exhibit "A"**. Notwithstanding anything to the contrary set forth herein, Declarant shall execute and cause to be Recorded, in Declarant's sole discretion, at any time that Declarant owns all of the Property described in **Exhibit "A"** to this Master Declaration, or Declarant and any Builder may jointly execute and cause to be Recorded for any portion of the Property described in **Exhibit "A"** which is owned by such Builder, a Supplemental Declaration which contains any or all of the provisions applicable to Declarations of Annexation, including amendment rights, and any other provisions which the Person(s) executing such Supplemental Declaration desire to include, so long as such provisions are not in conflict with this Master Declaration.

2.4 **Deannexation**. Subject to the provisions of this Section 2.4, Declarant and only Declarant may remove a portion of the Property from coverage of this Master Declaration and the jurisdiction of the Association, so long as Declarant is the Owner of all of such property (other than publicly owned property). For any portion of the Property which is to be deannexed ("Deannexed Property") (i) a Declaration of Deannexation executed by Declarant must be Recorded which legally describes that portion of the Property which is being deannexed and which reallocates the allocated interests among the remaining Units within the Property, using the formula set forth in Section 8.3, hereof; and (ii) if such property is a Residential Project Type approved by VA or FHA, VA or FHA, as applicable, must have approved in writing such deannexation to the extent required by applicable laws or regulations.

2.5 **Reallocation of Assessments Upon Annexation or Deannexation of Units**. Except in the case of any Annexed Property or Deannexed Property which is Common Area or Limited Common Elements, the fraction described in Section 8.3, hereof, by which Assessments are allocated among the Units, shall be reallocated to include the Units within the Annexed Property, or to exclude the Units within the Deannexed Property. In the case of Units within the Annexed Property, such reallocation shall be

effective upon the date on which the Annual Assessment commences within such Phase of the Annexed Property pursuant to the provisions of Section 8.4.2, hereof. In the case of Units within the Deannexed Property, the reallocation pursuant to Section 8.3, hereof, shall take place upon the Recordation of the Declaration of Deannexation.

2.6 Interpretation. In the event any provision of a Declaration of Annexation or Supplemental Declaration conflicts with the terms of this Master Declaration, the provisions of this Master Declaration shall control. In the event any provision of a Supplemental Declaration conflicts with a Declaration of Annexation governing the same Project, then the provisions of the Declaration of Annexation shall control.

ARTICLE III

DESIGNATION AND TRANSFER OF COMMON AREAS; OWNERS RIGHTS OF USE AND ENJOYMENT; ASSOCIATION EASEMENTS

3.1 General Intent. The purpose of this Article III, among other things, is to provide for the transfer of title from Declarant to the Association of those portions of the Common Areas which are to become Association Property and to provide for the Association's acceptance of responsibility for the care and maintenance of the Association Property and other Common Areas not owned by the Association, but which the Association will be required to maintain. This Article also establishes easements for the Owners use and enjoyment of the Common Areas subject to the restrictions set forth in this Master Declaration and in the Rules and Regulations. This Article further provides for the dedication of Association Property for use as a bike path at such time as West Charleston Boulevard is widened. By the provisions of this Article, each Owner acknowledges the potential for Golf Hazards and accepts title to such Owner's Unit with knowledge of this risk.

3.2 Transfer and Acceptance.

3.2.1 Transfer of Title to Association Property. As each Phase of the Property is developed, Declarant shall convey to the Association fee simple title to any Association Property designated by Declarant to be associated with such Phase or Phases or with the Property as a whole. The Association Property shall be conveyed to the Association free and clear of all liens and encumbrances, except the following:

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(a) The provisions of this Master Declaration, including, but not limited to, all Declarant's Rights;

(b) The lien of any non-delinquent real property taxes and governmental assessments on the Association Property;

(c) Such easements or rights of way on, over, or under all or any part of such Association Property as may be (i) reserved to Declarant hereunder or under any Recorded instrument, (ii) granted to the Owners or any group of Owners for use in accordance with the provisions of this Master Declaration, or (iii) granted to or for the benefit of any political subdivision, public organization, or utility for the purpose of constructing, erecting, operating, and maintaining thereon, at any time: roads, streets, trails, walks, bike paths, driveways, parkways, and park areas; poles, wires, conduits for transmission of electricity, telephone, communication and cable or master antenna television for the Property and the necessary attachments connected therewith; and public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any and all equipment connected therewith;

(d) A reservation in favor of Declarant of any and all water rights which are appurtenant to the Association Property, but not necessary for its development or operation;

(e) The obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of Nevada, the County, the City or any other political subdivision or public organization having jurisdiction over the Property or the sales thereof, or by any organization or political body created pursuant to any such statute, law, ordinance, or regulation;

(f) The requirement that in the event and at such time as West Charleston Boulevard is widened, the Association must dedicate to the appropriate governmental authority a strip of land along West Charleston Boulevard for use as a bike path as designated by such governmental authority; and

(g) All other easements, encumbrances and other matters affecting title of any kind whatsoever, except (i) liens securing an obligation to pay money to a Person other than a governmental entity or utility company servicing the Association

Property; and (ii) matters which would materially and actually prejudice Owners in the use and enjoyment of their Units.

3.2.2 Other Common Areas. Declarant may designate in a Declaration of Annexation or a Supplemental Declaration any other Common Areas associated with a Phase or Phases or with the Property as a whole which the Association will not own but shall be required to maintain.

3.2.3 Unconditional Obligation to Accept. Subject to the provisions of Section 3.2.5, below, the Association shall be unconditionally obligated to accept title to, and responsibility for the maintenance of each parcel of Association Property at the time of its acquisition by the Association, and to accept responsibility for the maintenance of all other Common Areas at the time such property is designated by Declarant as Common Area.

3.2.4 Transfers Associated with Residential Project Types. Declarant shall be required to convey to the Association any Association Property within or associated with each Phase of a Residential Project Type within one (1) year after the date of close of escrow for the first sale of a Unit within such Phase to a purchaser who is not a Builder, Declarant or a Successor Declarant, or on such later date as may be permitted by any DRE having jurisdiction over the sale of the Units within such Phase.

3.2.5 Character of Common Area Improvements. Declarant shall determine in its sole and absolute discretion the nature, design, quantity, quality and other attributes of the Common Areas, and the Improvements thereon. In the event the Improvements to any Association Property or Common Area are not completed or the Annual Assessment or Special Benefits Area Assessment has not yet commenced at the time Declarant conveys any Association Property to the Association or designates any Common Area for maintenance by the Association, then Declarant shall continue to have the maintenance responsibility therefor until completion of the Improvements by the Declarant and the establishment of the appropriate Assessment. As the maintenance responsibility of each portion of the Common Areas or Special Benefits Area Amenities is transferred from Declarant to the Association, Declarant shall provide the Association with copies of any and all "as built" surveys and plans and specifications relating thereto which are then in the possession of Declarant.

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3.3 Common Area Use and Enjoyment.

3.3.1 Grant of Non-Exclusive Easements in Common Area. Except for any Common Areas which are designated as Special Benefits Area Amenities, and except as otherwise provided in Section 3.3.4 hereof, each Owner, the members of such Owner's immediate family and such Owner's guests shall have a non-exclusive easement of use and enjoyment in, to and throughout the Common Areas for the purposes and subject to the limitations set forth in this Master Declaration and the Rules and Regulations. Such easement shall be appurtenant to such Owner's Unit and shall pass with the title thereto.

3.3.2 Grant of Exclusive Easements in Special Benefits Area. Declarant may, in its sole discretion, designate in a Declaration of Annexation or Supplemental Declaration any Common Area owned by Declarant as Limited Common Elements for use exclusively by the Owners of Units within a Special Benefits Area as a Special Benefits Area Amenity, in which case the Owners within the Special Benefits Area, collectively, shall have exclusive easements of use and enjoyment in, to and throughout the Special Benefits Area Amenities.

3.3.3 Tenants. Any Owner who has leased such Owner's Unit to a tenant or tenants ("Tenant") shall be deemed to have assigned such Owner's rights of use of the Common Areas and Special Benefits Area Amenities, if any, to the Tenant, provided that such Owner has complied with the provisions of Section 5.2.12, hereof.

3.3.4 Limitations on Owners and Tenants of Commercial Project Types. Unless otherwise specified in a Declaration of Annexation or Supplemental Declaration, the Common Area easements granted to Owners and Tenants of Commercial Project Types and their respective employees, representatives and business invitees shall be limited to easements in, to, over and through such of the private roadways within the Property which serve as access to such Commercial Project for purposes of pedestrian and vehicular ingress and egress and the installation, repair, maintenance and replacement of utility lines.

3.4 Golf Course Liabilities. By accepting the deed or other instrument of conveyance to a Unit, each Owner, for himself and his invitees, personal representatives, assigns, and heirs (collectively, the "Owner's Related Parties") hereby (i) acknowledges the potential effect on his property of stray golf balls and other events inherent to the activities of a golf course near the Property (the "Golf Course Hazards"), (ii) assumes the risk of any property damage, personal injury, creation or maintenance of a trespass or

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nuisance created by or arising in connection with the Golf Course Hazards (collectively, the "Assumed Risks"), and (iii) releases, waives, discharges, covenants not to sue, indemnifies and agrees to hold harmless Declarant, the Association, the Board, the other Members, the owners and lessees of the golf course, all golf course managers and operators, all Builders and each of their respective officers, directors, shareholders, affiliates, employees, agents, representatives, successors and assigns (collectively, the "Released Parties"), and each of them, from any and all liability to the Owner or Owner's Related Parties for any losses, costs (including, without limitation, attorneys' fees), claims, demands, suits, judgments or other obligations arising out of or connected with any of the Assumed Risks, whether caused by the negligence of the Released Parties or otherwise. Notwithstanding the foregoing, however, in no event shall this Section 3.4 relieve any golfer from any claims or liability for any Golf Course Hazard caused by such golfer.

3.5 Association Use of Common Area. As the owner or lessee of the Association Property, the Association shall have all rights of use thereof which are consistent with fee simple ownership or the terms of its lease, as the case may be, subject only to the terms of this Master Declaration. As to all other Common Areas, there is hereby granted to the Association easements over such Common Areas for the purpose of performance of its duties and the exercise of its rights under this Master Declaration.

ARTICLE IV

DESIGN REVIEW

4.1 General Intent. The purpose of Article IV, among other things, is to establish a Design Review Committee to review Construction Activities within the Property, with the exception of the Construction Activities of the Declarant, Construction Activities of Builders pursuant to a contract with Declarant and certain Construction Activities conducted within Commercial Projects. The Design Review Committee will administer and enforce, with the assistance of the Board, the Master-Planned Community Standards. The Association's Architect (defined below) and the Association's Landscape Consultant (defined below) shall at all times be hired by the Association to assist the Design Review Committee in performing its duties.

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4.2 Master-Planned Community Standards.

4.2.1 Adoption. The Master-Planned Community Standards shall include site planning, architectural design and landscaping standards for each of the Residential Products. Declarant may, but shall not be required to, adopt Master-Planned Community Standards for Commercial Project Types. Prior to Declarant's DRC Appointment Rights Termination Date, Declarant shall have the exclusive right to adopt sections of the Master-Planned Community Standards applicable to each of the Residential Product Types to be constructed within the Property. In the event Declarant fails to adopt Master-Planned Community Standards for any Residential Product prior to Declarant's DRC Appointment Rights Termination Date, then the Design Review Committee shall adopt the same after consultation with the Association's Architect; provided, however, that any such Master-Planned Community Standards adopted by the Design Review Committee shall be consistent with the size, type and quality of existing Residences within the Property which have been classified as such Residential Product in a Declaration of Annexation or Supplemental Declaration. Attached hereto as Exhibit "D" are general sections of the Master-Planned Community Standards applicable to all Construction Activities. As each section of the Master-Planned Community Standards is adopted, it shall be recorded as a supplement to Exhibit "D" of this Master Declaration and become a part hereof upon such Recordation.

4.2.2 Amendment. Subject to the limitations set forth in this Section 4.2.2, the Master-Planned Community Standards may be amended by the Declarant, only, prior to Declarant's DRC Appointment Rights Termination Date, and thereafter by a two-thirds (⅔) majority vote of all of the members of the Design Review Committee; provided, however, that any such amendment which materially changes the quality, size or character of any Residential Product shall not be effective until it is approved as an amendment to this Master Declaration in accordance with the provision of Section 13.2.2 hereof, and further provided that no such amendment shall affect any then existing Improvement constructed and approved in accordance with Article IV of this Declaration. Notwithstanding anything to the contrary set forth herein, Declarant shall have the unilateral right to amend the Master-Planned Community Standards at any time prior to the formation of the Design Review Committee.

4.2.3 Purpose and Duties of Design Review Committee. The Design Review Committee shall administer, interpret and enforce the Master-Planned Community Standards. The Design Review Committee shall conduct its activities in accordance with the procedures set forth in the Master Declaration and the Master-Planned Community

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Standards, and may adopt such additional procedural rules which are reasonably necessary to carry out its functions.

4.2.4 Interpretation. In the event of any conflict between the Master-Planned Community Standards or any procedural rules adopted by the Design Review Committee and this Master Declaration, this Master Declaration shall prevail.

4.3 Organization of Design Review Committee; Scope of Review.

4.3.1 Members; Association's Architect; and Association's Landscape Consultant. The Design Review Committee shall consist of five (5) regular members and one alternate member. The alternate member shall serve as a Design Review Committee member only if a regular member is absent or becomes incapacitated. All of the regular members and the alternate member of the Design Review Committee shall be appointed by Declarant for so long as Declarant owns (i) any portion of the Property, or (ii) any portion of the Annexable Property and Declarant's Annexation Rights have not terminated. From and after the date on which such appointment rights of Declarant terminate (herein "Declarant's DRC Appointment Rights Termination Date"), the regular members and the alternate member of the Design Review Committee shall be appointed by the Board for terms not exceeding two years and shall serve at the pleasure of the Board. The members of the Design Review Committee appointed by Declarant need not be architects or Members of the Association and need not possess any special qualifications. The members of the Design Review Committee who are appointed by the Board must be Members of the Association, but need not be architects or possess any special qualifications. Any member of the Design Review Committee may be removed at any time without cause by the Person appointing such member as provided herein. The Association's Architect and the Association's Landscape Consultant shall serve as advisors to the Design Review Committee and shall be consulted on all Design Review Committee decisions.

4.3.2 Notice of Appointment. Whenever a Design Review Committee member is appointed or removed by Declarant, written notice to the Board of such appointment or removal shall be given by the Declarant.

4.3.3 Scope of Review. The Design Review Committee shall review and approve or disapprove all plans and specifications submitted to it for any proposed Improvements, any alteration or addition to, or demolition of, any Improvement, and any other Construction Activities on the basis of the considerations set forth in this Master Declaration, the Master-Planned Community Standards and similar considerations. None

of (i) the members of the Design Review Committee, (ii) the Association's Architect, or (iii) the Association's Landscape Consultant shall be responsible to any Owner for reviewing any plan or design from the standpoint of structural safety or conformance with building codes or other governmental requirements.

4.4 Construction Activities Defined; Exemptions.

4.4.1 Review of Construction Activities. Except as otherwise provided in Article XII of this Master Declaration and subsections (a) through (d), inclusive, of this Section 4.4.1, no construction, development, painting, alteration, grading, addition, excavation, modification, decoration, redecoration, reconstruction or demolition of an Improvement within the Property, or any other similar activity (collectively, "Construction Activities") shall be commenced or maintained by any Owner or Project Association until the plans and specifications therefor showing the nature, design, kind, scope, height, width, color, materials, location and other aspects of the same have been submitted to the Design Review Committee and approved in writing by the Design Review Committee.

a. Declarant. Declarant need not seek approval of the Design Review Committee with respect to any of its construction or development activities including, without limitation, any Construction Activity.

b. Builders. No Construction Activity of a Builder which has been approved by Declarant shall be subject to the provisions of this Article IV.

c. Commercial Project Types. Owners of Parcels improved or to be improved with Commercial Project Types shall obtain the approval of Declarant prior to engaging in any Construction Activity until Declarant's DRC Appointment Rights Termination Date. Thereafter, except as otherwise provided in subsection 4.4.1(d), below, all such Construction Activities shall be approved by the Design Review Committee.

d. Reconstruction of Improvements Approved by Declarant. In the event any Improvement which is constructed by Declarant or approved by Declarant pursuant to the provisions hereof within a Commercial Project Type is damaged or destroyed, then such Improvement may be reconstructed without the approval of the Design Review Committee, so long as such reconstructed Improvement is substantially similar to the damaged or destroyed Improvement or complies with the general

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specifications for such type of development, if any, set forth in the Master-Planned Community Standards.

4.4.2 Professionals and Consultants. The Board shall hire a qualified Architect licensed in Nevada who is not an Owner and who holds no interest in any entity which is an Owner (the "Association's Architect") to advise the Design Review Committee on matters which come before it. The Board shall hire a qualified landscape consultant who is not an Owner and who holds no interest in an entity which is an Owner (the "Association's Landscape Consultant") to serve as an advisor to the Design Review Committee and the Board regarding the administration of such portions of the Master-Planned Community Standards which deal with landscaping and the proper care, husbandry and maintenance of all plantings and replantings within the Property which the Association is required to maintain in an aesthetically pleasing state consistent with the high standards of Queensridge. The Association's Architect and the Association's Landscape Consultant shall be present at every meeting of the Design Review Committee. Subject to the approval of the Board, the Design Review Committee shall have the right to engage such landscape architects, designers, planners and other professionals and consultants, including attorneys, if necessary (collectively, "Professionals"), as the Design Review Committee deems necessary or appropriate to enable the Design Review Committee to perform its duties under this Article IV.

4.4.3 Preparation and Submission of Plans and Specifications. All Plans and Specifications submitted to the Design Review Committee for the construction of any building or other structure shall be prepared by professionals licensed in the State of Nevada. Persons submitting proposals or plans and specifications to the Design Review Committee (such Person is referred to in this Section as "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the Design Review Committee with the address to which further communications from the Design Review Committee are to be directed. A reasonable fee to be established by the Design Review Committee to defray the costs to the Design Review Committee in reviewing the plans and specifications and performing its functions under this Master Declaration and the Master-Planned Community Standards, shall accompany such submission. In the event the Design Review Committee determines, in its sole discretion, that it will require the assistance of a Professional other than the Association's Architect or the Association's Landscape Consultant in performing its functions with respect to any submission, then after obtaining approval of the Board as provided above and after informing the Applicant of the reason for hiring the Professional and the amount of the fee of such Professional, the Design Review Committee may require that the Applicant pay an additional fee for the performance of such function in an amount, and upon payment terms, as may be

agreed upon by the Professional and the Design Review Committee. The fee of the Professional shall be paid by the Applicant in full prior to the Design Review Committee's approval of the plans and specifications. All fees, bonds and other monetary reimbursement collected by the Design Review Committee pursuant to this Article IV shall be payable to the Association and immediately turned over to the Treasurer of the Association. All expenses incurred by the Design Review Committee shall be paid from funds deposited with the Association. The Design Review Committee may, but shall not be obligated to, further require that proposals or plans and specifications submitted by an Applicant first be reviewed and approved by the board of directors of any Project Association which administers the Project in which Construction Activity will take place. Conditions and requirements imposed by the Design Review Committee shall supersede any and all conflicting conditions or requirements which may be imposed by any Project Association. The Design Review Committee's determination of the existence of a conflict or discrepancy between the conditions or requirements imposed by the Design Review Committee and those imposed by a Project Association shall be binding and conclusive upon such Project Association and the Applicant submitting proposals or plans and specifications for any Construction Activity.

4.4.4 **Approval Criteria**. The Design Review Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Master Declaration and perform such other duties as are specified in this Master Declaration, including the inspection of construction in progress to determine its conformance with plans approved by the Design Review Committee. The Design Review Committee shall approve plans and specifications submitted for its approval only if it deems that (i) the proposed Construction Activity is in conformance with the Master-Planned Community Standards, (ii) the proposed Construction Activity will not be detrimental to the appearance of the surrounding area or the Property as a whole, (iii) the appearance of any structure affected thereby will be in harmony with the surrounding structures, and (iv) the Construction Activity and the product thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members; and (v) such additional criteria as are set forth in the Master-Planned Community Standards.

4.4.5 **Obligations of Applicants**. The Design Review Committee may condition its approval of proposals or plans and specifications for any Improvement (i) on the agreement by the Applicant submitting the same to furnish to the Design Review Committee Board a bond or other security acceptable to the Design Review Committee in an amount reasonably sufficient to (a) assure the completion of such Improvement or the availability of funds adequate to remedy any nuisance or unsightly conditions

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occurring as a result of the partial completion of such Improvement, and (b) to protect the Association and the other Owners against mechanic's liens or other encumbrances which may be Recorded against their respective interests in the Property or from potential damage to the Association Property or any Common Area as a result of such work, (ii) or such changes therein as the Design Review Committee deems appropriate, and in connection therewith, require the submission of additional plans and specifications or other information prior to approving or disapproving materials submitted.

4.4.6 Submittal Requirements. All submittals to the Design Review Committee shall be in accordance with the requirements of the Master-Planned Community Standards. The Design Review Committee may require such additional detail in plans and specifications submitted for its review as it deems proper. Until receipt by the Design Review Committee of all required submittals, the Design Review committee may postpone review of any plan submitted. The decision of the Design Review committee or a request for further information and the reasons therefor shall be transmitted in writing by the Design Review Committee to the Applicant at the address furnished by the Applicant, within the time period specified. If no written approval or request for further information is so transmitted within the approval period set forth in the Master-Planned Community Standards, then the materials submitted shall be deemed approved by the Design Review Committee.

4.4.7 Meetings. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. Except as set forth in this Article, the vote of a majority of the members of the Design Review Committee, or the written consent of a majority of the members of the Design Review Committee taken without a meeting, shall constitute an act of the Design Review Committee.

4.4.8 No Waiver of Future Approvals. The approval of the Design Review Committee of any proposals or plans and specifications or drawing for any Construction Activity done or proposed or in connection with any other matter requiring approval and consent of such Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

4.4.9 Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

a. **Certificate of Compliance**. The Design Review Committee or its duly appointed representative may at any time inspect any Improvement for which approval is required under this Article. However, the Design Review Committee's right of inspection and disapproval of Improvements for which plans have been submitted and approved shall terminate thirty (30) days after the work of Improvement has been completed and the Applicant has given written notice to the Design Review Committee of such completion ("Inspection Period"). The Design Review Committee's rights of inspection shall not terminate if plans for the work of Improvement have not previously been submitted to and approved in writing by the Design Review Committee. If the Design Review Committee or its duly appointed representative determines that the Improvement has been constructed in accordance with the approved plans and specifications, then it shall issue a Certificate of Compliance giving the address of the Lot or Parcel upon which the Improvement was constructed, a brief description of the plans and the date which such plans were approved and certifying that for purposes of this Article IV the Improvement was constructed in accordance with the approved plans and specifications. If, as a result of such inspection, the Design Review Committee Review Board finds that such Improvement was done without obtaining written approval of the plan therefor or was not done in substantial compliance with the plans approved by the Design Review Committee, the Design Review Committee shall notify the Applicant in writing of failure to comply with this Article IV within the Inspection Period, specifying the particulars of noncompliance ("Notice of Noncompliance"). The Design Review Committee shall have the authority to require the Applicant to take such action as may be necessary to remedy the noncompliance.

b. **Failure to Remedy Noncompliance**. If, upon the expiration of thirty (30) days from the date a Notice of Noncompliance is given to the Applicant, the Applicant has failed to remedy the noncompliance, the Design Review Committee shall notify, in writing, the Board of the Association of such failure. The Board of the Association shall convene a Hearing Panel in accordance with Section 5.2.9(g) to determine whether there is noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than sixty (60) days from the date that notice of the Board ruling is given to the Applicant. If the Applicant does not comply with the Board ruling within that period, the Board, at its option, may Record such ruling and may peacefully remedy the noncompliance, which remedy may include removal of any non-conforming Improvement, and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Applicant to the Association, the Board of the Association shall levy a Violation Assessment against such Applicant for reimbursement

of such expenses. The right of the Association to remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Master Declaration, and may be exercised, in the Board's discretion, after a Violation Assessment has been levied and collected, provided that the Board follows the procedures set forth in Section 5.2.9(g)(5) to determine the amount of such Violation Assessment.

c. Failure to Issue Notice of Noncompliance. If the Design Review Committee fails, prior to the expiration of the Inspection Period, to either (i) issue a Certificate of Compliance, or (ii) give to the Applicant a Notice of Noncompliance in connection with previously submitted and approved plans, the Improvement shall be deemed to be constructed in accordance with such approved plans and a Certificate of Compliance shall be deemed to have been issued for all purposes.

d. Prosecution of Work. The Design Review Committee approval for any particular Construction Activity shall expire and the plans and specifications therefor shall be resubmitted for Design Review Committee approval pursuant to this Article IV if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months of the Design Review Committee's approval of such Construction Activity. All Construction Activities shall be performed as promptly and diligently as possible.

4.4.10 Compliance with Master-Planned Community Standards; Variances. Except as otherwise expressly provided in this Master Declaration, all Improvements constructed within the Property and all Construction Activities therein shall comply with the Master-Planned Community Standards. The Design Review Committee may recommend to the Board variances ("Variances") from compliance with any of the Master-Planned Community Standards or any other architectural provisions of this Master Declaration, any Declaration of Annexation or Supplemental Declaration, including, without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Variances must be approved by (i) the Board of the Association, (ii) the board of directors of any applicable Project Association, (which approvals described in clauses (i) and (ii) above shall be evidenced in writing, and signed and sworn to by at least two (2) officers of each such association certifying such approval) and (iii) by the Declarant until Declarant's DRC Appointment Rights Termination Date. Variances shall be granted in a writing in a proper form for Recording and shall become effective upon Recordation. If a Variance is granted, no violation of the covenants, conditions and restrictions contained in this

Master Declaration or any Declaration of Annexation or Supplemental Declaration shall be deemed to have occurred with respect to the matter for which the Variance was granted. The granting of a Variance shall not operate to waive any of the terms and provisions of this Master Declaration or of any Declaration of Annexation or Supplemental Declaration for any purpose except as to the particular property and particular provision hereof covered by the Variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Lot or Parcel, including, but not limited to, zoning ordinances and setback lines or other requirements imposed by the City, County or other governmental authority.

4.4.11 No Compensation. The members of the Design Review Committee shall receive no compensation for services rendered.

ARTICLE V

USE RESTRICTIONS

5.1 General Intent. Article V covers, among other things, development and use restrictions and maintenance covenants applicable to all of the Property (Section 5.2), those restrictions which apply only to the Residential Areas (Section 5.3) and those which pertain only to the Commercial Project Types (Section 5.4). Section 5.5 describes Declarant's exemptions from Article V.

5.2 General Development and Use Restrictions. Subject to the exemptions of Declarant set forth in Section 5.5 hereof, and other Declarant's Rights as set forth in this Master Declaration, all of the Property shall be held, used and enjoyed subject to the following limitations and restrictions:

5.2.1 Antennae and Other Exterior Installations. In order to preserve the aesthetic and visual integrity of the Property, except as otherwise provided in this Section 5.2.1 or in the Master-Planned Community Standards, no exterior radio antenna, television antenna, "C.B." antenna, "satellite dish," microwave transmitting or receiving antenna or other antenna, transmitting or receiving device of any type shall be maintained on any portion of the Property. Satellite dishes up to twenty (20) inches in diameter shall be permitted in all areas of the Property, provided that the location and placement thereof shall have first been approved by the Design Review Committee. Subject to the provisions of NRS Chapter 278, no exterior air conditioning or heating unit (including solar heating devices), shall be erected or maintained on any portion of the

Property unless it is (a) completely concealed so as not to be Visible From Neighboring Property, and (b) approved in writing in accordance with Article IV, of this Master Declaration. A master antenna or cable television antenna may, but need not, be provided by Declarant, and Declarant may grant easements for the installation and maintenance of any such master or cable television service. This Section 5.2.1 shall not apply to, nor restrict, master antennae, cable television antennae or head end system for any cable television system installed by Declarant or by a franchised or licensed cable television operator approved by Declarant, or to any other communications facilities installed by Declarant.

5.2.2 Compliance With Laws. Nothing shall be done or kept in, on or about any portion of the Property, or Improvement thereon, except in compliance with all applicable federal, state and local laws, regulations and ordinances (collectively, "laws") including environmental laws.

5.2.3 Construction of Improvements. Except for the Construction Activities of Declarant and as otherwise provided in Article XII and Section 4.4.1, hereof, no Improvements shall be made to any land within the Property nor any Construction Activities conducted thereon without the prior approval of the Design Review Committee as provided in Article IV hereof.

5.2.4 Drainage; Storm Drain System. There shall be no interference with the rain gutters, downspouts, or drainage or storm drain systems originally installed by Declarant or any other interference with the established drainage pattern over any portion of the Property, unless an adequate alternative provision, previously approved in writing by the Declarant and the Design Review Committee is made for proper drainage. For purposes hereof, "established" drainage is defined as the drainage pattern and drainage Improvements which exist at the time such portion of the Property is conveyed by Declarant or a Builder to an Owner, by the Declarant to the Association, or by Declarant or a Builder to a Project Association, or as modified in accordance with plans approved by the Declarant until Declarant's DRC Appointment Rights Termination Date or, thereafter, by the Design Review Committee. There shall be no violation of the drainage requirements of the City, County, U.S. Army Corps of Engineers, or State of Nevada Division of Environmental Protection, notwithstanding any such approval of Declarant or the Design Review Committee.

5.2.5 Entrance Gates. Except for those entrance gates constructed by Declarant, or constructed by a Builder pursuant to Development Covenants between Declarant and such Builder, no entrance gate on any portion of the Property which is

designed to limit entry into any portion of the Property shall be erected, altered or maintained unless the cost thereof (including maintenance) is defrayed through a Special Benefits Area Assessment approved in accordance with the provisions of Section 8.8 hereof, and the construction of the Improvement is first approved as provided in Article IV hereof.

5.2.6 **Handicapped Rights**. Subject to the review and approval process of the Design Review Committee and applicable law, each Owner shall have the right to modify such Owner's Improvements and the route over the Parcel, Lot or Common Area (as applicable and necessary) leading to the entrance of such Owner's Improvements, at such Owner's sole cost and expense, in order to facilitate access by Persons who are blind, visually handicapped, deaf or physically disabled, to alter conditions which could be hazardous to such Persons, or to otherwise comply with the Americans with Disabilities Act.

5.2.7 **Lakes and Ponds**. Declarant may, but is not obligated to, construct ponds and lakes within the Common Areas. Unless otherwise designated for recreational use by Declarant in a Declaration of Annexation or Supplemental Declaration, such lakes and ponds are intended to provide visual enhancement to the park areas and other areas of the Property and are not to be used for swimming, snorkeling, sailing, canoeing, boating, wind surfing, fishing, scuba diving, water skiing, jet skiing or other recreational activities.

5.2.8 **Lake and Pond Water Use**. Except for Declarant, no Owner may draw or otherwise remove water from any lake or pond within the Common Area for any purpose whatsoever.

5.2.9 **Maintenance, Repair and Upkeep**. It is the intent of Declarant that all portions of the Property and the Improvements thereon be repaired, maintained, and replaced when necessary, by the Responsible Party in a manner consistent with the highest standards of quality and in accordance with the maintenance covenants set forth herein.

a. **Common Areas and Special Benefits Area Amenities**. Subject to the provisions of Section 3.2.5, maintenance of the Common Areas, and any and all Improvements thereon, and the Special Benefits Area Amenities shall be the obligation of the Association. The Association shall maintain all utility, water and sewer lines, equipment and other apparatus therein, unless such item of maintenance is the obligation of a utility company, the City or other governmental entity; provided,

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however, that the maintenance of any such lines or equipment within any Perimeter Maintenance Easement Areas which serve a particular Unit or Units shall be the responsibility of the Owner(s) of the Unit(s) serviced by such lines or equipment.

b. Project Common Areas. Each of the Project Common Areas, including any walls or fences constructed on the boundaries of the Project Common Areas, shall be maintained by the Project Association having the responsibility therefor, and all Project Common Areas shall be maintained in accordance with the Applicable Declarations in a manner consistent with the high standards of the Queensridge community. All provisions of the Applicable Declarations dealing with the repair, upkeep, maintenance or replacement of the Project Common Areas shall be deemed to run in favor of the Declarant, the Association and all of the Owners. The Declarant, the Association in its own name and on its own behalf, or any Owner, shall have the right, power and authority to commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any such provision of the Applicable Declarations, to enforce by mandatory injunction, or otherwise, such provisions and to intervene in litigation, arbitration or administrative proceedings involving such provisions. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

c. Common Fences.

(1) On Lot or Parcel Boundaries Other Than Boundaries of Custom Lots. Except for Common Fences on Custom Lot boundaries, (covered in subsection 5.2.9(c)(2) below) and Perimeter Walls (covered in subsection 5.2.9(d) below), each Owner or other Responsible Party shall be responsible for the maintenance, upkeep and repair that half of the Common Fence which faces such Responsible Party's Lot or Parcel. Except as otherwise provided in Section 5.2.9(c)(3), in the event the Common Fence has been damaged or destroyed, or has deteriorated over time, and such damage, destruction or deterioration has necessitated the rebuilding of the Common Fence, then the cost of demolition and reconstruction shall be shared equally by the Responsible Parties sharing the Common Boundary on which the Common Fence is located.

(2) On Custom Lot Boundaries. Except as otherwise provided in Subsection 5.2.9(c)(3), below, a Common Fence on a boundary of a Custom Lot shall be repaired, maintained, and reconstructed, if necessary, by the Owner which constructed the same, or such Owner's successor-in-interest (collectively, "Installing Owner"), which Installing Owner shall be deemed to be the Responsible Party, unless a

written agreement which provides for the sharing of the cost of repairing, maintaining and reconstructing the Common Fence is executed by the Custom Lot Owners sharing a common boundary and Recorded, in which case the Owners of both Custom Lots shall be deemed to be the Responsible Parties. If no such agreement is Recorded, to the extent necessary to repair, maintain or reconstruct a Common Fence, the Owner ("Non-Participating Owner") of the Custom Lot sharing the common boundary with the Installing Owner shall be deemed to have granted the Installing Owner an easement over the Non-Participating Owner's Lot solely for, and limited to, necessary access to the Common Fence to repair, maintain, construct or reconstruct the same.

(3) **Owner Caused Damage**. Notwithstanding the foregoing, in the event that any Common Fence is damaged or destroyed through the act of an Owner or any of such Owner's tenants, agents, guests, or family members (whether or not such act is negligent or otherwise culpable), such Owner shall have the sole obligation to rebuild, reconstruct, repair or restore the Common Fence to its condition prior to the event causing such damage or destruction. No other Owner shall be required to share in such cost.

(4) **Disputes**. In the event of a dispute with respect to the repair, upkeep, maintenance or rebuilding of a Common Fence, with respect to the sharing of the cost thereof, or with respect to Owner caused damage as set forth in Section 5.2.9(c)(3) hereof, then any party to the dispute may submit the dispute to the Board, and in such event, the matter shall be handled as a Maintenance Violation in the manner provided in Section 5.2.9(g) hereof.

d. **Perimeter Walls**. The Association shall repair and maintain, and if it deems necessary, rebuild all Perimeter Walls.

e. **Parcels and Lots and the Improvements Thereon**. Each Responsible Party shall have the obligation to repair and maintain such Responsible Party's Parcel or Lot and the Improvements thereon, at such Responsible Party's sole cost and expense in accordance with the high standards of Queensridge. Such repair and maintenance responsibilities shall include, but are not limited to, the following: all plumbing, electrical and gas lines, equipment and facilities, all water and sewer lines and all other utility facilities serving the property to be maintained by the Responsible Party, all Improvements within such property, all exterior walls, windows, skylights and roofs, and all other Improvements on such property. Each Responsible Party shall keep all shrubs, trees, grass and plantings within such Responsible Party's Lot or Parcel neatly trimmed, properly watered and cultivated, and free from trash, weeds, debris and other

unsightly material, pursuant to the written recommendations and guidelines promulgated by the Association's Landscape Consultant. No approval from the Design Review Committee shall be necessary for the performance of normal maintenance and repair work.

f. **Responsible Party's Obligation to Rebuild Improvements on a Lot or Parcel After Damage or Destruction to Improvements**. No Responsible Party shall do any act or work that will impair the structural soundness or safety of any Improvement located within such Responsible Party's Parcel or Lot. Each Responsible Party or other Person expressly designated in this Master Declaration shall carry casualty insurance insuring the Improvements on such Responsible Party's Parcel or Lot in accordance with the applicable provisions of Section 9.10, hereof. Except as otherwise provided in subsections (a) through (d), inclusive of Section 4.4.1, hereof, prior to commencement of work to repair or reconstruct a damaged Improvement, the Responsible Party shall submit the plans and specifications for the repair or reconstruction of the Improvement to the Design Review Committee and shall have received written approval thereof prior to the commencement of any work of repair or reconstruction. The Responsible Party shall commence repair or reconstruction of a damaged or destroyed Improvement within the longer of one hundred twenty (120) days after the event causing the damage or destruction, or forty-five (45) days after the insurance proceeds are made available for reconstruction purposes; provided, however, that in the event the insurance proceeds available to the Responsible Party are insufficient to complete such repair or reconstruction, or in the event a holder of a Deed of Trust exercises any right of such holder to apply all or substantially all of the insurance proceeds to the indebtedness secured by the Deed of Trust and the Responsible Party elects not to rebuild the damaged or destroyed Improvements, then within six (6) months after the event causing the damage or destruction the Responsible Party shall remove all debris from the Parcel or Lot and restore the Parcel or Lot to a state that is not offensive to the general appearance of the Property, which restoration plan shall be submitted to, and approved by, the Design Review Committee prior to the commencement of the restoration work. The Responsible Party shall perform all repairs, maintenance and upkeep of such Parcel or Lot in accordance with the Applicable Declarations. The failure of the Responsible Party to repair or reconstruct the damaged or destroyed Improvements, or to restore the Lot or Parcel to an inoffensive state as required hereby shall be deemed to be a Maintenance Violation as set forth in subsection 5.2.9(g), below.

g. Maintenance Violations.

(1) Maintenance Violation Notice. If any Responsible Party allows, permits, or causes any condition to exist on or within such Responsible Party's Lot, Parcel, Project Common Area, Limited Common Elements, or Common Areas, as the case may be, or the Improvements thereon, which violates the provisions of Article V of this Master Declaration or, in the sole reasonable discretion of the Board, is unsightly, unsanitary, or hazardous (including, but not limited to, a condition which causes dust to carry to another Lot or Parcel) (herein collectively "Maintenance Violation"), then, except as otherwise provided in subsection 5.2.9(i), hereof, (in the case of an emergency), the Association shall give the Responsible Party written notice ("Maintenance Violation Notice") in the manner provided in Section 13.5, below, specifying the nature of the Maintenance Violation and a reasonable time period within which the Responsible Party(ies) must correct such Maintenance Violation, as the Board determines is reasonably required, which cure period shall be no less than thirty (30) days. In the event that the Board fails to give a Maintenance Violation Notice to a Responsible Party who has defaulted in its maintenance obligation hereunder, then upon the filing with the Board of a meritorious written complaint (herein "Owner Complaint") executed by the Owners of any two (2) Units within the Property, the Board shall have the obligation to give such Maintenance Violation Notice.

(2) Responsible Party's Right to File an Objection; Hearing Panel; Arbitration. The Responsible Party to whom a Maintenance Violation Notice is given shall have the right to file a written objection thereto with the Secretary of the Association within ten (10) days after such Responsible Party is deemed to have received such Maintenance Violation Notice (pursuant to Section 13.5, below). In the event such an objection is filed, and within thirty (30) days after the objection is filed, the Board may elect either (i) to convene a Hearing Panel (defined below), or (ii) submit the matter to binding arbitration pursuant to the provisions of Chapter 38 of the Nevada Revised Statutes. By acceptance of his deed or other instrument of conveyance, each Owner shall be deemed to have agreed to binding arbitration pursuant to the provisions of NRS 38.300, *et seq.*, or any successor statute, if such matter goes to arbitration.

(3) Hearing Panel. In the event the Board elects pursuant to subsection 5.2.9(g)(2), above, to convene a Hearing Panel, then the President of the Association shall appoint, within thirty (30) days after receipt of the Responsible Party's objection, a panel of three (3) Board Members or three (3) members of any committee of the Board established by the Board pursuant to the Bylaws (the "Hearing Panel"), at least one (1) of whom shall be an Owner of a Unit within the same Project Type as the

Unit which is the subject of the Violation Notice. The Hearing Panel shall convene no later than thirty (30) days after its appointment for the purpose of conducting a hearing on the disputed Maintenance Violation. Notice of such hearing, and time and place thereof, shall be given to the Responsible Party to whom the Maintenance Violation Notice is given and any other Owners who have filed Owner Complaints at least five (5) business days prior to the date set for such hearing. The Hearing Panel shall give written notice of its decision to the Owner against whom the Maintenance Violation Notice was given as to whether or not a Maintenance Violation exists and the nature of such violation. Copies of such decision shall be mailed to all persons who filed an Owner Complaint. The decision of the Hearing Panel shall be nonbinding and appealable as set forth in NRS 38.300, *et seq.*, or any successor statute. Appeals must be initiated within thirty (30) days after the Hearing Panel renders its decision. The notice period within which a Maintenance Violation must be cured shall be tolled from the date of filing such objection until the date the Hearing Panel notifies the Owner in writing of its decision and if an appeal is filed, during the pendency of the appeal.

(4) Association's Right to Correct Maintenance Violation. If a binding decision is rendered that a Maintenance Violation exists and the Responsible Party fails to correct a Maintenance Violation within the period specified in such decision, or, if no time is specified, within a reasonable time ("cure period"), then the Association, acting through the Board, shall have the right, but not the obligation, to correct the Maintenance Violation in accordance with the procedures set forth below.

(5) Procedure for Association's Correction of Maintenance Violation.

(A) **Bids**. In the event the Association elects to correct a Maintenance Violation, then prior to commencement of work to correct the Maintenance Violation and promptly after the expiration of the cure period afforded a defaulting Responsible Party, the Board shall obtain three (3) written bids to perform the required work and shall mail the bids to the Responsible Party. The Responsible Party shall have the right to select the bid by notifying the Board in writing within fourteen (14) days after the bids are mailed by the Board to the Owner. In the event the Responsible Party fails to select a bid within such time period, the Board shall select the bid.

(B) Violation Assessment. When the bid has been selected as set forth in subsection (A), above, the Board shall levy a Violation Assessment pursuant to Section 8.7 hereof against the Responsible Party in the amount of the cost of

correcting the Maintenance Violation and the costs and expenses, including attorneys' fees, incurred by the Association incident thereto.

(C) **Performance of Corrective Work By Association**. The Board may, at its sole option and discretion, elect to cause the corrective work to be commenced promptly after the Violation Assessment has been levied against the Responsible Party, or elect to postpone the corrective work until after the amount of the Violation Assessment has been collected partially or in full. Neither the Association, the Board, nor any of the Association's agents, or employees shall be liable for any damage which may result from any work performed by the Association to cure a Maintenance Violation.

h. **Association's Right of Entry for Repair and Maintenance**. Each Responsible Party hereby grants to the Association, and its duly authorized agents, representatives, employees and contractors, the right of entry onto such Responsible Party's Parcel or Lot (including within any Dwelling Unit or other Improvement thereon) or Project Common Area, which right shall be irrevocable, to make such repairs and perform such maintenance work which the Association is required or entitled to do pursuant to the provisions of this Master Declaration. Except as provided hereinbelow with respect to emergencies, such right of entry shall be exercised only during reasonable hours and after reasonable notice.

i. **Emergencies**. In the event any officer of the Association believes, in his or her sole reasonable discretion, that an emergency situation exists within a Lot or Parcel (including within any Dwelling Unit or other Improvement thereon) or within any Project Common Area and that immediate repairs are necessary to prevent or mitigate damages, then such officer, the Manager or the Manager's authorized agent shall have the right to exercise the Association's right of entry without notice. If after gaining entry, any officer of the Association still believes in his or her sole reasonable discretion, that immediate repairs are necessary to prevent or mitigate damages, then the Association shall have the right to make such repairs without notice to the Responsible Party and without a hearing, and without obtaining competitive bids as provided in subsection 5.2.9(g)(5)(A), above. The Association shall levy a Violation Assessment against the Responsible Party in the amount of the cost of the corrective work and all costs and expenses, including attorneys' fees, incurred by the Association incident thereto. Neither the Association, the Board, nor any of the Association's agents or employees, nor any person hired by the Association to perform the corrective work, shall be liable for any damage which may result from any work so performed on behalf of the Association.

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j. Entry by Court Order. In the event a Responsible Party prevents an officer of the Association, the Manager or authorized agent of the Manager from gaining access to such Responsible Party's Parcel or Lot (including within any Dwelling Unit or other Improvement thereon) or Project Common Area for the purpose of correcting a Maintenance Violation or for the purpose of attending to an emergency situation, then the Responsible Party(ies) shall be jointly and severally liable to the Association for attorneys' fees, court costs and incidental expenses incurred by the Association for the purpose of gaining such entry and all other costs and expenses incident thereto (collectively "Entry Costs"), and such Entry Costs shall be assessed to the Responsible Party as a Violation Assessment pursuant to Section 8.7 hereof.

5.2.10 Mineral Exploration, Mining or Drilling. No portion of the surface of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, geothermal heat, minerals, rocks, stones, gravel or earth, nor shall oil, water or other wells, tanks, tunnels, mineral or geothermal excavations or shafts be permitted upon the surface of any portion of the Property, except any water wells installed by Declarant or any public or private utility company for the exclusive or nonexclusive use and benefit of the Property and such excavations and removal of earth and other substances as may be done by Declarant and Builders under an agreement with Declarant during and incidental to the development of the Property.

5.2.11 Nuisances and Offensive Activities. No nuisance shall be permitted to exist upon or emanate from any portion of the Property, nor any offensive activity conducted thereon. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), live bands, noisy or smoky vehicles, large noisy power equipment or tools, off-road motor vehicles or other items which may unreasonably disturb other Owners, or their tenants or guests, shall be located, used or placed on any portion of the Property. No thing or condition shall be allowed to exist in or on any portion of the Property which shall induce, breed or harbor infectious plant diseases or noxious insects. Except for golf carts and other special use vehicles operating in areas designated for their use, no vehicles may be operated upon any portion of the Property which is not improved as a driveway or street without the prior written approval of the Board, which approval may be withheld for any reason whatsoever. Alarm devices used exclusively for security purposes shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. Normal Construction Activities and parking in connection with the building of Improvements shall not be considered a nuisance or

otherwise prohibited by this Master Declaration, provided that such activities are in compliance with the Master-Planned Community Standards. Lots and Parcels and surrounding areas shall be kept in a neat and tidy condition during the conduct of Construction Activities thereon, and trash and debris shall not be permitted to accumulate. Construction vehicles of contractors or suppliers or their employees shall not use any routes within the Property which Declarant or the Design Review Committee designates as "off-limits" to such vehicles. Construction equipment or building materials stored or kept on any Lot or Parcel during construction of Improvements may be kept only in areas approved by Declarant or the Design Review Committee.

5.2.12 **Leasing of Units**. An Owner shall be permitted to lease such Owner's entire Unit provided that:

(a) The Owner and all tenants ("Tenant") enter into a written lease which provides that the terms of the lease shall be subject in all respects to the provisions of the Applicable Declarations and the Rules and Regulations and that any failure by the Tenant to comply with the terms of such documents shall be a default under the lease;

(b) The Tenant is furnished with a copy of the Applicable Declarations and the Rules and Regulations;

(c) The lease grants to the Association as a third-party beneficiary the right to evict the Tenant for failure to comply with the Applicable Declarations or Rules and Regulations; and

(d) The Secretary of the Association has been furnished with the name(s) and mailing addresses of the Tenant within five (5) business days after execution of the lease.

Each Owner shall be responsible and liable for all activities of such Owner's Tenant which are in violation of the Applicable Declarations or the Rules and Regulations.

5.2.13 **Prefabricated or Temporary Structures**. Unless approved pursuant to Article IV hereof, and then only in connection with Construction Activities, no tent, shack, trailer or any temporary building, Improvement or structure, or prefabricated building or structure, shall be placed upon any portion of the Property.

5.2.14 **Subdivision; Rezoning**. Except as expressly authorized in this Master Declaration, a Declaration of Annexation or Supplemental Declaration, no Parcel,

Lot or Condominium in the Property may be further subdivided (including division into time-share estates or time-share uses) without the prior written approval of Declarant, provided, however, that nothing in this Section shall be deemed to prevent an Owner from, or require the approval of Declarant or such Board for (a) transferring or selling any Unit to more than one (1) Person to be held by them as tenants in common, joint tenants, community property or community property with right of survivorship; or (b) the leasing or renting by any Owner of such Owner's entire Unit, provided that any such lease or rental shall be subject to the Applicable Declarations. No application for rezoning of any Lot or Parcel, and no applications for variances or use permits shall be filed with any governmental authority unless the proposed use of the Lot or Parcel has been approved by Declarant or, from and after the Declarant's Rights Termination Date, by the Board and the proposed use otherwise complies with the Applicable Declarations. Notwithstanding anything contained herein to the contrary, Declarant, or its successors or assigns, shall have the right to change the location, size or configuration of the Common Areas within a Project after a Final Map thereof has been recorded, so long as such change does not materially and adversely affect any Owners of the Units within the Project.

5.2.15 **Trash Containers and Collection**. No garbage or trash shall be placed or kept, except in covered containers of a type, size and style which are approved by the Design Review Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property, except to make the same available for collection and then only for the shortest time (not to exceed twenty-four (24) hours) reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and Parcels and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any portion of the Property.

5.2.16 **Signs**. Except as otherwise expressly allowed or limited in this Master Declaration, no signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any portion of the Property. Signs required by legal proceedings address identification signs, and during construction construction job identification signs and builder and lender signs on construction projects are permitted on Lots or Parcels within the Property.

All permitted signs shall be in conformance with the requirements of the City and shall have been approved in writing as to size, color, design, message content and location in accordance with Article IV of this Master Declaration.

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5.2.17 **Fences**. No fences, hedges or walls ("fences"), shall be constructed except in compliance with Article IV of this Master Declaration.

5.2.18 **Installation of Utility Equipment**. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Parcel unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings, pedestals, or other structures approved by the Design Review Committee. No provisions hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures as provided in this Master Declaration.

5.2.19 **Flagpoles**. No free-standing flag poles shall be erected or maintained on any Lot or Parcel and no flag shall be affixed to the exterior of any Improvement on a Lot or Parcel, except in compliance with Article IV of this Master Declaration.

5.2.20 **Health, Safety and Welfare**. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and residents, the Board may make rules restricting or regulating their presence on the Property as part of the Rules and Regulations or may direct the Design Review Committee to make rules governing their presence on Lots or Parcels as part of the Master-Planned Community Standards.

5.3 **Use Restrictions, Maintenance Obligations and Private Easements Applicable to Residential Areas**. Subject to the exemptions of Declarant set forth in Section 5.5, below, and the other Declarant's Rights as set forth in this Master Declaration, the Units within the Residential Areas shall be held, used and enjoyed subject to the following additional limitations and restrictions:

5.3.1 **Residential Use**. No Unit shall be improved or used for any purpose other than residential use by a single Family. There shall be no more than one (1) Dwelling Unit per Lot. No Dwelling Unit shall be occupied as living quarters until a certificate of occupancy permitting the habitation of such Dwelling Unit has been issued by the appropriate governmental authority. No Owner shall rent or lease his Dwelling Unit for transient or hotel purposes, nor shall any Dwelling Unit be time shared. No Dwelling Unit shall be further subdivided in any manner, nor partitioned for occupancy by more than one Family. No Owner shall lease less than his entire Unit.

5.3.2 **Parking; Vehicular Restrictions**. None of the following (collectively "Prohibited Vehicles") shall be parked, stored or kept on any street (public or private) within any Residential Area: any 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, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; any vehicle not in operating condition; any off-road vehicle; any trash bins; or any vehicle or equipment, mobile or otherwise, deemed to be a nuisance by the Board. No Prohibited Vehicle shall be parked, stored or kept on any Lot or Parcel except wholly within an enclosed garage, and then only if the garage door is capable of being fully closed. Prohibited Vehicles shall not be allowed in any driveway or other exposed parking areas, or any street within any Residential Area, except for the purposes of loading, unloading, making deliveries, or emergency repairs, and except within parking areas which may be specifically designated for parking and storage of specific types of Prohibited Vehicles by the Declarant, or from and after the Declarant's DRC Appointment Rights Termination Date, by the Design Review Committee. Vehicles owned, operated or within the control of an Owner, or of a resident of such Owner's Unit, shall be parked in the garage or other assigned parking space to the extent of the maximum designed capacity of such garage or parking space. Garages or other parking areas shall be used only for parking of authorized vehicles, and shall not be used for storage, living, recreational, business or other purposes. There shall be no parking in the driveways if the Owner's garage is not being utilized to its maximum capacity, or if to do so obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard. Garage doors shall be kept closed, except as reasonably required for ingress to and egress from the interiors of the garages. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment shall be conducted upon any street, any portion of any Common Area, any Lot or Parcel or elsewhere within the Residential Areas, except wholly within an enclosed garage; provided, however, that such activity within an enclosed garage may not be undertaken as a business, and provided further that such activity may be prohibited entirely in the Rules and Regulations, if it is determined by the Board to be a nuisance. The Board shall determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions contained herein. These parking and vehicular restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any ordinance of the City or County. These parking and vehicular restrictions shall not apply to any public or private transportation system providing passenger shuttle service within the Property which has been approved by Declarant or the Association, or to any Construction Activities permitted by this Master Declaration, or to moving vans which shall be permitted to load or unload for up to forty-eight (48)

hours. The Association shall have the right to direct the removal of vehicles improperly parked on Association Property pursuant to NRS 487.038.

5.3.3 **Animals**. No animals, birds, reptiles, poultry, fish or insects of any kind shall be raised, bred or kept on any Lot or Parcel, or within any Dwelling Unit, except a reasonable number of birds, fish, dogs, cats, or other customary household pets (collectively "Household Pets"). As used in this Master Declaration "a reasonable number of Household Pets" shall ordinarily mean three (3) or less Household Pets per Dwelling Unit, unless otherwise specified in the Rules and Regulations. The Rules and Regulations may differentiate based on Project Type as to what shall be deemed to be a reasonable number of Household Pets per Unit within a particular Project Type. Permitted Household Pets shall not be kept, bred or maintained for any commercial purpose nor in violation of any applicable law. The Association, acting through its Board of Directors, shall have the right to prohibit any Household Pet which constitutes, in the opinion of the Board, a nuisance to other Owners. Household Pets belonging to Owners, occupants or their licensees, tenants, or invitees must be either kept within an enclosure or an enclosed yard or on a leash or other restraint capable of controlling the Household Pet. To the extent permitted by law, each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any Household Pet brought or kept upon the Property by an Owner or by members of such Owner's family, or tenants or guests of such Owner, and it shall be the absolute duty and responsibility of each such Owner to clean up after such Owner's Household Pets which have used any portion of the Property. Pet enclosures shall comply with the Master-Planned Community Standards and must be approved in accordance with the provisions of Article IV hereof prior to installation. The Board may from time to time adopt such other reasonable Rules and Regulations pertaining to Household Pets as it deems advisable.

5.3.4 **Exterior Installations and Activities**.

a. **Barbecues**. There shall be no exterior fires except barbecue fires contained within receptacle designed for such purpose or outside fireplaces approved in accordance with the provisions in Article IV hereof.

b. **Exterior Lighting**. All exterior lighting shall be approved in accordance with the provisions of Article IV hereof. Nothing contained herein shall prohibit, or require Design Review Committee approval of, outdoor lighting or other displays during holiday seasons.

c. Mailboxes. No mailbox or other receptacle for delivery of mail or newspapers shall be erected, painted, altered or maintained, unless such mailbox or receptacle is permitted by the Master-Planned Community Standards and in accordance with Article IV hereof.

d. Sports Equipment. No fixed basketball standard or other fixed sports apparatus shall be erected or attached to any structure. Portable basketball standards and other portable sports equipment are permitted, but must be stored at night so as not to be Visible From Neighboring Property.

e. Security Bars on Windows. Security bars on windows are prohibited. Security gates as permitted by the Master Planned Community Standards must be approved in accordance with Article IV hereof prior to installation.

5.3.5 Landscaping. The yard areas of each Lot and of each Project Common Area shall be fully landscaped by the Owners thereof in accordance with a landscape plan approved in accordance with the provisions of this Master Declaration. In the case of Single Family Residential Lots, all landscaping shall be completed no later than six (6) months after the later of (i) date of issuance of a certificate of occupancy for the Dwelling Unit on the Lot, or (ii) six (6) months after close of escrow for the sale of a Lot with a completed Dwelling Unit thereon to a Person other than a Builder, Declarant or Successor Declarant. As used herein, the yard areas of a Lot shall mean all land within the perimeter boundaries of a Lot excluding the area on which the residence is constructed and any and all patio, sidewalk and driveway areas. In the case of a Residential Condominium Project or Multiple-Dwelling Project, all landscaping of the Project Common Area shall be completed by the Builder thereof for each Phase of the Condominium Project within three (3) months after the first sale of a Condominium Unit in the Phase to a Person other than Declarant, a Successor Declarant or a Builder. In the event any landscaping on a Lot or Project Common Area dies or is destroyed, the areas of the Lot or Project Common Area containing such dead or destroyed landscaping shall be replanted by the Responsible Party within thirty (30) days after the event causing the damage or destruction unless the Responsible Party applies to the Design Review Committee for an extension and the Design Review Committee grants a written extension of such time period for inclement weather or for other good cause. Any failure to comply with the provisions of this Section 5.3.5 shall be deemed to be a Maintenance Violation hereunder and subject to the provisions of Section 5.2.9(g), hereof.

5.3.6 Signs. Except as otherwise provided in this Section 5.3.6 and in Article XII of this Master Declaration, no "for sale," "for lease," or similar signs shall

be placed on any portion of the Residential Areas, including Lots, Common Areas and Project Common Areas nor within any Improvement thereon so as to be Visible From Neighboring Property. Except as may be limited by the Master Planned Community Standards, each Builder may maintain "For Sale", "For Lease" and similar signs on Lots owned by such Builder and directional and "Open House" signs on portions of the property approved by Declarant. On consecutive Saturdays and Sundays twice a calendar month, Owners other than Builders may place "Open House" signs and directional signs in such areas which are designated by the Board and one (1) "For Sale" or "For Lease" sign on such Owner's Lot, all of which signs shall be of a size and type as described in the Master Planned Community Standards or as specified by the Board. Prior to placing such signs on any such portions of the Property, the Owner shall notify the Board. Prior to viewing any Lot or Residence, all prospective buyers and real estate brokers or salespersons shall register with the sales office of Declarant or Declarant's Affiliate on the Property, if any, or if no such sales office is located on the Property, at the Association office or security guard station.

5.3.7 **Window Coverings; Unsightly Objects**. All draperies, curtains, shutters and other window coverings or treatments within a Unit shall be of neutral color and of such design and appearance as to be in harmony with the permitted exterior colors within the Project in which the Dwelling Unit is located. No plastic, aluminum, tin or other metallic window coverings are allowed in or on any windows. Final decisions regarding compliance or non-compliance with this Section 5.3.7 shall be made by the Design Review Committee or as otherwise provided in Article IV hereof.

5.4 **Use Restrictions, Maintenance Obligations and Private Easements Applicable to Commercial Areas**. Subject to the exemptions of Declarant set forth in Section 5.5, below, and the other Declarant's Rights set forth in this Master Declaration, all real property improved or to be improved with a Commercial Project Type ("Commercial Parcels") shall be held, used and enjoyed subject to the following additional limitations and restrictions.

5.4.1 **Prohibited Uses**. No portion of a Commercial Parcel shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for any manufacturing or industrial purpose, or for adult bookstores, or other businesses involving the sale, use distribution or dissemination of pornographic literature, videos, movies or similar materials.

5.4.2 **Landscape Maintenance**. Each Responsible Party within a Commercial Parcel shall properly maintain and periodically replace, when necessary, any

trees, plants, grass, vegetation or other landscaping Improvements located on such Responsible Party's Parcel.

5.4.3 Parking; Vehicular Restrictions. Parking of vehicles of any type shall be restricted to designated parking areas, and no employees, agents, business invitees, tenants or customers of any Owner of a Commercial Parcel shall be permitted to park in areas not so designated, or on any street (public or private) within the Property, except for purposes of loading or unloading passengers or emergency repairs. All deliveries or loading and unloading of goods or materials shall be restricted to designated loading docks or similar facilities. No repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle or equipment shall be conducted upon any street (public or private), or Parcel, except wholly within a facility specifically designated for such purpose or within an enclosed garage. The Board shall determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions contained herein. These parking and vehicular restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any ordinance of the City or County. These parking and vehicular restrictions shall not apply to any public or private transportation system providing passenger shuttle service within the Property which has been approved by Declarant or the Board, or to any Construction Activities.

5.4.4 Animals. No animals, birds, reptiles, poultry, fish or insects of any kind shall be raised, bred or kept, except in licensed aquariums or retail pet shops operated as a business.

5.4.5. Signs. Business identification signs, and "For Sale" or "For Lease" signs are permitted within all Commercial Parcels, subject to specifications, if any, set forth in the Master-Planned Community Standards.

5.5 Declarant's Exemptions. Declarant shall be exempt from the provisions of this Article V to the extent necessary or appropriate in the exercise of any of Declarant's Rights set forth in this Master Declaration.

ARTICLE VI

THE ASSOCIATION

6.1 Formation. The Association is a nonprofit corporation formed or to be formed under Chapter 82 of the Nevada Revised Statutes. Promptly after recordation of

this Master Declaration, Declarant shall cause the Articles of Incorporation to be filed with the Secretary of State of the State of Nevada. The Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Master Declaration. In the event any provision of the Articles or Bylaws conflict with the provisions of this Master Declaration, then the provisions of this Master Declaration shall control.

6.2 Membership.

6.2.1 Membership Qualifications. The Members of the Association shall be the Owners (including Declarant and any Builders) of one (1) or more Units. The Owner or Owners, collectively, of each Unit shall have one (1) membership in the Association ("Membership"). At any given time, the number of Memberships in the Association shall be equal to the number of Units in the Property. The number of Memberships shall increase in proportion to the number of Units within the Annexed Property each time any of the Annexable Property is annexed to the Property and shall decrease in proportion to the number of Units which are deannexed each time a deannexation occurs pursuant to the provisions of Section 2.4, hereof. As used in this Master Declaration, the term "Member" shall refer to the Person owning a Unit if owned solely by such Person, or collectively to all of the Persons owning a Unit if owned by more than one Person. Each Member shall have the rights, duties, and obligations set forth in this Master Declaration, the Articles, Bylaws and Rules and Regulations, as the same may from time to time be amended. Membership in the Association shall be in addition to an Owner's membership in any Project Association.

6.2.2 Transfer of Membership. Each Membership shall be appurtenant to the Member's Unit, and Memberships shall not be pledged, transferred, or assigned, except to the Person to whom the Unit is transferred. Any attempt to make a prohibited transfer of a Membership shall be void and will not be reflected on the books of the Association. Any transfer of title or interest to a Unit shall operate automatically to transfer the appurtenant Membership to the grantee, and the Recordation of a contract of sale of a Unit shall operate to transfer the appurtenant Membership to the buyer thereunder. Prior to any transfer of title to a Unit (excluding a transfer for security purposes), either the transferring owner or the acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association may charge to the transferee Owner (excluding Builders who are transferees) a reasonable transfer fee of not less than One Hundred and No/100 Dollars ($100.00) (payment of which fee shall be secured by an Assessment lien against the Unit transferred and shall be added to the Annual Assessment

chargeable to such transferee Owner) to reimburse the Association for the administrative costs of transferring the memberships to the new Owner on the records of the Association.

6.2.3 Voting Classes. The Association shall have the following described voting classes ("Voting Classes") and, subject to the provisions of Section 6.2.3(e), below, shall have the voting classes specified in Sections 6.2.3(a) through 6.2.3(d), inclusive, below.

a. Class A Members. Class A Members shall be the Owners, including Declarant, of one of the following Residential Products:

(i) Custom Lot;

(ii) Luxury Lot; or

(iii) Such other Residential Product(s) which Declarant may, in its sole discretion, designate in a Declaration of Annexation or Supplemental Declaration for Class A Membership.

One (1) Class A Membership shall be appurtenant to each Unit which is a Residential Product of the type described in this Section 6.2.3(a). Subject to the provisions of Section 6.2.3(e) hereof (pertaining to Declarant's voting rights), and Section 6.3 hereof (pertaining to Declarant's appointment and removal rights), each Class A Membership shall be entitled to one (1) vote.

b. Class B Members. Class B Members shall be the Owners, including Declarant, of one of the following Residential Products:

(i) Executive Lot;

(ii) Upgrade Lot; or

(iii) Such other Residential Product(s) which Declarant may, in its sole discretion, designate in a Declaration of Annexation or Supplemental Declaration for Class B Membership.

One (1) Class B Membership shall be appurtenant to each Unit which is a Residential Product of the type described in this Section 6.2.3(b). Subject to the

provisions of Sections 6.2.3(e) and 6.3 hereof, each Class B Membership shall have one (1) vote.

c. Class C Members. Class C Members shall be the Owners, including Declarant, of one (1) of the following Residential Products:

(i) Executive Condominium;

(ii) Upgrade Condominium; or

(iii) Move-Up Condominiums; and

(iv) Such other Residential Product(s) which Declarant may, in its sole discretion, designate in a Declaration of Annexation or Supplemental Declaration for Class C Membership.

One (1) Class C Membership shall be appurtenant to each Unit which is a Residential Product of the type described in this Section 6.2.3(c). Subject to the provisions of Sections 6.2.3(e) and 6.3 hereof, each Class C Membership shall have one (1) vote.

d. Class D Members. Class D Members shall be the Owners, including Declarant, of a Unit within a Commercial Project Type. Subject to the provisions of Sections 6.2.3(e) and 6.3 hereof, each Class D Membership shall have one (1) vote for each Assessment Unit allocated to such Membership in this Master Declaration, or in a Declaration of Annexation or any Supplemental Declaration.

e. Class E Member. The Class E Member shall be the Declarant, only. The Class E Membership is created for the purpose of exercising Declarant's right to appoint members of the Board and officers of the Association, pursuant to Section 6.3, hereof, subject to the limitations set forth in Section 6.3.2, below. The Class E Membership shall terminate upon the earliest to occur of the following events ("Declarant's Control Termination Date"):

(i) Sixty (60) days after conveyance to Owners other than Declarant, a Successor Declarant or Builders of seventy-five percent (75%) of the Maximum Number of Units; or

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

(iii) Five (5) years after Declarant last exercises its rights to record a Declaration of Annexation wherein Annexable Property is added to the Property; or

(iv) Declarant waives by written instrument the rights reserved by Declarant under this Section 6.2.3(e), and such written waiver is Recorded.

Except for those matters for which the Class E Membership is created (in which case Declarant shall exercise Class E membership votes), Declarant at all times shall have the right to exercise voting rights for those classes of memberships listed in subsections (a) through (d) of this Section 6.2.3 attributable to the Units within the Property owned by Declarant. Notwithstanding anything to the contrary set forth herein, nothing in Section 6.2.3 shall be deemed to in any way impair, modify, alter or limit Declarant's Rights set forth elsewhere in this Master Declaration.

6.2.4 Exercise of Voting Rights.

a. By Declarant. In the event Declarant is a single Person, Declarant shall have the right, but not the obligation, to designate to the Board in writing the Person or Persons entitled to exercise the rights reserved to Declarant under this Master Declaration, including the casting of votes on behalf of Declarant. In the event Declarant is more than one Person, then Declarant's Rights shall be exercised either (i) by a Person appointed in writing by one hundred percent (100%) of the Persons comprising Declarant as Declarant's attorney-in-fact, or (ii) by Persons comprising Declarant which hold a majority of the ownership interests in the Property and the Annexable Property combined.

b. By Project Delegates. Subject to the provisions of Sections 6.2.3(e), hereof, the votes allocated to Members within a Project for which a Project Association has been formed shall be cast by the Project Delegates of such Project Association and not by the Members themselves. Such Member votes to be cast by Project Delegates of each Project Association either (i) shall be divided proportionally among each of the Delegates, by dividing the total number of votes allocated to such Project by the total number of Project Delegates present at the meeting of the Members, or (ii) shall be cast in such manner as a majority of the Project Delegates determines. The method of casting such votes shall be designated by the President of the Project

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Association in writing to the Secretary of the Association at the commencement of each meeting of the Members prior to voting on any matter. If no such written determination is made, then the Secretary of the Association shall allocate votes to each Project Delegate by dividing the total votes allocated to a Project by the number of Project Delegates present at the meeting.

c. **By Owners**. Members not represented by Project Delegates shall cast their votes in person or by proxy as provided in the Bylaws. In the case of a Membership owned by two (2) or more Persons, the vote or votes allocated to such Membership shall be exercised by only one of them. If only one (1) of several Persons owning a Membership is present at a meeting of the Association, that Person is entitled to cast the vote or votes allocated to that Membership. If more than one (1) of the Persons owning a Membership are present, the vote or votes allocated to that Membership may be cast only in accordance with the agreement of a majority in interest of the Persons owning such Membership. There shall be deemed to be a majority agreement among several Persons owning a Membership if any one (1) of such Persons casts the vote or votes allocated to that Membership without protest made promptly to the person presiding over the meeting by any of the other Persons owning such Membership. In the event there is no such protest, it will be conclusively presumed for all purposes that the Person who cast the vote or votes for a particular Membership was acting with the authority and consent of all other Persons owning such Membership. If such a protest is made, or more than one (1) Person owning a single Membership casts the vote or votes, then the vote for such Membership shall not be counted.

6.3 Composition of Board of Directors.

6.3.1 Declarant's Right of Appointment and Removal. Subject to the provisions of Section 6.3.2, below, Declarant reserves the right to appoint and remove all of the members of the Board and all of the officers of the Association until Declarant's Control Termination Date.

6.3.2 Board Representation of Members (other than Declarant) Prior to Declarant's Control Termination Date.

a. On the date which is sixty (60) days after the conveyance of Units equal to twenty-five percent (25%) of the Maximum Number of Units to Owners other than Declarant, a Successor Declarant, or Builders, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Members other than the Declarant.

b. Not later than the date which is sixty (60) days after Declarant's conveyance of Units equal to fifty percent (50%) of the Maximum Number of Units to Owner's other than Declarant, a Successor Declarant or Builders, not less than thirty-three and one-third percent (33-1/3%) of the members of the Board shall be elected by Members other than the Declarant.

c. The Board seats elected by Members other than Declarant pursuant to this Section 6.3.2 shall be interim "at large" seats elected by all Voting Classes other than the Class E Member.

6.3.3 **Board Seats**. The Board shall have three (3) Members until the date specified in Section 6.3.2(a) hereof. From the date specified in Section 6.3.2(a) hereof until the date specified in Section 6.3.2(b) hereof, the Board shall have four (4) members. From the date specified in Section 6.3.2(b) until Declarant's Control Termination Date, the Board shall have six (6) members. From and after Declarant's Control Termination Date, the Board shall have seven (7) Members elected in the manner provided in Section 6.3.4 hereof.

6.3.4 **Election of Board From and After Declarant's Control Termination Date**. From and after Declarant's Control Termination Date, the interim "at large" seats on the Board shall terminate and each of the Voting Classes shall elect, in the manner provided in the Articles and Bylaws, specified seats on the Board representing each Voting Class as follows:

Class A Members -- 3 seats
Class B Members -- 2 seats
Class C Members -- 1 seat
Class D Members -- 1 seat

6.3.5 **Persons Entitled to Serve on the Board**. Except for the members of the Board appointed by Declarant pursuant to Section 6.3.1, hereof, and the members of the first Board named in the Articles, no less than a majority of the members of the Board shall be Members of the Association. An officer, employee, agent or director of a corporate Owner of a Unit, a trustee or designated beneficiary of a trust that owns a Unit, a partner of a partnership that owns a Unit, or a fiduciary of an estate that owns a Unit may serve as an officer or a member of the Board. In all events where the Person serving or offering to serve as an officer of the Association or member of the Board is not the Owner of Record, such Person shall file proof of his, her or its authority in the records of the Association. All members of the Board must be at least eighteen (18) years of age.

6.3.6 First Board. The members of the first Board of the Association named in the Articles shall serve until the earlier of: (i) the date specified in Section 6.3.2(a) above, or (ii) removal of any such member by Declarant as provided in Section 6.3.1 hereof.

6.3.7 Meetings of Board. Meetings of the Board shall be noticed and held as provided in the Articles, Bylaws and this Master Declaration. It is Declarant's intent that the continuity of the development of the Property be maintained until the termination of this Master Declaration, and the Board shall be required to give notice to Declarant of all of its regular and special meetings, whether or not Declarant owns any interest in the Property, provided that Declarant shall have given notice of its current address to the Board in the manner provided in Section 13.5 hereof. Declarant shall have the right, but not the obligation, to attend all Board meetings in a non-voting advisory capacity.

6.3.8 Special Benefits Area Committee. No later than sixty (60) days after the close of escrow of the sale of the Unit within a Special Benefits Area to a Person other than Declarant, a Successor Declarant or a Builder which represents the fifty-first (51st) percentile interest within such Special Benefits Area, the Board shall appoint a committee of three (3) persons to represent such Special Benefits Area ("Special Benefits Area Committee") to serve in the capacity as a liaison between the Board and the Members within such Special Benefits Area. One member of the Committee must be a Board Member. After the Declarant's Control Termination Date, if any of the Board Members own a Unit within the Special Benefits Area, then the Board representative to the Special Benefits Area Committee shall be selected from such Board Members. If no Board Member owns a Unit within such Special Benefits Area, then the Board representative shall hold a Board seat elected by Members within a Voting Class which is the same as one of the Voting Classes within the Special Benefits Area. The other two (2) Special Benefits Area Committee members shall be Owners of a Unit within the Special Benefits Area. Each Special Benefits Area Committee shall have the right to cause matters affecting only the Special Benefits Area it represents to be placed on the agenda of any semi-annual meeting of the Association as a Special Benefits Ballot Question (defined in Section 6.4 below).

6.4 Association Action. Except as to matters requiring the approval of the Members as set forth in the Articles, Bylaws, and this Master Declaration, the powers of the Association shall be vested in, exercised by, and under the control of, the Board, and the affairs of the Association shall be managed and controlled by the Board. Except as otherwise provided in the Articles, Bylaws, or this Master Declaration, all matters

requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting power of the Association assent to such matters by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws. To the extent allowed by applicable law, matters affecting only a Special Benefits Area shall be the subject of a special ballot question ("Special Benefits Ballot Question) at the semi-annual or special meetings of the Members, each of which Special Benefits Ballot Questions shall be voted upon exclusively by the Members owning Units within such Special Benefits Area and must be approved by a majority of the voting power within such Special Benefits Area unless otherwise provided in this Master Declaration.

ARTICLE VII

POWERS AND DUTIES OF THE ASSOCIATION

7.1 Powers. The Association shall have all the powers of a non-profit corporation organized under the laws of the State of Nevada and the powers conferred upon it pursuant to Chapters 82 and 116 of the Nevada Revised Statutes, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Master Declaration. The Association shall be deemed to be acting in the capacity of an Association described in NRS 116.3101, and the Owners within all common interest communities which comprise the Property and all Project Associations shall be deemed to have delegated to the Association the powers set forth in NRS 116.3102 in addition to the powers conferred upon the Association under this Master Declaration. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Master Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation, the following:

7.1.1 Assessments. The Association shall have the power to establish, fix, and levy Assessments as set forth in Article VIII hereof and to enforce payment of Assessments in accordance with the provisions of this Declaration. The Association shall have the right to assign its right to future income to be derived from any Capital Improvement Assessment made pursuant to Section 8.6 hereof or any Special Benefits Area Assessment made pursuant to Section 8.8.5 hereof, in accordance with NRS Chapter 116.

7.1.2 **Suspension of Voting Rights; Fines**. The Association shall have the power and authority to suspend the voting rights of, or can assess monetary fines against, the Owners of any Unit for any violation of this Master Declaration, the Articles, Bylaws, or Rules and Regulations. If the Association adopts a policy of imposing fines for such violations, prior to imposing any fine, the Secretary of the Association shall prepare and cause to be hand delivered or sent prepaid by United States Mail to the mailing address of each Unit, or such other mailing address designated in writing in the manner provided in Section 13.5 hereof to the Association by the Owner of a Unit, a schedule of violations for which a fine may be imposed and the amount of the fine for each. Any such monetary fine imposed by the Board cannot exceed Five Hundred and No/100 Dollars ($500.00) for any one violation; provided, however, that such maximum amount may be adjusted by the Board annually commencing one (1) year after the date of Recordation of this Master Declaration pursuant to the Consumer Price Index adjustment formula set forth in NRS 116.1115, or any successor statute thereof. Before invoking the remedies of suspension of voting rights or a fine, the Board shall give the Owner or other Responsible Party notice and the opportunity to be heard either by convening a Hearing Panel (defined in Section 5.2.9(g)(3) hereof) or by submitting the matter to binding arbitration as provided in NRS Chapter 38.

7.1.3 **Delegation of Powers; Professional Management; Other Services**. The Association has the power and authority to delegate its powers, duties, and responsibilities to employees, agents and independent contractors, including the Manager, and to committees, a majority of which committee members shall be Members of the Association from and after Declarant's Control Termination Date.

7.1.4 **Personal Property**. The Association may acquire and hold for the use and benefit of the Owners tangible and intangible personal property which upon acquisition shall become Association Property, and may dispose of the same by sale or otherwise.

7.1.5 **Rules and Regulations**. The Board shall have the power to adopt, amend, and repeal the Rules and Regulations regulating the use of the Common Areas and Special Benefits Area Amenities and for such other purposes as are expressly allowed by this Master Declaration, including the imposition of reasonable fines for the violation of any of the provisions of such Rules and Regulations. Any fines adopted by the Board shall be included in a schedule attached to the Rules and Regulations. However, the Rules and Regulations shall not be inconsistent with, or materially alter, any provisions of this Master Declaration, the Articles, or the Bylaws. A copy of the Rules and Regulations as adopted, amended, or repealed, shall be mailed or otherwise

delivered to each Member. In case of any conflict between any provision of the Rules and Regulations and any provisions of any of the Applicable Declarations, the Articles or the Bylaws, the conflicting provision of the Rules and Regulations shall be superseded by the provisions of the Applicable Declarations, the Articles or the Bylaws.

7.1.6 Legal Accounting and Other Services. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Property and the enforcement of this Master Declaration.

7.1.7 Other Services and Contracts. The Association shall have the power to obtain and pay for any other property, services, supplies, materials, and any other thing which the Board deems necessary for the Association to perform its duties, to exercise its powers, or which, in the opinion of the Board, shall be necessary or proper for the operation of the Association or for the benefit of the Property or the Owners, and to incur liabilities and make contracts respecting the same, provided, however, that in the event any such contract benefits exclusively one or more a Special Benefits Areas, then a Special Benefits Area Assessment shall be levied against the Owners within each Special Benefits Area so benefited to defray the cost thereof.

7.2 Duties of the Association. In addition to the duties delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association or Persons described in Section 7.1.3, to whom the Association has delegated its powers or duties have the obligation to conduct all business affairs of common interest to all Members and to perform each of the following duties:

7.2.1 Professional Management and Advisors. The Association shall engage the services of a Manager to manage the Property and shall enter into a written management agreement with each Manager which complies with the provisions of this Master Declaration and Applicable Law. Such management agreement shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days written notice. The term of any such management agreement shall not exceed one year, although such management agreement may be renewed from year to year by the Board. In addition, the Association shall hire the following described professionals to assist the Association and the Design Review Committee in the performance of its duties hereunder and under the Master Planned Community Standards:

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a. The Association's Architect (defined in Section 4.4.2 hereof); and

b. The Landscape Maintenance Consultant defined in Section 4.4.2 hereof.

7.2.2 **Taxes and Assessments**. The Association shall pay all taxes and assessments levied against all Association Property or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

7.2.3 **Insurance**. The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article IX and any other insurance required by NRS Chapter 116.

7.2.4 **Implied Authority; Easements**. The Association shall perform such other acts, whether or not expressly authorized by this Master Declaration, or any Declaration Annexation or Supplemental Declaration that may be reasonably necessary to enforce any of the provisions of this Master Declaration, the Articles, Bylaws, Rules and Regulations and the Master-Planned Community Standards. There is hereby reserved to the Association such easements over the Common Areas, Project Common Areas, Limited Common Elements, and the Units as are necessary to perform its duties and obligations or to exercise its rights as set forth in this Master Declaration, any Declaration of Annexation, any Supplemental Declaration, the Bylaws, Articles, the Rules and Regulations and the Master-Planned Community Standards.

7.2.5 **Association's Maintenance Obligations**.

a. **Areas of Property**. Subject to the provisions of subsection 7.2.5(b), below, the Association shall operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of all Common Areas and the Improvements thereon, and Special Benefits Area Amenities. Such operations, management and maintenance shall be in a manner consistent with the highest standards of quality. In this connection, the Association may enter into contracts for services or materials, including contracts with Declarant. The term of any such service contract shall not exceed one year and shall be terminable by either party with or without cause and without payment of a termination fee upon thirty (30) days written notice, although such service contract may be renewed from year to year by the Board.

b. Acceptance of Maintenance Responsibility. Provided that the applicable Assessment has commenced pursuant to the provisions of this Master Declaration, the Association shall be deemed to have accepted the responsibility for the maintenance of (i) any Annexed Property which is to be Association Property upon the conveyance of the Association Property to the Association, subject to the provisions of Section 3.2.5, hereof; (ii) any Annexed Property which is Common Area other than Association Property, upon the designation of such property as Common Area in this Master Declaration or in any Recorded Declaration of Annexation or Supplemental Declaration; (iii) the exterior of any residential building designated for Association maintenance in a Declaration of Annexation or Supplemental Declaration and which is included within a Special Benefits Area, upon the issuance of a certificate of occupancy for such building; and (v) of the front yard landscaping of any Lot so designated for Association maintenance and which is included within a Special Benefits Area, when a Certificate of Compliance has been issued or is deemed to have been issued pursuant to the provisions of Section 4.4.9(a), hereof.

7.2.6 Other. The Association shall carry out the other duties of the Association set forth in the Master Declaration, Articles, Bylaws, Rules and Regulations and Master Planned Community Standards.

7.3 Limitations on Authority of Board. The Board shall not take any of the following actions without the affirmative vote or written consent of (i) a majority of the Members of the Association other than Declarant which constitute a quorum of more than fifty percent (50%) of the voting power of the non-Declarant Members, and (ii) Declarant, until Declarant's Rights Termination Date:

(a) Sell during any fiscal year Association Property having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

(b) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

(c) Incur aggregate expenditures for Capital Improvements to the Common Areas in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for such fiscal year.

7.4 Personal Liability. No member of the Board or of any committee of the Association, any member of the Design Review Committee, or any officer of the Association, or any Manager, or advisor to the Association, including the Association's Architect and the Association's Landscape Architect, or Declarant, or any agent, representative or employee of Declarant, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him, her or it, acted in good faith without willful or intentional misconduct.

7.5 Meetings of Members. The first semi-annual meeting of the Members of the Association shall be held on the later of: (a) forty-five (45) days after the closing of the sale of a Unit to a Person other than Declarant, a Successor Declarant or Builder, which closing represents the fifty-first (51st) percentile interest sold within the first Phase, or (b) six (6) months after the closing of the first sale of a Unit to a Person other than Declarant, a Successor Declarant or Builder. Subsequent semi-annual meetings of the Members shall be held within the months in which the semi-annual and annual anniversaries of the first meeting occur on such day of each month as is specified in the Bylaws, or on the first day thereafter which is not a legal holiday, after notice as required by law and as provided in the Articles, Bylaws, and this Master Declaration.

7.6 Association Books and Records and Association Property. The Association shall keep financial records sufficiently detailed to enable the Association to comply with NRS 116.4109, or any successor statute thereof.

7.6.1 Right of Inspection. All membership registers, financial and other accounting records, and minutes of meetings of the Members, the Board, and committees of the Board, and all other books, documents and records of the Association, and the physical properties of the Association, shall be made available for inspection by any Member of the Association, or his, her or its duly appointed representative or Project Delegate, or any Mortgagee, at any reasonable time and for a purpose reasonably related to membership in the Association, at the office of the Association or at such other place as the Board prescribes. The right of inspection shall include the right to make copies of documents provided that such Member shall pay reasonable copying charges. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member representative, or mortgagee desiring to make an inspection, (b) hours and days of the week when an inspection may be made, and (c) payment of the cost of reproducing copies of documents requested by a Member or by a representative or mortgagee. It shall be deemed to be

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a violation of this Master Declaration for any Person other than Declarant to use the membership roster of the Association for any commercial or business purpose.

7.6.2 **Declarant's Obligation to Deliver Association Property and Records to Board.** Within thirty (30) days after the Declarant's Control Termination Date, the Declarant shall deliver to the Association all property of the Association or control thereof held by or controlled by Declarant, including, but not limited to:

(a) The original or a certified copy of this Master Declaration, all Declarations of Annexation and Supplemental Declarations, the Articles, the Bylaws, minute books and other books and records of the Association and any Rules and Regulations which may have been adopted;

(b) An accounting for money of the Association and financial statements from the date the Association received money to the Declarant's Control Termination Date. The financial statements shall fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles;

(c) Any of the Association's money in the possession of Declarant;

(d) All of the tangible personal property that has been represented by the Declarant to be Association Property or, all tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Areas, and inventories of those properties; unless Declarant has disclosed in a property report or public offering statement that such personal property will remain the property of Declarant;

(e) A copy of any plans and specifications used in the construction of any Improvements to the Common Areas or of Special Benefits Area Amenities which were completed within two (2) years before this Master Declaration was recorded and a copy of any "as built" surveys, plans and specifications or the like relating to Improvements to the Common Areas or Special Benefits Area Amenities which are then in Declarant's possession;

(f) All insurance policies then in force, in which the Owners, the Association, or its directors or officers are named as the insured Persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any Improvements to the Common Areas or Special Benefits Area Amenities;

(h) Any other permits and approvals issued by governmental bodies applicable to the Common Areas or Special Benefits Area Amenities which are in force or which were issued within one (1) year before the Declarant's Control Termination Date;

(i) Written warranties then in effect of any contractors, subcontractors, suppliers or manufacturers with respect to Improvements to the Common Areas or Special Benefits Area Amenities;

(j) A roster of Owners and Eligible Mortgage Holders and their addresses and telephone numbers, if known, as shown on Declarant's records;

(k) Contracts of employment in which the Association is a contracting party;

(l) Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the Person performing the services;

(m) Any bond or security device in which the Association is a beneficiary;

(n) The current Master-Planned Community Standards and Rules and Regulations;

(o) All deeds and leases, executed by the Declarant conveying the Association Property to the Association;

(p) All Final Maps;

(q) Any other instrument which establishes or defines the common, mutual or reciprocal rights or responsibilities of the Members; and

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(r) Any other information in the possession or under the control of Declarant related to the operation of the Association which the Board may reasonably request in writing.

ARTICLE VIII

ASSESSMENTS

8.1 Purpose and Amount of Assessments. The Assessments levied by the Association shall be the amount estimated for, and shall be used exclusively to promote, the health, safety, and welfare of the Members of the Association, for the performance of the duties of the Association as set forth in this Master Declaration, and for the repair, maintenance and upkeep of the Common Areas.

8.2 Personal Obligations. Except as otherwise provided below, regarding the Developer Subsidy Agreement, Declarant, for each Unit owned by it, and each Owner for each Unit owned by such Owner, hereby covenants and agrees to pay to the Association such Assessments as are made pursuant to this Article VIII. Declarant may, in lieu of payment of Assessments attributable to Units owned by Declarant, enter into a Subsidy Agreement with the Association which shall expire on the earlier of the following dates: (i) Declarant's Control Termination Date or (ii) the date on which Declarant elects, in Declarant's sole discretion, to terminate the Subsidy Agreement by written notice to the Board. Each Assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the Person who is the Owner of the Unit at the time such Assessment (or installment thereof) became due and payable. If more than one (1) Person is the Owner of the Unit, the personal obligation to pay such Assessment (or installment) respecting such Unit shall be both joint and several. Subject to the provisions of Article XI, hereof, a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid Assessments against the Unit, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of his Unit.

8.3 Allocation of Assessment Units.

8.3.1 Annual Assessments, Special Assessments and Capital Improvement Assessments; Uniform Rate. Subject to the provisions of Section 8.4.2, hereof, Annual Assessments, Special Assessments and Capital Improvement Assessments shall be assessed against the Owners of the Units at a uniform rate in accordance with the number of Assessment Units allocated to each Unit, in accordance with the following formula: For each Unit, an amount which is the product of (i) a fraction, the numerator of which is the number of Assessment Units attributable to such Unit and the denominator of which is the total number of Assessment Units attributable to all Units within the Property, multiplied by (ii) (a) in the case of the Annual Assessments, the amount of the Budget for the applicable fiscal year, (b) in the case of Special Assessments, by the amount of the Special Assessment, and (c) in the case of Capital Improvement Assessments, by the amount of the Capital Improvement Assessment. Annual Assessments shall be payable in installments payable no less frequently than quarterly, as the Board shall determine. Special Assessments and Capital Improvement Assessments may be payable in one lump sum or in installments, as the Board shall determine.

8.3.2 Other Assessments. Violations Assessments shall be assessed in accordance with the provisions of Section 8.7, hereof. Special Benefits Area Assessments shall be assessed in accordance with Section 8.8, hereof.

8.3.3 Allocation of Assessment Units. Each Unit within a Single-Family Project, Multiple-Dwelling Project or Residential Condominium Project shall be allocated one (1) Assessment Unit. All other Project Types shall be allocated the number of Assessment Units as is specified in the Declaration of Annexation or in a Supplemental Declaration for each such Project.

8.4 Annual Assessments.

8.4.1 Budget. As used herein, "Annual Assessment" shall mean the amount of the Association budget ("Budget") for each fiscal year to pay the Common Expenses (defined below) as established pursuant to the provisions of this Article. As used herein, "Common Expenses" means the expenditures made by the Association in the performance of its obligations hereunder and the financial liabilities of the Association during the applicable fiscal year (excluding the combined amount of all Special Benefits Budgets), including an allocation to reserves, and shall include, but are not limited to, expenditures for the following purposes: (i) to operate, manage, maintain and repair the Common Areas and other Association Property, and to administer the operation of the

Association; (ii) to provide for reasonable reserves consistent with sound business practice for the repair and replacement of Improvements to the Common Areas and any Association Property, and for such other purposes as are consistent with good business practice; (iii) to provide for the possibility that some Assessments may not be paid on a current basis; (iv) to provide for the payment of the fees of the Manager and other Professionals hired by the Board; (v) to hire such security services or personnel as the Board, in its sole absolute discretion deems necessary, and (vi) to provide recreational and social activities for the exclusive benefit of all of the Owners. Without limiting the generality of the foregoing, Common Expenses shall include: all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the Association administration, including, but not limited to, the repair, maintenance, upkeep and replacement of the Common Areas; any taxes and assessments assessed against Association Property, any taxes assessed against the Association itself, insurance premiums, including fire and other casualty insurance, liability insurance, worker's compensation insurance, and other insurance obtained pursuant to this Master Declaration; payment of any liability of the Association whatsoever for loss or damage arising out of or in connection with the Common Areas or any fire, accident, or nuisance occurring within the Common Areas; the cost of repair, rebuilding and replacement of the Improvements to the Common Areas; the cost of all utility services to the Common Areas, including water, electricity, refuse removal, landscape maintenance services, and any other similar service attributable to the Common Areas; the unpaid share of any Assessment levied during the previous fiscal year against any Owner who has defaulted in payment thereof to the extent that the same becomes uncollectible; accounting and legal fees, management fees, cleaning and janitorial fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Common Areas and the Improvements thereon; the cost of security services and the cost of organizing and funding recreational and social activities of the Owners.

8.4.2 Commencement of Annual Assessments. For each Phase of a Residential Project Type, the Annual Assessments for such Phase shall commence upon the earlier of the following (i) the first close of escrow for the sale of a Unit within such Phase to a Person other than a Builder, Declarant or a Successor Declarant, or (ii) six (6) months after the close of escrow for the sale or transfer of such Phase by the Declarant to a Person other than a Successor Declarant. For all Commercial Project Types, the Annual Assessments shall commence for such Project upon the earlier to occur of the following: (i) the issuance by a governmental authority of the first certificate of occupancy for a building within the Project, or (ii) one (1) year after the close of escrow for the sale of the Commercial Project to a Person other than a Successor Declarant.

8.4.3 **Procedure for Establishing Annual Assessments**. The Annual Assessment period shall coincide with the fiscal year of the Association, which shall commence on January 1 of each year and shall terminate on December 31 of such year. Annual Assessments shall be payable, in advance, in equal quarterly installments payable on the first (1st) day of each fiscal quarter unless the Board adopts some other basis for collection. However, the initial Annual Assessment period for the first Phase of the Property described in **Exhibit "A"** to this Master Declaration shall be prorated based on the remaining number of days within the calendar quarter (or other applicable installment period) in which the Annual Assessments commence pursuant to Section 8.4.2 hereof. Not less than ninety (90) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of preparing the proposed Budget of the Common Expenses for the next succeeding fiscal year and establishing the Annual Assessment for such fiscal year. Within thirty (30) days after adoption of the proposed Budget by the Board for such fiscal year, the Board shall provide a summary of the Budget to all Owners, and shall set a date for a meeting of the Members to consider ratification of the Budget, which date shall be not less than twenty-one (21) nor more than sixty (60) days after mailing of the summary. Such meeting of the Members may be one of the semi-annual meetings of the Members or a special meeting of the Members called for such purpose. Unless at the meeting of the Members described in this Section 8.4.3 at least sixty-seven percent (67%) of the voting power of the Association votes to reject the proposed Budget, the Budget shall be deemed ratified by the Members, whether or not a quorum is present at such meeting. If the proposed Budget is so rejected, the Budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent Budget proposed by the Board in the manner provided in this Section 8.4.3.

8.4.4 **Emergency Situations**. Notwithstanding any other provision contained in this Section 8.4, the Board may increase the Annual Assessments as necessary for emergency situations. For purposes of this Section, an emergency situation is any one (1) of the following:

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

(b) An extraordinary expense necessary to repair or maintain Property or any portion thereof for which the Association is responsible, where a threat to personal safety on the Property is discovered; or

(c) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible, that could not

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have been reasonably foreseen by the governing body in preparing and distributing the proposed Budget.

Prior to the imposition or collection of an increase to the Annual Assessment under this Section 8.4.4, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of the emergency assessment.

8.4.5 **Expenditure of Reserves.**

a. The Board shall not expend funds designated as Reserves for any purpose other than:

(i) The repair, restoration, replacement or maintenance of major components for which the Association is obligated and for which the Reserve Account in question was established, or

(ii) Litigation involving the purposes set forth in subsection 8.4.4(b), above.

b. Notwithstanding the provisions of Section 8.4.5(a)(i) and (ii), above, the Board:

(i) May authorize the temporary transfer of money from the Reserve Account to the Association's operating account to meet short term cash flow requirements or other expenses;

(ii) Shall cause the transferred funds described in 8.4.5(b)(i), above, to be restored to the Reserve Account within three (3) years of the date of the initial transfer; however, the Board may, upon making a documented finding that a delay of restoration of the funds to the Reserve Account would be in the best interests of the Property, delay the restoration until such time it reasonably determines to be necessary; and

(iii) Shall exercise prudent fiscal management in delaying restoration of the transferred funds to the Reserve Account and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time

limits specified in 8.4.5(b)(ii), above. Any such Special Assessment shall not be subject to the limitations specified in Section 8.5, below.

8.5 Special Assessments. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses for a given fiscal year is or will become inadequate to meet the Common Expenses for any reason, including, but not limited to, shortfalls caused by delinquencies in the payment of Assessments, the annexation of Additional Common Area, or insufficient reserves to perform the Association's obligations under this Master Declaration, or extraordinary legal expenses, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the Members with the Board's recommendation for a Special Assessment to meet such shortfall, and shall set a date for a meeting of the Members which is not less than twenty-one (21) nor more than sixty (60) days after the mailing of the summary. If the amount of the proposed Special Assessment does not exceed five percent (5%) of the Budgeted gross expenses of the Association for the current fiscal year, and, unless at such meeting a majority of the voting power of the Association votes to reject the proposed Special Assessment, the proposed Special Assessment shall be deemed ratified by the Members, whether or not a quorum is present at such meeting, and shall become a Special Assessment to the Owners of the Units. If the proposed Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the current fiscal year, then such Special Assessment must be approved by the vote or written assent of a majority of a quorum of the Members constituting at least fifty percent (50%) of the voting power of the Association. The Board may, in its discretion, provide for payment of any Special Assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board deems reasonable. Each Special Assessment shall be allocated among the Units in the same manner as the Annual Assessment is allocated.

8.6 Capital Improvement Assessments.

8.6.1 Association's Power to Levy; Definition. The Association shall have the power to levy assessments for Capital Improvements ("Capital Improvement Assessments") on the terms and conditions set forth below. As used herein "Capital Improvement" means (i) any Improvement upon the Common Area which is not a repair or replacement of an existing Improvement, or (ii) any expenditure relating to the Common Area which is outside the ordinary course of business of the Association.

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8.6.2 **Petition; Association Approval.**

a. Owners of three (3) or more of the Units may petition the Association for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement. Such petition shall be in writing and be in such form and shall contain such information as the Board may reasonably require. The Board may, on its own motion, move for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement, in which case such motion shall be treated as if it were a petition duly submitted by Owners of three (3) or more of the Units.

b. Upon receipt of a petition for a proposed Capital Improvement or if the Board desires to propose a Capital Improvement, the Board shall obtain three (3) estimates from licensed contractors for the construction of the Capital Improvement.

c. The Board shall submit the Capital Improvement proposal to a vote of the Members at any semi-annual meeting of the Members, or a special meeting called for such purpose, or by written ballot. The Capital Improvement Assessment shall be deemed approved upon the affirmative vote of (i) non-Declarant Members entitled to exercise a majority of the voting power of the Association, and (ii) the Declarant, until the Declarant's Rights Termination Date.

8.6.3 **Levy of Capital Improvement Assessments.** Capital Improvement Assessments shall be allocated among the Units in the same manner as the Annual Assessments are allocated. A Capital Improvement Assessment shall be paid in such installments and during such period or periods as shall be voted upon by the Members at the time such Assessment is approved. If no terms of payment are specified by such vote of the Membership, then the Capital Improvement Assessment shall be due and payable upon terms set by the Board.

8.6.4 **Expenditure for Capital Improvement.** After the levy of the Capital Improvement Assessment and the collection of the entire Capital Improvement Assessment, or a sufficient portion thereof as the Board deems prudent, then the Board shall cause the Capital Improvement to be constructed, installed, or acquired, or shall contract for the extraordinary expenditure constituting the Capital Improvement.

8.6.5 **Deficiency in Capital Improvement Assessment.** If at any time and from time to time a Capital Improvement Assessment proves or appears likely to be inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, subject to the limitations set forth in this Section 8.6.5, increase the Capital

Improvement Assessment by the amount of such actual or estimated inadequacy, which shall be levied against the Owners in the same proportion as the initial Capital Improvement Assessment was allocated. If such additional Capital Improvement Assessment is in excess of five percent (5%) of the original Capital Improvement Assessment, the affirmative vote or written consent of the Members as provided in Section 8.6.2(c), above, (for the initial Capital Improvement Assessment) shall be required for any such increased Capital Improvement Assessment.

8.7 **Violation Assessments**. Subject to the provisions of Section 5.2.9(g) hereof, the Board shall have the power to levy Violation Assessments against Owners or Responsible Parties as authorized by this Declaration or to collect reasonable fines imposed by the Rules and Regulations. The Board shall levy a Violation Assessment against the Owners of a Unit ("Violation Assessment") to pay for the cost of curing any Maintenance Violation of such Owners and/or any other work performed by the Association for such Owners' account pursuant to the provisions of this Master Declaration, and any costs or expenses incident thereto, including, but not limited to, attorneys' fees and court costs.

8.8 **Special Benefits Area Assessments**.

8.8.1 **Purpose**. The purpose of a Special Benefits Area Assessment is to provide for the payment of (a) the expenses of repair, maintenance, upkeep and replacement of any Special Benefits Area Amenities; (b) the expenses of special services provided by the Association to the Units within the Special Benefits Area and not to the Owners as a whole, including special maintenance of the Owners' Lots or any Improvements thereon; and (c) the extra bookkeeping and accounting expenses created by the Special Benefits Area.

8.8.2 **Special Benefits Budget**. Each Special Benefits Budget (defined below) shall be ratified by the Members owning Units within the Special Benefits Area in the manner provided in Section 8.8.4, below, and shall include estimated expenditures for the following purposes: (i) to operate, manage, maintain, replace, rebuild and repair the Special Benefits Area Amenities to defray the cost of services provided by the Association exclusively to Owners within one or more Special Benefits Areas and to repair, maintain and replace other Association Property used exclusively within one or more Special Benefits Areas, (ii) to provide for reasonable reserves consistent with sound business practice and for such other purposes as are consistent with good business practice; (iii) to provide for the possibility that some Special Benefits Area Assessments may not be paid on a current basis; and (iv) to provide for the payment of

any additional fees of the Manager and the fees of other Professionals hired by the Board relating exclusively to such one or more Special Benefits Areas. Without limiting the generality of the foregoing, such estimated expenditures shall include: all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration of the Special Benefits Area, including, but not limited to, any taxes and assessments assessed against the Special Benefits Area Amenities for which the Association is responsible, insurance premiums, including fire and other casualty insurance, liability insurance, workman's compensation insurance, and other insurance obtained for the Special Benefits Area Amenities or Special Benefits Area services, payment of any liability of the Association whatsoever for loss or damage arising out of or in connection with the Special Benefits Area Amenities or Special Benefits Area services or any fire, accident, or nuisance occurring within the Special Benefits Area Amenities or in connection with Special Benefits Area services; the cost of all utility services to the Special Benefits Area Amenities, including water, electricity, refuse removal, landscape maintenance services, and any other similar service attributable thereto; the unpaid share of any Special Benefits Area Assessments levied during the previous fiscal year against Owners who have defaulted in payment thereof, to the extent that the same becomes uncollectible; cleaning, janitorial and landscape care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Special Benefits Area Amenities.

8.8.3 Allocation of Special Benefits Area Assessments. Each of the Special Benefits Area Assessments shall be levied against the Owners, jointly and severally, of each of the Units within the applicable Special Benefits Area in accordance with the number of Assessment Units assigned to such Unit in relation to the total number of Assessment Units attributable to the Units within such Special Benefits Area.

8.8.4 Procedure for Establishing Special Benefits Area Assessments. At such time as the Board meets for the purpose of preparing the proposed Budget of the Common Expenses for the next succeeding fiscal year, the Board shall also establish a budget for the expenses of each Special Benefits Area within the Property ("Special Benefits Budget"). Within thirty (30) days after adoption by the Board of the proposed Special Benefits Budgets for each Special Benefits Area, the Board shall provide a summary of the applicable proposed Special Benefits Budget to all Owners within the Special Benefits Area and the ratification of the Special Benefits Budget shall be considered by the Owners within the Special Benefits Area as a Special Benefits Ballot Question at the same meeting of the Members as the Budget for the Common Expenses is considered for ratification. Unless at such meeting at least sixty-seven percent (67%) of the voting power of the Members within the Special Benefits Area votes to reject the

proposed Special Benefits Budget, such Special Benefits Budget shall be deemed ratified by such Owners, whether or not a quorum of such Owners is present at such meeting. If any proposed Special Benefits Budget is so rejected, the Special Benefits Budget last ratified by the Owners within the Special Benefits Area shall be continued until such time as the next budget proposed by the Board is submitted to the Owners within the Special Benefits Area in the manner provided in this Section 8.8.4.

8.8.5 **Increased Services or Additional Improvements Within a Special Benefits Area**. Any additional or increased services for a Special Benefits Area which were not initially provided for in the Declaration(s) of Annexation or Supplemental Declaration(s) for such Special Benefits Area and any additional Capital Improvement(s) to the Limited Common Elements which are Special Benefits Area Amenities, shall not be authorized unless all of the following occur: (i) a majority of the Members of the Special Benefits Area Committee for the Special Benefits Area recommends such additional or increased services or such Capital Improvement; (ii) such Special Benefits Area Committee has directed the Manager to obtain at least three (3) bids for such service or Capital Improvement; (iii) the matter is placed on the agenda of a regular semi-annual meeting of the Members as a Special Benefits Ballot Question and information pertaining to the cost of such service or Capital Improvement is mailed to the Owners of all Units within the Special Benefits Area in the manner provided in Section 13.5 hereof; (iv) Members entitled to exercise not less than sixty-seven percent (67%) of the voting power within such Special Benefits Area, excluding Declarant, approves such service or Capital Improvement; and (v) Declarant has given its written approval of the Capital Improvement, or service, unless Declarant's Rights Termination Date has occurred.

8.8.6 **Applicability of Other Sections**. The provisions of Sections 8.9, 8.10, and 8.11 shall apply to Special Benefits Area Assessments.

8.9 **Notices of Assessments; Delinquencies**. All Assessment notices shall be in writing and shall be given in the manner specified in Section 13.5, hereof. The Association shall give written notice of the Annual Assessments, any Special Assessments and any Capital Improvement Assessments to the Owners of the Units within the Property, which notice shall specify the amount of the Assessment and the date or dates payment of the same is due. Nothing contained herein shall be construed so as to require the Association to give periodic notices of the same Assessment. One notice of an Assessment shall be sufficient to meet the requirements of this Section, even though the Assessment may be payable in installments. Failure of the Association to give notice of any Assessment shall not affect the liability of the Owners of the Unit for such Assessment; provided, however, that the date when payment of the first installment of

such Assessment shall become due in such a case shall be deferred to a date fifteen (15) days after such notice shall have been given, and the first installment of such Assessment shall not be deemed delinquent until fifteen (15) days after such deferred due date. Any Assessment installment hereunder which is not paid within fifteen (15) days following the date it is due as specified in the notice of such Assessment shall be deemed delinquent. All delinquent Assessments shall bear interest at the rate of twelve percent (12%) per annum from the date the Assessment becomes delinquent hereunder until paid, and, in addition, a late charge equal to ten percent (10%) of each delinquent installment shall be due for each delinquent installment.

8.10 Statement of Account. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Unit, the amount of the current periodic assessment, and the date that such assessment becomes or became due, and if there is any credit for advance payments. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) business days following receipt of the written request and fee, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement.

8.11 Collection of Assessments.

8.11.1 Judicial and Non-Judicial Remedies. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including the Manager, can enforce the obligations of the Owners to pay Assessments provided for in this Master Declaration by commencement and maintenance of a suit to recover a money judgement, or can enforce its lien rights by judicial proceedings or through the exercise of the power of sale granted to the Board pursuant to applicable statutes and laws and Section 8.11.3, below. Suit to recover a money judgment against an Owner for unpaid assessments together with all other amounts due hereunder shall be maintainable without first foreclosing against the Unit which is subject to the lien for such Assessment or waiving the lien rights granted to the Association hereby.

8.11.2 Liens for Assessments; Priority and Duration. All sums assessed to an Owner pursuant to this Master Declaration, together with interest thereon as provided herein, shall be secured by a lien on such Owner's Unit in favor of the

Association from the date the Assessment becomes due. Such lien shall be prior to all other liens and encumbrances on such Unit, except for: (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of this Master Declaration; and (c) except as otherwise provided in NRS 116.3116, or any successor statute, a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent. NRS 116.3116 provides that the lien created by this Master Declaration for unpaid Annual Assessments is prior to a First Mortgage to the extent of the amount of such Annual Assessment which would have become due during the six (6) month period immediately preceding institution of an action to enforce the lien. The provisions of this Section 8.11.2 shall not affect the priority of mechanics' or materialmen's liens under applicable law. Recording of the Master Declaration constitutes record notice and perfection of the lien. A lien for unpaid Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessments becomes due.

8.11.3 Enforcement of Lien.

a. Notice of Delinquent Assessment and Notice of Default. The Association may foreclose its lien by sale pursuant to NRS Chapter 116 after:

(i) The Association has caused to be recorded with the County Recorder of the county in which the Unit or any part thereof is situated ("the County Recorder"), a notice of delinquent assessment (herein "Notice of Delinquent Assessment"), executed by an authorized representative of the Manager which states the amount of the Assessment which is due together with all interest and late charges thereon in accordance with the provisions of this Master Declaration, a description of the Unit against which the lien is imposed, and the name of the Owner of Record of the Unit; and

(ii) The Association or other Person conducting the sale has executed and caused to be recorded with the County Recorder, a notice of default and election to sell the Unit to satisfy the lien ("Notice of Default"), which shall contain the same information as the Notice of Delinquent Assessment, but which shall also describe the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale; and

(iii) The Owners of the Unit or their successors in interest have failed to pay the amount of the lien, including interest and late charges, and costs, fees

and expenses incident to its enforcement for a period of sixty (60) days which commences on the first day following the later of:

(1) The day on which the Notice of Default is so recorded; or

(2) The day on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Owners of the Unit, or their successors in interest, at their address if known, or otherwise to the address of the Unit.

b. Notice of Sale. The Association or other person conducting the sale shall, at any time after the expiration of such sixty (60) day period and before selling the Unit, give notice of the time and place of the sale ("Notice of Sale") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Owners of the Unit, or their successors in interest, at their address if known, or otherwise to the address of the Unit. Such sale shall be conducted in any manner permitted by law. Each Owner who is liable for payment of the Assessment shall be required to pay the costs and expenses of such foreclosure proceeding including, but not limited to, the cost of preparation of all notices (whether or not such notice has been given to the Owners at the time payment is made), reasonable attorneys' fees, title company fees and charges, trustee's fees and costs and title insurance costs.

All such costs and expenses of the foreclosure shall be secured by the lien being foreclosed. Each Owner who is liable for payment of the Assessment shall be required to pay to the Association any and all Assessments against such Owner which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use, and otherwise deal with the Unit. The Association shall be entitled to bid on credit up to and including the amount secured by the lien being foreclosed.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and Recorded upon payment of all sums secured by such lien, in accordance with law.

Any encumbrancer holding a lien on a Unit may, but shall not be required to, pay any amounts secured by a lien for unpaid assessments, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including rights of priority.

c. Conduct of Sale. Such sale shall be conducted in accordance with applicable law and the proceeds thereof distributed as provided by law.

ARTICLE IX

INSURANCE

9.1 General Provisions Relating to Insurance to be Obtained. All insurance obtained by the Association shall be provided by companies duly authorized to do business in Nevada which have and maintain a rating of A-/VIII, or above, in the Best's Insurance Reports, or the equivalent. If the insurance coverage described in Sections 9.2 or 9.3 is not reasonably available, the Board shall promptly cause notice of that fact to be given to all Owners, Eligible Mortgage Holders and Eligible Insurers in the manner provided in Section 13.5, hereof. The insurance policies described in Sections 9.2 and 9.3, hereof must provide, to the extent reasonably available, that:

a. Each Owner is an insured Person under the policy with respect to liability arising out of such Owner's membership in the Association;

b. The insurer waives its right to subrogation under the policy against each Owner or member of such Owner's household;

c. No act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and

d. If, at the time of a loss under the policy, there is other insurance in the name of any Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

All insurers which issue insurance policies under Sections 9.2 or 9.3, hereof, shall issue certificates of insurance to the Association and, upon written request, to any Owner or holder of a Mortgage or other security interest. The insurer issuing such policies may

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not cancel or refuse to renew the same until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed, in the manner provided in Section 13.5 hereof, to the Association, each Owner and each holder of a Mortgage or other security interest to whom a certificate of insurance has been issued, at their respective last known addresses.

At such time as the Board deems reasonable, and in no event later than the Declarant's Control Termination Date, the Association shall obtain and maintain in full force and effect the insurance coverage described in Sections 9.5 and 9.6 hereof, to the extent reasonably available.

The Association may obtain and maintain in full force to the extent reasonably available the insurance coverage described in Sections 9.4 and 9.7 of this Article to the extent the Board deems advisable in accordance with sound business practice.

Every policy of insurance obtained by the Association shall contain an express waiver, if reasonably available, of any and all rights subrogation against Declarant, Declarant's project managers, the Board, the Design Review Committee, and their respective representatives, members and employees.

9.2 Casualty Insurance. Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, a Successor Declarant or a Builder, the Association shall obtain and maintain in force, to the extent reasonably available, insurance against all risks of direct physical loss commonly insured against on all insurable Improvements upon the Common Area and any other Improvements under the control of the Association and any equipment and fixtures within such Improvements, on all Special Benefits Area Amenities and on all Association Property which is personal property in an amount, after application of any deductibles, equal to one hundred percent (100%) of current "replacement cost", exclusive of land, excavations, foundations and other items normally excluded from coverage. Such insurance shall include fire and extended coverage, vandalism, and malicious mischief, and such other risks and hazards against which the Association shall deem appropriate to provide insurance protection. The Association may elect such "deductible" provisions as in the Board's opinion are consistent with good business practice, provided that in no event shall such deductible be in an amount greater than the lesser of (i) $10,000.00, or (ii) one percent (1%) of the face amount of such policy.

9.3 **Public Liability and Property Damage Insurance**. Commencing not later than the date of the first conveyance of a Unit to a Person other than Declarant, a Successor Declarant or a Builder, the Association shall obtain and maintain in force, to the extent reasonably available, broad form comprehensive liability coverage, including insurance for medical payments, in such amounts and in such forms as the Board deems advisable to provide adequate protection; provided, however, that the limits of liability on such insurance shall be no less than $1,000,000.00 for injury or death to any one (1) person, no less than $3,000.000.00 for injury or death to more than one (1) person in one (1) occurrence and no less than $500,000.00 for damage to property. Coverage shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Association Property and the Common Area and coverage for operation of automobiles on behalf of the Association. The liability insurance shall name as separately protected insured Persons, the Declarant, the Manager, the Association, the Board, the Design Review Committee, and each of their respective representatives, agents, members, and employees. From and after Declarant's Rights Termination Date, such insurance provisions regarding Declarant shall not apply. In the event such public liability insurance and property damage insurance is insufficient to cover the liability of the insured thereunder, then such shortfall shall be deemed to be part of the Common Expenses, the Association shall levy a Special Assessment against the Owners in the manner provided in Section 8.5, hereof, to cover such shortfall and the limitations set forth in Section 8.5 shall not be applicable to such Special Assessment. Such Special Assessment shall be allocated and collected as provided in Article VIII, hereof.

9.4 **Workman's Compensation and Employer's Liability Insurance**. The Board shall obtain a certificate from all persons or companies hired by the Association certifying that such person or company is covered under the State of Nevada industrial insurance system or by workmen's compensation insurance in the amounts and in the forms required by law. The Association may carry such employer's liability insurance as is customary for homeowner's associations within the State of Nevada having similar responsibilities.

9.5 **Fidelity Insurance**. At such time as the Board deems reasonable, but in no event later than Declarant's Control Termination Date, the Association shall obtain and maintain insurance covering officers and employees of the Association and employees of the Manager, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the Manager at any give time during the

term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months installments of the Annual Assessments on all Units.

9.6 Errors and Omissions Insurance. At such times as the Board deems reasonable, and in no event later than Declarant's Control Termination Date, the Association shall obtain and maintain, in such amounts and in such form as the Board deems appropriate, errors and omissions insurance covering the members of the Board, the Manager and the officers of the Association.

9.7 Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as the Board shall deem appropriate with respect to the Property. The Association shall obtain such other insurance as required by law. The Association shall obtain such insurance as required by FNMA, FHLMC, VA, FHA and the United States Department of Housing and Urban Development ("HUD"), if the Property has been, or is intended to be, qualified with such entities.

9.8 Coverage Review. The Board shall review the coverage of all insurance policies of the Association at least once a year and obtain such additional coverage as the Board deems prudent.

9.9 Adjustment of Claims. Any loss covered by the policies described in Sections 9.2 or 9.3, hereof, shall be adjusted with the Association, but the proceeds for that loss shall be payable to either a trustee designated for that purpose, or otherwise to the Association, and not to any holder of a Mortgage or other security interest. Such trustee or the Association shall hold any such proceeds in trust for the Association, the Owners, Mortgagees and other lien holders as their interests may appear of Record. Subject to the provisions of Section 10.1, below, and NRS 116.31135, such proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Owners, Mortgagees, and other lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common-interest community created by this Declaration is terminated in accordance with statute and the provisions of this Master Declaration.

9.10 Owner's Insurance Responsibilities. The following insurance coverages shall be the responsibility of each Owner unless a Project Association governing such Owner's Unit is required to maintain such insurance pursuant to a Declaration of Annexation or a Supplemental Declaration: insurance on all Improvements within such Owner's Lot, Parcel or Condominium Unit; insurance on items of personal property

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within such Owner's Lot, Parcel or Condominium Unit; insurance for casualty and public liability coverage within each Lot, Parcel or Condominium Unit; and insurance coverage for activities of the Owner, not acting for the Association, with respect to the Common Areas and Special Benefits Area Amenities. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect for Units owned by the Association such casualty, flood, and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit developments ("PUD") projects established by FNMA and/or FHLMA, as applicable, so long as the Association is the owner of such Unit, except to the extent such coverage is not available or has been waived in writing or is not required by FNMA or FHLMC, as the case may be.

9.11 **Flood Hazard Disclosure and Disclaimer; Flood Insurance**. It is acknowledged by each Owner and prospective purchaser that the Clark County area is subject to flash flooding over which Declarant and the Association have no control. Declarant, the Association and the Design Review Committee hereby disclaim any obligation to insure or guarantee any Owner against flooding in the Property. This disclosure is meant to place the general public and any prospective purchaser on notice that Declarant and the Association have no duty, express or implied, to investigate the flood plains, the likelihood of flooding, nor to take any corrective actions to prevent the potential loss from this threatened harm. Each Owner is responsible for the design of the Improvements on such Owner's Lot or Parcel in a manner which will best protect such Improvements from loss by natural causes. No Owner or other Responsible Party shall alter the shape, design or elevation of such Owner's Lot or Parcel in a fashion which would result in harm to other Owners or an increased potential for flood loss to other Owners' Lots or Parcels or the Improvements thereon. Each Owner, with respect to such Owner's Lot or Parcel, the Association with respect to Common Areas and Special Benefits Area Amenities, and each Project Association with respect to the Project Common Area maintained by such Project Association, shall bear the responsibility for procuring and maintaining at its own expense, any policies of flood insurance with appropriate coverage. Declarant shall have no duty or responsibility for the maintenance of flood insurance, nor for the payment of any premium for policies of flood insurance on behalf of any Owner or the Association.

ARTICLE X

DAMAGE, DESTRUCTION, OR CONDEMNATION

10.1 Duty and Authority to Rebuild. Any portion of the Common Area which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

a. The common-interest community created by this Declaration is terminated, in which case NRS Sections 116.2118, 116.21183 and 116.21185 and Sections 13.1.2 of this Master Declaration apply; or

b. Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

c. Members entitled to exercise eighty percent (80%) of the voting power of the Association elect not to rebuild by vote or written consent.

Any portion of the damaged or destroyed property which is a Special Benefits Area Amenity, must be repaired or replaced promptly by the Association unless (i) the provisions of subsections (a) or (b) of this Section 10.1 apply or (ii) the Owners of the Units representing eighty percent (80%) of the Units within the Special Benefits Area vote not to rebuild.

The Association's duties under this Section 10.1 shall be exercised in accordance with the provisions of this Master Declaration and applicable law.

10.2 Estimate of Costs; Design Review Committee Approval. As soon as practicable after an event causing damage to, or destruction of, any Improvements to the Common Area or Special Benefits Area Amenities, the Association shall obtain estimates that it deems reliable and complete of the costs of repair or reconstruction of the damaged or destroyed property. No reconstruction or repair of damaged or destroyed Common Area Improvements or Special Benefits Area Amenities shall commence until the requirements of Article IV of this Master Declaration have been satisfied.

10.3 Funds for Reconstruction. The proceeds of any insurance shall be collected by and available to the Association for the purpose of repair or reconstruction of the Common Area Improvements or the Special Benefits Area Amenities, as the case may be. If the damaged or destroyed Improvements are Common Area Improvements, and proceeds of the insurance plus the amount of the Reserves, if any, budgeted for such

damaged or destroyed Improvements are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board shall levy a Special Assessment under Section 8.5, hereof, which is sufficient to cover the shortfall. If the damaged or destroyed Improvements are Special Benefits Area Amenities, and the proceeds of the insurance plus the amount of the Reserves, if any, budgeted for such Special Benefits Area Amenity are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board shall levy a Special Benefits Area Assessment under Section 8.8, hereof, which shall be in an amount which is sufficient to cover the shortfall. No Member approval shall be required for Assessments made pursuant to this Section 10.3.

10.4 **Repair or Reconstruction**. Except as otherwise provided herein, as soon as practicable after receiving the estimates, the Board shall diligently pursue to complete the repair or reconstruction of the damaged or destroyed Common Area Improvements or Special Benefits Area Amenities. The Association may take all necessary or appropriate action to effect repair or reconstruction. Such repair or reconstruction shall be in accordance with the original plans and specifications; provided, however, that in the case of Common Area Improvements, with the approval of Members entitled to exercise fifty-one percent (51%) of the voting power of the Association, or in the case of Special Benefits Area Amenities, with the approval of the Owners of fifty-one percent (51%) of the Units within the affected Special Benefits Area, the repair or reconstruction may be in accordance with different plans and specifications, subject, in all cases to the approvals required in Article IV hereof.

10.5 **Disbursement of Funds for Repair or Reconstruction**. The insurance proceeds held by the Association and the amounts received from the Special Assessment or Special Benefits Area Assessment, as the case may be, provided for in Section 10.3 hereof constitute a fund for the payment of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for costs of repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners of the Units in proportion to the contributions by each Owner to the Association.

10.6 **Decision Not to Rebuild; Excess Proceeds**. In the event of a determination not to rebuild, the damaged or destroyed Improvements shall be removed from the land, and the land shall be landscaped in a manner so as to be compatible with the surrounding areas and which will ensure the existence of adequate rights-of-way and legal access over and to the area. The cost of removal and landscaping shall be paid for with insurance proceeds. In the event any insurance proceeds remain after repair or reconstruction or

after restoration as provided in this Section 10.6 ("Excess Insurance Proceeds"), the Excess Insurance Proceeds shall be distributed as provided in NRS 116.31135(2), or any successor statute thereof.

10.7 Condemnation. If at any time all or any portion of the Common Areas or Special Benefits Area Amenities, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain, or by private purchase in lieu of eminent domain, (collectively "Condemnation Proceedings") then the Association shall have the sole and exclusive right to represent the Members in the Condemnation Proceedings and to receive the award ("Condemnation Award"), which shall be disposed of in accordance with this Section 10.7. The Association shall have the duty to repair or replace the Improvement so taken, only if the following conditions are met: (i) the Board determines that a suitable location exists within the Common Area or within the Limited Common Elements assigned to the affected Special Benefits Area; and (ii) the Available Proceeds are sufficient to pay the estimated cost of repair or reconstruction. As used herein "Available Proceeds" shall mean the sum of the Condemnation Award (including any allocation for land taken) and any Reserves set aside for repair or replacement of the Improvement so taken.

10.7.1 Insufficient Available Proceeds. If the Improvement taken was a Common Area Improvement and the Available Proceeds are insufficient to repair or replace the Improvement, then the matter shall be submitted to the vote of the Members as a Special Assessment in the manner set forth in Section 8.5 hereof. If the Improvement taken was a Special Benefits Area Amenity, then the matter shall be submitted to a vote as a Special Benefits Ballot Question as provided in Section 8.8.5 hereof.

10.7.2 Destruction of Condemnation Award Proceeds. In the event the Condemnation Award exceeds the cost of repair or replacement of the Improvement taken or the Available Proceeds are insufficient and the decision is made not to repair or replace the same, then the excess proceeds or the entire award, as the case may be, shall be distributed to the Members in the manner provided in Section 10.6 relating to Excess Insurance Proceeds.

10.8 Notice to Owners and Mortgagees. The Board immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Areas or Special Benefits Area Amenities or of any taking by eminent domain, or threat thereof, of the of the Common Areas or Special Benefits Area Amenities, or any portion thereof, shall promptly notify, in the case of Common Areas, all Owners, all Eligible

Mortgage Holders and Eligible Insurers, or in the case of Special Benefits Area Amenities, the Owners of Units within the affected Special Benefits Area.

ARTICLE XI

PROTECTION OF LENDERS

11.1 Encumbrance of Lots Permitted. Any Owner may encumber such Owner's Unit with a Mortgage.

11.2 Subordination. Except as otherwise provided in NRS 116.3116, or any successor statute, any lien created or claimed under Article VIII of this Master Declaration is subject and subordinate to the lien of any First Mortgage which was recorded before the date on which the Assessment sought to be enforced became delinquent.

11.3 No Liability for Unpaid Assessments. Except as otherwise provided in NRS 116.3116, or any successor statute, any Person who acquires title to a Unit by foreclosure of a First Mortgage shall take the Unit free of any liens securing unpaid Assessments against such Unit that accrued prior to the time such Person so acquires ownership of the Unit; provided, however, that after the foreclosure sale under such First Mortgage, the amount of all Assessments which are due and payable from and after such foreclosure sale shall be assessed hereunder to the grantee or purchaser at such sale.

11.4 Breach of Covenants. A breach by an Owner of any of the provisions of this Master Declaration, shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Property or any portion thereof; provided, however, the provisions of this Master Declaration shall be binding upon each Mortgagee which acquires title to the Unit encumbered by its Mortgage by foreclosure of such Mortgage or deed in lieu of foreclosure thereof.

11.5 Notice to Eligible Mortgage Holders, Insurers and Guarantors. The holder of any Residential First Mortgage shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Master Declaration and any insurer or guarantor of a Residential First Mortgage shall be entitled to become an "Eligible Insurer" hereunder by notifying the Association of its name, address and the address of the Unit encumbered by the First Mortgage which it holds or insures in the manner provided in Section 13.5, below. Such notification shall be deemed to be a request by

the Eligible Mortgage Holder or Eligible Insurer for written notice from the Association of: (i) any default in the payment of Assessments or fines which remains uncured for a period of sixty (60) days; (ii) any condemnation or casualty loss that affects a material portion of the Unit; (iii) any lapse, cancellation or material modification of any hazard or liability insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action described in Section 11.9, below. The Association shall give written notice to Eligible Mortgage Holders and Eligible Insurers in accordance with the provisions of this Section 11.5 and in the manner prescribed in Section 13.5, below. Any holder or insurer of a Residential First Mortgage encumbering a Unit who does not so request notice, shall not be deemed to be an Eligible Mortgage Holder or Eligible Insurer under the terms of this Master Declaration and shall not be entitled to any notice right or distribution pursuant to this Master Declaration, except as otherwise expressly provided herein.

11.6 Insurance Proceeds and Condemnation Awards. No provision of this Master Declaration or the Articles shall give any Owner, or any other party, priority over any rights of the holders of First Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards.

11.7 Appearance at Meetings. Because of its financial interest in the Property, any holder of a Residential First Mortgage may appear (but cannot vote) at meetings of the Members and the Board, and may draw attention to violations of this Master Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

11.8 Examination of Records. The holders of First Mortgages shall have the right to examine the books and records of the Association and can require the submission of financial data concerning the Association, including, but not limited to, an audited statement for the preceding fiscal year and operating statements if requested in writing by an Eligible Mortgage Holder or Eligible Insurer.

11.9 Prior Approvals. None of the following actions shall be taken unless Members entitled to exercise sixty-seven percent (67%) of the voting power of the Association have approved the same in the manner provided in this Master Declaration and fifty-one percent (51%) of the Eligible Mortgage Holders and Eligible Insurers have given their prior written approval (each Eligible Mortgage Holder or Eligible Insurer having one vote for each Residential Unit encumbered):

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(a) Make any substantive amendment or modification to the provisions of this Master Declaration which would:

(i) Change the voting rights as set forth herein with respect to any Owner of a Residential Unit or the approval rights of any Eligible Mortgage Holder or Eligible Insurer;

(ii) Amend the uniform rate of assessment as established by this Master Declaration for any Residential Product, the liens securing Assessments, or the priority of Assessment liens, unless such amendment is required by applicable law;

(iii) Change the allocation of responsibility for maintenance and repairs;

(iv) Reallocate the interests in the Common Areas or any Limited Common Elements, except as provided in this Master Declaration, or rights to their use;

(v) Redefine the boundaries of Residential Units;

(vi) Affect the convertibility of Units to Common Area or Common Area to Units;

(vii) Provide for the expansion or contraction of the Property or the addition, annexation or withdrawal of property, except in the manner provided in this Master Declaration;

(viii) Change the hazard or fidelity insurance requirements of this Master Declaration;

(ix) Affect the leasing of the Residential Units;

(x) Provide for the imposition of restrictions on a Residential Owner's right to sell or transfer such Owner's Unit; or

(xi) Amend any provision of this Master Declaration that expressly benefits Residential Mortgagees, insurers, or guarantors; or

(b) Take any action to reduce the reserves for maintenance, repair and replacement of Improvements to the Common Areas;

(c) Fail to maintain the insurance required by Sections 9.2 or 9.3, hereof;

(d) Establish self-management, if professional management had been required previously by this Master Declaration;

(e) Take any action to terminate the legal status of the Property or the continued existence of this Master Declaration after substantial destruction or condemnation occurs; or

(f) Take any action to restore or repair any of the Property (after damage or partial condemnation) in a manner other than that specified in this Master Declaration.

In the event the Association or the Owners are considering any action to terminate the legal status of the Property as a common interest community under this Master Declaration for reasons other than substantial destruction or condemnation, then at least sixty-seven percent (67%) of the Eligible Mortgage Holders and Eligible Insurers shall give their prior written approval.

11.10 Non-Action As Approval. In the event any Eligible Mortgage Holder or Eligible Insurer is notified in the manner provided in Section 13.5, below, and at the address designated by such Eligible Mortgage Holder or Eligible Insurer to the Association in the manner provided in such Section 13.5 of any proposed decision or action described in Section 11.9 hereof and fails to submit a written response within thirty (30) days after notice of such proposed decision or action, then such Eligible Mortgage Holder or Eligible Insurer shall be deemed to have given its approval of such decision or action and such implied approval shall be conclusive as to all persons relying thereon in good faith. A certificate signed by the Secretary of the Association as to any Eligible Mortgage Holder's or Eligible Insurer's failure to so respond shall be deemed to be sufficient evidence of such implied approval.

ARTICLE XII

SPECIAL DECLARANT'S RIGHTS

12.1 Purpose and Duration. Declarant hereby reserves, for the benefit of Declarant, all rights, easements and exemptions set forth in this Article XII ("Special Declarant's Rights"). The Property and the Annexable Property are part of a master-

planned community designed to enhance the quality of life for the residents of the Queensridge community and the enhancement of property values within Queensridge. It is essential to the establishment of Queensridge that Declarant possess special rights and exemptions in addition to the other rights of Declarant set forth herein. The Special Declarant's Rights contained in this Article XII are personal to Declarant and any Successor Declarant, and may only be transferred by a written assignment duly Recorded from a Declarant to a Successor Declarant, or from a Successor Declarant to another Successor Declarant, provided, however that Declarant hereby reserves the right to delegate certain Special Declarant's Rights to any number of Builders pursuant to Recorded Development Covenants. Each Owner of a Unit acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument of conveyance, that Declarant has a substantial interest to be protected in the Property and the Annexable Property, and that the Special Declarant's Rights are necessary to protect Declarant's interests therein. The Special Declarant's Rights set forth herein shall terminate upon the Declarant's Rights Termination Date (defined in Section 1.30 hereof).

12.2 **Right to Construct Development**. Nothing in this Master Declaration nor any action by the Association shall limit, and none of (i) the Owners (including Builders), (ii) the Association, or (iii) any Project Association shall do anything to interfere with, the right of Declarant to master-plan, improve, develop, zone, re-zone, subdivide, re-subdivide, sell, resell, rent or re-rent any portion of the Property, to annex the Annexable Property (subject only to the limitations set forth in Section 2.3.2, hereof) to deannex any portion of the Property (subject only to the limitations set forth in Section 2.4, hereof), to excavate, grade, construct or alter Improvements, or to conduct Construction Activities to and on any portion of the Property or Annexable Property owned by Declarant or owned by a Builder and pursuant to obligations of Declarant to such Builder. Such right shall include, but shall not be limited to, erecting, constructing and maintaining such structures, signs and displays as may be reasonably necessary for the conduct of the business of completing the development of the Property or the Annexable Property or the work of construction pursuant to any Development Covenants or other development agreement between any Owner and Declarant and, if applicable, the City and the Declarant, and disposing of portions of the Property or the Annexable Property owned by Declarant by sale, lease or otherwise. Any material alteration in the construction plans for a Condominium Project or Multiple-Dwelling Project shall require the approval of either or both FHA or VA where the approval of such Project by such agency has previously been obtained by Declarant or a Builder, unless otherwise provided by applicable laws or regulations.

12.3 Easements. Nothing in this Master Declaration nor any action by the Association shall limit the right of Declarant, or any Builder with the permission of Declarant, to establish on Parcels, Lots, Condominiums, Common Areas, or Limited Common Elements on such portions of the property which are owned by Declarant or such Builder, as applicable, additional licenses, easements, reservations and rights-of-way for the benefit of Declarant, the Association, utility companies, or others as may from time to time be reasonably necessary for the proper development and disposal of the Property or the Annexable Property; provided, however, if either or both FHA or VA approval for any Condominium Project or Multiple-Dwelling Project has been obtained by Declarant or a Builder, then such agency shall have the right to approve any such grants as provided herein, unless otherwise provided by applicable laws or regulations. Declarant shall have the right, but not the obligation, to transfer to the Association or any Project Association any of the rights and easements set forth in this Section 12.3 as Declarant deems appropriate for the proper administration or operation of the Property. Without limiting the generality of the foregoing, Declarant hereby reserves for the benefit of Declarant, and for use by Declarant, its agents and employees, and such Builders, their agents and employees, the following rights and easements:

a. Easements over the Property which are, in the sole discretion of Declarant, necessary for the development of the Property as a master-planned development for the construction of Improvements thereon or, for the installation and maintenance of electric, telephone, cable television, water, gas and sanitary sewer lines and drainage facilities, together with the right to grant and transfer the same;

b. Non-Exclusive easements over any and all portions of the Common Area, Limited Common Elements and Project Common Areas for access to the sales and leasing facilities of Declarant;

c. Exclusive rights and easements over the Property to drill, install and operate any water wells in connection with the development of the Property or the Annexable Property (the "Water Wells"), including, without limitation, (1) the right to maintain, repair, replace, remove and relocate the Water Wells, and such other rigs, pumps, pipelines, meters, tanks, reservoirs and related equipment and facilities (collectively, the "Water Well Facilities") as are appropriate or necessary, and (2) the right to enter upon and use portions of any Lot, Parcel, Common Area, Limited Common Elements or Project Common Area, in connection with such right and easement; provided, however, that such entry and use shall not unreasonably interfere with the use of any Lot, Parcel, Common Area, Limited Common Elements or Project Common Area by the Owners;

d. Nonexclusive easements of access, ingress and egress over all of the Property for purposes of installation, operation, maintenance, repair, inspection, removal, relocation and replacement of water distribution lines, valves, connections, facilities and equipment in connection with the exercise by Declarant or its successors and assigns of the rights, profits, licenses and easements reserved to Declarant in this Master Declaration, including, without limitation, transporting water to and from any ponds and canals to portions of the Property to be irrigated, or from the Water Wells to either or both ponds, canals or portions of the Property or Annexable Property to be irrigated; and

e. Exclusive rights and easements over the Property to pump and extract groundwater through the Water Well Facilities, and to store such groundwater (whether on or beneath the surface of the Property, including in the ponds and canals) and to transport and use such groundwater at such times, in such a manner and in such order of priority as Declarant deems, in its sole discretion, to be necessary or appropriate. Such easements and rights include, but are not limited to, the right to use groundwater on the landscaping of any Common Area, Project Common Area or Limited Common Elements and any property Declarant now or hereafter owns or controls within or contiguous to the Property or Annexable Property.

12.4 **Reservation of Water Rights**. Declarant hereby reserves for itself, and its successors and assigns, any and all water, water rights, and water entitlements interests in water rights ("Water Rights") appurtenant to the Property which are not required for the development of the Property in accordance with the Master Plan. Declarant hereby reserves unto Declarant, the right to dedicate or transfer to the utility company(ies) providing water service to the Property any or all Water Rights appurtenant to the Property, whether now existing, or hereafter acquired for the purpose of obtaining "will serve" letters from such company(ies) for any portion of the Property or the Annexable Property. No Owner or Builder, nor any of their respective successors, assigns, grantees, heirs, executors, administrators and devisees, shall claim any right to drill, install or operate water wells, to pump or extract groundwater (whether natural or foreign), to use any groundwater that Declarant, or its grantee or transferee, utilizes or has the right to utilize for any purposes, or to exercise other water rights generally reserved to Declarant under this Master Declaration.

12.5 **Model Homes**. Declarant, and Builders, with the permission of Declarant, may maintain such number of model homes within each Project which is a Residential Project Type which Declarant sees fit.

12.6 Signs. Declarant, and Builders, with the permission of Declarant, shall have the right to maintain temporary or permanent signs advertising the Property, or a portion or portions thereof, which signs may be maintained anywhere on the Property, excluding Lots or Parcels owned by Owners other than Declarant or such Builders, as the case may be.

12.7 Sales Offices. Declarant hereby reserves the right to maintain for itself or such assignees as Declarant may designate in writing, ("Declarant Assignees") offices for real estate sales upon a portion of the Common Area designated by Declarant for such activity. As used in this Section 12.7, "sales" shall include sales and resales of real estate whether or not owned by Declarant or Declarant's Assignees. Declarant shall be solely responsible for the maintenance of such sales office and any parking areas adjacent thereto, provided, however, that the Association may enter into a lease with Declarant or Declarant's Assignees for any portion of any community building constructed on any Common Area or Limited Common Elements and a reciprocal access, parking and maintenance agreement with the Declarant or Declarant's Assignees for the sharing of parking and access areas with the Association office and the cost of maintaining the same.

12.8 Conversion of Hotel Rooms. Subject to Declarant's approval rights set forth below, the Owner of a Parcel improved with Hotel/Time Share Project Type may elect to convert all or a portion of the Project into Condominiums (a "Hotel Condominium Project"). In the event the Condominium conversion is incident to the creation of a Time Share Project, then (a) the Hotel Condominium Project shall continue to be classified as one Unit for voting rights in the Association and shall be assessed based on the number of Assessment Units initially apportioned to such Project in a Declaration of Annexation or Supplemental Declaration; (b) a Supplemental Declaration shall be executed and recorded by the Owner of the Hotel Condominium Project which, at minimum satisfies the requirements of NRS Chapters 119A and 116, or any successor statutes thereof; and (c) a Project Association shall be formed or the Project shall be annexed to an existing Project Association governing another Time Share Project. If, however, the conversion will create Residential Condominiums, and provided that such conversion does not cause the number of Units within the Property and the Annexable Property as master planned by Declarant to exceed the Maximum Number of Units, a Supplemental Declaration shall be executed and recorded by the Owner of the Hotel Time Share Project which complies with the requirements of NRS Chapter 116 and which shall provide that, effective upon the first close of escrow for the sale of a Hotel Condominium in each Phase of development of a Hotel Condominium Project to a non-Builder purchaser: (i) each of the owners of Hotel Condominiums in such Phase of development shall be an "Owner" as defined in this Master Declaration, (ii) each Condominium

designated for Residential use within the Hotel Condominium Project, and the Owners thereof, shall be subject to all provisions of this Master Declaration in the same manner as the other Residential Condominiums; (iii) one Class C membership in the Association shall be appurtenant to each Condominium Unit, unless another class of membership is designated in a Supplemental Declaration with the written approval of Declarant; and (iv) one Assessment Unit shall be allocated to each Residential Condominium Unit. The conversion of Hotel Rooms into a Hotel Condominium Project pursuant to this Section 12.8 shall require the approval of Declarant until the Declarant's Rights Termination Date. Thereafter, the approval of the Board shall be required for any such conversion.

12.9 **Declarant's Approval Rights**. Until the Declarant's Rights Termination Date, the following actions, before being undertaken by the Association, the Members, or any Project Association, shall first be approved in writing by Declarant, and shall be in addition to any other approval rights of Declarant under other provisions of this Master Declaration:

a. **Amendments or Actions Requiring Declarant Approval**. Any amendment to this Master Declaration or to any Declaration of Annexation, Supplemental Declaration or Project Declaration or any action requiring the approval of Declarant under this Master Declaration or under any Declaration of Annexation, Supplemental Declaration or Project Declaration;

b. **Annexation or Deannexation**. The annexation of Annexable Property after Declarant's Annexation Rights Termination Date, the annexation to this Master Declaration of real property other than the Annexable Property or the deannexation of any portion of the Property not owned by Declarant;

c. **Capital Improvement Assessments or Special Benefits Area Assessments**. The levy of Capital Improvement Assessments or the levy of Special Benefits Area Assessments;

d. **Election Not to Rebuild; or to Substantially Alter Common Area Improvements**. Any election pursuant to Section 10.1 hereof, not to repair or replace any Common Area Improvements or to substantially alter such Improvements;

e. **Service/Maintenance Reductions**. Any significant reduction of Common Area maintenance or other Association services;

f. Master-Planned Community Standards. Any supplement or amendment to the Master Planned Community Standards, including any pre-approval authorization or variance issued or approved pursuant to Article IV, hereof;

g. Master Plan. Any amendment to.the Master Plan (which shall be at the sole election and discretion of Declarant); and

h. Termination. Any election pursuant to Section 13.1.2 hereof to terminate this Master Declaration.

12.10 Exemptions from Articles IV and V. The restrictions of Article IV and Article V of this Master Declaration shall not and do not apply to any of the following:

12.10.1 Any part of the Property which is owned by any public or quasi-public agency, district or other body;

12.10.2 Any act done or proposed to be done upon the Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;

12.10.3 Any act done or proposed to be done upon the Property, or any condition created thereon. by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television, or sewer service to any portion of the Property), which act could be done by such public utility company were this Master Declaration not made;

12.10.4 Any act done or proposed to be done upon the Property, or any condition created thereon, by Declarant, or its successors, assigns, agents, employees or contractors, in connection with the exercise of any easement, license, or other right reserved to Declarant in this Master Declaration; provided, however, that any such acts, proposed acts or condition created upon the Property shall not unreasonably restrict the Owners in their use and enjoyment of any Common Area, Limited Common Elements or Project Common Area or the facilities thereon. With respect to Improvements constructed by Declarant or its agents on Association Property (or on land which is to become Association Property), the Design Review Committee may require Declarant to deliver, at the completion of construction of such Improvements, documentation reasonably necessary to the maintenance and repair responsibility of the Association describing the "as-built" configuration of such Improvements.

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12.10.5 Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this section are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 Duration.

13.1.1 **Term**. This Master Declaration shall be in effect from the date of its Recordation and continue to be effective for a period of fifty (50) years from such date of Recordation and shall be automatically extended for successive periods of ten (10) years each unless a Declaration of Termination satisfying the requirements of an amendment to this Master Declaration pursuant to Section 13.2 hereof and the requirements of 13.1.2 hereof has been Recorded.

13.1.2 **Termination of Master Declaration and Common-Interest Community**. The common-interest community created by this Master Declaration may only be terminated pursuant to the provisions hereof and applicable law.

a. **Termination Agreement**. Except in the case of a taking of all the Units by eminent domain, the common-interest community created by this Master Declaration or any portion or portions thereof may be terminated only by agreement ("Termination Agreement") of the Members to whom at least eighty percent (80%) of the voting power of the Association has been allocated and sixty-seven percent (67%) of the Eligible Mortgage Holders. A Termination Agreement must be evidenced by the execution of a written agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Owners. The Termination Agreement must specify a date after which the Termination Agreement will be void unless it is Recorded before that date. The Termination Agreement and all ratifications thereof must be Recorded in the County and shall be effective only upon Recordation. The Termination Agreement may provide for sale of the Common Areas or Limited Common Elements, but unless otherwise allowed by applicable law, the Termination Agreement may not require that the

Units be sold following termination, unless the Owners of ninety percent (90%) of the Units consent to the sale.

b. Sale of Property. The Association, on behalf of the Owners, may contract for the sale of any of the Property, but the contract is not binding on the Owners until approved pursuant to subsection (a) above. If any portion of the Property is to be sold following termination, title to that Property, upon termination, vests in the Association, as trustee for the holders of all interests in the Units. All powers necessary and appropriate to effect the sale are hereby conferred upon the Association. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence with all powers it had before termination. Proceeds of the sale must be distributed to Owners and lien holders as their interests may appear, in accordance with NRS 116.21183 and 116.21185 or any successor statutes thereof. Unless otherwise specified in the Termination Agreement, each Owner and such Owner's successors-in-interest have an exclusive right to occupancy of the portion of the Property that formerly constituted the Unit until close of the sale of such Unit. During the period of such occupancy, each Owner and such Owner's successors in interest remain liable for all assessments and other obligations imposed on Owners by NRS Chapter 116 or this Master Declaration. Following the sale of the common-interest community, or portion thereof, the proceeds of such sale, together with the assets of the Association, are held by the Association as trustee for Owners and holders of liens on the Units as their interests may appear.

c. Termination of Condominium or Multiple Dwelling Project Without Sale. If a Condominium Project or a Multiple-Dwelling Project is not to be sold following termination, title to the Project Common Areas, vests in the Owners within such Condominium Project or Multiple-Dwelling Project upon Recordation of the Termination Agreement as tenants in common in proportion to their respective interests as provided in NRS 116.21185, or any successor statute thereof, and liens on the Units shift accordingly to a lien on the appropriate undivided interest in the Condominium Project or Multiple-Dwelling Project. While the tenancy in common exists, each Owner and his successors in interest have an exclusive right to occupancy of the portion of such Project that formerly constituted the Unit.

13.2 Amendments.

13.2.1 By Declarant. Prior to the first close of the first escrow for the sale of a Unit to a Person other than Declarant, a Successor Declarant or a Builder, the provisions of this Master Declaration may be amended or terminated unilaterally by

Declarant by Recordation of a written instrument signed by Declarant setting forth such amendment or termination. In addition, Declarant shall have the right to unilaterally amend this Master Declaration to make the following amendments:

a. Any and all amendments which may be necessary from time to time to correct exhibits or satisfy requirements of governmental agencies, including, without limitation, DRE requirements, provided such amendments do not unreasonably interfere with the rights of existing Owners;

b. Amendments to the Master Plan, and all other amendments relating to the Master Planned Community Standards;

c. Amendments to this Master Declaration which are necessary or appropriate to the exercise of Declarant's Rights; and

d. Amendments to this Master Declaration which are necessary for compliance with NRS Chapter 116. Notwithstanding anything to the contrary set forth in the Master Declaration, Declarant shall have the unilateral right to amend this Declaration for the purpose of adopting the initial Master-Planned Community Standards applicable to a particular Project Type.

13.2.2 **By Members**. Except as otherwise expressly provided in this Master Declaration, including but not limited to, in Sections 11.9, 13.2.1, and 13.2.4, and unless this Master Declaration specifies a higher percentage for any action by the Members, this Master Declaration may be amended by (a) the vote or written assent of Members entitled to exercise a majority of the voting power of the Association and (b) the written consent of Declarant until the Declarant's Rights Termination Date. If this Master Declaration specifies a higher percentage for action by a vote of the Members on a particular matter, then such provision shall only be amended by the vote or written assent of Members entitled to exercise the specified percentage of the voting power of the Association for such matter.

13.2.3 **Approval of Eligible Mortgage Holders and Eligible Insurers**. The provisions of this Master Declaration which are described in Section 11.9(a) hereof may only be amended with the prior written consent of Eligible Mortgage Holders and Eligible Insurers as provided therein.

13.2.4 **Form of Amendments**. All amendments to this Master Declaration or any Declaration of Annexation or Supplemental Declaration must be in

writing, and executed, Recorded and certified on behalf of the Association by the President and the Secretary of the Association.

13.2.5 Declarant Approval; Termination of Declarant's Rights. Notwithstanding any other provision of this Master Declaration, the prior written approval of Declarant will be required before any amendment to any of Declarant's Rights under this Master Declaration shall be effective. The Declarant's Rights described in this Master Declaration shall terminate on the Declarant's Rights Termination Date, and from and after such date Declarant shall have the rights of an Owner as to any of the Property then owned by Declarant.

13.3 Enforcement and Nonwaiver.

13.3.1 Right of Enforcement. In addition to the rights and powers conferred upon the Association by this Master Declaration, the Articles, Bylaws, NRS Chapters 82 and 116 and other applicable laws, the Association shall have the enforcement powers set forth in Section 13.3.1 hereof. The Association shall have the power to perform such other acts, whether or not expressly authorized by this Master Declaration, that may be reasonably necessary to carry out its duties and enforcement powers as set forth herein. Subject to the provisions of NRS 38.300 *et seq.*, each of the Association, in its own name and on its own behalf, any Owner, any Project Association, and Declarant (until the Declarant's Rights Termination Date) shall have the power and authority to commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any provision of this Master Declaration, the Master-Planned Community Standards, any applicable Declaration of Annexation or Supplemental Declaration, the Articles, Bylaws, Rules and Regulations, and any resolutions of the Board, to enforce by mandatory injunction, or otherwise, all of these provisions, to intervene in litigation or administrative proceedings on matters affecting the Property. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees. Nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not the Association, the Declarant, a Project Association or an Owner.

13.3.2 Violations and Nuisance. Every act or omission whereby a covenant, condition, or restriction of this Master Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

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13.3.3 Violation of Law. Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation, or use of any portion of the Property is hereby declared to be a violation of this Master Declaration and subject to any or all of the enforcement procedures herein set forth.

13.3.4 Remedies Cumulative. Each remedy provided by this Master Declaration is cumulative and not exclusive.

13.3.5 Nonwaiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in this Master Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Master Declaration.

13.4 Termination of Transferor Owner's Liability for Assessments. Upon the conveyance, sale, assignment, or other transfer of a Unit to the transferee Owner, the transferor Owner shall not be liable for any Assessments levied with respect to such Unit after notification of the Association of such transfer in the manner provided in Sections 6.2.2 and 13.5 hereof. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Master Declaration.

13.5 Notices. All notices hereunder to the Association or the Board shall be sent by regular mail, or registered or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Lots. Until the Owners are notified otherwise, all notices to the Association or to the Board shall be addressed as follows:

Queensridge Owners Association
9999 West Charleston Boulevard
Las Vegas, Nevada 89117

All notices given by the Association to any Owner shall be sent by regular mail, or by registered or certified mail, return receipt requested, to such Owner's Unit address or to such other address as may be designated by such Owner from time to time, in writing, to the Board. All notices to Eligible Mortgage Holders and Eligible Insurers shall be sent by registered or certified mail, return receipt requested, at the address to which such Eligible Mortgage Holder or Eligible Insurer has last requested that notice be sent by notifying the Association in the manner provided in this Section 13.5. All notices shall

be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of change of address which shall be deemed to have been given when actually received.

13.6 Written Approvals. Any consent or approvals by the Board or Design Review Committee pursuant to the provisions of the Master Declaration shall be in writing.

13.7 Construction and Severability; Singular and Plural; Titles.

13.7.1 Restrictions and Easements Construed Together. All of the covenants, conditions, restrictions and easements of this Master Declaration shall be liberally construed together to promote the purposes of this Master Declaration as set forth herein.

13.7.2 Restrictions and Easements Severable. The covenants, conditions, restrictions and easements contained in this Master Declaration shall be deemed independent and severable; and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

13.7.3 Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter, as the context requires.

13.7.4 Captions. All captions or titles used in this Master Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions of any Section.

13.7.5 "General Intent" Paragraphs. Sections 2.1, 3.1, 4.1, 5.1 and 6.1 are not to be used in construing the terms of this Master Declaration to the extent they are inconsistent with the other provisions hereof.

13.8 Binding Arbitration. Whenever the provisions of this Master Declaration refer to "binding arbitration", each of the Owners by acceptance of title to such Owner's Unit shall be deemed to have agreed to binding arbitration pursuant to NRS 38.330(5).

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

"DECLARANT"

NEVADA LEGACY 14, LLC, a Nevada limited liability company

By: PECCOLE NEVADA CORPORATION, a Nevada corporation, its manager

By: Wanda Peccole
WANDA PECCOLE, Its President

STATE OF NEVADA)
)
COUNTY OF Clark)

This instrument was acknowledged before me on May 20, 1996 by WANDA PECCOLE, as President of Peccole Nevada Corporation, a Nevada corporation, the manager of Nevada Legacy 14, LLC, a Nevada limited liability company.

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MAUREEN SUTTON
My Appointment Expires November 3rd, 1998

Maureen Sutton
Signature of Notary

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May 20, 1996

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EXHIBIT "A" TO
Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge

LEGAL DESCRIPTION

All that certain real property situate in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

PARCEL ONE (1):

ALL REAL PROPERTY WITHIN THE PERIMETER BOUNDARIES OF PECCOLE WEST - LOT 9, PHASE 1 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 73 OF PLATS, PAGE 34 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

PARCEL TWO (2):

A NON-EXCLUSIVE EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITY PURPOSES ON, OVER AND ACROSS ALL THOSE AREAS LABELED PRIVATE STREETS ON THE MAP REFERENCED HEREINABOVE.

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Exhibit "B"
Annexable Property

LEGAL DESCRIPTION

BEING THE SOUTH HALF (S 1/2) OF SECTION 31, TOGETHER WITH A PORTION OF THE SOUTH HALF (S 1/2) OF THE NORTH HALF (N 1/2) OF SECTION 31, TOGETHER WITH A PORTION OF THE WEST HALF (W 1/2) OF SECTION 32, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M., CITY OF LAS VEGAS, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 31; THENCE NORTH 00°33'39" EAST A DISTANCE OF 65.00 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF CHARLESTON BLVD., ALSO BEING THE **POINT OF BEGINNING**; THENCE SOUTH 89°40'03" WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 2611.05 FEET; THENCE SOUTH 89°41'18" WEST A DISTANCE OF 2685.70 FEET ALONG SAID RIGHT-OF-WAY LINE TO A POINT ON A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 54.00 FEET SUBTENDING A CENTRAL ANGLE OF 40°27'03"; THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT AND FROM A RADIAL WHICH BEARS SOUTH 00°18'42" WEST AN ARC DISTANCE OF 38.12 FEET TO THE EAST RIGHT-OF-WAY LINE OF HUALAPAI WAY; THENCE NORTH 06°05'57" WEST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 4033.44 FEET; THENCE SOUTH 89°10'53" EAST A DISTANCE OF 2836.42 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ALTA DRIVE; THENCE SOUTH 89°10'39" EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 2148.27 FEET; THENCE SOUTH 00°49'21" WEST A DISTANCE OF 40.00 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHWEST ALSO BEING A POINT ON THE CENTERLINE OF ALTA DRIVE HAVING A RADIUS OF 1200.00 FEET SUBTENDING A CENTRAL ANGLE OF 43°59'23"; THENCE CONTINUING ALONG SAID CENTERLINE AND SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT AND FROM A RADIAL WHICH BEARS SOUTH 00°49'21" WEST, AN ARC DISTANCE OF 921.32 FEET; THENCE SOUTH 45°11'16" EAST TO A DISTANCE OF 377.22 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1000.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 48°38'51"; THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE LEFT AND FROM A RADIAL WHICH BEARS SOUTH 44°48'44" WEST, AN ARC DISTANCE OF 849.06 FEET; THENCE NORTH 86°09'53" EAST A DISTANCE OF 565.75 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 800.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 43°41'22"; THENCE EASTERLY ALONG SAID CURVE TO THE

RIGHT AND FROM A RADIAL WHICH BEARS SOUTH 03°50'07" EAST, AN ARC DISTANCE OF 610.02 FEET; THENCE SOUTH 39°51'15" WEST A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF ALTA DRIVE, THENCE SOUTH 50°08'45" EAST A DISTANCE OF 2.17 FEET TO A POINT ON A CURVE CONCAVE TO THE WEST, HAVING A RADIUS OF 54.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT AND FROM A RADIAL WHICH BEARS NORTH 39°51'15" EAST, AN ARC DISTANCE OF 84.82 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF RAMPART BLVD., THENCE SOUTH 39°51'15" WEST A DISTANCE OF 859.38 FEET TO A POINT ON A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 1750.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 29°52'50"; THENCE SOUTHERLY ALONG SAID CURVE TO THE LEFT AND FROM A RADIAL WHICH BEARS SOUTH 50°08'45" EAST, AN ARC DISTANCE OF 912.65 FEET; THENCE SOUTH 89°26'21" WEST A DISTANCE OF 639.49 FEET; THENCE SOUTH 00°33'39" EAST A DISTANCE OF 660.00 FEET; THENCE NORTH 89°26'21" EAST A DISTANCE OF 610.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF RAMPART BLVD.; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 00°33'39" EAST A DISTANCE OF 117.00 FEET; THENCE SOUTH 00°35'06" WEST, A DISTANCE OF 200.03 FEET; THENCE SOUTH 00°33'39" EAST, A DISTANCE OF 224.00 FEET TO A POINT ON A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 54.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 90°00'00"; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE RIGHT AND FROM A RADIAL WHICH BEARS NORTH 89°26'21" EAST, AN ARC DISTANCE OF 84.82 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF CHARLESTON BLVD.; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 89°26'21" WEST A DISTANCE OF 1217.17 FEET TO THE **POINT OF BEGINNING.**

CONTAINING 605.68 ACRES.

EXCEPTING THEREFROM those certain parcels of land described as follows:

A PORTION OF SECTION 31 AND 32, TOWNSHIP 20 SOUTH, RANGE 60 EAST, M.D.M. CITY OF LAS VEGAS, CLARK COUNTY, NEVADA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SAID SECTION 31 AS SHOWN ON A PARCEL MAP RECORDED IN FILE 76 OF PARCEL MAPS, PAGE 65 IN THE OFFICE OF THE CLARK COUNTY RECORDER, SAID POINT BEING THE CENTERLINE INTERESECTION OF CHARLESTON BLVD. AND HUALAPAI

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WAY; THENCE N.06°05'57"W., ALONG THE CENTERLINE OF HUALAPAI WAY AND THE WEST LINE OF SAID SECTION 31, A DISTANCE OF 893.94 FEET; THENCE N.83°54'03"E., A DISTANCE OF 50.00 FEET TO A POINT ON THE EAST LINE OF HUALAPAI WAY, THE **POINT OF BEGINNING**; THENCE N.64°15'40"E., A DISTANCE OF 619.87 FEET; THENCE N.72°29'37"E., A DISTANCE OF 496.92 FEET; THENCE S.68°25'40"E., A DISTANCE OF 319.98 FEET; THENCE S.87°40'02E., A DISTANCE OF 513.23 FEET; THENCE S.87°55'09"E., A DISTANCE OF 1033.86 FEET; THENCE N.30°04'55"W., ALONG THE ALIGNMENT OF APPLE DRIVE, A DISTANCE OF 248.13 FEET TO A POINT ON A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 385.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 15°19'20"; THENCE NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT AN ARC DISTANCE OF 102.96 FEET; THENCE FROM A RADIAL WHICH BEARS N.75°14'25"E., ON A LINE WHICH BEARS S.81°53'08"W., A DISTANCE OF 145.92 FEET; THENCE S.87°55'09"W., A DISTANCE OF 310.00 FEET; THENCE N.82°21'29"W., A DISTANCE OF 374.79 FEET TO A POINT ON A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 500.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 14°37'17"; THENCE WESTERLY ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 127.60 FEET; THENCE S.83°01'14"W., TANGENT TO THE LAST CURVE, A DISTANCE OF 96.53 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 350.00 FEET AND SUBTENDING CENTRAL ANGLE OF 27°10'03"; THENCE FROM A RADIAL WHICH BEARS N.06°58'46"W., NORTHWESTERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 165.96 FEET; THENCE N.69°48'43"W., A DISTANCE OF 192.18 FEET; THENCE S.82°19'57"W., A DISTANCE OF 1093.43 FEET; THENCE N.13°19'52"E., A DISTANCE OF 317.29 FEET; THENCE N.23°54'36"W., A DISTANCE OF 100.00 FEET; THENCE N.58°52'45"E., A DISTANCE OF 338.26 FEET; THENCE S.80°43'39"E., A DISTANCE OF 466.63 FEET, THENCE N.76°45'03"E., A DISTANCE OF 419.28 FEET; THENCE N.83°01'14"E., A DISTANCE OF 469.82 FEET; THENCE N.73°41'43"E., A DISTANCE OF 243.69 FEET; THENCE S.77°12'30"E., A DISTANCE OF 583.20 FEET; THENCE N.74°05'05"E., A DISTANCE OF 533.49 FEET; THENCE N.41°57'12"E., A DISTANCE OF 152.00 FEET; THENCE S.87°46'25"E., A DISTANCE OF 1006.93 FEET; THENCE S.01°24'18"E., A DISTANCE OF 308.96 FEET; THENCE S.58°15'03"W., A DISTANCE OF 493.93 FEET; THENCE S.74°49'16"W., A DISTANCE OF 284.31 FEET; THENCE S.83°26'16"W., A DISTANCE OF 556.80 FEET; THENCE S.81°53'08"W., A DISTANCE OF 277.49 FEET TO A POINT ON A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 295.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 13°16'52"; THENCE FROM A RADIAL WHICH BEARS N.73°11'57"E., SOUTHEASTERLY ALONG SAID CURVE TO THE LEFT AN ARC DISTANCE OF 68.38 FEET; THENCE S.30°04'55"E., TANGENT TO THE LAST CURVE A

DISTANCE OF 289.63 FEET; THENCE S.30°04'58"E., A DISTANCE OF 376.81 FEET TO A POINT ON A CURVE CONCAVE WESTERLY HAVING A RADIUS OF 1245.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 23°03'13"; THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT AN ARC DISTANCE OF 500.94 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 10.00 FEET AND SUBTENING A CENTRAL ANGLE OF 86°42'26"; THENCE FROM A RADIAL WHICH BEARS S.82°58'15"W., SOUTHEASTERLY ALONG CURVE TO THE LEFT AN ARC DISTANCE OF 15.13 FEET; THENCE N.86°15'49"E., TANGENT TO THE LAST CURVE, A DISTANCE OF 162.42 FEET; THENCE N.69°00'54"E., A DISTANCE OF 168.53 FEET; THENCE N.05°47'04"W., A DISTANCE OF 518.92 FEET; THENCE N.73°26'22"E., A DISTANCE OF 743.81 FEET; THENCE N. 59°07'42"E., A DISTANCE OF 726.09 FEET; THENCE S.41°09'26"E., A DISTANCE OF 512.31 FEET; THENCE S.50°04'02"W., A DISTANCE OF 518.76 FEET; THENCE S.03°23'10"E., A DISTANCE OF 416.56 FEET; THENCE N.89°33'15"W., A DISTANCE OF 518.10 FEET; THENCE S.82°42'54"W., A DISTANCE OF 204.18 FEET; THENCE S.75°59'22"W., A DISTANCE OF 524.36 FEET; THENCE N.05°47'04"W., A DISTANCE OF 110.88 FEET; THENCE S.69°00'54"W., A DISTANCE OF 186.56 FEET; THENCE S.21°20'17"E., A DISTANCE OF 272.67 FEET; THENCE N.89°40'03"E., ALONG A LINE PARALLEL TO AND 73.00 FEET NORTH OF THE SOUTH LINE OF SAID SECTION 31, ALSO BEING THE CENTERLINE OF CHARLESTON BLVD., A DISTANCE OF 1556.83 FEET; THENCE N.02°49'39"E., A DISTANCE OF 718.24 FEET; THENCE N.60°00'23"E., A DISTANCE OF 752.07 FEET; THENCE N.39°15'37"E., A DISTANCE OF 50.00 FEET; THENCE S.33°39'42"E., A DISTANCE OF 243.50 FEET; THENCE N.89°26'21"E., A DISTANCE OF 60.00 FEET TO A POINT ON THE WEST LINE OF THAT CERTAIN PARCEL OF LAND SHOWN AS L.V.V.W.D., A.P.N.=450-180-004 ON THE AFORESAID PARCEL MAP; THENCE N.00°33'39"W., A DISTANCE OF 325.00 FEET TO THE NORTHWEST CORNER OF THE AFORESAID PARCEL; THENCE S.89°26'21"W., A DISTANCE OF 122.37 FEET; THENCE N.03°15'12"E., A DISTANCE OF 185.92 FEET; THENCE N.45°06'08"E., A DISTANCE OF 322.73 FEET; THENCE S.87°19'36"E., A DISTANCE OF 204.43 FEET; THENCE N.56°10'59"E., A DISTANCE OF 572.72 FEET; THENCE N.65°08'21"E., A DISTANCE OF 245.50 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF RAMPART BLVD.; THENCE N.39°51'15"E., A DISTANCE OF 859.38 FEET TO A POINT ON A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 54.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 89°49'26"; THENCE NORTHWESTERLY ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 84.66 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 760.00 FEET AND SUBTENDING A CENTRAL ANGLE

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OF 33°51'20"; THENCE FROM A RADIAL WHICH BEARS S.40°01'49"W., WESTERLY ALONG SAID CURVE TO THE LEFT AND ALONG THE FUTURE SOUTH RIGHT-OF-WAY LINE OF ALTA DRIVE, AN ARC DISTANCE OF 449.08 FEET; THENCE LEAVING SAID CURVE FROM A RADIAL WHICH BEARS S.06°10'29"W., ON A BEARING OF S.55°19'16"W., A DISTANCE OF 845.91 FEET; THENCE S.65°09'52"W., A DISTANCE OF 354.20 FEET; THENCE N.88°08'01"W., A DISTANCE OF 211.78 FEET; THENCE N.68°42'48"W., A DISTANCE OF 242.40 FEET; THENCE N.09°40'05"E., A DISTANCE OF 210.00 FEET; THENCE N.19°34'34"W., A DISTANCE OF 342.33 FEET; THENCE N.39°33'13"E., A DISTANCE OF 199.03 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 30.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 85°41'50"; THENCE NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 44.87 FEET TO A POINT ON A CURVE CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1040.00 FEET AND SUBTENDING A ENTRAL ANGLE OF 06°57'58"; THENCE NORTHWESTERLY FROM A RADIAL WHICH BEARS N.35°15'03"E. ALONG SAID CURVE TO THE RIGHT, BEING THE FUTURE SOUTH RIGHT-OF-WAY LINE OF ALTA DRIVE, AN ARC DISTANCE OF 126.45 FEET TO A POINT ON A CURVE, CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 30.00 FEET AND SUBTENDING A CENTRAL ANGLE OF 87°20'11"; THENCE SOUTHEASTERLY FROM A RADIAL WHICH BEARS N.42°13'02"E., ALONG SAID CURVE TO THE RIGHT AN ARC DISTANCE OF 45.73 FEET; THENCE S.39°33'13"W., TANGENT TO THE LAST CURVE, A DISTANCE OF 640.56 FEET; THENCE S.06°22'19"E., A DISTANCE OF 130.00 FEET; THENCE N.83°54'34"W., A DISTANCE OF 240.27 FEET; THENCE S.86°47'39"W., A DISTANCE OF 617.43 FEET; THENCE S.79°01'40"W., A DISTANCE OF 495.51 FEET; THENCE N.54°56'11"W., A DISTANCE OF 206.04 FEET; THENCE N.80°50'57"W., A DISTANCE OF 221.28 FEET; THENCE S.88°22'40"W., A DISTANCE OF 338.29 FEET; THENCE S.63°54'06"W., A DISTANCE OF 573.96 FEET; THENCE N.77°42'42"W., A DISTANCE OF 167.96 FEET; THENCE N.85°50'10"W., A DISTANCE OF 283.93 FEET; THENCE N.89°18'01"W., A DISTANCE OF 357.11 FEET; THENCE S.84°07'53"W., A DISTANCE OF 269.16 FEET; THENCE S.75°37'07"W., A DISTANCE OF 386.72 FEET; THENCE S.81°11'34"W., A DISTANCE OF 265.35 FEET; THENCE N.83°33'51"W., A DISTANCE OF 185.18 FEET; THENCE N.67°39'10"W., A DISTANCE OF 232.62 FEET; THENCE S.73°01'48"W., A DISTANCE OF 355.57 FEET; THENCE S.67°05'17"W., A DISTANCE OF 382.31 FEET; THENCE N.88°42'44"W., A DISTANCE OF 108.52 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF HUALAPAI WAY; THENCE S.06°05'57"E., ALONG THE SAID WEST RIGHT-OF-WAY OF HUALAPAI WAY A DISTANCE OF 1315.32 FEET TO THE **POINT OF BEGINNING**.

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THIS PARCEL CONTAINS 8,196,106 SQ. FT. OR 188.16 ACRES MORE OR LESS.

AND FURTHER EXCEPTING THEREFROM that certain parcel of land described as follows:

ALL REAL PROPERTY WITHIN THE PERIMETER BOUNDARIES OF PECCOLE WEST - LOT 9, PHASE 1 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 73 OF PLATS, PAGE 34 IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

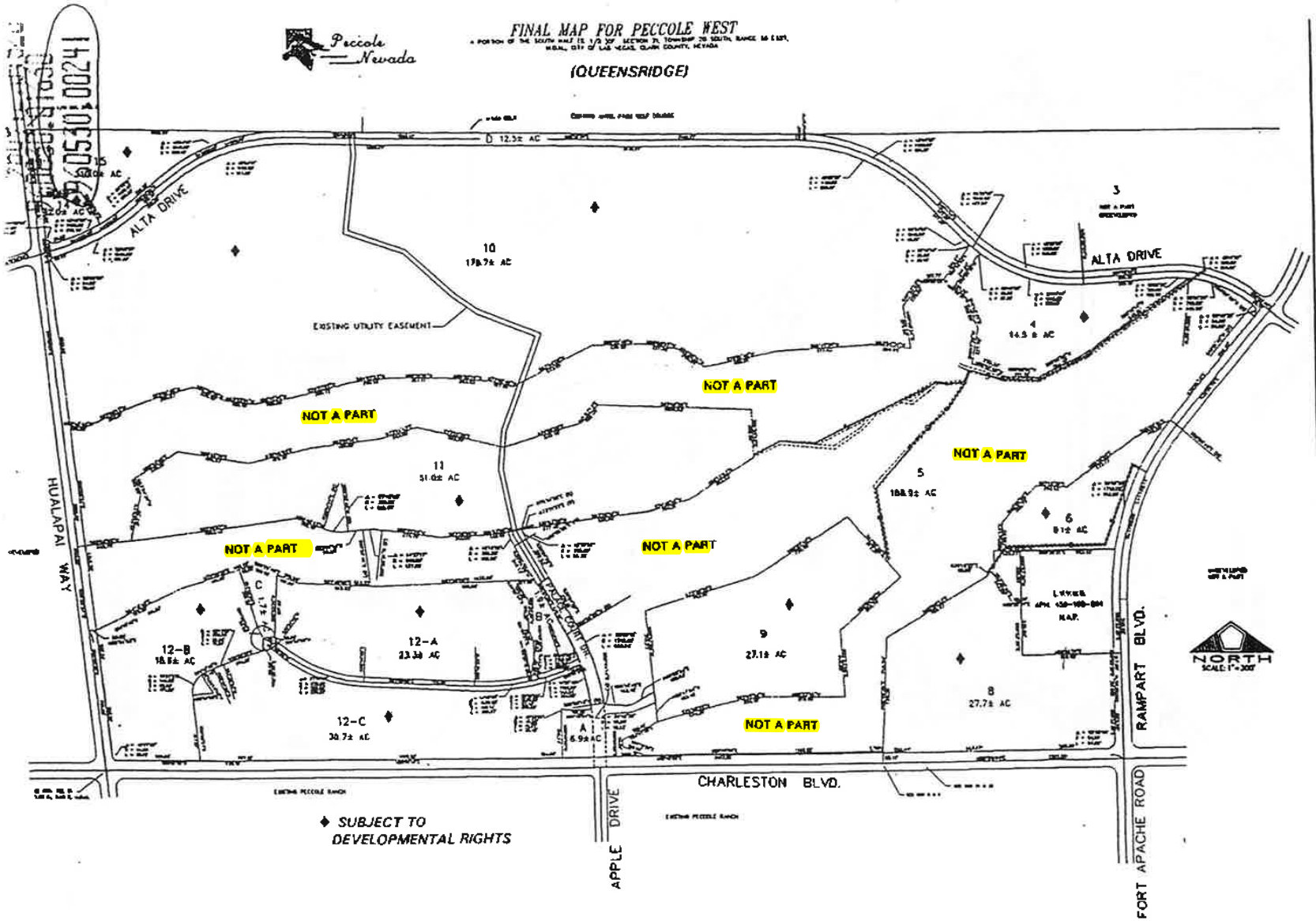
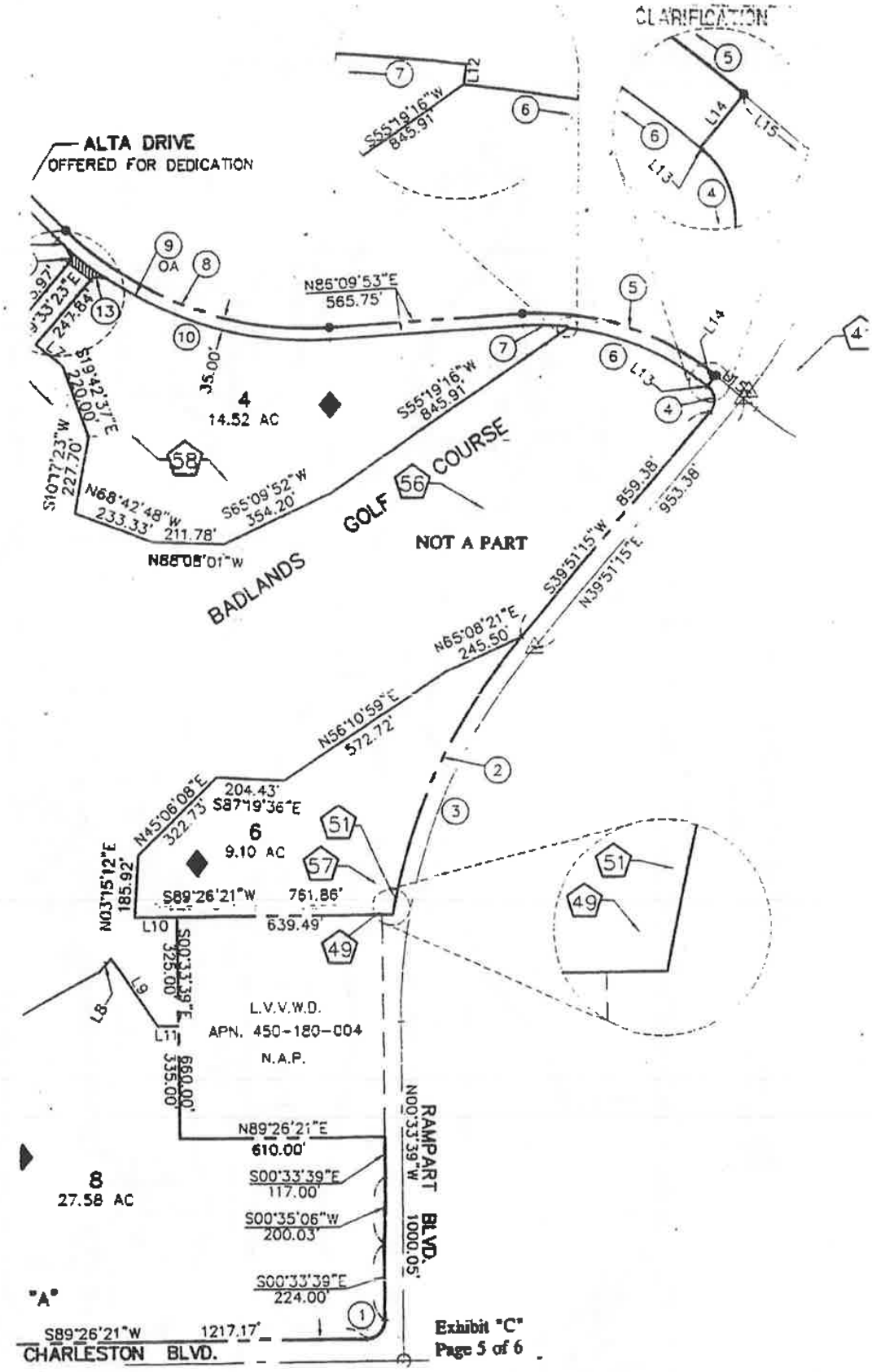


EXHIBIT C

MASTER PLAN
EXHIBIT "C"
Page 1 of 2

RECORDER'S NOTE: Due to the quality, characteristics or condition of this document, it may be unsuitable for microfilming and reproduction. Under NRS 247.120, the Recorder has requested that a more suitable copy be presented for recordation.


CLARIFICATION
ALTA DRIVE
OFFERED FOR DEDICATION
N86°09'53"E
565.75'
S55°19'16"W
845.91'
4
14.52 AC
S19°42'37"E
220.00'
S10°77'23"W
227.70'
N68°42'48"W
233.33'
S65°09'52"W
354.20'
211.78'
N88°08'01"W
35.00'
BADLANDS GOLF COURSE
NOT A PART
S39°51'15"W
859.38'
N39°51'15"E
953.38'
N65°08'21"E
245.50'
N56°10'59"E
572.72'
N45°06'08"E
322.73'
204.43'
S87°19'36"E
6
9.10 AC
N03°15'12"E
185.92'
S89°26'21"W
761.86'
639.49'
S00°33'39"E
325.00'
L.V.V.W.D.
APN. 450-180-004
N.A.P.
660.00'
335.00'
N89°26'21"E
610.00'
S00°33'39"E
117.00'
S00°35'06"W
200.03'
S00°33'39"E
224.00'
8
27.58 AC
"A"
S89°26'21"W
1217.17'
CHARLESTON BLVD.
RAMPART BLVD.
N00°33'39"W
1000.05'
Exhibit "C"
Page 5 of 6

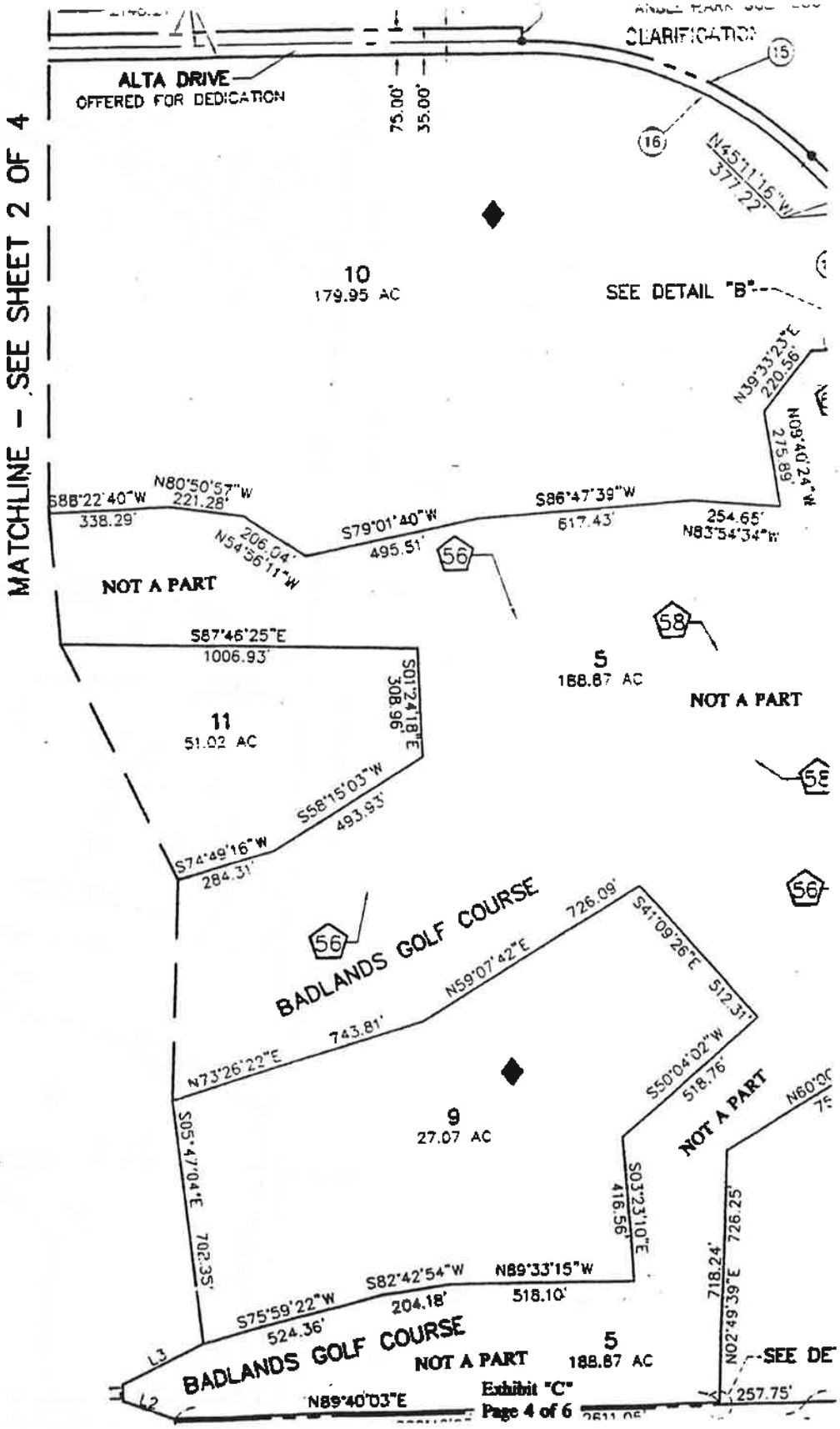


Exhibit "C"
Page 4 of 6

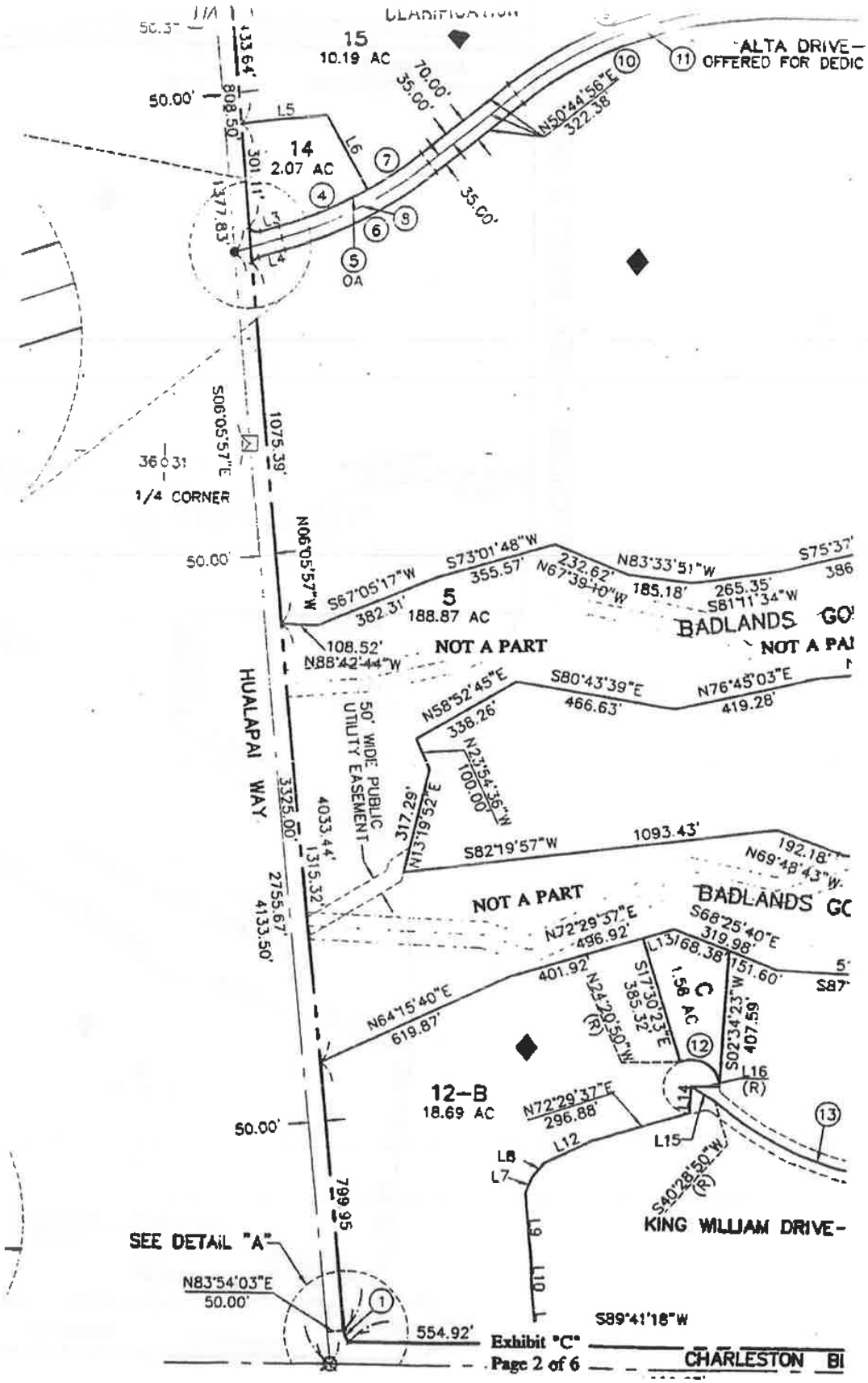


Exhibit "C"
Page 2 of 6

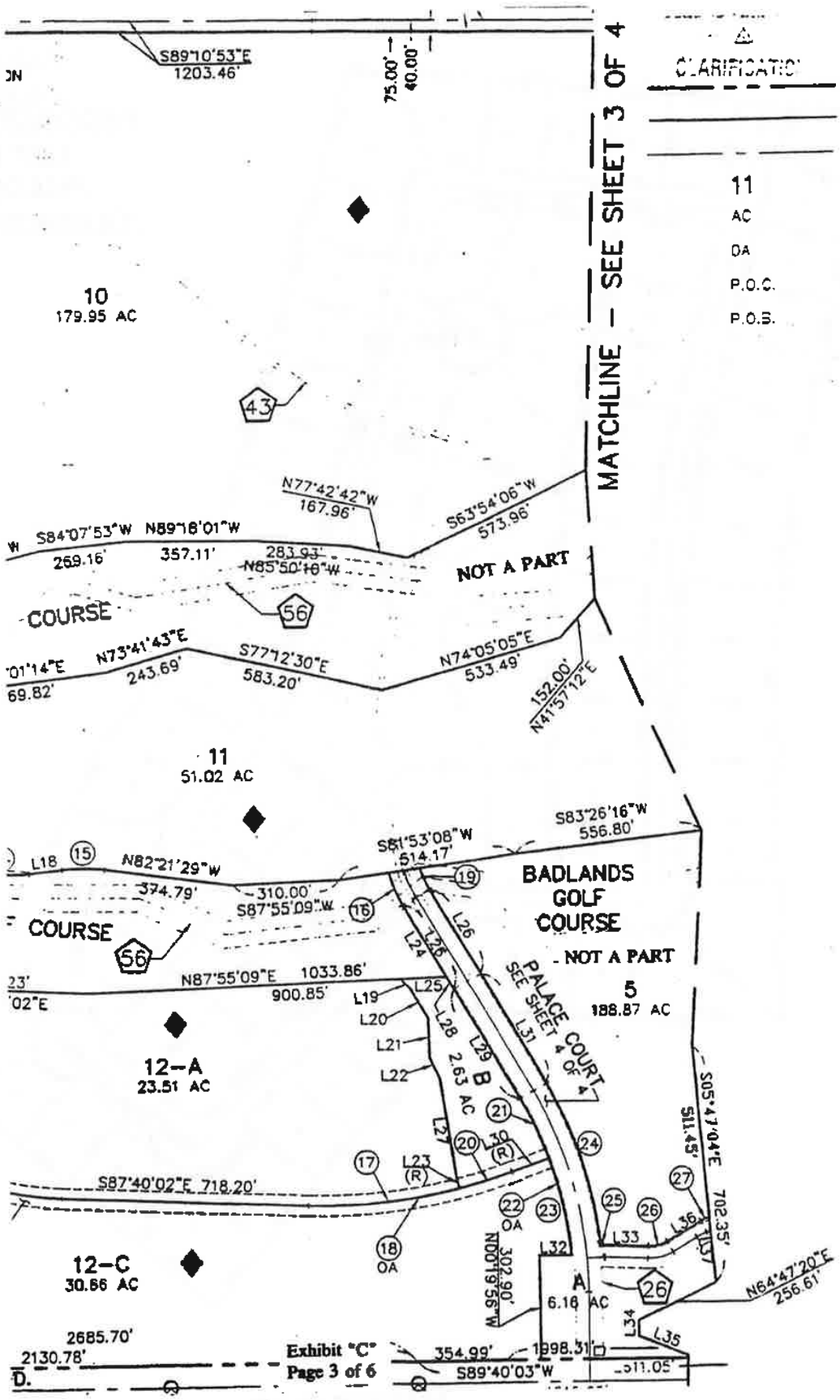


Exhibit "C"
Page 3 of 6

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PECCOLE WEST
LOT 9,
PHASE 1
(QUEENSRIDGE)

MASTER PLAN
EXHIBIT "C"
Page 2 of 2

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EXHIBIT "D"

Master-Planned Community Standards
Section A - All Project Types

SECTION 1. CONSTRUCTION SUBMITTAL REQUIREMENTS.

1.1 General Requirements.

1.1.1 Definitions. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge ("Master Declaration")

1.1.2 General Information.

All submittals of preliminary plans and plans and specifications to the Design Review Committee ("DRC") must be submitted on paper sepia or other reproducible medium not to exceed 30" x 42" in size.

Each submittal must include the following information:

a. Sheet Title
b. Scale and North Arrow
c. Lot Owner: Name of Owner
d. Builder: Name of Company
e. Prepared By: Entity that prepared the plan(s)
f. Date the drawings were completed and/or modified
g. Parcel and Lot Identification

1.2 Plan Preparation.

All plans shall be prepared by qualified professionals licensed in the State of Nevada.

1.3 Plan Check Fees.

A plan check fee of two hundred fifty and no/100ths dollars ($250.00) is required to cover administrative costs of the DRC associated with two plan reviews by the DRC which are the Courtesy Review and the Submittal Review described below. If more than two reviews are necessary, an additional charge of one hundred twenty five and no/100ths dollars ($125.00) will be assessed for each such additional review.

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1.4 Design Review and Approval Process.

1.4.1 Pre-Design Conference.

Prior to beginning design work, the applicant shall contact the DRC to schedule a pre-design conference ("Pre-Design Conference") with one (1) or more members of the DRC, and, if the DRC deems necessary, with the Association's Architect and the Association's Landscape Consultant. The purpose of the Pre-Design Conference is to provide the applicant with a general overview of Queensridge, including the underlying development philosophy of the Declarant. At the Pre-Design Conference, the applicant shall have an opportunity to discuss the sections of the Master-Planned Community Standards applicable to the applicant's Lot or Parcel (herein "Applicable Design Guidelines") review and clarify submittal requirements, review design requirements to provide the applicant with any additional information about site amenities or opportunities/constraints, identify any unique conditions or issues related to the applicant's Lot or Parcel and answer any other questions the applicant may have regarding the proposed Improvements.

1.4.2 Courtesy Review.

The Courtesy Review shall consist of a review of the applicant's preliminary submittal package, wherein the DRC may offer comments and suggestions for the applicant to incorporate into applicant's submittal in order to ensure a more expeditious review of the final plans submitted for Submittal Review.

The applicant shall submit the following items for the Courtesy Review:

- **Preliminary Site Plan at 1" = 20'**

  Dimensioned site plan showing lot boundaries and adjacent streets or open space, building footprint(s), setbacks, easements, paving, accessory structures, fence and wall locations, materials and heights, swimming pools or other amenities, existing and proposed grade elevations and any requested variances or encroachments.

- **Preliminary Grading and Drainage Plan at 1" = 20'**

  Grading plans shall show all existing and proposed elevations, drainage flow lines, drainage structures, retaining walls or other site structures, and utility connections. In addition, pad elevations of all adjacent lots and existing grades along open space edges must be shown on the grading plan.

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- **Preliminary Landscape Plan at 1" = 20'**

  The landscape concept plan shall show all existing and proposed landscape elements including the location of all plant material, patios, walks, and other hard surface areas decks, trellises, arbors, and any other site element. In addition, the landscape plan should include a typical plant list including plant sizes and symbols corresponding to the drawings.

- **Conceptual Architectural Plans**

  The conceptual architectural drawings shall indicate the proposed appearance of all buildings including but not limited to details of roof, trim, finishes, colors and materials. The following items shall be included in the submittal:

  Dimensioned Conceptual Floor Plans at 1/4" - 1'-0"
  Conceptual Building Elevations at 1/4" - 1'-0"
  (including front, side, and rear elevations with material and colors called out)
  Floor Plan Area Calculations for each floor including garage
  Roof Plan at 1/4" = 1'-0"
  Elevation or Section Drawings indicating conformance to bulk plan setback criteria.

  Material and Color Board with samples of actual selections or manufacturer's cut sheets for all exterior materials, including but not limited to:

  - Roof tile
  - Entry doors
  - Garage doors
  - Building wall finishes
  - Paint or stain color chips
  - Windows
  - Fascias
  - Trim materials
  - Lighting
  - Fence or site wall finishes (if applicable)
  - Decorative paving
  - Site furnishings
  - Other visible exterior features

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The DRC may waive any of the above described requirements depending on the Project Type and the nature of the proposed Improvements.

1.4.3 Submittal Review.

Upon completion of all plans and specifications for the proposed Improvements, the applicant shall submit final plans and specification to the DRC for official review ("Submittal Review"). The final plans shall consist of four sets of working drawings including the following items:

- ***Architectural Plot Plan at 1" = 20'**

  Dimensioned plot plan showing lot boundaries, adjacent streets and open space, building footprints, setbacks, accessory structures, easements, wall and fence locations, materials and heights, swimming pools and/or other site amenities, utility and equipment pads, driveways and other paved surfaces, proposed grade elevations and any requested variances or encroachments.

- ***Grading Plan at 1" = 20'**

  Grading plans shall show all existing and proposed elevations, drainage flow lines, drainage structures, retaining walls or other site structures, and utility connections. In addition, pad elevations of all adjacent lots and existing grades along open space edges must be shown on the grading plan.

- ***Landscape Construction Drawings**

  The landscape construction drawings shall consist of the following:

  Planting Plans, Details, and Specifications, including species, size, and location of all plant material

  Irrigation Plans, Details, and Specifications, including the location and specifications for all sprinklers, valves, controllers, backflow preventers, and pipes.

  Hardscape Plans, Specifications, and any pertinent Details

  Fence & Wall Plans and Details

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- **Final Architectural Plans**

The final architectural working drawings shall consist of the following items:

Floor Plans with dimensions (1/4" = 1'-0")
Wrap Around Elevations with dimensions (1/4" = 1'-0")
Floor Plan Area Calculations for each floor including garage
Roof Plan at 1/4" = 1'-0"
Elevation or Section Drawings indicating conformance to bulk plan setback criteria.

- **Material Sample Board**

The material sample board(s) shall include samples or manufacturer's cut sheets for all exterior materials, including but not limited to:

- Roof tile
- Entry doors
- Garage doors
- Building wall finishes
- Paint or stain color chips
- Windows
- Fascias
- Trim materials
- Lighting
- Fence or site wall finishes
- Decorative paving
- Site furnishings
- Other visible exterior features
- Landscape mulches

- **Construction Plan**

The Construction Plan shall indication the location of lot construction access, trash receptacles, construction trailers, if any, and temporary restroom facility.

- **Any other drawings deemed necessary by the DRC**

* Note: The Architectural Plot Plan, Grading Plan and Landscape Plan may be combined onto one drawing if all the information is clearly depicted.

The DRC may waive any of the above described requirements depending on the Project Type and the nature of the proposed Improvements.

- **Repair Deposit**

  The Repair Deposit as defined in Section 2.9 hereof shall be paid at the time of the Submittal Review.

1.5 Submittal Review Response Time.

After a submission is accepted by the DRC as complete for Submittal Review, the DRC shall approve, approve with conditions, or deny the application within a reasonable time, not to exceed 10 business days.

The DRC shall review the design of each submission for its compliance with the Master Declaration, the Master-Planned Community Standards and the Applicable Design Guidelines. The DRC will evaluate the layout, circulation, and placement of all structures and other site features in terms of scale and harmony. Such design review shall include, without limitations, architectural style, building size, building massing, building location, materials, colors, the relationship of grading and drainage design, landscape design, special site features, and impacts to surrounding lots, open space, and other parcels. Specific requirements and recommendations to achieve these elements shall be detailed in the Applicable Design Guidelines. The DRC is not responsible for the review of submissions to determine conformance to any applicable codes or standards established by public agencies.

1.6 Approvals and Re-Submittals.

Upon completion of the Submittal Review, cover sheets of all submittals will be stamped "Approved", "Address Comments and Resubmit", or "Denied". Construction may not begin on any proposed Improvement until all submittals for that Improvement have been approved by the DRC. All comments back to the DRC must be addressed in letter and/or graphic form. Applicants must show all revisions to previously reviewed plans using the graphic practice of clouding (i.e., outlining the revision with a cloud shaped line). Any change to the plans, including those not specifically requested by the DRC, must be resubmitted for approval. Upon receipt of submittal comments, the applicant may contact the DRC and/or its consultants to schedule a meeting to review and explain comments in further detail, if necessary.

1.7 Building Permits.

Upon approval of all submittals, the DRC will give written notice to the City of Las Vegas documenting the approval. The applicant may then submit plans to the City for its review and approval. All plans must be approved by the DRC prior to submission to the City and issuance of a building permit.

1.8 Submittals Checklists.

The following checklists are provided to assist applicants in preparing submittal packages:

1.8.1 Submittal Checklist - Courtesy Review.

The items listed below must be submitted for the Courtesy Review. For a complete listing of specific requirements for each item, refer to Section 1.4.2, hereof.

a. Design Review Application
b. Preliminary Site Plan
c. Preliminary Grading and Drainage Plan
d. Preliminary Landscape Plan
e. Preliminary Signage Plans
f. Conceptual Architectural Plans
g. Project Summary

1.8.2 Submittal Checklist - Submittal Review.

The items listed below must be submitted for Submittal Review. For a complete listing of specific requirements for each item, please refer to Section 1.4.3, hereof.

a. Design Review Application
b. Architectural Plot Plan
c. Grading Plan
d. Landscape Construction Drawings
e. Final Architectural Plans
f. Construction Plan
g. Project Summary

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SECTION 2. CONSTRUCTION PROCEDURES.

2.1 Nuisance Control.

Construction operations shall not create any of the following nuisances (to the extent they are permanent or are detectable (without the use of instruments) at any location outside of the Parcel or Lot upon which the operation or activity is conducted:

a. Change of air temperature or humidity;
b. Dust or other airborne particulate matter;
c. Noxious odor;
d. Glare from lighting or reflective materials;
e. Disruption of television or radio reception; or
f. Excessively loud noise for long periods of time.

The use of radios, boom boxes, and other similar devices on a construction site shall not be audible from off-site locations. No dogs shall be permitted on any construction site. The use of alcohol on or about any construction site is strictly prohibited. The DRC may enact strict procedures, temporary or permanent, at any time to ensure noise and dust abatement measures are taken by Owners and their contractors.

2.2 Construction Fencing.

All construction sites are required to have approved construction fencing and screening to block the view of construction activity from off-site areas and to prevent windblown debris from leaving the construction site.

2.3 Erosion Control.

Owners or their contractors shall provide erosion control devices as necessary to prevent silt and other debris from flowing onto streets, open space, or adjacent lots during construction.

2.4 Cleanliness and Storage.

All construction sites and adjacent areas shall be kept free of trash, waste and any other unsightly materials including materials which can be carried off the site by the wind. The construction site shall be left in a neat and orderly condition at the end of each workday, with scrap material and debris disposed of in covered receptacles, and such receptacles collected and emptied as necessary before becoming overfilled. Hazardous debris and material shall be removed from the site each day. No hazardous

material shall be stored anywhere on the Property. Weeds, debris and litter shall not be allowed to accumulate on the construction site.

Storage of any construction materials, machinery, tools or forms are not permitted on any adjacent lots without written permission from the lot owner which is to be submitted to the DRC once obtained.

2.5 Trailers and Restrooms. No trailers for temporary living quarters are allowed. Construction trailers may be allowed subject to approval by the DRC. There shall be a minimum of one temporary rest room facility per lot during construction.

2.6 Construction Access.

Only those access roads approved for construction access by the DRC shall be used for moving construction equipment on and off the site and for trucks and automobiles of persons working on the construction site.

2.7 Contractors.

All contractors and subcontractors shall be properly licensed and bonded with the appropriate governmental authorities.

2.8 Foundation/Slab Staking Observation.

The Owner is required to provide 24 hour prior notice to the DRC for observation and approval of the staking for building foundations and/or slabs. Concrete pouring of building foundations can not begin without DRC approval.

2.9 Blasting, Excavation, Damage.

No blasting may be undertaken without specific written approval by the DRC. Applicable governmental regulations must be met prior to any blasting activity.

Excess excavation materials must be hauled away from the construction site.

Damage and scarring to other property, including, but not limited to open space, other lots, streets, street landscape area, common areas, driveways, irrigation, landscape, and/or other improvements will not be permitted. If any such damage occurs, it must be repaired and/or restored promptly at the expense of the person causing the damage or the lot owner. Upon completion of construction, each lot owner and builder shall clean the construction site and repair all property which was damaged, including but not limited

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to restoring grades, planting shrubs and trees as approved or required by the DRC, and repair of streets, driveways, pathways, drains, culverts, ditches, signs, lighting, and fencing. Any damage not repaired by the lot owner will be repaired by the Association and charged to the Owner as described in the Master Declaration.

2.10 Repair Deposit.

A security deposit ("Repair Deposit") in an amount of no less than one thousand and no/100ths dollars ($1,000.00) shall be submitted to the DRC to hold as security for any damage caused by the Owner or its contractors.

2.11 Hours of Operation.

No equipment maintenance or construction work of any type shall be performed or conducted on any construction site between the hours of 8:00 p.m. and 6:00 a.m.

2.12 Additional Construction Requirements.

All construction activities shall be subject to the following additional requirements:

a. The Owner shall inspect all existing improvements on or near the construction site prior to the commencement of construction (i.e., sidewalk, landscape area including street tree locations, light poles, etc.) and notify the DRC of any damage which may exist before construction begins. Once construction commences, the DRC shall assume all damage was a result of the Owner's Construction Activity and shall be the responsibility of the Owner.

b. The Owner shall provide the security guard at the entrance gate with a list of the individuals authorized to enter the construction site.

c. Construction shall be substantially completed within 1 year after construction has begun.

d. Landscape installation shall begin no later than thirty (30) days after occupancy of the Improvements and must be substantially completed within one hundred twenty (120) days of such occupancy.

e. All walls and/or fences located on shared property lines must be centered on the property line.

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f. The DRC will conduct three (3) on-site inspections during construction as follows:

(i) Foundation/slab forms in place, prior to pouring;

(ii) Completion of framing; and

(iii) Completion of the Improvement.

The Owner is responsible for notifying the DRC when each stage of construction is ready for inspection.

* * *

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
05-30-96 08:01 TM- 133
OFFICIAL RECORDS
BOOK: 960530 INST: 00241
FEE: 141.00 RPTT: .00

980421.00085

*K/980421.85

WHEN RECORDED RETURN TO:

Karen D. Dennison, Esq.
Hale, Lane, Peek, Dennison, Howard,
Anderson and Pearl
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

(3)

Space above line for Recorder's use only

AMENDMENT TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR QUEENSRIDGE

This Amendment to Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge ("Amendment") is made this 15th day of April, 1998, by Nevada Legacy 14, LLC, a Nevada limited liability company ("Declarant").

Recitals:

A. Declarant recorded the Master Declaration of Covenants, Conditions, Restrictions and Easements for Queensridge on May 30, 1996, in the office of the County Recorder for Clark County, State of Nevada, in Book 960530, as Instrument No. 00241, Official Records, and re-recorded such document on July 3, 1996 in Book 960703, as Instrument No. 01580, of said Official Records (collectively, the "Master Declaration").

B. Section 13.2.1(d) of the Master Declaration provides that Declarant has the right to unilaterally amend the Master Declaration to effectuate amendments which are necessary for compliance with NRS Chapter 116.

C. In the 1997 session of the Nevada Legislature, S.B. 314 was adopted and Section 15 of S.B. 314 amends NRS 116.3108 to provide that a meeting of the units' owners of an association must be held at least once each year.

D. Section 7.5 of the Master Declaration currently provides for semi-annual meetings of the Members of the Association.

E. Declarant desires to amend Section 7.5 of the Master Declaration to provide for annual rather than semi-annual meetings in order to comply with the amendment to NRS 116.3108.

NOW, THEREFORE, Declarant amends the Master Declaration as set forth herein:

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1. Declarant hereby amends Section 7.5 of the Master Declaration in its entirety to read as follows:

> 7.5 Meetings of Members. The first semi-annual meeting of the Members of the Association shall be held on the later of: (a) forty-five (45) days after the closing of the sale of a Unit to a Person other than Declarant, a Successor Declarant or Builder, which closing represents the fifty-first (51st) percentile interest sold within the first Phase, or (b) six (6) months after the closing of the first sale of a Unit to a Person other than Declarant, a Successor Declarant or Builder. Subsequent semi-annual meetings of the Members shall be held within the months in which the semi-annual and annual anniversaries of the first meeting occur on such day of each month as is specified in the Bylaws, or on the first day thereafter which is not a legal holiday, after notice as required by law and as provided in the Articles, Bylaws, and this Master Declaration; provided, however, that after the date of recordation of the Amendment to the Master Declaration, subsequent annual meetings of the Members shall be held annually rather than semi-annually.

2. Except as amended above, the Master Declaration remains unchanged and continues in full force and effect.

3. Any capitalized terms not defined herein shall have the meaning given to them in the Master Declaration.

IN WITNESS WHEREOF, the Declarant has executed this Amendment as of the day and year first above written.

"DECLARANT"
NEVADA LEGACY 14, LLC,
a Nevada limited liability company

By: PECCOLE NEVADA CORPORATION,
a Nevada corporation, its manager

By: Larry Miller
LARRY MILLER

Title: CEO

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STATE OF NEVADA)
)ss.:
COUNTY OF CLARK)

This instrument was acknowledged before me on April 15, 1998, by LARRY MILLER, as CEO of Peccole Nevada Corporation, a Nevada corporation, the manager of Nevada Legacy 14, LLC, a Nevada limited liability company.

Notary Public - State of Nevada
COUNTY OF CLARK
JENNIEVE PROSPERO NOVERO
My Appointment Expires May 10, 1999

Jennivieve Novero
Signature of Notary

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
NEVADA TITLE COMPANY
04-21-98 08:00 TML 3
OFFICIAL RECORDS
BOOK: 980421 INST: 00085
FEE: 9.00 RPTT: .00

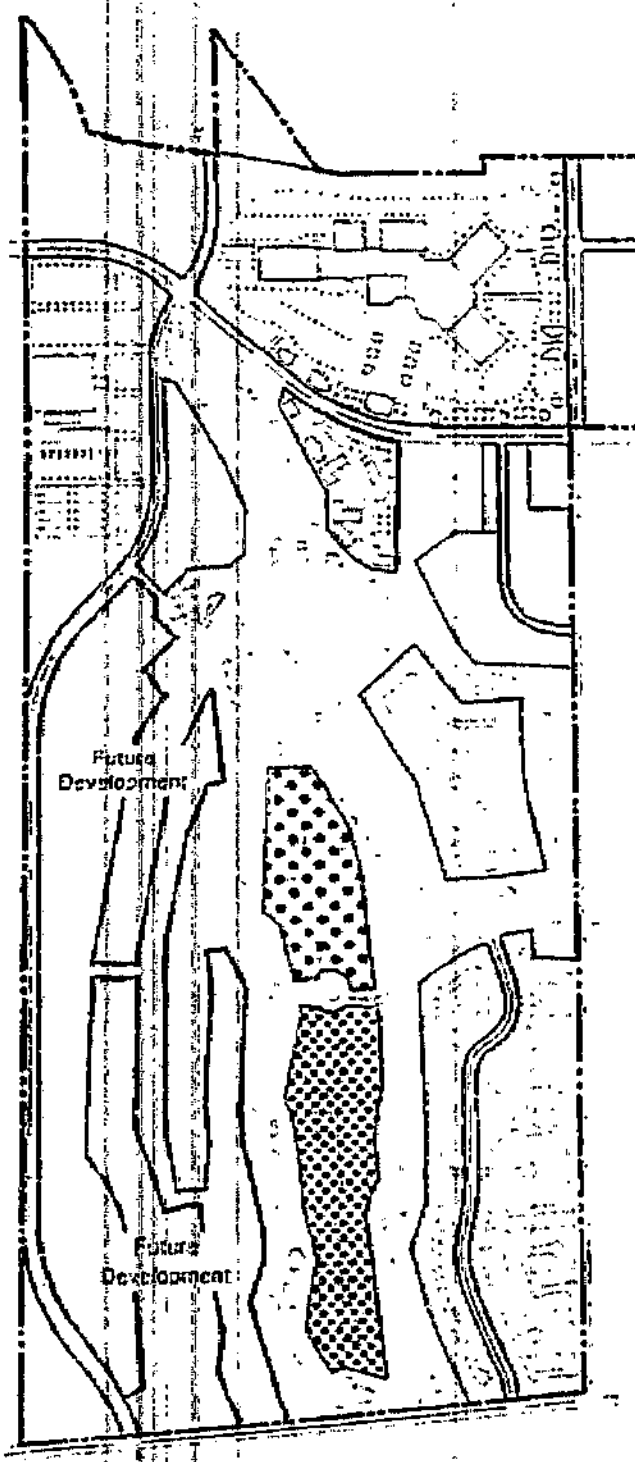
:ODMA\PCDOCS\HLRNODOCS\111329\1

Exhibit 37

Queensridge

Master Planned Community Standards - Section C

(Custom Lot Design Guidelines)



Site Plan is for conceptual purposes only, and is subject to change at the discretion of the Master Developer. Please refer to Engineering Base Maps for exact site layouts.

LEGEND

1/2 TO 1 AC. LOTS

1½ + AC. LOTS

EXHIBIT C-1

Exhibit 40

In the Matter Of:

Binion vs

Fore Stars

YOHAN LOWIE

August 04, 2017

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envision
legal solutions

702-805-4800
scheduling@envision.legal

D R A F T

T R A N S C R I P T

Binion vs. Fore Stars

- - -

Deposition of Yohan Lowie, Volume I

Thursday, August 4, 2017

By: Monice K. Campbell, NV CCR 312

monice@envision.legal

Page 2

ROUGH DRAFT TRANSCRIPT
REALTIME AND INTERACTIVE REALTIME TRANSCRIPT
ROUGH DRAFT DISCLAIMER

IMPORTANT NOTICE: AGREEMENT OF PARTIES

We, the party working with realtime and rough draft transcripts, understand that if we choose to use the realtime rough draft screen or the printout, that we are doing so with the understanding that the rough draft is an uncertified copy.

We further agree not to share, give, copy, scan, fax or in any way distribute this realtime rough draft in any form (written or computerized) to any party. However, our own experts, co-counsel, and staff may have limited internal use of same with the understanding that we agree to destroy our realtime rough draft and/or any computerized form, if any and replace it with the final transcript upon its completion.

Page 3

Since this deposition has been provided in real time and is in rough draft form, please be aware that there may be a discrepancy regarding page and line number when comparing the realtime screen, the rough draft, rough draft disk, and the final transcript.

Also please be aware that the realtime screen and the uncertified rough draft transcript may contain untranslated steno, reporter's notes, asterisks, misspelled proper names, incorrect or missing Q/A symbols or punctuation, and/or nonsensical English word combinations. All such entries will be corrected on the final, certified transcript.

Page 4

THE VIDEOGRAPHER: This begins the video recorded deposition of Yohan Lowie. Today's date is August 3rd, 2017. The time is 2:15 p.m. We are at 400 South 7th Street, Third Floor, Las Vegas, Nevada for the matter entitled Jack B. Binion, et al., versus Fore Stars, Limited, et al., Case Number A-15729053-C, in the District Court, Clark County, Nevada.

I'm the videographer, Becky Ulrey. The court reporter is Monice Campbell with Envision Legal Solutions.

Will counsel please identify yourselves and the reporter will administer the oath.

MR. JIMMERSON: Good afternoon. Jim Jimmerson. I have the privilege of representing Fore Stars, Limited, 180 Land Company, LLC and 70 Acres, LLC and today's deponent, Mr. Yohan Lowie. Good afternoon.

MR. BYRNES: Phil Byrnes representing the City of Las Vegas.

MR. BICE: And Todd Bice on behalf of the plaintiff.

Whereupon,

YOHAN LOWIE,

having been sworn to testify to the truth, the whole

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truth, and nothing but the truth, was examined and testified under oath as follows:

EXAMINATION

BY MR. BICE:

Q. Can you state your full name for the record, please?

A. Yohan Lowie.

Q. Mr. Lowie, can you tell me where you currently work?

A. I work at EHB Company.

Q. And what is EHB Company?

A. Now it's a corporation. I work various companies that we own, directly or indirectly own, and it's a developer and contractor, land owner.

Q. Okay. And EHB Companies, are you the principle owner of it?

A. No. I'm co-owner of EHB Companies.

Q. And how much of it do you own?

A. I own 50 percent.

Q. You own 50 percent. Who owns the other 50 percent?

A. Paul and Vicki DeHart.

Q. Okay. Do you own any other companies other than EHB Companies?

Page 6

A. All the other companies within our family of companies, I only own 50 percent or less.

Q. All right. Can you tell me what -- I don't understand what you mean by "your family of companies." So would it be accurate to say if you drew a corporate chart, EHB would be the top company?

A. No, it would be incorrect. Up to about a year ago, year and a half ago, EHB Company was just a brand name and we have a separate single purpose LLC for whichever we developed. And EHB is one of those. But since everybody recognizes EHB, we incorporated and that's what it is.

Q. I got you. But -- so you use EHB, it sounds like, sort of in two senses: One is there is an actual EHB entity but then you use the name EHB as just sort of the whole conglomerate; is that fair?

A. The world outside of us uses as such and we adopt it, yes.

Q. Okay. And so how long have you gone or your companies gone by the name EHB? How many years?

A. Everybody referred to us as EHB as a brand name for years because we had a company called Executive Home Builders which was one of the original companies. So everybody recognizes Executive Home Builders. So later on (inaudible) EHB and we

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incorporated about a year, year and a half ago, EHB Companies.

Q. So EHB -- but EHB in terms of just sort of the trade name, how long have you been using that?

A. For the recent past. Last two years.

Q. Within the last two years?

A. Year and a half, maybe.

Q. Okay. And did you have letterhead that you had EHB on it, that you would send out letterhead?

A. At what point?

Q. Within the last five years.

A. Yes.

Q. Okay. Now, was that letterhead? Is that for Executive Home Builders, or is that for just sort of the company-wide name that you were using?

A. Seeing as how it was incorporated, there's one logo and it's different, if you will, company, EHB Companies. EHB Companies is also the manager of other companies so if that's the company you refer to, yes, we sent out --

Q. So EHB, the actual entity, has existed for a couple of years?

A. The one that we are referring to in this conversation, yes. Prior to that it was Executive

Page 8

Home Builders and EHB was a brand name, if you will.

Q. Got it. Okay. And then you indicated that EHB, does it -- you said it serves as the manager of other companies?

A. Yes. In some cases, yes.

Q. Okay. Does EHB also own assets other than other companies?

A. I don't recall. I don't think so.

Q. Okay.

A. But I don't recall. The structure of the company is very complicated, 30(b)(6) designee. Mr. Sklar would be able to answer better.

Q. {Allen Sklar?

A. Yes.

Q. So EHB, though, is the manager, is it not, of the defendants in this action?

A. I would -- I would believe that's correct.

Q. And that would be Seventy Acres, LLC would be one of the companies, right?

A. Correct.

Q. And how much of Seventy Acres, LLC do you own?

A. It would be about 50 percent or less because there's a trust and kids, other kids -- other owners in these partnerships.

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Q. Let me ask you, is the ownership of Seventy Acres, LLC the same as the ownership of EHB?

A. I'm not sure. No, I don't think so. It's different.

Q. And then there is an another entity known as 180 -- 180 Land Company?

A. That's correct.

Q. And is that also EHB?

A. I believe so.

Q. Do you own the same amount of 180 Land Company as the same as you do in EHB?

A. I would suspect so but I'm not sure. It may be that it's different. It's rather complicated.

Q. Well, do you -- let me put it this way: Are there owners in EHB -- strike that.

Are there owners in Seventy Acres, LLC that are different than the owners of EHB?

A. If you can repeat the question.

Q. Sure. Let me try and break it down this way. In EHB you own half and --

A. DeHarts.

Q. Yes. They own half, Vicki and Paul, correct?

A. Correct.

Q. Now, for your half, do you have some of

Page 10

1 that in like your family trust and things like that?
2 A. Yes.
3 Q. Okay. So when you say you own 50 percent
4 and they own 50 percent, your 50 percent might be
5 broken up into various --
6 A. Correct.
7 Q. -- trusts or other -- other entities that
8 are subject to your ownership; is that fair?
9 A. That's correct.
10 Q. The same would be true for the DeHarts, I
11 suspect?
12 A. I would believe so.
13 Q. Okay. So what I'm trying to understand is
14 in Seventy Acres, LLC, the 50 percent of that entity
15 that you control, is that sort of the same structure
16 as you have in EHB?
17 A. No, it's not.
18 Q. It's not?
19 A. It's different.
20 Q. Are there different owners in Seventy
21 Acres, LLC other than you and Vicki and Paul?
22 A. Yes.
23 Q. Okay. Who?
24 A. From the top of my head, kids,
25 partnerships and trusts.

Page 11

1 Q. Your kids' partnerships?
2 A. My kids, their kids. We have kids in
3 different ages. So it's different owners.
4 Q. Sure. I understand that.
5 A. We both have two adults.
6 Q. Other than your kids and their kids, are
7 there any other owners of Seventy Acres, LLC?
8 A. I don't recall.
9 Q. How about 180 Land Company?
10 A. I don't recall. Same answer.
11 Q. Bear with me one second, sir.
12 Now, are you also an owner of an entity
13 known as Fore Stars, Limited?
14 A. Yes.
15 Q. And Fore Stars, Limited, how much of that
16 do you own?
17 A. I think it's the same, similar to 180.
18 Look I don't answer because I really don't know. I
19 didn't study and it's rather complex. There are
20 other companies that owned it prior to the company
21 that purchased Fore Star. I don't know what the
22 company that purchased Fore Star did.
23 Q. Just generally speaking, is the ownership
24 in Fore Star split up between you and the DeHarts? I
25 mean, I understand there may be some trusts or some

Page 12

1 kids' trusts in there, but is that how it's set up as
2 well?
3 A. I'm not sure there's trusts involved. I'm
4 not sure there are kids involved.
5 Q. Are there any members outside of your
6 family and the DeHarts' family that are involved in
7 Fore Stars?
8 A. I don't recall.
9 Q. All right.
10 A. It may be. I don't recall.
11 Q. How about for EHB?
12 A. For EHB?
13 Q. Is it your -- just your family and the
14 DeHarts family?
15 A. I believe there's no trust, no kids. No
16 other interest.
17 Q. And then for Seventy Acres, is it just
18 your family and the DeHart family as the owners?
19 A. No, I believe there's other trusts.
20 Q. Trusts belonging to kids, though?
21 A. Kids, adult kids.
22 Q. Adult kids. Okay. But other than your
23 family members which, I mean by your family members,
24 I mean you, your wife, your children, even if they're
25 adult children.

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1 A. I cannot conclusively answer that, but I
2 don't recall. I believe not but I don't recall.
3 Q. Fair enough. And I assume your answer
4 would be the same for 180?
5 A. That's correct.
6 Q. All right. When did you first approach
7 Fore Star about buying the golf course?
8 A. In 2006, I believe '5 or '6. '5 or '6.
9 Q. And who owned Fore Star at that point in
10 time?
11 A. I'm not sure it was Fore Stars at the
12 time. It may be a different company. At the time I
13 believe it to be -- I don't - I shouldn't say that.
14 I don't -- there were other companies that were
15 involved. I'm not sure who owned it at the time.
16 {But at the time is the family Larry Miller was
17 varying managers that they had from time to time.
18 Q. So the people that you would have spoken
19 to back in that 2006 time frame about purchasing it,
20 was {Mr. Baines and Mr. Miller?
21 A. And Mr. Miller. Mr. Bennett was involved
22 that I know, but Mr. Miller was the direct contact,
23 the ongoing contact. I don't believe we talked about
24 buying Fore Stars. I don't think we -- there was any
25 Fore Stars at the time. I'm not sure. I think we

Page 14

1 talked about buying the property.
2 **Q. When you say you approached them about**
3 **buying the property, was that a particular entity**
4 **that you had at that point in time that was going to**
5 **buy the property?**
6 A. I do not recall.
7 **Q. Who all was involved in those --**
8 A. No. No, this is not simple. I {didn't
9 call them to buy the property. I don't want to have
10 a record insinuating that I have called to buy the
11 property. There is a factor of business dealings
12 that end up in the need to purchase the property.
13 Q. There is a factor of business dealings
14 that ended up in a need to purchase the property?
15 A. Yes.
16 Q. This was in the 2006 time frame?
17 A. Yes.
18 Q. Okay. And what was that -- what was that
19 need?
20 A. The Peccoles need to be bought out at the
21 time. And we had other businesses with the family,
22 and they need to be bought out, and mainly because of
23 issues of the golf course and as a result of it we
24 got into a contract to purchase the property.
25 **Q. And you got into a contract with whom, do**

Page 15

1 **you remember?**
2 A. With -- contract with Peccole. I don't
3 remember who with. We got into agreement, not even a
4 contract. We got into an agreement that -- that -- I
5 can't recall you know, who it was, which company but
6 we got into an understanding that we are purchasing
7 the property and later on the Peccoles reneged on the
8 promise.
9 **Q. Why back then did the Peccoles need to**
10 **sell?**
11 A. Because the tower, the Queensridge towers
12 that we built together, we were still partners with,
13 is actually sitting on the golf course. They have
14 taken a piece of about six acres out of the golf
15 course at the location, and the towers are built, a
16 portion of them are built on the golf course. The
17 lessee at the time of the golf course wanted out of
18 the golf course. Apparently they were not making
19 money even then and Fore Star purchased the lease
20 back and put the Peccoles in a bad position.
21 **Q. And that was the Senior Tour which was the**
22 **lessee of the golf course at the time?**
23 A. I can't tell you what it was.
24 **Q. And when do you say that the Peccoles then**
25 **reneged?**

Page 16

1 A. Right after we close on the deal with them
2 and paid them for Queensridge towers. It was one
3 global sum but it was made out of pieces to get to
4 the number. A portion of it was Queensridge towers,
5 a portion of it was Tivoli, a portion of it was -- I
6 believe correctly, and I may be mistaken, {center
7 center and a portion was Badlands.
8 Q. And did you have this agreement in writing
9 with them?
10 A. There was a global settlement agreement.
11 One number, you pay me. I don't remember what it was
12 75 million or something, 100 million, 90 million and
13 we're out.
14 Q. And what happened to that deal?
15 A. The deal consummated. We bought them out.
16 Q. You bought them out. Okay. So you
17 bought -- as part of that deal, did you acquire the
18 golf course?
19 A. No, we did not.
20 **Q. And why was that?**
21 A. Because I had a promise to purchase the
22 golf course for $15 million and got into an agreement
23 and they decided to develop the property themselves
24 and the proposed development they need to fill with
25 the towers at the time, and we had to hire attorneys

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1 and the settlement was they gave us eight years,
2 within eight years or so, period of time, I think
3 eight years, to purchase the property. So we had an
4 option to purchase.
5 **Q. You had an option to purchase?**
6 A. It became an option, yes.
7 **Q. The court reporter, because I'm not sure I**
8 **heard the number correctly, did you have a promise to**
9 **purchase the golf course for 50 million or 15?**
10 A. Fifteen, 15.
11 **Q. It was hard to hear and she put 50, so I**
12 **just wanted to clarify. So for 15 million, that is**
13 **what they were supposed to have sold it to you for;**
14 **is that correct?**
15 A. That's correct.
16 **Q. And this is part of the global settlement**
17 **that you had with them?**
18 A. That's correct.
19 **Q. Then they late, as I understand it, you're**
20 **saying they later reneged and wouldn't sell you the**
21 **golf course?**
22 A. Correct.
23 **Q. So did you have a lawsuit with them?**
24 A. I believe we had a lawsuit, yes.
25 **Q. And do you recall who your lawyers were?**

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A. Sam Lionel.
Q. Mr. Lionel?
A. Mr. Lionel.
Q. And do you recall who the Peccoles' lawyers were?
A. No, I do not.
Q. And do you recall whether it actually ever went to like an actual complaint was filed in court, or was it just settled before it got that far?
A. I think it settled before.
Q. All right. And then part of your settlement, it sounds like, as the resolution, they gave you an option to buy the golf course for 15 years?
A. No.
Q. No?
A. For -- they had an internal issue with the family, the golf course at the time, per the agreement they made earlier, and the resolution was to give us the time and within eight years you can buy it.
Q. Eight years?
A. Yeah, I think. Don't hold me on the number. It was eight years, seven years. I think it was eight years or something. And when the time

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came -- just about eight years, I think.
Q. Just about eight years. And you had the --
A. I apologize. I don't recall. I think it was eight or ten years, but at any time you can put it through and have that.
Q. Got it. And did you have a price for that option?
A. I believe it was $15 million.
Q. So it was still $15 million?
A. That's correct.
Q. Okay. So from that time period on -- now let's deal with -- you think this is around 2005 when you entered into this option, 2006?
A. I believe it's 2006.
Q. Got it. It's a while ago. I got it. So you get the option. So from 2006 to 2010, let's deal with that window for a moment. During that four year window, did they ever ask you to exercise the option?
A. No.
Q. Did you ever ask them to exercise the option?
A. It was one sided.
Q. Okay. So they got to put it to you?
A. Yes.

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Q. If they put it to you, were you obligated to buy at that price?
A. No.
Q. So from 2006 to 2007, the Peccoles and whatever entity they had was operating the golf course, correct?
A. I don't know. I can't tell you what the Peccoles done. I don't believe so. I don't think they operated the golf course themselves.
Q. They always had a lessee?
A. Lessee -- I think there was -- I'm not sure. It was -- there were companies. The ones you mentioned, the name Senior Tour or American Golf. American Golf I think. I don't know if it's the same company or different.
Q. Okay. So they -- they kept the golf course property, but what did they sell you as part of -- you got an option in the golf course. I understand that. But what did they sell you in that 20006 settlement?
A. What did they sell me?
Q. Did you buy some other property from them?
A. What did they sold me?
Q. Yes, sir.
A. They sold their interest.

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Q. They sold their interest?
A. Two different agreements. There was a handshake agreement for some time until we get the contract. We had to close with them -- the issue with them -- purchased membership -- their membership interest from Tivoli, from towers and I think another property. I'm not sure. I think it was Sahara and Hualapai.
Q. Sahara and Hualapai?
A. I think they had an interest in the land, a small interest, and I think we purchased it from them. I'm not sure -- I think I may have purchased it personally which has nothing to do with it, but I don't recall.
Q. But is it fair to say that somewhere there is a written agreement of what they agreed to sell you?
A. That has nothing to do with the golf course. They agreed -- there there's an agreement of what they agreed to sell me on the golf course, separate and apart.
Q. The agreement on the golf course, and correct me if I'm misunderstanding you, it sounds like the original agreement did include the golf course but they reneged and then you entered into a

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1 **subsequent agreement about an option on the golf**
2 **course, or did I misunderstand you?**
3 A. I may have -- I didn't explain this
4 correctly. The membership purchase had nothing to do
5 with the golf course. It's just a membership
6 purchase included in the $30 million for the golf
7 course. I didn't mention the golf course. I didn't
8 mention the properties. We bought their shares.
9 **Q. You bought their interest in an entity?**
10 A. An entity. It wasn't in the property.
11 And subsequently, because we had a great
12 relationship, they came back and said, here's the
13 golf course and here's your contract. Whatever it
14 is. It was a very simple contract. You can buy it
15 for 15 million or something. And I don't know if it
16 was this contract or nominal amounts of money or
17 maybe even more. Either I owe them or they owe me
18 and reflected in the agreement and then they reneged
19 on it and there was a new agreement option that is
20 just an option to purchase.
21 **Q. And that option to purchase is only for**
22 **the golf course?**
23 A. That's correct.
24 **Q. So you bought Tivoli from them; is that**
25 **right?**

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1 A. We bought the membership interest.
2 **Q. You bought the membership interest which**
3 **gave you --**
4 A. {Control their interest. I always had the
5 control because I had more shares. As a matter of
6 fact, we introduced another party into it which came
7 back and basically purchased -- purchased their
8 interest, plus some interest of mine, and I took a
9 second position, you know, because of that issue on
10 the golf course.
11 Q. And that interest that you purchased from
12 them included then their interest in the towers; is
13 that right?
14 A. Yes. Again, I just want to make sure, the
15 purchase of the interest in the towers in Tivoli had
16 nothing to do with the golf course.
17 **Q. Right.**
18 A. But it was the deal that triggered the
19 issue with the golf course because the buildings were
20 sitting on the golf course.
21 **Q. I think I've got that straight now and I**
22 **apologize. It's taken me a while to get my arms**
23 **around all the transactions. So did you also**
24 **own -- when I said you, you or any of your**
25 **entities -- did you also own any of the real property**

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1 **that was around the golf course where the residences**
2 **are today?**
3 A. Yeah. I want to just qualify the "you."
4 Every time that you say "you," we're going to talk
5 about companies that I was involved with, right?
6 **Q. Yes, sir.**
7 A. Not personally anything?
8 **Q. Well, if you need to clarify for me that**
9 **you personally want to distinguish yourself from the**
10 **companies, feel free to do that. That's why I**
11 **specified when I meant you, I meant you being the**
12 **head of the EHB organization.**
13 A. I'm co-head.
14 **Q. A co-head. All right. The co-head Of**
15 **the EHB organization. That's what I'm talking about.**
16 A. Yes, as a co-head.
17 MR. JIMMERSON: And the less attractive
18 one I might add.
19 MR. BICE: I'll let you guys sort that
20 out. That's none of my business.
21 THE WITNESS: Yes. I -- we owned -- I
22 owned, prior that, the land to the towers. So we
23 just bought the Peccoles membership. So I was -- I'm
24 not sure I understand the question. If you can
25 repeat it.

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1 BY QUESTIONER:
2 **Q. Sure. There's the land that the towers**
3 **are on, then there's also the land where people have**
4 **homes. You have a home there. Mr. Jimmerson has a**
5 **home there. Did you at any point in time set aside**
6 **your personal residence as a developer in the EHB**
7 **organization, did you ever own any of that real**
8 **property that the homes are now built on?**
9 A. That's what I want clarified. Yes, I did.
10 We owned a lot of them.
11 **Q. And how many acres did you own that**
12 **ultimately was then divided and built homes on; do**
13 **you remember?**
14 A. Acres?
15 **Q. Yeah.**
16 A. At the time we owned probably 29 lots. I
17 just don't know what you mean by acreage.
18 **Q. That's fair. Let me clarify. When you**
19 **bought the property, you bought it -- it had already**
20 **been subdivided into lots, correct?**
21 A. Fully improved lots. I don't know what
22 subdivide into lots. We purchased when the property
23 was completed and there were finished lots to be had.
24 **Q. And those finished lots, you purchased**
25 **them to then build residences on, correct?**

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A. That's correct.
Q. And you think you built somewhere or bought somewhere between 25 and 30 of those lots?
A. To date we built 42 homes there.
Q. Oh, you built 42. Were some of those homes that you built, people bought the lots and then just hired you to build the house?
A. No. I believe that all of them we purchased the lots, either sold to somebody like yourself or Mr. Jimmerson and then built a house.
Q. And then built a house for him?
A. Some people wanted to finance the whole deal. Other than that it was all lots we purchased.
Q. When you purchased the lots, did you purchase them all at once?
A. No, I did not.
Q. And do you recall who you purchased them from?
A. That's interesting. I'm giving you an answer of my best belief.
Q. Sure.
A. But it was Legacy 14, LLC and later on was different companies. I don't recall which.
Q. And do you recall, who was it that you dealt with -- who was running Legacy, LLC?

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A. Larry Miller was running, I believe, Legacy. I can't tell you his position, but I -- to me he was a -- you know, the managing member, if you will.
Q. He was the person you dealt with; is that fair?
A. I dealt with him and Greg {Gorjian.
Q. And?
A. Greg Gorjian.
Q. So you built -- I think you indicated was it 42 houses in there?
A. Yes. In the custom homes, yes.
Q. In the custom homes. And you still live there today yourself?
A. Yes.
Q. So in 20 -- did you have -- strike that. Did you have any involvement in the building of the golf course?
A. No.
Q. Did any of your companies have any involvement in the building of the golf course?
A. No.
Q. But as the golf course was being built, did you already have your option for that land, or was the golf course already done when you acquired

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the option?
A. I believe the golf course was in construction.
Q. In construction?
A. When I started my purchasing, I don't think the {nine holes was existing at the time.
Q. So when you acquired the option to buy the land --
A. On which land are we talking?
Q. Let me specify. You said that you settled with the Peccoles, it sounds like, in 2006?
A. The golf course was completed.
Q. The golf course was completed?
A. Totally. If you're talking about that. If you're talking about the purchase of the interest of Fore Stars and the real estate called Badlands, yes, it was in 2006 and everything was completed at the time. When we started purchasing homes -- we were on a different topic prior -- when I purchased the first lots, the golf course was in construction in 1996, I believe.
Q. Understood. But when you acquired the option -- you settled your dispute with the Peccoles by way of, it sounds like, a settlement agreement where you acquired an option?

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A. Yes.
Q. And when you acquired that option, the golf course had been fully completed, correct?
A. Correct.
Q. And the golf course was subject to a lease, correct?
A. When I purchased the property?
Q. When you acquired that option in 2006.
A. Yeah. No, I'm not sure it was subsequent. I think they had an issue at the time and didn't have -- I believe when we acquired it, the option that we are talking about -- I apologize. I don't believe that that they had an operator. I think the operator gave them a notice to pay or they'll be, you know, in default of their agreement. So I don't believe they had an operator at the time. So in this period of time I don't believe they did.
Q. Your belief is that by -- at this time when you settled with them and you acquired that option, the tenant may have been threatening to leave?
A. I think they noticed them they are leaving. They violated the contract, so on and so forth, and the Peccoles had to buy the contract out. That was the whole issue we. Gave them the money to

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1 go buy them out. Now give us the golf course.
2 **Q. Okay.**
3 A. So at that time you wouldn't have an
4 operator. At the time the option would be
5 consummated you wouldn't have the operator.
6 **Q. And so who -- after you acquired the**
7 **option, who ran the golf course?**
8 A. That's a good question. Now that you
9 remind me of the events, they found a company to
10 manage the golf course and it wasn't Senior Tour or
11 American Golf. It was a different company. I can't
12 remember the name, but if I remember, I'll let you
13 know. It's in the top of my head.
14 **Q. Okay. But you acquired the option in '06**
15 **but you didn't have anything to do with the**
16 **operations of the golf course, or did you, after '06?**
17 A. Troon is the company.
18 **Q. Troon? Yeah, Troon Golf.**
19 MR. JIMMERSON: Troon. T-R-O-O-N.
20 BY MR. JIMMERSON:
21 **Q. Troon. It's a golf course management**
22 **company**
23 A. That's who at the time was negotiating --
24 at the time we acquired the option, that's who was
25 interested in it. That's my belief.

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1 **Q. After you acquired the option, did you**
2 **have any -- did you or your companies have any**
3 **involvement in the management of their operation of**
4 **the golf course?**
5 A. I had no involvement at all at the golf
6 course.
7 **Q. Okay. And do you recall which of your**
8 **entities the option was held by?**
9 A. I don't recall.
10 **Q. But it was an entity that you controlled?**
11 A. It must be -- it was probably a single
12 purpose LLC or something coming on. I don't recall.
13 I don't recall the name. I usually don't do that.
14 **Q. So when did you first discuss with the**
15 **Peccoles exercising the option to purchase the golf**
16 **course property?**
17 A. I'd been contacted by Billy {Bayne which
18 tells me, listen, I got problems with the golf course
19 and I may put it to you. I just want you to get the
20 heads up. I'm in discussion with family. It came up
21 and I want to give you notice. And that was at least
22 summer of 2014, I believe.
23 Q. Was that -- did you get any form of
24 writing from them?
25 A. No.

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1 Q. This was just an oral conversation you had
2 with Billy?
3 A. I have a great -- I had and have a great
4 relationship with the family, and most of my deals
5 with them are like that. {Handshakes, and this is
6 the way we did our business.
7 Q. And that would have been -- you had that
8 conversation with Mr. Bayne somewhere in the summer
9 of 2014?
10 A. Yes.
11 Q. And then when did you -- I guess when did
12 he sort of formally put it to you, that they were
13 going to ask you to exercise the option?
14 A. A few months later. I believe it was
15 three months, four months later or something. Maybe
16 late spring when I got the call.
17 **Q. Okay.**
18 A. And then they -- they had a serious
19 discussion. He called me again and said, Listen, I'm
20 preparing a contract -- or a contract, I don't know
21 who did it, to take over and then we started looking.
22 We had 90 days. I think we started actually earlier
23 on the property so we had enough time. When they
24 gave me the heads up, we started looking at the
25 property again..

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1 **Q. All right. So who was handling the due**
2 **diligence for you?**
3 A. Frank Pankratz was managing entitlements
4 and property research and -- so Frank and other
5 professionals that were hired for it.
6 **Q. Did you have any law firms representing**
7 **you?**
8 A. I believe that Sklar -- somebody at
9 Sklar's office was {walking because it may have been
10 in conflict with somebody who represents the family.
11 They all agreed that's who was representing to {
12 Q. So somebody in {Allen's office was
13 representing you?
14 A. Yes.
15 Q. All right. And who was representing the
16 Peccoles?
17 A. Somebody at Allen Sklar's office.
18 Q. So this due diligence that was done, that
19 was Mr. Pankratz's responsibility?
20 A. It was a collective responsibility in the
21 company. Todd Davis did research. Title companies
22 did research. Frank Pankratz did research.
23 Ultimately all the information flowed to Frank
24 Pankratz to a management team to, you know, Vicki and
25 myself. We were pretty involved with thing. A lot

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of people were involved.

Q. And when did you close on the transaction?

A. I believe that we closed early April '15.

Q. Early April of '15?

A. Yeah. I think at one point the families say that -- or we concluded with the family that they wanted us to buy the companies and not what we had an option for for the property, so we took on the liabilities too. So that's what we had to buy. So, you know, basically they said just -- you remind me during this conversation and I'm remember everything I think we purchased -- we purchased the companies and not the assets, the golf course itself, the real property, is the option purchase -- option to purchase was?

Q. So you purchased the entity that owned the golf course land?

A. That owned the golf course and all the liabilities and the -- the reason we couldn't is because there was a piece of property in there -- there was a piece of property there was a contract on that there was an obligation, post closing obligation that needed to be subdivided and gave Queensridge tower a piece of the property and gave a portion of the parcel to Fore Stars.

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So there was no way to do it -- to buy the real property and Peccole said you're going to have to buy the company with all its liabilities including the contract, so we purchased the company.

Q. Got it. And that contract was to take a portion of the property and put it in the entity that owned the tower, Queensridge --

A. There's -- in the initial parcel map, you see a small parcel. There was two different zonings on the property. They never do this. They've done it but prior to our dealings. So there were two different zonings, two different distinct categories of zoning on the property. And under the law, the new law, at least the law, the way the city does business, it had to be two separate properties. A portion of it was in another property because of the business end, so the lot had to be amended.

So it was a shifting of lot lines to capture that piece of property -- Queensridge Towers, whatever they deserved and gave Fore Stars what it deserved, and then the price was changed because at that point everybody knew it was the golf course. The Peccoles admitted that the golf course lost last year 1,200,000. They had to put four million dollars into it in the year prior to it to fix the greens and

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fix the infrastructure, the failing infrastructure. They didn't want to do it anymore. So we determined that we could buy the golf course, I believe, for seven and a half million. And we also at the time acquired -- inquired about buying water rights that the Peccoles have in another company, another entity that owned, you know, certain water rights, and we're going to -- we negotiated the purchase for that too.

Q. Okay. So you -- what you ended up really purchasing was you purchased the entity known as Fore Star; is that correct?

A. We purchased -- during the closing, we purchased a few entities, a couple entities minimum. It may be more.

Q. Was Fore Star --

A. I think Fore Stars. I think we bought WRL, which is -- it's a different company. And it has no real property, no real estate property. And we purchased -- I don't remember if there was a manager to it. I remember some discussion about who is managing who is what if we need to purchase that too. I don't recall the entire structure.

Q. Okay. And at the time that you -- why did you purchase WRL?

A. Because I want to own water rights.

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Otherwise I would have to go buy them.

Q. So WRL was the entity that held the water rights?

A. WRL is the company that owned the water rights, yeah.

Q. Okay. And did -- your contract to acquire, did it break out -- you paid seven and a half million for the golf course, Fore Star?

A. Fore Stars, yes.

Q. And then you had separate consideration you paid for these other entities?

A. Yes, correct.

Q. Do you recall how much you paid for WRL?

A. I think it happened to be also seven and a half million. It was an arbitrary number.

Q. All in, under your were, option you to pay 15. Is that it?

A. No, it's not. The numbers changed. Before when we were buying only the golf course for 15 and we would have leased the water rights.

Q. Okay.

A. And in 2015, we were buying the company that owns the real estate for seven and a half million and then we buy water rights for seven and a half million. So we didn't have to lease the water

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1 rights. Because the Peccoles realized the golf
2 course have ---
3 **Q. So you got the golf course at a better**
4 **price than what the original option called for?**
5 A. That's right.
6 **Q. Got you. Okay.**
7 MR. JIMMERSON: For what it matters, I
8 really think the close is about March 2 and not
9 April. Within 30 days.
10 MR. BICE: That's fine. He said he
11 thought it was around that time. That's fair.
12 BY MR. BICE:
13 **Q. Okay. So when you were doing your due**
14 **diligence on the property, I assume you were not**
15 **buying this to run a golf course?**
16 A. That's not exactly true.
17 **Q. Okay. So you -- at the time that you were**
18 **purchasing it, you were -- you may have been willing**
19 **to run a golf course?**
20 A. My original idea was to try to build a
21 very luxurious 18 hole golf course and develop the
22 lower nine holes, including a piece of many acres. I
23 can't remember, maybe 12 acres behind my house that
24 would be free because it's part of the lower nine and
25 develop that and run the golf course on the rest.

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1 But in the due diligence --
2 **Q. So you -- so when you were doing this due**
3 **diligence to acquire the property, was your original**
4 **plan that you were going to eliminate nine holes and**
5 **then just have an 18 hole luxury golf course?**
6 A. That was the original plan.
7 **Q. That was your original plan. Okay.**
8 A. The original. It's not a plan. It's all
9 conceptual because, you know, when you purchase a
10 piece of property, you think what to do with it.
11 **Q. I understand. But that was originally**
12 **what you hoped to do?**
13 A. That's what I was hoping to do, that's
14 correct.
15 **Q. When did you -- when did that sort of --**
16 **when did you change what you ultimately were going to**
17 **do?**
18 A. I believe around November or December of
19 2014, Frank had hired a very able and qualified golf
20 builder. People that do due diligence on golf
21 courses manage golf courses but they also do due
22 diligence. I can't recall the name of the
23 individual. It's on the top of my head but I can't
24 get it but in a second I'll get the name. I'll let
25 you know when I get the name. So we hired the

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1 company, and they came in and spent a few weeks on
2 the property and they do due diligence and they went
3 back to Florida, I believe, and they come back and
4 made a presentation and toward the end of December of
5 2014, to my recollection.
6 **Q. They made a -- they made a recommendation?**
7 A. A presentation.
8 **Q. Presentation?**
9 A. The findings.
10 **Q. The findings in December of '14?**
11 A. Yes.
12 **Q. AND what were their findings to you?**
13 A. Their findings were that he had -- I
14 remember that we were sitting around the table like
15 that. And they were on one side. And this man that
16 came was named Bobby, was his name, Bobby Weed. So
17 this gentleman said I've got bad news actually. I
18 think that this golf course is not going to make it.
19 And I think that -- because he saw the proposal to
20 put a lot of trees on the sides on the golf course.
21 And I don't think it's going to make it. And he gave
22 us the bad news are where the golf course is, what
23 the infrastructure looked like, and then he told us
24 what the industry is doing and where is it heading,
25 you know, in published opinions and his opinion. And

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1 I remember him saying that five and a half golf
2 courses have to be closed in this town just for the
3 other ones to make it but he suspected that even more
4 are going to close because the industry is in
5 trouble. That's the first time.
6 **Q. And that was in December of '14?**
7 A. Yes.
8 **Q. And how much time -- when he made that**
9 **presentation to you, how much time did you have left**
10 **on the option?**
11 A. I think we closed on March, is it? Early
12 March.
13 **Q. Okay. Early March. So did you get an**
14 **extension of the closing at any point in time?**
15 A. No, I don't think there was an extension
16 because we purchased a company, so the option was not
17 there anymore.
18 **Q. Got it.**
19 A. I think that's what happened.
20 **Q. Okay. Okay. Because your option was to**
21 **purchase the land?**
22 A. That's correct.
23 **Q. And you ultimately didn't even exercise**
24 **the option because you ended up purchasing the**
25 **company?**

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A. That's what I think happened.
Q. So you really weren't -- at that point in time, it sounds like you weren't really under time restrictions, or were you?
A. I think so. I think they gave us -- I can't remember. They gave us 90 days, 120 days, whatever, to close, and during that period of time we closed. As I mentioned to you prior, we have done -- we started due diligence. When he gave me the heads up, we started due diligence, including, I think, hiring this company, the Weed company.
Q. And did the Weed Company give you -- was it a written presentation?
A. I believe it was Weed. Weed. W-E-E-D.
Q. Bobby Weed?
A. Bobby Weed. Frank Pankratz would know.
MR. JIMMERSON: Bad name for a golf course.
BY MR. BICE:
Q. Did he give you a written presentation?
A. I believe he also left a written document. They had extensively drawn on the board all the issues one by one, prepared it, hour and a half, couple hours. I remember this meeting because it was so memorable because of the bad news. But they

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prepared every line item on the board and it was a huge board of here's where you are and here's what we think you should do.
Q. All right. So when you got that bad news, did you contemplate canceling the deal?
A. No, not at all.
Q. Why not?
A. Because I wanted the property.
Q. Why did you want the property?
A. I had been living on it, and I knew that land rights exist on this piece of property, and if I don't do it, somebody else will do it and develop it.
Q. When did you know that the land rights existed on the property?
A. 2000 or there about, that time frame.
Q. How did you know that?
A. Peccoles moved to develop a piece of the golf course in Queensridge -- the connection between Queensridge north and south. I wanted a piece of property on a portion of the golf course that was not used and they started grading it and there was a big hula hooo and I was building a few homes right behind it, four or five homes, and that's -- you know, that's how I find out what I -- you know, what the land rights are of the property.

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Q. And what did you find out in 2001?
A. We got into -- you know, a conversation and not comfortable conversation with the Peccoles, and they said, look at your documents. You purchased the property. Look at your book and see what it is. This property is developable any time. You have no promises. No issuances. And I remember I said, I'm not closing the rest of the 24 lots, I think I had left to close on that street, and they said, Well, then don't buy them. Just give me a deed restriction on this section so I can have it. They said absolutely not. Other people asked for them. People that live behind you in big homes here asked for the same thing and didn't get it. We're never going to put a deed restriction on the property. I wasn't happy with that conversation with Greg Gorjian, so I went to talk to Larry Miller and basically got the same answer from him.
Q. So you attempted -- when you were purchasing lots, you attempted to get a restriction on the golf course property?
A. I wanted to get a restriction, deed restriction, and the Peccoles refused to grant it because the property is developable and valuable.
Q. Did you attempt to get that restriction

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from them in writing?
A. I inquired about getting the restriction and then I learned about the vast zoning rights of this piece of property. They clearly walked me through the documents. We had an attorney reviewing the documents and they said this property is also developable, just like the Peccoles are telling you. So I did not ask any more to restrict views or anything. That's it. And I decided to move forward and close the rest of the lots.
Q. So that was in 2001?
A. That was the first time, yes.
Q. And so your testimony is that you knew in 2001 that the golf course property was developable; is that right?
A. That's correct. You know, now that I'm talking about it, I just remember, and I want a very clear record here, in 2006 we also acquired a restriction on the property, on the properties right below the towers for the time period of the option.
Only for the piece that would disturb, you know -- where the nine holes is, because we were very concerned that it would -- Peccole would try to build in our tower right there on the front. He's going to hurt Queensridge towers. And since we had -- we

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1 bought their shares, we restricted it.
2 **Q. You wanted a restriction so he couldn't**
3 **build something on that property?**
4 A. For the time that we have the option. If
5 they decide not to sell us the property, then they
6 can build it themselves.
7 **Q. Okay. So in 20 -- so from 2001 forward,**
8 **how many houses -- how many lots did you buy and**
9 **build on?**
10 A. Probably about 29, 29 or 30 lots.
11 **Q. And so do you know, was -- did you have**
12 **anything to do with Mr. Binion's home?**
13 A. No.
14 **Q. How about any of the plaintiffs in this**
15 **lawsuit, did you have anything to do with any of**
16 **their homes?**
17 A. No. Not at all.
18 **Q. Okay. How about -- do you know Dale**
19 **Reisner (ph)?**
20 A. I do.
21 **Q. Did you have anything to do with his home?**
22 A. Not as a builder. I just helped him when
23 he had problems in his house.
24 **Q. How did you help him?**
25 A. He asked me to be -- he asked me to help

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1 him out on issues he had at his house. I became an
2 expert witness or something.
3 **Q. And did he pay you to do so?**
4 A. No, I didn't want --
5 **Q. Just helping him out?**
6 A. Yeah.
7 **Q. Now, of those -- all those lots -- of**
8 **those 29 to 30 lots that you sold after 2001 and that**
9 **you built houses on, did you tell any of those people**
10 **that the golf course was developable?**
11 A. It's recorded on the deed. It expressly
12 shows in the -- in the book that you get with it and
13 it shows the development rights on this piece of
14 property.
15 **Q. So --**
16 A. So we give all disclosure, disclosures,
17 proper disclosures and signed the individuals of
18 every single sheet that had to be signed and initial,
19 including the initials that the zoning exists.
20 **Q. And did you -- again, did you disclose --**
21 **did you talk to any of those people to whom you were**
22 **selling these homes that the golf course could be**
23 **developed?**
24 A. I don't know that I discussed the golf
25 course could be developed but absolutely because I

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1 had buyers when this was going on. So the people
2 that I sold at the time and after knew the
3 possibility the golf course would be built.
4 **Q. But do you know whether you discussed that**
5 **with any of them?**
6 A. Yes, I did. Of course I did.
7 **Q. Who did you discuss it with?**
8 A. The own -- I can tell you by lots. I
9 can't remember the names anymore of the buyers. The
10 owner of lot number 5. I can't remember the buyer's
11 name, but I can remember the house. The gentleman's
12 name is Milton Homer. And a gentleman named -- that
13 bought lot four at the same time those houses were
14 already sold and being built when that lot was going
15 on. We discussed with people -- buyers coming and
16 going the possibility of the golf course being
17 developed. I think Clyde Turner was involved too.
18 **Q. You say he knew that the golf course was**
19 **going to be developed?**
20 A. Yes.
21 **Q. And when did he learn that?**
22 A. He learned it when he purchased -- what I
23 understood at the time from all the commotion over
24 the lot, because it was bordering his house, that he
25 had asked for the restriction on the golf course and

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1 the Peccoles refused to give it to him. He had
2 attorneys that negotiated it and was trying to get a
3 release and they did not. They said, don't buy the
4 lot. And in 2001 it came back. And when he
5 discussed it with them again, they told me -- because
6 we were trying to organize and I believe I talked to
7 Clyde Turner at the time to try to stop it. And the
8 Peccoles told me that Clyde Turner had -- you know,
9 had known about these rights when he purchased the
10 property and his attorney was trying to negotiate a
11 special provision for him and others in the
12 neighborhood as well.
13 **Q. So did you ever talk to Clyde Turner about**
14 **the fact that the golf course was developable?**
15 A. In 2001?
16 **Q. Yes. Okay.**
17 A. I don't think we talked about the golf
18 course was developable. Let's make -- you know, the
19 piece we're dealing with, those acreage behind -- you
20 know, the documents, the property's basically
21 developed. The property's developed. There's zoning
22 and there's land rights.
23 **Q. Okay. The property upon which the golf**
24 **course sits?**
25 A. Yes.

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Q. You and Mr. Turner discussed the fact that it was developable?
A. Yes.
Q. In 2001?
A. Yes.
Q. Did you do that in writing?
A. No.
Q. Anyone else that you can recall in 2001 discussing that with?
A. In the neighborhooded?
Q. Yes.
A. Or outside the neighborhood?
Q. Inside the neighborhood. Let's deal with that first, in 2001.
A. I don't recall. We spoke, many of us, because there were a lot of people were concerned there was a lot going on, and in the end, you know, fortunately for us, the golf course operator could not have -- could not have -- get out of his lease. And there was an easement that was tied up to the lease and he couldn't get the lessor to release it and they had to give up.
Q. Which lot are you talking about?
A. A portion of the golf course. They were taking about an acre, really an acre and a half just

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about and trying to develop it. They graded it actually. They brought many trucks of dirt and they raised the dirt and --
Q. And they weren't able to do so?
A. Because the golf course was on the lease which encumbered the property and the lessee would not release that from its lender. So that was the reason that lot never came to fruition.
Q. Okay. Anyone else in the neighborhood, inside the neighborhood in 2001 you say you discussed that with?
A. I do. I don't recall the names because people at the time, they were not my customers or Clyde Turner that I knew from previous dealings, I wouldn't know.
Q. How about people outside of the neighborhood?
A. Yes, attorneys.
Q. Attorneys?
A. Attorneys we hired to look at documents at that time.
Q. And who was that?
A. I don't recall the name of the attorneys. But I think that subsequently we talked to Sklar about those -- you know, about these items about the

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rights of the golf course.
Q. That would have been 2001?
A. Yes. I remember we had an additional set of attorneys at the time.
Q. All right. So you then believed, as of 2001, that the golf course property could be developed into residential; is that right?
A. I believe that the property -- I knew, yes. The answer would be yes. But what I knew is after carrying out the (inaudible) zoning, and that's what the attorneys all concluded.
Q. So in 2015 when you're closing on the property, in March it sounds like in 2015, was it your intent to purchase the property or were you closing on the entity? Was it your intent to acquire the property for residential development?
A. The front for mixed use type of development. And the back, at the time, when we closed, we only knew we were going to have to develop the whole thing, yes, but the mixed use on the front, the type of mixed use and building a residential, low density residential, yes.
Q. Just so the record's clear, when you're talking about the ront, what -- which property are you talking about?

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A. About 70 acres in the front.
Q. The 17 acres in the --
A. 17 -- at the time we closed, we knew we were going to develop the property in pieces, you know, over many years. We did not know we're going to do this in a development agreement. There was no development agreement idea or get zoning for the property in one shot. But, you know, we had an idea of what's going to happen with the property over the years, how we're going to develop it, and that's when we went to the council meeting. `
Q. But when you closed on the property or when you closed on the entity, you acquired the rights on the property, it was your intention to have mixed use, which you're saying in the front, which is right along Rampart?
A. Correct.
Q. And then the back, which is where the residences already are, the larger residences, you were going to have low density residences in that area?
A. We didn't know how many, what size, what type. But the idea is we put low density and high density in front.
Q. And the front being along Rampart, that's

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right across -- Tivoli is right across the street, correct?

A. The 70 acres, we treat it as the front.

Q. The 70 acres you treated?

A. 70 acres we treat as the front, out of which is 17 we wanted to develop because the market was right. Everything else would be for a later point.

Q. So the 17 acres you would develop first and then you said the remainder of the 70 you would develop at a later point in time?

A. That was the idea, yes.

Q. So as part of --

A. I want to make sure the record is clear. I don't think we would have developed the remainder of the 70 acres in one shot. The idea was to get another parcel map, propose the project separately on each piece, you know, entitle another piece. Get a separate parcel and then do another piece.

Q. And then you -- was it your intention -- was to start at the front and then just keep moving back?

A. No. The intention was to go to where the market would allow a project to be developed. So you have the project in front of the -- the intention was

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to develop the front project because we had an interest in that piece of property by a third party. And we could have started at the same time. We had an interest -- you know, once we have an interest in the back, we would start in the same time period.

Q. The property in the front, that's the 70 acres?

A. There is three -- there's three.

Q. Parcels now?

A. No. Two distinguished zonings for the properties. One is PD, planned development, one of the smaller pieces of property, and then there is a {RPD.

Q. Well, here's what I'm trying to understand. You just testified a minute ago that you had an interest in the front property by a third party.

A. Correct.

Q. And who was that?

A. It was Calida properties were interested to purchase from us 17 acres, 17 and a half, 18, we didn't know at the time, to put multiple -- multifamily residential for rent.

Q. So as part of the due diligence before you started to acquire the entity, do you know --

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A. We're going back in time because right now we were post closing.

Q. Fair enough. We're backing up. Before you closed, before you acquired the entity, was there any due diligence in terms of looking at the city's zoning that existed on the property?

A. Yes.

Q. Was there anything done in terms of looking at the city's land use on the property?

A. I don't believe so. The issue -- the zoning verification letter. We did a lot -- we went to the city and said, Guys, here's the deal. We just got -- you know, here's the deal we have. We can purchase this piece of property. Because here's what the industry is, and the Peccoles are not doing too well with the property. They want to sell it and we want to know if the property is developable or not. We know the property is developable. They proposed some development on it after that. If the property's not developable and you have any contract or any easement or anything that can prevent the property from being developed, we want to know because we don't want to purchase it.

Q. And who at the city did you have that conversation with?

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A. With the head of planning.

Q. That would be Mr. Perrigo?

A. Mr. Perrigo. I also believe that we had the conversation with Mr. Beers, and I believe that I sat here and heard that he doesn't recall any meetings with us on this project prior to almost a year later or nine months later, eight months later. But I know that we went and spoke to him and we spoke to -- spoke to Councilman Ross and Councilman Stavros and the mayor, Mr. Kaufman and the last councilman. What's his name, MacDonald?

Q. Tarkanian?

A. Mr. MacDonald. And Mr. Tarkanian. Mrs. Tarkanian. Yes, we have discussed with each one of them separately, you know, meetings with them. Here's what we got. We are being offered this piece of property and here's what we're planning to do with it because this was the situation. And we want to know what you're thinking.

Q. Okay. So you discussed with each of the council members, including Mr. Beers, before March of 2015, what you wanted to do?

A. I think it was in 2014 and then again in 2015. I think in December of 2014 we spoke to them and then in the week prior to closing we went again

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to speak with the council of what we want to do. We wanted to develop the front, the multifamily. We are going to keep the property -- we think we can maintain a lease on the property, and we're going to come up with projects in the future, with projects where we go, but we are going to protect the neighbors and protect my house, and this is how we're going to do it.

We think that multifamily will belong in this area and low level density belongs in the back.

Q. So did you have any sort of written plans to show them?

A. No.

Q. This was just -- did you show them anything in writing when you met with them?

A. Yes.

Q. What did you give them in writing?

A. I think a Google map of the area. We brought a large one, and we showed them what I want to do.

Q. And on the Google map of the area did you kind of show them roughly where you were proposing these various design elements?

A. Concept. Here's the concept. We want to know if it's okay with you. What do you think about

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it? Here's -- we basically showed them the change and this is our idea of the -- you know, very long run development of golf course. That exactly was the understanding.

Q. And did any of the council members express any reservations about what you were telling them?

A. No. As a matter of fact, I think we've been complimented by every single one of them at that time.

Q. Did they all tell you they were in support of it?

A. They told us they think it's an amazing idea of, you know, converting green -- very low density and putting density where density belongs.

Q. Did any of them indicate to you that they were opposed to it?

A. No.

Q. Did they indicate to you -- any of the council members indicate to you that they would support it?

A. No. They all said they need to learn more. They have to work with staff. And work with -- no, not at all. They liked the idea of it. I don't think they said -- yeah, as a matter of fact, I think that a few of them said this is the greatest

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idea. We want to see more. And I think we will support something like that.

Q. So when you purchased it, when you purchased the interest in the property, you didn't believe -- let me rephrase it this way.

When you purchased the property, you didn't do so in reliance on anything that any of the council members had told you?

A. Of course I did.

Q. You did?

A. I relied on the letter that I got from the city. And I relied on what we heard from council from all seven members twice. I actually recall clearly five members that I met with the second time around, but I believe that we met with all seven members on the subsequent meeting that we had with the city prior to closing and showed them the concept again. But if somebody said, no, I will never go for it, we would have probably got more of a discount.

Q. What do you mean you would have probably gotten more of a discount if somebody had said, no, we will never go forward?

MR. JIMMERSON: Let the record reflect he's smiling.

THE WITNESS: We would renegotiate or

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rethink where we are with this property.

BY MR. BICE:

Q. So if any of the council members had indicated to you they were opposed to this, you might not have purchased the property?

A. I don't know. I shouldn't have said it. I don't know what I was thinking at the time. I don't know what I would have thought. But I can tell you that nobody opposed. I can tell you that we got, in some cases, Hail does a great visionary for that concept and in some cases they say we want to see more. We want you to work with planning. We want you to take it to the neighbors early, and we've done all of that.

Q. So before you purchased it, did you talk to any of the homeowners?

A. Yes, I did.

Q. And who are the homeowners that you talked with and told them your plans?

A. I met with various homeowners. I can't tell you exactly who. In particular I remember meeting with Clyde Turner and Howard Bullock, his partner.

Q. And Howard Bullock?

A. Right. I met with others but the

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1 important meeting for me was with them because Clyde
2 lives there and he's a very -- he's a developer and I
3 I had a lot of respect for him at the time, and I
4 wanted to meet with him prior to closing.
5 **Q. And when did you meet with Mr. Turner?**
6 A. I believe it was very close to closing, if
7 not within a week of closing.
8 **Q. Before closing or after?**
9 A. I believe it to be before closing. My
10 recollection is it was before closing.
11 **Q. Okay.**
12 A. Because I think I said we're about to
13 close on this piece of property. Here's what it is.
14 Here's what's going on. And shared our vision what
15 we think the concept would be, you know, the concept
16 would be behind -- you know, on the 180, as we all
17 call the 180.
18 **Q. And what was the vision that you shared**
19 **with him?**
20 A. That we would landscape the property.
21 That we would landscape it like the 180 to create
22 canyons on the property because it's already
23 canyonee, so enhance the canyons and create
24 elevations and create topography on it. And then put
25 landscaping like Shadow Creek and build a very low

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1 number of homes on these areas in between.
2 So what the homeowners get, what we get,
3 we get a beautiful landscaping bordering our lots and
4 a view of fascias. You know, we hide the house and
5 then you can see it. And then on the perimeter,
6 where it's a high traffic area, we will build low
7 density and then we'll shift densities into the
8 front. We'll start in and shift to the front.
9 But that was the concept and I
10 particularly remember that Clyde Turner goes, Wow. I
11 think it's going to work. He said to me a few times,
12 I think it's going to work if you hire this landscape
13 architect, and I think that you need to take a
14 helicopter from here to Shadow Creek and back and
15 that's how you're going to sell those estates.
16 That's what he told me. That's my clear recollection
17 of that meeting.
18 **Q. Any other homeowners other than Mr. Turner**
19 **you spoke to?**
20 A. I mentioned Howard Bullock. Yes, I met
21 with other owners. I can't recall their names. I
22 met with at least a dozen homeowners at the time.
23 **Q. And when you say you met with a dozen,**
24 **that was before you closed on the property?**
25 A. Either before -- either at the time I

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1 closed --
2 **Q. I'm trying to figure out who you say you**
3 **spoke with before you closed.**
4 A. I can't recall the timing exactly but at
5 the time that I met with Mr. Turner, I met with
6 others at the time. So at the same time I met with
7 him, other people are coming in. Maybe the Roseners.
8 **Q. The Roseners?**
9 A. Yes. I think the Roseners I spoke with.
10 And like I said, that was the concept.
11 **Q. And they all indicated they supported it?**
12 A. I can tell you Clyde Turner did say that.
13 I don't recall what, you know, Dale or his wife said.
14 I can tell you that nobody opposed it.
15 **Q. Well, did you show them any drawings or**
16 **how you were going to move the property -- or how you**
17 **were going to build out the property?**
18 A. No, I don't think so. I think there was
19 only a Google map at the time and I was just drawing
20 on the Google map a piece of paper, a large sheet,
21 the concept.
22 **Q. So at the time then -- let's use this**
23 **exhibit to give a point of reference.**
24 (Exhibit Number Num was marked.)
25 ///

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1 BY MR. BICE:
2 **Q. Showing you what's been marked as Exhibit**
3 **Number 1, can you tell me what this is?**
4 A. I believe it's a zoning notification on
5 four separate pieces of property.
6 **Q. And did you request this from the city?**
7 A. I believe my office asked for it.
8 **Q. Okay. It says ENB companies but that**
9 **should probably be EHB Companies?**
10 A. I don't know what it says. I didn't read
11 it. I just read the top.
12 **Q. If you look at the address to where it's**
13 **sent, I assume that's just a typo, or is there an**
14 **ENB?**
15 A. No. No.
16 **Q. Fair enough. I just wanted to make sure.**
17 **You asked for a verification of the zoning**
18 **on the property, correct?**
19 A. Right.
20 **Q. Prior to purchasing -- prior to closing on**
21 **the transaction, did you know what the property's**
22 **designation was under the city's general plan?**
23 A. I don't know. I don't recall. But I
24 don't think that we dealt with designations because
25 of the zoning. We had a -- we had a due diligence

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and zoning supersedes everything above it.
Q. Who told you that?
A. The lawyers that did the due diligence.
Q. So you relied upon their advice?
A. I relied upon our understanding of the law and what the city says. The discussion was we want to know if we can build on this property. We want a letter telling us we can build this property. For that very reason you just mentioned right now we wanted this letter.
Q. You wanted a letter to verify that you could build on the property?
A. Mm-hmm.
Q. And that's what you told the city when you requested this letter?
A. We wanted a zoning verification letter because the city expected it. Hard zoning supersedes everything above it.
Q. When did the city tell you that?
A. December. Prior to December. We went to the city remember to -- to testify to it to Mr. Perrigo and asked him to tell us to go and do a study and figure out these parcels, these pieces of property, within the entity that we're purchasing, how developable. If the city has a contract, an

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easement, an instrument that otherwise would prevent construction on this piece of property.
Q. So you asked Mr. Perrigo to do this research in 2014?
A. Yes.
Q. Who asked him?
A. Frank and I in the meetings that we had.
Q. Mr. Pankratz and yourself?
A. I apologize, yes.
Q. Was it just the three of you in this meeting?
A. I believe there were more people.
Q. Who else was there, do you remember?
A. There were people on his side. And I'm not sure, but I think we had one more person or two more persons on our side. I think Al was on our side too. Al -- Mr. -- I can't remember his last name.
MR. JIMMERSON: Mickal.
THE WITNESS: Al Mickal.
MR. JIMMERSON: When you have time --
THE WITNESS: Mr. Harrison was there.
MR. JIMMERSON: When you have time, we've been going an hour and 20 minutes.
BY MR. BICE:
Q. And where was this meeting at?

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A. At the city.
Q. The city?
A. City planning department.
Q. Do you remember if Peter Lowenstein was there?
A. I think so. I don't remember. I don't want to make a record here for something I'm not for sure 100 percent. I know for sure that Mr. Perrigo was with others from his department and I'm sure 100 percent that Mr. Pankratz and myself and somebody else was there.
Q. Was Mr. Rankin there?
A. Maybe.
Q. Do you know Jim Lewis?
A. Yes.
Q. How do you know Mr. Lewis?
A. Only from there.
Q. Was he at that meeting?
A. We don't refer to him as Mr. Lewis. We refer to him as Mr. Binion's attorney in the office.
Q. Okay.
A. He may be. I don't know.
Q. All right. Let's take a break. Mr. Jimmerson wanted to take a break.
THE VIDEOGRAPHER: The time is 3:37 p.m.

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and we are off the video record.
(Whereupon, a recess was had.)
THE VIDEOGRAPHER: We are back on the video record at 3:48 p.m.
BY MR. BICE:
Q. So in this meeting that you had at the city and at Mr. Perrigo's office, and that was sometime in December of 2014 or was it before?
A. It may be before. Maybe between November and December, but it may be December. I can't tell you exactly.
Q. So as part of that discussion, had you told the city's planning staff what your vision was for the project?
A. No, no, no. We just want to know if the property is developable, if there is an easement or instrument that would restrict development of this piece of property.
Q. Well, did you tell them what sort of development?
A. No. The the R-PD7 is residential development. You can build up to seven and a half units on this property. Is it developable or do you have an easement or contract or something that will prevent you from doing it?

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Q. Did you put that request to them in writing?
A. I don't believe so.
Q. So how did you communicate that request to them? Was this at that meeting?
A. I don't know. I don't recall. Maybe Mr. Pankratz sent a letter requesting it in writing. I don't know.
Q. But at the meeting, you're saying that the city staff told you that there was nothing that prohibited you from building up to seven units per acre; is that correct?
A. No, they didn't tell me anything. They took the information and they said they're going to do a study. I believe the study took three weeks to do.
Q. The study took three weeks?
A. That's my recollection. Roughly three weeks it took them to do it and get us that letter.
Q. And the letter that they sent you is Exhibit 1?
A. I believe so, yes.
Q. So before I had asked you when did the city tell you that the zoning -- well, strike that. Did you know that what the land use

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designation was under the city general plan for the property?
MR. JIMMERSON: Objection. Asked and answered before but you can answer.
THE WITNESS: We didn't know anything about the general plan.
BY MR. BICE:
Q. And you didn't ask the city that?
A. We did not. We asked to know if this piece of property is developable. The conditions occurring on this piece of property that would otherwise make it developable or you have anything that may prevent development that you know.
Q. And they said there was nothing; is that right?
A. Not in this meeting. They didn't say anything. They're just admitting that you, referring to three weeks prior to this letter, they said it. I think at that time we started having more meetings and I believe at this time that's my recollection. I may be mistaken on that on timing, but when we came to -- before we got the letter, they are saying, it's amazing, this piece of property. You know, they were also very surprised that the property had no agreements, no easements, nothing that would

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otherwise prevent it from being developed. And it included the property's developable 100 percent.
Q. And when did they tell you that?
A. They told us that prior to this letter -- within days of this letter or maybe a few -- a couple days, three days we met again.
Q. So you met again before this letter?
A. Yes.
Q. And where did you meet before this letter?
A. Within a week of that letter we met. Or after we met. Just really within a few days prior to this letter we met and they said that's their findings.
Q. I want to be clear about the timing here. So did you meet with -- you had this meeting with them you said three weeks before this letter?
A. Three, four weeks before, my recollection is that time period we met. We had a meeting with them prior, saying we want you to do a study on a piece of property for us and tell us if there is any instrument that will restrict development. Can we build houses on this piece of property.
Q. And that's what you told the staff you wanted to do?
A. Yes.

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Q. You told them you were going to build houses on it?
A. We wanted the zoning, and if there is anything that will prevent development on this piece of property under the zoning category.
Q. I want to be clear what you told them. Did you tell them you intended to build houses on it?
A. No, I did not. We said we wanted too build the property, build the zoning on this piece of property. Anything that prevents this piece of property from being built.
Q. And that was about three or four weeks before December 30 of 2014?
A. I think prior to that when we came in, right prior to the letter when we discussed it with them, within that week I recall that we talked to them and we said yes, we want to know how many houses we can build, if you can build this number of homes. And they said, that's the zoning. And we asked them to put it in writing basically. That's our finding and this is the letter.
Q. And this is what you got in response?
A. Yes.
Q. So now you're saying that either shortly before or after this letter you had another meeting

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with the staff; is that right?
A. Yes.
Q. And who was in attendance at this meeting?
A. Same type of people.
Q. You were there, right?
A. I was there and Mr. Pankratz was there.
Q. And Mr. Pankratz was there. And Mr. Perrigo was there?
A. I believe so, yes.
Q. Okay. And are you saying it's at that meeting when they told you that there's nothing that precludes you from building houses on this property?
A. Yes. I think at that point we started speaking of how many units per acre can you build on this piece of property in the various areas, and they had difficulties on the up to seven and a half acres -- units, but it's like kind zoning. So you get what's next to it. There was discussion, just preliminary discussion, what does it mean, but it was quite obvious that there's nothing -- to the city, there is nothing they can do to prevent -- they said any applicant who comes in and develops this piece of property.
Q. So that was -- that was within a week of December 30 of 2014 when they told you that?

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A. I don't want to pinpoint a date. I believe my recollection is within a week.
Q. Well, it was before you purchased the --
A. A week before or after. This is at the holidays time. So -- but way before we purchased it.
Q. Way before you purchased it?
A. Yes.
Q. So the city -- now earlier I had asked you, and as I understood your testimony, you're saying that the city told you that the zoning trumps the general plan; is that right?
A. No. The zoning trumps everything. It's hard zoning. It's vested zoning. I think they used the word vested zoning. That's what we wanted to know, is it vested zoning or zoning that has has to be act -- there's different kinds of zoning, I guess.
Q. When did they tell you that?
A. When we asked the question. I think we asked them. We wanted to know what it is. And in response, in the discussions, what you want to know is it is vested zoning, if this property can be developed. You know, it's hard zoned. They used the word hard zoned too.
Q. And that was within a week or so of this letter of December 2010 they told you that?

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A. We asked to do the study.
Q. Before this letter they told you the zoning --
A. They didn't tell us, we asked them because we want to know if the property -- they were doing the conversation saying if you want to know if it's vested zoning that supersedes everything else. That was the discussion.
Q. And who at the city said that?
A. Tom Perrigo. I believe it to be Tom Perrigo and maybe someone else there. Doug Rankin.
Q. And you said that's what you wanted to know?
A. Yes.
Q. So they came back and they sent you this letter, Exhibit Number 1, correct?
A. Yes.
Q. And then you say either shortly before this or shortly after this, you had this other meeting with them, correct?
A. Correct.
Q. And at that meeting it was discussed that the zoning takes precedence over the city's master plan; is that correct?
A. I don't think master plan. The zoning

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takes place over everything. It's hard zoning. Basically you can build it.
Q. Who at that second meeting told you it takes precedence over everything?
A. I can't recall who told me that in the meeting, but it was a consensus between the planners that that's the case.
Q. Why didn't you get that in writing?
A. I think I have it in writing.
Q. Tell me where in this letter it says that zoning takes precedence over everything else.
A. That's, I believe, the law.
Q. Why didn't you get that in writing from them since you are saying that's what they told you?
A. I didn't think I needed to get it in writing. I didn't think there was any issues with it.
Q. Why did you want this in writing, Exhibit 1?
A. Because we wanted to know the city's behind it -- there's not any restriction on it, one, and two, we wanted to know -- we had a banker. We needed it for our bank financing. We would need a zoning verification letter. It's a standard item the banks request.

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1 **Q. I understand that you told us a little bit**
2 **ago you wanted the city to tell you there was nothing**
3 **that restricted any sort of development on this**
4 **property, correct?**
5 A. That's correct.
6 **Q. So why didn't you get that in writing?**
7 A. Because there was no issue. There was no
8 controversy at all. So we didn't -- we may -- we
9 probably should have asked for it today, but we
10 didn't ask for it. We didn't think we needed to ask
11 for it. Let's put it this way.
12 **Q. You knew that's what you wanted from them**
13 **but you didn't ask them for it?**
14 MR. JIMMERSON: Objection. Misstates the
15 man's testimony.
16 THE WITNESS: I would answer this way. In
17 my prior dealings with the city, with any
18 jurisdiction, building for many years, doing the same
19 exact thing, I've never had to ask for that when we
20 get a zoning verification letter. So there was no --
21 there was no reason. My answer is no reason to ask
22 for it.
23 BY MR. BICE:
24 **Q. What do you mean "there's no reason to ask**
25 **for it"? You just told us that the whole purpose in**

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1 **going to them was to get that answer.**
2 MR. JIMMERSON: Object to the question as
3 being argumentative and also misstates his testimony.
4 THE WITNESS: No. The reason we to go to
5 them is we want to know the property is developable.
6 BY MR. BICE:
7 **Q. Why didn't you get that in writing from**
8 **them?**
9 A. I did.
10 **Q. So this is the only thing you got from**
11 **them, is Exhibit 1?**
12 A. That's correct.
13 **Q. And you got nothing else from them except**
14 **for Exhibit 1, correct?**
15 MR. JIMMERSON: Objection. Misstates the
16 testimony.
17 THE WITNESS: I got available assurances
18 that the property is developable without any
19 questions. All along throughout the process the
20 city, they've upheld that the zoning (inaudible) the
21 hard zoning, property will be developed.
22 BY MR. BICE:
23 **Q. That's what I'm asking. My apologies, Mr.**
24 **Lowie. Why didn't you get those verbal assurances in**
25 **writing?**

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1 A. Why would I need it in writing?
2 **Q. Why wouldn't you?**
3 A. Why would I need it in writing? Prior to
4 the lawsuit there was no reason to ask for it in
5 writing.
6 **Q. Why did you want the zoning verification**
7 **in writing then?**
8 A. You need it for the bank. The bank
9 required zoning verification letter standardized.
10 **Q. So this was for the benefit of the bank,**
11 **not for any other purpose?**
12 MR. JIMMERSON: Objection. In fairness to
13 the witness, he did reference earlier one of the
14 reasons was the bank.
15 BY MR. BICE:
16 **Q. Is there any other reason other than the**
17 **bank that you needed Exhibit 1?**
18 A. Of course.
19 **Q. What other reasons?**
20 A. For us to know the property is
21 developable.
22 **Q. For you to know the property is**
23 **developable?**
24 A. Correct.
25 **Q. So you got Exhibit 1 and and you got**

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1 **verbal assurances that it was developable from the**
2 **city?**
3 A. Up through the entire process up to today.
4 **Q. Who was it that gave the verbal**
5 **assurances?**
6 A. Head of planning, planners, city attorney,
7 council people, on the record are saying you have
8 rights and the zoning on the property.
9 **Q. I'm talking about before you purchased it.**
10 A. Before I purchased it?
11 **Q. Yep. Who gave you those verbal**
12 **assurances?**
13 A. The planning team at the time.
14 **Q. That would be Mr. Perrigo?**
15 A. No. Planning team.
16 **Q. Planning team?**
17 A. Right.
18 **Q. So it would be somebody in addition to**
19 **Mr. Perrigo?**
20 A. Yes.
21 **Q. So it's more than one?**
22 A. Yes.
23 **Q. Mr. Lowenstein?**
24 A. I believe so too.
25 **Q. Mr. Rankin?**

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A. Maybe.
Q. Well, do you know or do you not know?
A. I don't recall. But more than those two gentlemen have expressed the same zoning.
Q. Mr. Lewis?
A. Mr. Lewis, sure.
Q. So Mr. Lewis gave you that assurance as well?
A. Yes.
Q. Mr. Jerbic?
A. No, I didn't meet Mr. Jerbic at that time.
Q. All right. Mr. Lowie, have you ever told the city that you will sue them if you don't get approvals because they gave you assurances?
MR. JIMMERSON: Let me just object to the line of the questioning as being far afield, irrelevant to a parcel map issue. I'm not going to instruct him not to answer.
Go ahead sir, you can answer the question.
THE WITNESS: I may have, yes.
BY MR. BICE:
Q. Who have you told you are going to sue them because of the verbal assurances they gave you before you purchased the property?
A. No verbal assurances. You represented to

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us the property is developable. They're just refusing constitutional rights to zoning.
Q. Mr. Lowie, who have you told you're going to sue over the assurances?
A. I'm sure that I told it to the city attorney.
Q. You told Mr. Jerbic that, correct?
A. Yes.
Q. Have you told Mr. Jerbic that you are going to sue him personally?
A. No.
Q. Have you told anyone else you're going to sue them?
A. No. No. I don't think so.
Q. Had you told Mr. Lewis you were going to sue him?
A. Mr. Lewis, no, I don't think I said it.
Q. How about Mr. Perrigo?
A. No.
Q. And so you told Mr. Jerbic -- did you tell Mr. Jerbic issuing you were going to sue the city because you had received assurances that it was fully developable before you purchased the property?
A. No. As a matter of fact, I recall now that I said to Mr. Lewis, you know, I won't have to

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end up with a lawsuit with the city over these rights in one of the meetings that we had. I recall that, yes.
Q. So it was Mr. Lewis you said that to?
A. Mr. Lewis, yes. This was in response to a letter that he wrote to me.
Q. So Mr. Lewis wrote you a letter that said what?
A. It said that -- you can't sue the city for whatever it is we're asking you to do if you don't get it. You can only sue the city on R-PD7, based on YOUR zoning and maybe only it will take a judge to determine what is going to be built here. Something to that effect. Which was a totally ludicrous letter to us. That's why we called him Mr. Binion's attorney.
Q. Why did you call him Mr. Binion's attorney?
A. Because we sat in meetings with him for periods of time that we really believed -- we didn't know him. We thought he was Jack Binion's attorney.
Q. And why did you think he was Jack Binion's attorney?
A. Because he was representing only the Binions and not the neighbors' interest. Not the

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city interest or public interest.
Q. So the city's interest was different in your view than the neighborhood's interests?
A. No, no, no, no, no. I don't think so at all. I don't think so. I think that Mr. -- Mr. Lewis was behaving in a manner that did not represent a fair and balanced independent city attorney. He behaved as he worked for Mr. Binion.
Q. And tell me how he did that.
A. He -- we thought he was Mr. Binion's attorney, only representing one client.
Q. And he was only representing Mr. Binion; is that right?
A. That's what we thought, yes.
Q. Is it because Mr. Lewis told you you didn't have the rights you were claiming to have?
A. Never said that.
Q. He didn't?
A. Quite opposite. He said we have a right to develop the property under the R-PD7.
Q. What was he saying that was supposedly in Mr. Binion's interests and not the city's?
A. All kinds of things we should ask Mr. Binion's permission to develop the property.
Q. Anything else?

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A. Stuff to that effect. Everything that came up he said you need to go talk to your neighbors, get your neighbors signature to develop the property. And I asked where is it in the constitutional, under zoning I have to go and ask neighbors what I'm going to do with my property?

Q. Anything else Mr. Lewis did that said he he was not representing the interests of the city but the interests of Mr. Binion?

A. I should say the majority of the portions of what Mr. Lewis said were only to the benefit of Mr. Binion and certain other homeowners in the community.

Q. Did you talk to the mayor about Mr. Lewis?

A. At one point I believe so, yes.

Q. Did you ask the mayor to have Mr. Lewis removed?

A. I don't recall. No, I don't think so, but I thought Mr. Lewis was behaving in a manner that -- no, I don't think so.

Q. You did not ask the mayor to have Mr. Lewis removed from working on this project because he was --

A. No.

Q. -- looking out for the homeowners?

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A. No, I don't think I did. I said -- I think I said the city attorney is working for the homeowners, not for the City.

Q. But you did talk to the mayor about Mr. Lewis, did you not?

A. I think I mentioned he's being very difficult dealing with the city attorney. It seems like he's not representing the city interests.

Q. Who was present when you had that discussion with the mayor?

A. Our team. Whoever was sitting with us and my consultant.

Q. Your consultant, Jay Brown?

A. You know, Mr. Brown, Mr. Kaemfer or both.

Q. So it would have been you, Mr. Brown, Mr.Kemper at the -- in the mayor's office, correct?

MR. JIMMERSON: Object. He didn't say both, Counselor. To be fair, he said --

MR. BICE: I thought I said or. My apologies.

BY MR. BICE:

Q. Mr. Brown, Mr. Kaemfer or maybe both of them?

A. And the other people at the city. And they asked me how this is going with this

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negotiation. And I said I don't find we are negotiating fairly, because I think I think that Mr. Lewis is not representing the city, but the homeowners.

Q. And that was in the mayor's office, correct?

A. Yes.

Q. Do you recall when that was?

A. No. Early -- early in the process.

Q. Early in the process?

A. I explained earlier, the summer of 2015.

Q. And the mayor was there. And who was there with the mayor?

A. The mayor had a liaison and other people were there in the office with the mayor. I've never been with the mayor alone.

Q. And you complained to the mayor that Mr. Lewis was being too tough on you?

A. Not at all.

Q. You said he was being unfair.

A. No. I said I don't think he was representing the interests of the city. It seems like he's representing homeowners. That's all I said. I wasn't complaining. It wasn't an issue that was discussed. It was just a comment.

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Q. How long after your meeting with the mayor where you raised the subject matter with the mayor was Mr. Lewis taken off the project?

A. I don't think he was taken off the project until he wrote the letter which I had nothing to do with. I believe he was not authorized to write the letter. I was very upset by the letter and demanded a retraction of the letter, and the city attorney invited me and our advisers to his office and told me then that he was absolutely not authorized to write this letter. He had no authority to do so. He have done it on his own accord and the city attorney's office will deal with it. That's what I -- that's the only thing that happened on Mr. Lewis' issue.

Q. So he wrote you a letter that said what?

A. He wrote a letter that said -- I don't know. Do you have the letter?

Q. Do you recall what it said?

A. I recall it said something to the effect, you can't sue the city for a project you're asking for but you can sue the city only for the R-PD7 zoning that you have. Something to that effect.

Q. And this letter upset you?

A. Yes.

Q. Why?

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A. Because the whole idea was to work with the city to get the right project for the homeowners and for -- you know, for the developer, and -- listen, the meetings with Mr. Lewis were peculiar at best. The guy was -- never seen anything like it before and I never saw anything like that since.

Q. What do you mean?

A. He really behaved like he was working for somebody else. Not the the city.

Q. And did you tell that to anyone else other than the mayor?

A. I think in the office we are calling Mr. Lewis Jack Binion' attorney.

Q. Okay. Anyone else in the city who you said that to?

A. Prior to the meeting with Brad Jerbic?

Q. Yeah.

A. No, I don't think I said that to anybody else at the city except Mr. Jerbic that invited me to his office.

Q. Approximate at mayor correct.

A. And -- I made a comment to the mayor. I don't know where it's going because it seems like we're meeting with Jack Binion's attorney when we go to the meeting, not the city.

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Q. Did you also have that same conversation or a conversation like that with Councilman Beers?

A. I don't recall. Maybe.

Q. Did you meet with Councilman Beers in his office to discuss Mr. Lewis?

A. No. In particular for Mr. Lewis, no.

Q. Well, whether it was particular to Mr. Lewis or not, did you have a discussion with Mr. Beers in his office about Jim Lewis?

A. No, I don't believe so. I don't recall.

Q. Did you have a conversation with Mr. Beers at all about Jim Lewis?

A. I don't recall having a conversation with Mr. Lewis. I may have but I don't recall at all.

Q. Did you -- is it possible that you told Mr. Beers that you wanted Mr. Lewis removed from this project?

MR. JIMMERSON: Objection. Calls for speculation as to what's possible.

THE WITNESS: I have no idea. I don't think I would have asked any councilman to remove somebody from their position. That's not my business.

BY MR. BICE:

Q. Did you communicate with anyone in email

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about wanting Mr. Lewis removed?

A. I don't recall. Myself, I don't think so.

Q. Anyone on your staff.

A. I don't think so.

Q. You haven't seen any; is that correct?

A. It's correct.

MR. JIMMERSON: If there is something, Counsel, you can certainly show him because it's apparent he doesn't recall it.

BY MR. BICE:

Q. When was your meeting with Mr. Jerbic about Mr. Lewis, do you remember?

A. No, I don't recall the time.

Q. How close in proximity was it to the letter you received from Mr. Lewis?

A. I believe it was very close. Within a -- you know, a week, ten days, two weeks.

MR. JIMMERSON: Let me have you pause for a second. Madam Court Reporter, at line 8817, it's not apparently he doesn't recall, I said it's apparent he doesn't recall. Thank you.

BY MR. BICE:

Q. So you understood at the time that you purchased the property that zoning on the property took precedence over the general plan and everything

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else, correct?

A. Correct.

Q. And the city had given you that assurance correct.

A. Correct.

Q. Verbally?

A. In writing too.

Q. In writing too. Where did they do that?

A. There's nothing here that prevents zoning from being exercised.

Q. Other than Exhibit 1, is there any other writings you claim where they gave you assurances that zoning took precedence over everything else?

A. My answer was no before on the same thing.

Q. Do you recall, Mr. Lowie, that -- do you recall that you actually sought a general plan amendment in November of 2015?

A. November 2015? I'm not good with the dates on this, but yes, we seek the general plan amendment on the direction of the city, yes.

Q. And who are you saying at the city gave you that direction?

A. The planning department.

Q. Who in the planning department?

A. The project team.

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1 **Q. That would have been Mr. Perrigo?**
2 A. With Mr. Perrigo. I can't remember who
3 requested it as a list of items that they required we
4 will file, and that's what we did.
5 **Q. Do you recall sending them a letter --**
6 **well, strike that.**
7 (Exhibit Number Num was marked.)
8 BY MR. BICE:
9 **Q. Showing you what's been marked as Exhibit**
10 **Number 2, have you seen Exhibit Number 2 before,**
11 **Mr. Lowie?**
12 A. No, I don't believe so.
13 **Q. Well, take a look at it.**
14 A. I looked at the signature at the back and
15 I signed it, but I don't recall seeing it.
16 **Q. So you signed it but you wouldn't have**
17 **prepared this letter?**
18 A. No.
19 **Q. Who would have?**
20 A. I would assume that Mr. Pankratz would.
21 **Q. Okay. And why would you sign it then?**
22 A. Why? They put my name on it for that
23 reason instead of EHB Company, LLC. So it's either
24 Vicki or myself. The manager signs it.
25 **Q. Okay. So a manager has to sign it,**

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1 **correct? Okay. So did you read the letter before**
2 **you signed it?**
3 A. No, I don't think so. I'm not sure. I
4 can't tell you. I don't recall.
5 **Q. Well, go ahead and read -- I'd ask you to**
6 **read the letter and tell me if there's anything in**
7 **there that you believe is incorrect.**
8 A. Okay. No. The answer is no.
9 **Q. The letter is correct?**
10 A. Yes, I believe so.
11 **Q. Let's have this one marked next, please.**
12 (Exhibit Number Num was marked.)
13 BY MR. BICE:
14 **Q. Showing you what's been marked as**
15 **Exhibit number 3, have you seen Exhibit Number 3**
16 **before?**
17 A. No.
18 **Q. Did you know that there was a general plan**
19 **amendment dated November 23 of 2015 with the stamp by**
20 **the city GPA62387?**
21 A. I know the city requested the GPA on this
22 piece of property, yes.
23 **Q. And is Exhibit Number 2 the letter you**
24 **signed, is this the justification letter for that**
25 **general plan amendment?**

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1 A. Did I sign one? I don't see my signature
2 here.
3 **Q. I'm talking about Exhibit Number 2, the**
4 **letter you just read.**
5 A. The justification?
6 **Q. Yes. That you said was accurate.**
7 A. It does not say which one. Yes, I believe
8 it's the same one.
9 **Q. Okay. I just want to make sure this**
10 **letter Exhibit Number 2 is the justification letter**
11 **for Exhibit Number 3, correct?**
12 A. Yes.
13 **Q. So Exhibit Number 3, what was the general**
14 **plan amendment that you were seeking?**
15 A. I believe the general plan amendment was
16 to change from a PR-OS to -- to a 2H.
17 **Q. Okay. And in the Exhibit Number 3,**
18 **there's a plan on the third page?**
19 A. Okay.
20 **Q. Do you see that it says the subject**
21 **property?**
22 A. Yes.
23 **Q. And that's a portion of the parcel,**
24 **existing parcel, correct?**
25 A. It's a parcel.

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1 **Q. That's a parcel?**
2 A. Yes.
3 **Q. If you look at Exhibit Number 2, your**
4 **justification letter, do you see where you told the**
5 **city that it wasn't a separate parcel as of yet? You**
6 **said you were subdividing it. Do you see that?**
7 A. Parcelizing it. Let's get the dates here.
8 **Q. If you look at your letter, sir, that you**
9 **just said was accurate, it says -- the second**
10 **sentence says, "The 17 acres is in the process of**
11 **being subdivided." Do you see that? Into a separate**
12 **parcel and will have its own APN number. Do you see**
13 **that?**
14 A. Okay. It means parcelizing it in this
15 instance, yes.
16 **Q. That's what you were doing, correct?**
17 **That's what you told them in the letter, Exhibit 2?**
18 A. No. We basically were parcelizing a piece
19 out of the parcel, yes.
20 **Q. So you were creating another parcel,**
21 **correct?**
22 A. That's correct. That's how you develop in
23 this country.
24 **Q. Okay.**
25 A. You get another parcel and you develop it

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and you get entitlements for it.
Q. And in Exhibit Number 2 -- I'm sorry, Exhibit Number 3 you had even shown them in advance the number of parcels and how you were going to break it up later on, correct?
A. Yeah. I believe at that time the parcel map was already in process, so this is -- this is an accurate picture of what was in process.
Q. The parcel map, you were going to subdivide it with the parcel map?
MR. JIMMERSON: Objection to the question. Misrepresents the facts and the law.
THE WITNESS: Yes. I think you are making a wrong assumption and conclusion of the subdividing in this instance.
BY MR. BICE:
Q. I'm reading your letter.
A. Our intention and our exact meaning of subdividing is subdividing one parcel into two by way of a parcel map.
Q. So that's what you meant in this letter, you're subdividing it into two parcels?
A. Take one parcel and make it into two is subdividing or parcellizing, right?
Q. Okay.

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A. Easier language would be parcelizing it. That's what it is. It means nothing other than parcelizing it and creating another parcel.
Q. And you were doing that by way of a parcel map, right?
A. Yes. There's no other way to do it.
Q. And you had submitted, as I understand your testimony, you're saying that the city asked you to submit Exhibit 3?
A. The city asked us to subdivide -- to parcelize the property into a separate parcel before we go to entitlement, and this is a checklist from the city of what they want. And I remember the discussion on it, because we asked the city to get entitlements without a parcel map and the city asked us to parcelize the property out from the 70 acres separately. It would not allow development on the tip of another parcel. They would not allow a parcel without entitlements on 100 percent of the parcel or else you have to accommodate, like you do in every single project, parcelize it out. That's how you do it.
Q. My question was, sir, you are claiming the the city wanted the general plan amendment, not you?
A. The city gave us a checklist of what they

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want to see prior to entitlements, for the entitlements, yes.
Q. And that included the general plan?
A. That's correct.
Q. And so you submitted one, correct?
A. We submitted what the city asked us to submit.
Q. And that general plan amendment was to change the land use designation from PR-OS, correct?
A. To match to existing, as they call it in the city. When you have an inconsistent general plan and zoning, when you seek entitlements, everything has to match.
Q. And you'll notice here in Exhibit Number 2 that you testified was correct, that no where here in Exhibit Number 2 did you ever say that the city has already told us that the zoning supersedes the land use, did you?
A. Why would we say that? It's common knowledge at that point.
Q. So that's why you didn't say it, because was common knowledge?
A. No, I didn't think we had to say it. The the city asked us to file the documents, and we filed exactly what they told us to file.

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Q. Now, in around the same time in early November, were you asking the city to change its general plan so as to allow the city to go above eight units per acre?
A. No.
Q. You didn't ask for that?
A. No. The city asked -- the city come up with it. I believe staff came up with it. They asked us to do it because it's three separate companies, and we were trying to shift densities from one parcel to the other, and they didn't have a mechanism in the code to do it at the numbers we were seeking, consulting on, and that's -- that's -- that's a request from staff.
Q. A request from staff to do what?
A. They come up with an idea that they will put an amendment to a code or something by, you know, to increase the densities to over a certain what was allowed in the code for a property as such that you want to shift densities.
Q. Why did you want to increase the densities?
A. Shift densities.
Q. Shift. Why did you want to do that?
A. Because if we wanted to build less units

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1 below or more at the front, you shift as the R-PD7
2 allows you, but you have three separate companies,
3 and I think that the GPA was because we were also
4 changing to an R3 -- R4, and the R4 zoning was not
5 something that was contemplated in the original
6 conceptual master plan. Only an R3. So they
7 requested a GPA.
8 **Q. Did you have Greg Borgel working on this**
9 **for you?**
10 A. Greg Borgel was on one of the teams. I
11 don't know that he was working on that.
12 **Q. Mark this, please.**
13 (Exhibit Number Num was marked.)
14 BY MR. BICE:
15 **Q. Have you seen Exhibit 4 before, Mr. Lowie?**
16 A. I don't believe so.
17 **Q. Did you have Mr. Borgel attend this**
18 **planning commission meeting on your behalf?**
19 A. I don't recall who attended the meeting on
20 our behalf. I don't recall that we had anybody
21 attend the meeting on our behalf. I don't recall.
22 What date is the meeting?
23 **Q. November 3 of 2015.**
24 A. If you will help me out, what meeting is
25 this?

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1 **Q. Planning commission meeting.**
2 A. Okay.
3 **Q. Did you know at the planning commission**
4 **meeting that staff said this amendment was being made**
5 **for the benefit of Fore Star?**
6 A. No, I did not.
7 **Q. Is that true?**
8 A. I recall from the discussion that we had
9 in that weekly meeting, when they came up with the
10 idea that -- I believe it's Doug Rankin that came up
11 with the idea of putting an asterisk next to
12 densities and change it because of other pieces of
13 properties in town that would be affected by it.
14 That's what I believe the discussion was. That there
15 was a city-wide ordinance that needed other pieces of
16 property in town. ^
17 **Q. And you believe that was Mr. Rankin's**
18 **idea?**
19 A. Yes, I do. Well, I heard it from him at
20 the meeting.
21 **Q. You heard it from him at what meeting,**
22 **sir?**
23 A. That's what -- we had ongoing Thursday
24 meetings usually and in one of the meetings we
25 discussed what the city wants to do, and that's what

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1 they requested us to do.
2 (Exhibit Number Num was marked.)
3 BY MR. BICE:
4 **Q. Showing you what's been marked as**
5 **Exhibit 5, Mr. Lowie, this is the planning commission**
6 **meeting from September 8, 2015 before you had**
7 **submitted your applications. Were you aware of this**
8 **planning commission meeting?**
9 MR. JIMMERSON: Object to the form of the
10 question. Misstates the evidence.
11 THE WITNESS: What -- what application is
12 that?
13 BY MR. BICE:
14 **Q. This is an application for the general**
15 **plan amendment, the asterisk as you have called it.**
16 A. Well, is the other one --
17 **Q. That was another planning commission**
18 **meeting on the same matter.**
19 A. So this is subsequent? Then maybe my
20 testimony is incorrect. I thought it was the first
21 meeting.
22 MR. JIMMERSON: Could I ask, which exhibit
23 number is this, please?
24 MR. BICE: This is Exhibit 5.
25 MR. JIMMERSON: Thank you.

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1 BY MR. BICE:
2 **Q. Were you aware at the planning --**
3 A. I want to correct my testimony prior.
4 **Q. Sure.**
5 A. Because in the second meeting, I know we
6 had people in there. So I don't know. I don't see
7 him here on the list of who spoke for us.
8 **Q. Were you aware at this -- did you have Mr.**
9 **Borgel representing you at this planning commission**
10 **meeting?**
11 MR. JIMMERSON: Just to make it clear,
12 which meeting, please?
13 BY MR. BICE:
14 **Q. The September 8th meeting.**
15 A. I don't recall. I think so. September I
16 think is the subsequent meeting.
17 **Q. Why would Mr. Borgel be representing you**
18 **at the planning commission meeting on this item?**
19 A. I don't think that -- again, you are
20 confusing two meetings here. I need to understand
21 what's Exhibit 4, which meeting it is. Let me read
22 it. I want to correct my whole testimony because I'm
23 confused between two meetings.
24 **Q. Go ahead.**
25 A. The first meeting we had no representation

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there. We didn't send anybody to represent us, I believe, in the first meeting. It was a city, you know, cleanup, if you will. So the first meeting would be -- the meeting that the city put a representation, you have to direct me, is it the September meeting?

Q. September meeting is Exhibit 5.

A. So Exhibit 5.

MR. JIMMERSON: Comes ahead of four.

THE WITNESS: So I believe in Exhibit 5 we did not have any representation.

BY MR. BICE:

Q. Well, if you looked at the transcript at the back, you'll see that Mr. Borgel was there, Jennifer Lazovich was there. Was Miss Lazovich working for you?

A. I don't know anything about it. Maybe Frank would know more. I don't.

Q. Did you know that Mr. Lowenstein, when pressed by Commissioner Freer (ph) as to who it was that this was being sought for, said that it was being sought for -- if you look at CLV000187, Mr. Lowenstein finally identified Fore Star.

A. What's the point? This is what they asked us to do.

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Q. Who asked you to do?

A. The city.

Q. The city did?

A. Yeah. The city asked us to file this application basically for the cleanup. But the city proposed this list, not us.

Q. The city proposed it, not you?

A. Yes, the city proposed it, yes.

Q. Did you ask them to?

A. No. They came up with the mechanism of how they want to do it. I think you may be mistaken of how this business between the developer and city works. We as developer don't tell the city what to do. We come in and we said, Here's what we want to do. What do you need us to do? What do we need to do in order to get it?

Q. Okay.

A. They come up with -- and when there's challenges, they come up with the request of how to do it.

Q. So the city -- so you told the city this is what you want to do and the city tells you what you have to do in order to comply; is that correct?

A. What they want you to do, exactly. Not to comply. What they want, what process they want to

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put forward.

Q. Is there a difference between what they want you to do and what you need to do to comply?

A. We are not in charge of city laws and we as developers don't have land use attorneys to file an application to try to figure out the what the law is. It doesn't work that way.

Q. Did you also submit to them, subsequently in November, a zone change request?

A. I don't know.

MR. JIMMERSON: Take a look.

(Exhibit Number Num was marked.)

THE WITNESS: I need to understand what was the relevance of number 4. I corrected my answer. Number 5 I didn't believe we had anybody that went for this meeting. Apparently people got up and spoke on our behalf. I don't know if we sent them there. I have no idea. That's what you tell me.

Exhibit number 4, November -- November 3rd, we would have had representation.

BY MR. BICE:

Q. Okay.

(Exhibit Number Num was marked.)

///

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BY MR. BICE:

Q. Item number six or Exhibit Number 6, have you seen this zone change request, also dated November 23 of 2015?

A. I don't recall seeing it.

Q. Again, if you look at the third page --

MR. JIMMERSON: Counsel, when you use the words also dated November 23, I don't know that there is an exhibit before this date November 23.

MR. BICE: I actually think it was the GEA, the general plan amendment. I believe these are all dated at the same time.

MR. JIMMERSON: Exhibit 4 is November 3, not the November 23.

MR. BICE: Let me look real quick. Yeah, that's the planning commission meeting. Exhibit 3 is the general plan amendment which is dated November 23 of 2015, same day.

MR. JIMMERSON: Thank you. I object to the question in that you are confusing which exhibits but I agree with you three and your last exhibit appear to have the same date.

BY MR. BICE:

Q. Okay. Going to Exhibit 6, is this last map on Exhibit 6, again, as of November 23 of 2015,

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1 **the land had not been divided?**
2 A. Parcelized.
3 **Q. Parcelized?**
4 A. Parcelized or divided yet.
5 **Q. Okay. That hadn't been done yet,**
6 **correct?**
7 A. It was in the process.
8 **Q. And you subsequently did that by parcel**
9 **map, right?**
10 A. Of course. Is there any other way?
11 (Exhibit Number Num was marked.)
12 BY MR. BICE:
13 **Q. Showing you what's been marked as**
14 **Exhibit 7, have you seen this before?**
15 A. I don't believe so. I don't think so.
16 **Q. So you haven't reviewed -- did you ever**
17 **review any of the staff reports from the city**
18 **planning staff?**
19 A. I may have.
20 **Q. Okay.**
21 A. Yes.
22 **Q. But you don't believe you reviewed this**
23 **one?**
24 A. No.
25 **Q. Are you aware that the city was requiring**

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1 **you to submit a major modification to the Peccole**
2 **Ranch Master Plan?**
3 A. I'm aware that there was a request to
4 modify an existing master plan.
5 **Q. And did you do that?**
6 A. I don't recall will.
7 **Q. Sorry?**
8 A. I don't recall. I think we filed it. You
9 know, Frank does entitlements. I don't handle
10 entitlements. It's not what I do.
11 **Q. Had you divided the property by this time,**
12 **March 8 of 2016?**
13 A. I would say so.
14 **Q. If you look at the third page of this**
15 **Exhibit--**
16 A. Yes.
17 **Q. -- do you see there that there's a map**
18 **that shows a colored in portion of a parcel?**
19 A. I do.
20 **Q. And what's that colored in portion?**
21 A. That's the -- that would be a 17 and a
22 half acre justified parcel.
23 **Q. That was going to become the new parcel?**
24 A. I think at this time it is a new parcel.
25 I'm not sure of the date, but I think it was already

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1 parcelized.
2 **Q. All right. And how much before or how**
3 **long prior to November of 2015 had you told the city**
4 **that you wanted to divide that property into smaller**
5 **parcels?**
6 A. Our intention was we wanted only to
7 develop this piece of property. We came only with
8 that project originally. We did not want to do
9 anything other than the original when we purchased
10 the property. Our intention was to develop this
11 piece. So you're asking me when did we tell the
12 city?
13 **Q. Yes.**
14 A. Way early in the game.
15 **Q. So the city knew that you were going to**
16 **divide the property and create a separate 17-acre**
17 **parcel early in the game, correct?**
18 A. Early in the game, in the spring -- late
19 spring of 2015, yes.
20 **Q. Okay. Right after you purchased the**
21 **property?**
22 A. Within months of it, within three months
23 after.
24 **Q. Fair enough. Well, do you think that the**
25 **city would have known that prior to July of 2015?**

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1 A. You know, I'm not sure of the dates but we
2 knew that we had to do it. Actually, we went to the
3 city. I stand corrected. I testified before that we
4 went to the city and we asked them to allow us to
5 develop within the 70 a portion for the high density,
6 and, you know, at one point they come back and said
7 no, we would not allow it. We want you to file a
8 separate parcel map for that.
9 **Q. Okay. If you would go to page CLV000297**
10 **of the staff report, there's a project description.**
11 **Do you see that?**
12 A. Yes.
13 **Q. Did you ever -- who reviews these staff**
14 **reports for you?**
15 A. Frank, Al, and Brett Anthony. It is a
16 whole team of guys.
17 **Q. All right. Did your company -- company or**
18 **companies ever submit a protest in writing to the**
19 **city saying you disagreed with anything in the staff**
20 **report, to your knowledge?**
21 A. I have no idea. We were trying not to --
22 I have no idea. I don't know what's in the staff
23 report, so I can't answer the question.
24 **Q. But you haven't seen any form of written**
25 **protest to the staff report, have you?**

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A. I have no idea.
Q. So you might have one somewhere?
A. I don't know.
Q. Okay.
A. I have no idea. I don't know you see here where it says, in the first paragraph of the project description, "The current land use designation of PR-OS does not allow for multifamily residential uses." Do you see that?
A. Okay. That's what it is. PR-OS is not allowed for any use. PR-OS is meaningless in zoning.
Q. You understood that that PR-OS does not allow any residential use?
A. I understand PR-OS is meaningless because the zoning supersedes the land used. That's what I definitely understand, understood then, understood throughout the entire process, understand today and it will be understood after the the Court will rule on it.
Q. And do you know why the staff report doesn't say that?
A. It does say that.
Q. Where does it say that?
A. I don't know. I didn't read the staff report. It only recognizes PR-OS. It does not allow

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for any -- you know, any building.
Q. Well, go ahead and tell me -- go ahead and read the staff report here and tell me where it says that the PR-OS designation -- I want to use your terminology here --
MR. JIMMERSON: Let me object to the form of the question.
BY MR. BICE:
Q. -- is meaningless?
MR. JIMMERSON: The document certainly speaks for itself. He hasn't read it.
THE WITNESS: That's correct to me. It's meaningless.
BY MR. BICE:
Q. To you it's meaningless?
A. To me it's meaningless because the code and the statute renders that the general plan has been superseded by hard zoning, and zoning -- there's hard zoning on the property.
Q. Do you know why the staff report doesn't say that?
A. I don't know what staff report -- I will read the whole thing so I can find out about zoning and what they're talking about.
Q. Have you ever seen any staff report making

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the claim that you just said, that the hard zoning supersedes your characterization -- supersedes the PR-OS land use designation?
MR. JIMMERSON: Object to the form of the question. It's compound. Two questions pending.
THE WITNESS: I can tell you the city takes the position consistently that the PR-OS is put on the property illegally without notice to the owner. Peccole have objected prior to it to a PR-OS on the property. It was put on it by either in error or somebody just wanted to match Google to land use -- to a matrix, and that's -- that's what was told to us by the city.
BY MR. BICE:
Q. Who?
A. That's the position that the city took, the city attorney.
Q. Mr. Jerbic is the one that told you it was put on there illegally?
A. Yes.
Q. Without notice to the owner?
A. Yes.
Q. When did he tell you that?
A. He told us that when your clients have -- started raising concern and issues and litigation

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over -- over this PR-OS.
Q. So he never told you that at the time of this meeting that you say that you had right around the time of closing, correct?
A. I think I told you on -- repeatedly we did not discuss any PR-OS or any land use. We only discussed zoning.
MR. JIMMERSON: Object to the question as being asked and answered four times.
BY MR. BICE:
Q. And so it's sometime after we raised the issue is when Mr. Jerbic said for the first time that it was PR-OS was somehow -- I want to get your terminology correct here -- illegally put on this property?
MR. JIMMERSON: Object to the form of the question. The plaintiffs have never raised this issue. It's no where within any pleadings or arguments or any briefs that's before this court.
BY MR. BICE:
Q. Am I right?
A. I can tell you that when your side raised the issue, we have studied it ourself. I have talked to the Peccoles about PR-OS. They didn't know that the property was PR-OS. They didn't understand what

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it is. And they said, no, they actually rejected anything that would impede the zoning in the past. So that --

Q. Well, sorry. Let's go back to -- I want to know when you -- when we raised the issue, you said Mr. Jerbic --

A. Yes.

MR. JIMMERSON: I'm going to raise the issue when you talk about raising the issue, counsel, I know your -- I hope I understand correctly you're referring in a public forum like city mapping commission or City Council. Before Judge Allf is not an issue before the Court.

MR. BICE: I disagree but you can argue whatever you like before the judge. My point is when did Mr. Jerbic raise this with you that he had determined it was somehow illegally placed on there?

THE WITNESS: I wrote, I believe, a letter to the city.

BY MR. BICE:

Q. You wrote a letter to the city?

A. No, no. Counsel wrote a letter to the city and demanded the city remove the PR-OS from the property because they have taken -- they have an inconsistent zoning in the general plan, and they

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have taken the units from 7.49 to a {zero inch per acre, and we asked them to remove it. And they have done their research and they have admitted that it was put illegally on the property. There's no legal basis to put it on. And the ordinance included medium low density on this piece of property on I believe it's either June or July of 2005. And somebody in September, arbitrarily have changed the matrix, take it to counsel and painted a different color on the matrix to match the change into a PR-OS. So that's the answer we got from the city.

Q. And you got that from Mr. Jerbic; is that right?

A. Got it from Mr. Jerbic. I got it from staff for Mr. Perrigo, I believe, and we got it from Councilman Beers. You know, we had one discussion with him. He admitted that the city doesn't have -- doesn't have the backup for it and it's illegally put on the property.

Q. You say your counsel. Is that Mr. Jimmerson wrote a letter to the city?

A. I don't recall. Either Todd Davis or Mr. Jimmerson.

Q. And asked Mr. Jerbic to remove the PR-OS designation?

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A. Yes. Since we did not have any record of legally putting it on, on the property.

Q. And that was -- that was sometime after your general plan amendment failed; is that correct?

A. I don't know when it was. I can't relate it to when in the process. It may be --

Q. Well, you tried to get a general plan amendment to eliminate the PR-OS, right?

A. No. To remove it.

Q. To remove it?

A. No. General plan amendment -- the general plan amendment was, I believe -- yes, general plan amendment is to remove the PR-OS on the property in favor of the project you're proposing, yes.

Q. What happened to your request to eliminate the PR-OS?

A. I think the city admitted it was put wrong. Because we put the city in the position saying you have a -- you have a lien on the property. Essentially you have a lien on the property without any legal process. And the city has concluded that it's correct, and consistently I want to tell you, consistently the city -- ever since the issue over the PR-OS was raised, told us you don't have to file anything. It can be changed in letter point. You

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have to file the plans. You don't have to do a general plan amendment now. You can do a general plan amendment next meeting, after -- two meetings after the zoning after the entitlements. You don't have to and it's not your obligation to do it. We just want to correct it.

There's a meeting with -- a few meetings, not just one, it was repeated, with Mr. Perrigo, Mr. Jerbic, Mr. Lowenstein, and others, from planning that set a meeting and they said it numerous times.

Q. Did they put -- did they put any of these admissions in writing anywhere that you have seen?

A. I don't know.

Q. Have you seen any?

A. I don't know. I don't think the city would have -- would like to put something, you know, illegal action in writing.

Q. Okay. So why did you withdraw your request for a general plan amendment?

A. Because -- I have no idea. Maybe because we don't need it anymore.

Q. Is that why or do you have no idea?

A. I can't tell you why we withdraw this application. I have to think about it. I didn't look at any documents prior to coming here, and I

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1 don't have a clear recollection of what happened on
2 those tens of applications we filed.
3 **Q. Did you withdraw your general plan**
4 **amendment because you were told it was going to be**
5 **denied?**
6 A. No. Unless the city asked us to withdraw:
7 Probably the city asked us to withdrw. I don't think
8 we have done anything ourself, except we're doing on
9 our behalf, but every single time we withdraw, I
10 believe, and I might be mistaken, the city requested
11 it.
12 **Q. Do you recall you did seek a general plan**
13 **amendment and it was denied, or do you just not know**
14 **that?**
15 A. I think we seek the general plan amendment
16 on the 61 lots.
17 **Q. And what was the general plan amendment to**
18 **do?**
19 A. Removing.
20 **Q. The PR-OS on the property?**
21 A. Yes.
22 **Q. And the city council voted you down,**
23 **correct?**
24 A. Illegally.
25 **Q. What's that?**

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1 A. Illegally, yes.
2 **Q. But the City Council made a decision that**
3 **they would not lift the PR-OS designation, correct?**
4 A. The PR-OS designation, again, in the eyes
5 of the court is meaningless. The property has -- the
6 property has zoning and the city knows it.
7 **Q. And which court is it that said it's**
8 **meaningless?**
9 A. Court of California stated it's an act of
10 taking, installing a PR-OS on the property.
11 **Q. Any others than the Court in California?**
12 A. I don't know any others. I can tell you
13 what this city and the city attorney says. It's
14 meaningless to your development, the PR-OS, because
15 the zoning supersedes the general plan, and the
16 general plan was put on illegally.
17 **Q. And why did you withdraw your request for**
18 **a major modification to the Peccole Ranch Master**
19 **Plan?**
20 A. At what time?
21 **Q. Ever.**
22 A. I don't know. You have to tell me
23 specifically which one you're talking about.
24 **Q. Well, in the March 8, 2016 exhibit that's**
25 **in front of you, specifically discusses that you have**

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1 **to do a major modification to the Peccole Ranch**
2 **Master Plan. Do you see that?**
3 A. If you want to -- if you want me to spend
4 20 minutes reading the whole document, I will. I
5 will be glad to do it. Because if we change for the
6 R4 in this application, then that would require a
7 major mod to something that we have objected to, and
8 I think the city, in the end, agreed that the Peccole
9 Ranch Master Plan was null and void by a resolution
10 of intent in 2005.
11 **Q. When did the city tell you that?**
12 A. In discussions of -- you know, when
13 reading documents, the zoning letter from -- the Z-17
14 zoning letter from 1990, it has a five year
15 resolution of intent on it.
16 **Q. So the city told you that the Peccole**
17 **Ranch Master Plan has expired?**
18 A. That they have never used it -- never --
19 never took it into consideration when it developed
20 any other property in the vicinity, including One
21 Queensridge Place, Tivoli, Boca park, other
22 properties in Queensridge, did not take into
23 consideration the master plan and changed zoning so
24 the zoning designation that would not otherwise be
25 allowed under the conceptual master plan. The plan

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1 was conceptual. It has a time limit of five years
2 resolution of intent which at the time means it
3 expires after five years.
4 MR. JIMMERSON: When you get a chance,
5 we've been going about 75 minutes.
6 MR. BICE: That's fine. We can take a
7 break.
8 THE VIDEOGRAPHER: The time is 5:01 p.m.
9 We're off the video record.
10 (Recess was had.)
11 THE VIDEOGRAPHER: We are back on the
12 video record at 5:11 p.m.
13 BY MR. BICE:
14 **Q. So when was it, Mr. Lowie, when you say**
15 **that the city told you that the Peccole Ranch Master**
16 **Plan was no longer in effect?**
17 A. I don't know they said -- I think they
18 concluded themself there was a resolution of intent
19 in the Z-17-90 that is expiring in five years which
20 will '95, expiring in 1995. You know, April of '95,
21 five years later. And a year later, just about, in
22 '96, Peccole had filed for a new master plan
23 development called Queensridge that did not contain
24 encumbered land that we currently own.
25 MR. JIMMERSON: Could I just interrupt?

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At page 120, line 13, the witness said 2005. Here he said correctly 1995. So I would like to call that to your attention, Mr. Bice. That was a misstatement by him.

Go ahead, sir.

BY MR. BICE:

Q. So when did the city tell you that it was no longer in effect?

A. I believe -- I believe during the discussion they realized that it may be not in effect. However, they never took an action to remove it or to, you know, to do whatever it is with. So they treated it as guidance, consensual master plan development as guidance. And your question was when? I believe it was in the -- maybe in the last year. Maybe late 2016 that they concluded it.

Q. And who is it that told you it in late 2016?

A. A discussion with staff.

Q. Again, who at staff?

A. I don't recall exactly. We have these big meetings with staff. There's so many people sitting in them, 16, 17 people in the meeting, and we had quite a lot of meetings.

Q. So you didn't ask them to take that

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position; is that right?

A. No, no.

Q. They came to that conclusion all by themselves.

A. No. We had discussions we wanted to know what does it say. Actually, this all starts with Peccole. I believe that Peccole -- Billy Bayne had raised the issue that the master plan is -- you know, no longer in effect for a long time.

Q. Billy Bayne raised this with who?

A. With me. He came to my office and told me that?

Q. When?

A. A year ago, at least.

Q. A year ago at least?

A. Yes.

Q. So sometime prior to July of 2016?

A. Mid-July -- last time -- that sounds right.

Q. So then you went to the city and told them you didn't think it was any longer valid?

A. No. I shared with them what Billy Bayne has said.

Q. You showed them?

A. Shared. Shared with them.

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Q. You shared with them.

A. What Billy Bayne said and asked them to check if it's correct.

MR. JIMMERSON: Let me know -- as you can tell, my client is fatigued and he's slurring his words a little bit. I'm not asking you to stop now -- I'm perceptively observing an hour ago or an hour and a half ago he was much more clear than now.

BY MR. BICE:

Q. I will wrap up here for the day.

Let me ask you this: Did you show any documents to the city to get them to change their position about the master plan being in effect?

A. I can't tell you if the city changed the position about the master plan because you can see it here, but I believe they told me they were using it as a guidance, the Peccole Ranch Master Plan, because they didn't follow a tool through the entire 25 years since 199 -- 1990.

Q. Did you submit to them a letter of justification in 2016 seeking a major modification of the plan?

A. I believe we had to seek major -- they requested a major mod on an R4, a zoning. That was not within the conceptual master plan's guidance.

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Q. So what I'm trying to understand, Mr. Lowie, is why are you submitting major modification requests if you're saying that it's not in effect?

MR. JIMMERSON: Objection to the question. Asked and answered. You can answer again.

THE WITNESS: I don't believe we tell the city what to do. The city tells us what to do.

BY MR. BICE:

Q. The city's position is that you needed to submit a major modification, correct?

A. For something that was outside the guidelines, you know, the unit counts or zoning designation. They had requested -- at the time they took the position it should be -- at the time they took the position that they wanted GPA -- I believe the unit number now is much less within the R-PD7 designation, and the zoning categories have not changed. Therefore --

Q. Well, strike that. Didn't you have to seek a major modification for 17 acres?

A. The 17 acres was filed for a different designation that was originally in the conceptual master plan development.

Q. And did you seek a major modification?

A. For something that was not within the

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guidance, yes.

Q. And then did you later drop that major modification?

A. I don't recall what we've done with it. Again, it's city guidance. File an application, withdraw the application, prepare the application, city guidance, except one that I recall that we have.

Q. You keep saying "city guidance." What does that mean, "city guidance"?

A. City guidance means the planning department or city attorney's office instructs you what to do. We want you to file this, do this, do that.

Q. Did you ever tell the city you did not believe you were obligated to do so?

A. I told the city I'm not obligated to file for a PR-OS removal, yes, I did.

Q. And when did you tell them that?

A. When the application was going through and one of the requests was on the list, GPA request.

Q. And when -- did you put that in writing that you aren't obligated to do so?

A. No. Weekly meetings. We had so many meetings with the city, so instead of putting a letter to the city, we just discussed it with them in

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the meetings, either in the --

Q. Did you ever get the PR-OS designation removed from the property for the 17 acres?

A. I believe that it was removed. I'm not sure who filed it, us or the city, but it was removed, yes.

Q. And when was that done?

A. It was done at the time of these documents. It did not have to be but it was done at the time of the document.

Q. So you got a general plan amendment for the 17 acres; is that what you're saying?

A. General plan amendment, yes, I believe so. I don't recall. Frank Pankratz would know all those details much more than I in the company

Q. All right. Well, I understand. I agree with Mr. Jimmerson it's probably best to cease at this point in time but we'll work out schedules. Thank you for your time, Mr. Lowie. I appreciate it. I hope you make -- you'll have plenty of time to make the airport now.

Let's go off the record.

THE VIDEOGRAPHER: This concludes today's deposition. We're off the record at 5:21 p.m.

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