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Re: NATIONAL TITLE COMPANY
Frances Deane
Clark County Recorder Pg. 42

246.355 m²
When Recorded, Return to:

Loren A. Piel, Esq.
Piel Law Firm LLC
7473 W. Lake Mead Blvd., Suite 100
Las Vegas, NV 89128

APN 161-35-710-001

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

ASPEN PEAK
A Condominium Development

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ASPEN PEAK**

THIS AMENDED AND RESTATED DECLARATION of Covenants, Conditions and Restrictions (the "**Declaration**") is made this 17th day of May, 2004, by Aspen Peak, LLC, a Nevada limited liability company (the "**Declarant**") with reference to the following:

RECITALS

A. Declarant is the owner of certain real property in the County of Clark, State of Nevada, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference (the "**Property**").

B. Declarant intends to develop a condominium Common Interest Community under the provisions of Nevada Common Interest Ownership Act (the "**Act**") that provides for separate title to the Condominium Units (as hereinafter defined) appurtenant to which will be an undivided fractional interest in the Common Elements other than Association Property. Aspen Peak consists of Three Hundred (300) units. Although it is permitted by this Declaration, at the present time it is not anticipated that additional property will be annexed into the Aspen Peak Development and no additional Legal Phases are contemplated.

C. The development shall be known and marketed as Aspen Peak. Each Unit shall be assigned certain Limited Common Elements, sometimes "Exclusive Use Areas," which may consist of Patios, Balconies, Porch/Landing, Storage, Electrical Room, and Covered Parking.

E. The Association Property shall include the easements to maintain the Common Elements and any real and personal property owned by the Association.

F. Each Condominium shall have appurtenant to it, a membership in Aspen Peak Homeowners' Association, Inc., a Nevada non-profit corporation ("**Association**"), and the management body for the overall Condominium Project.

G. There is no guarantee that the number of Condominium Units or recreational facilities and amenities will be developed as described above. The Project and Construction phases will be comparable in architectural style, quality, and size, and if applicable, consistent with the overall development plan submitted to the Secretary of the United States Department of Veterans Affairs and Federal Housing Administration.

H. Before selling or conveying any interests in the Condominium Project, Declarant will subject the Condominium Project in accordance with a common plan, to certain covenants, conditions and restrictions for the benefit of Declarant, and any and all present and future Owners of the Condominium Project.

NOW, THEREFORE, Declarant hereby declares that all of the properties described hereinabove, shall be held, sold and conveyed subject to the covenants, conditions, and

restrictions herein, which are for the purpose of protecting the value and habitability of the Project, which shall run with the real property in the Project, and bind and inure to all parties with any right, title or interest in the Condominium Project, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I DEFINITIONS

Section 1.1 **Allocated Interest** shall mean and refer to the following interest allocated to each Unit: Limited Common Elements, fractional interest in Common Elements, easements and licenses in Association Property, liability for Common Expenses and one (1) vote in the Association. The Allocated Interest of each Unit in the Common Elements will be a fraction, the numerator of which will be one (1) and the denominator, which will be the total of all Units in the Project that become subject to the Declaration. If all contemplated units are constructed subject to the Declaration, then each Owner would have a 1/300th interest in the Common Elements. If a Unit Owner owns more than one (1) Unit, then that Owner will have one (1) Allocated Interest in all the Common Elements for each Unit owned.

Section 1.2 **Arbitration** shall mean the requirement under N.R.S. Chapter 38 for certain claims regarding the Declaration and the Association to be submitted to Arbitration or mediation.

Section 1.3 **Articles** shall mean and refer to the Articles of Incorporation of the Association and any amendments to said Articles.

Section 1.4 **Association** shall mean and refer to Aspen Peak Homeowners' Association, Inc., a Nevada Non-Profit Corporation, its successors and assigns.

Section 1.5 **Association Property** shall mean and refer to real property owned from time to time by the Association and the easements to maintain the Common Elements in the Project.

Section 1.6 **Buildings/Floor Plan** shall mean the buildings, which contain either (i) four (4) first-floor and four (4) second-floor Units, or (ii) six (6) first floor and six (6) second floor units.

Section 1.7 **Bylaws** shall mean and refer to the Bylaws of the Association and any amendments to said Bylaws.

Section 1.8 **Common Elements**, sometimes Common Areas, shall mean and refer to all portions of the Common Elements, other than Units or Association Property within the Project.

Section 1.9 **Common Expenses** means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.10 Condominium Unit, sometimes Unit, shall mean and refer to the fee simple interest in the Unit as shown by the map of the Units, together with the "Allocated Interest" assigned to each Unit. Specifically, the Unit shall consist of:

- (a) The separate interest in each Unit;
- (b) Limited Commons Elements, sometimes Exclusive Use Areas, within the Common Elements;
- (c) Undivided fractional interest ("Allocated Interest") as tenants in common in the Common Elements;
- (d) Easements over and right to use of the Private Drives and Recreational Area; and
- (e) Membership in the Association.

Section 1.11 Covered Parking shall mean and refer to the Limited Common Element assigned as covered parking, if any, reserved for Unit Owners and assigned to specific Units for the exclusive use of the assigned Unit. **Unassigned Parking** shall mean and refer to parking not assigned to Units, the use of which shall be as established through the rules and regulations of the Board.

Section 1.12 Declarant shall mean and refer to Aspen Peak, LLC, a Nevada limited liability company, its successors and assigns.

Section 1.13 Declarant's Control Period shall mean and refer to the period of time in which the Declarant may appoint the majority of the Executive Board of the Association as further described in Section 2.2 of this Declaration.

Section 1.14 Declarant's Rights shall mean and refer to the rights granted to the Declarant by law and pursuant to this Declaration, including without limitation, Declarant's right to:

- (a) Add Construction Phases or Legal Phases to the Property;
- (b) Create Units and Common Elements within the Construction Phases;
- (c) Complete the Improvements as indicated on the Plat;
- (d) Maintain on the Property sales office, models, management offices, and signs;
- (e) Use of easements through the Common Elements for the purpose of making Improvements in the Condominium Project;

- (f) Appoint or remove officers of the Association and any members of the Executive Board during the period of the Declarant's Control as described in Section 2.2 of this Declaration.

Section 1.15 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and amendments thereto.

Section 1.16 Eligible Insurer or Guarantor shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters, which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association.

Section 1.17 Eligible Security Interest shall mean and refer to a holder of a first security interest in a Condominium, who has requested notice from the Association of those matters, which such holder is entitled to notice of, by reason of this Declaration or the Bylaws of the Association.

Section 1.18 Executive Board, sometimes Board of Directors, shall mean and refer to the governing body of said Association.

Section 1.19 First Security Interest shall mean and refer to the holder of a security interest on a Unit, which is senior in priority, except as limited in Section 3.11 of the Declaration, to all other encumbrances.

Section 1.20 FHA shall mean and refer to the Federal Housing Administration.

Section 1.21 Governing Documents shall include this Declaration, the Articles, Bylaws, and Association Rules.

Section 1.22 Improvements shall mean and refer to all structures and appurtenances thereto, of every type and kind, including, but not limited to, buildings, outbuildings, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, planted trees, shrubs, poles, signs, exterior air-conditioning, water softener, or equipment.

Section 1.23 Limited Common Elements means Patios, Balconies, Porch/Landing, Storage, Electrical Room, as shown on Sheets 5 - 9 of the First Recorded Plat, and Parking as shown on Sheets 2 - 3 of the First Recorded Plat.

Section 1.24 Manager shall mean the person or entity designated by the Board to manage the affairs of the Project, and to perform various other duties assigned to it by the Board by the provisions of this Declaration and Bylaws.

Section 1.25 Member of Association shall mean and refer to an Owner as defined in Section 1.27 of this Article 1.

Section 1.26 Mortgagee shall mean and refer to a holder of a Security Interest, including a beneficiary under, or holder of, a deed of trust given for value, which encumbers any Condominium Unit.

Section 1.27 Owner, sometimes Unit Owner, shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium Unit, which is part of the Condominium Project

Section 1.28 Parking shall mean and refer to unassigned parking spaces the use of which shall be as established by the Executive Board.

Section 1.29 Perimeter Wall means the masonry wall along the perimeter of the Project. The Association shall be responsible for the maintenance and repair of the Perimeter Wall and exterior landscaping.

Section 1.30 Phased Annexation, sometimes Phased Areas, shall mean and refer to the phases described herein, which Declarant may annex in accordance with Article XI, Section 11.7, without consent of the Owners or Eligible Security Interest Holders. As used herein the term "Construction Phase" shall refer only to the sequence in which the property of constructed and shall have no effect on the Legal Phases or the right of Annexation.

Section 1.31 Phases, unless specifically preceded by the word "Construction," the term "Phase" as used herein shall mean and refer to the Legal Phases of the project, which presently consists of one (1) Phase with a total of three hundred (300) units, plus common elements.

Section 1.32 Plat shall mean and refer to the plats of Aspen Peak, a Condominium Development. The "First Recorded Plat" shall refer to the Plat of South Valley Ranch Lot 3 – Unit 1 filed in Book 114 of Plats, Page 0044, Clark County, Nevada, Records, covering 134 units of the Condominium Project, and any amendments thereto. Declarant anticipates recording a plat for South Valley Ranch Lot 3 – Unit 2 subsequent to the date hereof which is anticipated to include the remaining one hundred sixty four (164) units in the Project.

Section 1.33 Project, sometimes Condominium Project, shall mean and refer to the entire real property above described, including, without limitation, all structures and Improvements erected, or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

Section 1.34 Recreational Area shall mean and refer to the Common Element shown on the First Recorded Plat which contains a clubhouse and pool area.

Section 1.35 Residence shall mean and refer to any dwelling constructed on a Unit in accordance with the law and this Declaration.

Section 1.36 Security Interest shall mean and refer to an interest in real estate or personal property, created by contract or conveyance, which secure payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, security deed,

contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or contract for retention of title intended as security for an obligation.

Section 1.37 Stairs/Landings shall mean the Limited Common Element, which provides access to the second-floor Unit, as shown on Sheets 5 - 9 of the First Recorded Plat.

Section 1.38 Streets means the private streets and public utility easements shown on approved civil engineering drawings.

Section 1.39 Intentionally Omitted

Section 1.40 Unit/Boundaries shall mean and refer to the residential Units designated by the Building letter and Unit number as shown on Sheets 2 and 3 of the First Recorded Plat.

- (a) Each Unit's boundaries are its ceilings, floors, and walls, including, without limitation, all electrical outlets, lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finish flooring, and any other materials constituting any part of the finished surfaces within a Unit. All other portions of the walls, floors, or ceilings, are part of the Common Elements. All spaces, interior partitions, and other fixtures and Improvements within the boundaries of the Unit, including, without limitation, Patios and Balconies are part of a Unit.
- (b) Interpreting Boundaries shall mean that interpreting deeds, plats, and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, and shall conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building, and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

Section 1.41 VA shall mean and refer to the Department of Veterans Affairs.

**ARTICLE II
MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

Section 2.1 Membership. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Condominium Unit. Each Owner is obligated to comply with the Articles, Declaration, Bylaws, and the Rules and Regulations adopted by the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void. If the Owner of any Unit should fail or refuse to transfer the membership registered in his or her name to the purchaser of his or her Unit, the Association

shall have the right to record the transfer upon its books, and thereupon the old membership outstanding in the name of the seller shall be null and void.

At no time shall title and ownership of more than two units be vested in or held by the same natural person or persons, their agents, assigns, heirs, or nominees, or by any corporation, trust organization or other entity, their agents, assigns, or nominees.

Amendment of the foregoing restrictive provision may be made only by a majority of condominium owners after all units have been sold in accordance with the restrictive provision.

Section 2.2 Voting Rights. The Association shall have two (2) classes of voting membership.

Owner/Members shall be all Owners, with the exception of Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

Declarant/Member(s) shall be the Declarant, or persons designated by the Declarant, who shall be entitled to appoint and remove all or a majority of the officers of the Executive Board (Declarant Control Period) until:

- (a) Sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created pursuant to Recital B to Non-Declarant Owners when at least twenty-five percent (25%) of the Board, but not less than one (1), shall be elected by the Non-Declarant Unit Owners;
- (b) Sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Non-Declarant Owners, not less than one-third (1/3) of the Board shall be elected by the Non-Declarant Members.
- (c) not later than the earlier of:
 - (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Units that may be created to the Unit Owners other than the Declarant; and
 - (ii) Five (5) years after any right to add new Units was last exercised;the Unit Owners other than the Declarant shall elect the majority of the Board, which majority must be Non-Declarant Owners.

The Declarant may voluntarily surrender the right to appoint and remove officers and Members of the Board for termination of the Declarant's Control Period. In the event the Declarant surrenders the right described in the immediately preceding sentence the Declarant may require,

until the first to occur of the events described in Section 2.2(c), that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

**ARTICLE III
COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

Section 3.1 Creation of Lien and Personal Obligation for Assessments. The Declarant, for each Condominium Unit owned within the Project, hereby covenants, and each Owner of any Condominium Unit by acceptance of a deed therefor, whether or not it is stated in the deed, is deemed to covenant and agree to pay without deduction or offset to the Association:

- (a) annual assessment, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Elements and Association Property;
- (b) special capital assessments for capital improvements, such assessments to be established and collected as herein provided; and
- (c) special unit assessments to be established and collected as hereinafter provided. The full annual and special assessments, together with interest, costs and reasonable attorneys' fees and costs, where applicable, shall be a charge on the Unit and shall be a continuing lien upon the "Unit" against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees and costs shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 3.2 Purpose of Assessment. The assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, welfare and common good of all the residents in the entire Project and for the improvement and maintenance of the Common Elements and any Association Property.

Section 3.3 Maximum Annual Assessment.

- (a) Until January first of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be One Thousand Three Hundred Twenty Dollars (\$1,320.00) annually per Unit, all payable, except in the event of default, in installments of One Hundred Ten Dollars (\$110.00) per month.
- (b) From and after January 1st of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased by the Board each year not more than fifteen percent

- (15%) above the maximum assessment for the previous year without a vote of the membership.
- (c) From and after January of the year immediately following the conveyance of the first Unit in the first Phase, the maximum annual assessment may be increased more than fifteen percent (15%) above a prior year only by the vote or written assent of fifty-one percent (51%) of each class of members; provided, however, that following the expiration of Declarant's Control Period, any such increase shall have the vote or written assent of
 - (i) fifty-one percent (51%) of the total voting power of the Association, and
 - (ii) fifty-one percent (51%) of the total voting power of Members other than the Declarant:
- (d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 3.4 Special Capital Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only. The Association Board may permit payment of the special assessment in installments that extend beyond the year in which the assessment is approved for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements and Association Property, including, without limitation, fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of fifty-one percent (51%) of each class of Members; provided, however, following the expiration of Declarant's Control Period, any such assessment shall have the vote or written assent of:

- (a) fifty-one percent (51%) of the total voting power of the Association, and
- (b) fifty-one percent (51%) of the total voting power of the Members other than Declarant.

Section 3.5 Special Unit Assessment. The Association may also levy a special assessment, against any Member and Member's Unit to reimburse the Association for costs incurred in bringing a Member and Member's Unit into compliance with the provisions of the Declaration, the Articles, the Bylaws, and the Association Rules and Regulations. Said special assessment may be levied upon the vote of the Board after notice to the Owner and an opportunity to be heard.

Section 3.6 Members Approval. Any membership action authorized under Section 3.3 or 3.4 above shall be taken at a meeting called for that purpose, written notice, which must state the time, place, and the items to be considered at the meeting, of which shall be given by first class mail, or personal service, to all Members not less than twenty-one (21) days nor more

than sixty (60) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the membership of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if

- (a) the meeting so adjourned is an Annual Meeting, and
- (b) the adjourned Annual Meeting is actually attended, in person or by proxy, by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Association, then the only matters, which may be voted upon, are routine matters for which notice was duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than required for a quorum, Members who were not present in person or by proxy may give their assent in writing provided the same is delivered to the Association or its Manager not later than thirty (30) days from the date of such meeting.

Section 3.7 Assessment Criteria. Except as otherwise provided herein, both annual and special assessments shall be fixed at a uniform rate for all Units. The assessments shall be collected monthly. The Association shall retain surplus funds remaining after payment of or provision for Common Expenses as a capital and replacement reserve. A special assessment against Members to raise funds for the rebuilding or major repair of any portion of the structural Common Elements shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the aggregate floor area of the Units in all affected Buildings. A special assessment against a member to reimburse the Association for costs incurred in bringing the member and his or her Unit into compliance with the provisions of the Association's documents shall be assessed only against that Member and that Member's Unit. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of twelve percent (12%) per annum or such other lawful interest rate as may be set by the Board from time to time from the due date until paid. If an Owner shall be in default in the payment of an assessment installment, the Board may accelerate the remaining installments of the assessment upon notice thereof to the Owner, and thereupon the unpaid balance of the assessment shall come due on the date stated in the notice.

Section 3.8 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Units in the first Phase and subsequent Phases on the first day of the month following the conveyance of the first Unit to a Purchaser in each Phase. For up to sixty (60) days following the conveyance of the first Unit in each Phase, the Declarant may pay on unsold Units one-half (1/2) of the regular monthly assessment, but not less than an amount sufficient to cover the Common Expenses applicable to each Unit for the Common Elements and any Association Property. The first annual assessment in each Phase shall be adjusted based on the number of months remaining in the calendar year. The Board shall fix the amount of each annual assessment for each annual assessment period. Written notice of the annual assessment established by the Board shall be sent to each Owner.

Section 3.9 Effect of Nonpayment of Assessments; Remedies of the Association.

Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Unit from the time the assessment is due. At any time after any assessment levied by the Association against a Unit has become delinquent, the Board may record in the Office of the Clark County Recorder a "Notice of Delinquent Assessment and Claim of Lien" as to such Unit. A suggested form of lien is set forth on Exhibit B attached hereto. An officer or director of the Association, its manager or its attorney, shall sign such notice. A copy of said Notice shall be served personally upon the Owner, or be sent by first class mail, postage prepaid, return receipt requested, to the then current address of the Owner in the Association's files. Immediately upon mailing of any notice of delinquency pursuant to this Section 3.9, the amounts delinquent and subsequent installments for the balance of such assessment whether delinquent or not, together with costs (including, without limitation, attorneys' fees and costs), if any, and interest accruing thereon, shall be and become immediately due. The notice shall also secure all other payments and/or assessments, together with interest, costs, and attorneys' fees and costs with respect to said Unit following such recording. Said notice shall continue as a lien on a Unit for a period of three (3) years from and after the date the full amount of the assessment becomes due unless sooner paid. If the delinquent assessments and all other assessments which have become due and payable with respect to a Unit together with all costs (including, without limitation, attorneys' fees and costs) and accrued interest on such amount are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien, the Board shall record a satisfaction and release of said lien. Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of Nevada, or may be enforced by sale pursuant to NRS § 116.31162 and § 116.31164, as the same may be amended from time to time, or any successor statute, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suits to recover a money judgment for unpaid assessments, costs, fines and attorneys' fees and costs are permitted without foreclosure or waiver of the lien on the Unit.

Section 3.10 Notice to Lien Holders. A copy of the notice of default and election to sell, as well as the notice of sale, shall be mailed certified mail or registered mail, return receipt requested, to holders of recorded liens, and to persons who have recorded requests for notice per NRS § 107.090. Notice shall be mailed to the name and address as appears on the request for notice and on the recorded liens.

Section 3.11 Lien/Security Interest. A lien under this Section is prior to all other liens and encumbrances on the Unit except:

- (a) Liens and encumbrances recorded before the recordation of the Declaration;
- (b) Liens for real estate taxes and other governmental assessments or charges against the Unit;

- (c) Other than as provided in this Section 3.11A, a First Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent;
- (d) Mechanics' and materialmen's liens;
- (e) Association liens with earlier priority.

Section 3.11A Super Priority. The lien is also prior to all Security Interests described in Subsection (c) to the extent that the assessments for Common Expenses and Association Property based on the periodic budget adopted by the Association pursuant to NRS § 116.3115 would have become due in the absence of acceleration during the six (6) months ("Super Priority") immediately preceding institution of an action to enforce the lien.

Section 3.12 Subordination of the Lien to First Security Interest. Except as provided in Section 3.11A, the lien of the assessments provided for herein shall be subordinate to the lien of a First Security Interest upon any Unit recorded prior to the date the assessment sought to be enforced becomes delinquent. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or non judicial foreclosure of a First Security Interest or any conveyance in lieu thereof shall except pursuant to Section 3.11A, extinguish the lien of such assessments as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the holder of a recorded First Security Interest or other purchaser of a Unit obtains title to the same as a result of foreclosure or conveyance in lieu, such acquirer of title, a successor or assign, shall not, except pursuant to Section 3.11A, be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be common expenses collectible from all of the Units including, without limitation, such acquirer, and successors and assigns.

Section 3.13 Estoppel Certificate. The Association shall within ten (10) days upon written request by a Unit Owner, or holder of a Security Interest on a Unit provide a certificate in recordable form signed by an officer of the Association setting forth the amount of the unpaid assessment on the Unit and whether or not it is delinquent. A properly executed certificate of the Association as to the status of assessment on a Unit is binding upon the Association, the Board and every Unit Owner as of the date of its issuance.

Section 3.14 Personal Liability of Owner. No Owner will be exempted from personal liability for assessments levied by the Association, nor will the Owner's Unit be released from the liens and charges hereof by waiver or non-use or enjoyment of any of the Common Elements or by abandonment of Owner's Unit.

Section 3.15 Taxation of Association. If any taxes are assessed against the Common Elements, Association Property or the property of the Association, rather than against the individual Units, said taxes shall be added to the annual assessments and, if necessary, a special

assessment may be levied against the Unit in an amount equal to said taxes, to be paid in four (4) installments, thirty (30) days prior to the due date of each tax installment.

Section 3.16 Working Capital Fund. Upon acquisition of record title to a Unit from Declarant, Owner in each Phase shall contribute to the working capital fund of the Association an amount equal to one-sixth (1/6th) the amount of the then annual assessment for that Unit as determined by the Board. The working capital shall not be considered prepayment of the annual assessment. This amount shall be deposited by the buyer into the purchase and sale escrow and distributed therefrom to the Association. Within sixty (60) days after close of the first sales escrow by Declarant, of a Unit in each Phase, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6th) of the then annual assessment for unsold Units owned by the Declarant as seller. Escrow shall remit these funds to the Association. Upon the close of escrow of any Unit for which the capital contribution was prepaid by Declarant, escrow shall remit to the Declarant the capital contribution collected from the Owner.

ARTICLE IV RESPONSIBILITIES FOR MAINTENANCE

Section 4.1 Owner Maintenance of Unit. Each Unit Owner shall be responsible for the maintenance and repair of the Limited Common Elements, and the doors and windows enclosing the Unit, the interior of the Unit, including, without limitation, walls, floors, ceilings, doors, windows and also appliances whether "built-in" or freestanding within a Unit. The Owner shall also be responsible for the maintenance and repair (and damage as a result of any repair) of the plumbing, gas, electrical, T.V. cable connection, air conditioning, heating units and ducts servicing the Unit.

Section 4.2 Owner's Grant of Easement. Each Owner hereby grants easements to other Owners to enter into each Unit and to allow utility and television cable companies and their agents to enter into Units to repair the systems located thereon, subject to the following limitations. Entry into a Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner. The entering party shall repair any damage caused by such entry. Entry into a Unit for other than emergency repairs shall be made only after three (3) days notice to the Owner and shall be made with as little inconvenience as possible to the Owner. The entering party shall repair any damage caused thereby.

Section 4.3 Association Maintenance of Common Elements. Except as otherwise provided herein, the Association acting through the Board and its officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Elements and Association Property, and any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws. Should said maintenance or repair result from the negligence of an Owner, guests or licensees, the Owner shall reimburse the Association for the costs of such maintenance or repair.

Section 4.4 Association Right of Entry. For the purpose of performing the maintenance of the Common Elements and Association Property or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Declaration, the Association agents or employees shall have the right to enter any Unit or upon any portion of the Common Elements to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any portion of the Common Elements to effect repairs, improvements, replacement or maintenance which the Association deems necessary, after approval by the Board. Such entry shall be made with as little inconvenience to the Owner as possible. The Association shall repair any damage caused thereby. Such entry for other than emergency repairs shall be made only upon three (3) days notice to the Owner.

Section 4.5 Association Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Association Property, Common Elements and Limited Common Elements and facilities situated thereon by Owners, their tenants or guests, and the conduct of such person with respect to the Common Elements and Association Property, including but not limited to, vehicle parking, outside storage of boats, motor homes, campers, trailers, bicycles and other objects, disposal of waste materials, control of pets, use of any recreational facility, and other activities which, if not so regulated, might detract from the appearance of the Project or offend or cause inconvenience or danger to Members and visitors. Such rules may provide that the Owner of a Unit whose occupant leaves property on the Common Elements or Association Property in violation of the rules may be fined. The Owner may be assessed and liened for the expenses incurred by the Association in the removal, storage, and disposal of such property after appropriate notice and an opportunity for a hearing before the Board. The Board may suspend the voting rights and right to use the recreational facilities located on the Association Property of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days after reasonable written notice and an opportunity for a hearing before the Board for any infraction of its published Rules and Regulations.

ARTICLE V ARCHITECTURAL CONTROL

Section 5.1 Approval Required. No building, fence, wall, structure, improvement or alteration, including, without limitation, removal of partitions between Units shall be commenced, placed, erected, or altered upon the Common Elements, including, without limitation, the Limited Common Elements, or the Association Property, until the location and complete plans and specifications showing the nature, kind, shape, height, and materials, including, without limitation, the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors, or by an Architectural Review Committee appointed by the Board of Directors composed of not less than three (3) Members. The grade, level, or drainage characteristics of the Condominium Project or any portion thereof, shall not be altered without the prior written consent of the Board or the Architectural Review Committee. The Architectural

Review Committee, subject to Board approval, may establish Architectural Guidelines and procedures to facilitate the administration of its responsibilities under this Article.

Section 5.2 Failure to Act. If the Board or the Architectural Review Committee fails to approve or disapprove such location, plans and specifications, or other requests within thirty (30) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony and compatible with similar structures erected within the Project. Said failure to approve or to disapprove a submission shall not constitute a waiver of subsequent compliance with this Article by an Owner.

Section 5.3 Disabled Person. Notwithstanding any other rule, regulation or restriction, the Board of Directors shall make reasonable accommodations in the rules, regulations or Restrictions if those accommodations may be necessary or be required by law to afford a person with a disability equal opportunity to use and enjoy the Condominium Project.

Section 5.4 Liability. Neither the Association, the Board, the Architectural Review Committee nor any Member thereof shall be liable to any Owner, or to any other party, for any damage, loss, prejudice or expense suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications whether or not defective (b) any defect in the construction or performance of any work, whether or not pursuant to approval plans and specifications, or (c) the inability of anyone to obtain a building permit for the construction or alteration of any improvement pursuant to plans and specifications, provided, however, that such Association Member, Board member or Architectural Review Committee member has acted in good faith on the basis of such information as may be possessed by such person.

Section 5.5 Declarant Exception. The provisions of this Article shall not apply to the initial construction by Declarant of Units or other improvements to the Condominium Project, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction by Declarant of Units or other improvements to the Project.

Section 5.6 For Sale and For Rent Signs. Until such time as Declarant has completed its sale of Units and closed the sales operation at the Project, no Owner shall display a "For Sale" or "For Rent" sign at the Project. Any sale of a Unit during such period shall be completed without the use of visible signs in the Common Area or visible from the Common Areas.

ARTICLE VI PROHIBITION OF PARTITION OR SEPARATION OF INTEREST

Section 6.1 Separation of Interest. No Owner shall sell, assign, lease or convey:

- (a) The Allocated Interest separate and apart from the Unit, nor

- (b) The Unit separate and apart from the Limited Common Elements assigned to the Unit, nor
- (c) The interest in any Limited Common Elements, separate and apart from the interest in the Common Elements and the Unit.
- (d) Any rights to the use of the Association Property, other than as permitted by this Declaration, the Bylaws or the Rules and Regulations as established from time to time by the Association.

Section 6.2 Prohibition of Partition. Each Owner of a Unit, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Project, except upon the showing that:

- (a) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or
- (b) that three-fourths (3/4ths) of more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Elements are opposed to repair or restoration of the Project, or
- (c) that the Project has been in existence for fifty (50) years or more, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Elements are opposed to repair or restoration of the Project; provided, however, that if any Unit shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants, so long as there is not a physical division of the Unit. No Unit may be partitioned or subdivided without the prior written approval of the Mortgagee holding the First Security Interest on that Unit.

Section 6.3 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Project for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Project may be had pursuant to Section 6.2 above. The power of attorney herein granted may be exercised after the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3rds) of the interest in the Common Elements, by any two (2) members of the Board. The Board shall record a copy of the resolution implementing the power of attorney in the office of the County Recorder, Clark County, Nevada. Said resolution shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary, Department of Veterans Affairs.

**ARTICLE VII
RIGHT OF SECURITY INTEREST**

Section 7.1 Security Interest's Consent. Provided that the holder of the First Security Interest informs the Association in writing of its appropriate address and requests in writing to be notified (each an "Eligible First Security Interest"), except upon substantial destruction or condemnation, in which event only fifty-one percent (51%) of the First Security Interest is required, neither the Association nor the Owners shall do any of the following unless at least sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of the Eligible First Security Interest which encumber Condominium Units (based upon one (1) vote for each Eligible First Security Interest or, in the event of substantial destruction, each Security Interest) have given their prior written approval:

- (a) seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plat or this Declaration, or change, waive or abandon any scheme or regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Elements;
- (b) change the pro-rata interest or obligations of any Units for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro-rata share of the Common Elements appurtenant to each Unit;
- (c) partition or subdivide any Unit;³
- (d) seek, by act or omission to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or Association Property; however, the granting of easements for public utility or other public purposes consistent with the uses of said Areas shall not be deemed a transfer within the meaning of this provision;
- (e) use of hazard insurance proceeds for losses to any portion of the Project for other than the repair, replacement or reconstruction of the Project, except as may be provided by statute upon substantial loss to the Unit, Common Elements or Association Property;
- (f) fail to maintain fire and extended coverage insurance on the Common Elements or Association Property and the improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

Section 7.2 Notice to Security Interest. Upon written request to the Association identifying the name and address of the Eligible First Security Interest, Eligible Insurer, or

³ Applies only to affected Security Interest

Guarantor and the Unit number and address, any Eligible First Security Interest, Eligible Insurer, or Guarantor will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a first mortgage held, insured or guaranteed by such Eligible First Security Interest, Eligible Insurer or Guarantor, as applicable;
- (b) Any sixty (60) day delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a First Security Interest held, insured or guaranteed by such Eligible First Security Interest holder, Eligible Insurer or Guarantor;
- (c) Any lapse, cancellation or material modification of any insurance policy maintained by the Association; and
- (d) Any proposed action that would require the consent of a specified percentage of Eligible First Security Interest holders.

Section 7.3 Security Interest Protection. Neither the breach of any of the covenants, conditions and restrictions in this Declaration, nor the enforcement thereof or, except as provided in Section 3.11A of any lien provisions herein, shall defeat or render invalid the lien of any Security Interest held by an Eligible First Security Interest holder made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any Owner whose title is derived through foreclosure or exercise of power of sale, or otherwise.

ARTICLE VIII DESTRUCTION OF COMMON ELEMENTS OR ASSOCIATION PROPERTY

Section 8.1 Casualty Destruction of Common Elements or Recreational Area. If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then:

- (a) If the cost to repair or rebuild does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repair or rebuilding is needed, the Board shall contract to repair or rebuild the damaged portion of the Common Elements substantially in accordance with the original plans and specifications therefor.
- (b) If the cost to repair or rebuild exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repair or rebuilding is needed, and if the Owners holding in aggregate more than fifty percent (50%) interest in the damaged or destroyed Common Elements agrees to

repair or restoration of the Project, then the Board shall contract as provided in (a) above. (In the case of the Recreational Area, more than fifty percent (50%) of the voting power in the Project).

- (c) - If the Owners do not agree to the repair or rebuilding of the Common Elements provided in subparagraph (e) below, then each owner (and the mortgagee(s)), as their respective interest shall then appear, shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of the Unit as compared to the aggregate decrease in the fair values of the Condominium Units caused by such damage or destruction. For purposes hereof, an appraiser licensed by the State of Nevada, selected by the Board and hired by and at the expense of the Association shall determine fair market values.
- (d) Should disputes arise as to the distribution of insurance proceeds, the dispute shall be decided by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.
- (e) Notwithstanding Section 8.1(c), the Board shall contract for such repair or rebuilding of the Common Elements of a Condominium Building(s) containing Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners in said Building(s) agree in writing to the repair or restoration of said Building(s).
- (f) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Unit in the damaged or destroyed Building(s), in the proportion the Condominiums are regularly assessed, to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding for purposes of raising funds for the rebuilding or major repairs of the structural Common Elements. Such assessments and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

Section 8.2 Taking of Common Elements. If any portion of the Common Elements or Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award therefor is not apportioned among the Owners and their Security Interest holders as their respective interests then appear, by court judgment or by agreements between the condemning authority and each of the affected Owners, then the Owners of the Common Elements, and the Security Interest holders as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Section 8.1(c) above. However, if it should be determined to repair or rebuild any portion of the Common Elements or Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 8.1 for the repair of damaged or destroyed portions of the Common Elements. Any decision to repair or rebuild shall

be made in the same manner and subject to the same conditions and limitations as provided in Section 8.1 above to determine whether or not to rebuild or repair the damage or destruction.

Section 8.3 Casualty Destruction of Unit. In the event of damage or destruction of any Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. If the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of receipt thereof, they shall be deemed to have been approved provided that such changed plans and specifications conform to all of the conditions and restrictions herein contained, and are in harmony and compatible with the Project.

Section 8.4 Taking of Unit. In the event of the taking of a Unit, the Owner (and his or her mortgagees as their interests may appear) of the Unit shall be entitled to receive the award for such taking and after acceptance thereof Owner and Owner's mortgagee shall be divested of any further interests in the Condominium Project if such Owner shall vacate his or her Unit as the result of such taking. In such event said Owner shall grant Owner's remaining interest in the Common Elements appurtenant to the Unit so taken, if any, to the Owners owning a fractional interest in the same Common Elements, such grant to be in proportion to the fractional interest in the Common Elements then owned by each.

Section 8.5 Association Insurance. The Association shall obtain and continue in effect the following insurance:

- (a) A master fire insurance policy with extended coverage endorsements for the full insurable value of all of the improvements within the Project. "Improvements" means and refers to the Association Property and Common Elements together with those appliances and improvements located within the Units provided by Declarant to the initial Owners of Units. It does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional First Security Interests and shall meet the maximum standards of the various institutional first mortgage lenders whose loan(s) encumber any of the Units.
- (b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Elements or Association Property. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such policies must provide that they may not be canceled or substantially modified by any party without at least thirty (30) days prior written notice to the Association and to each holder of a First Security

- Interest that is listed as a scheduled holder of a First Security Interest in the insurance policy.
- (c) Flood loss for the maximum amount available if the Property is located in a Flood Hazard Area.
 - (d) Fidelity insurance coverage Members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as insured and written in an amount equal to at least the estimated maximum funds, including, without limitation, reserves in the custody of the Association or a management agent at any given time during the term of the bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate assessments on all Condominium Units plus reserve funds.
 - (e) Workman's Compensation Insurance covering any employees of the Association.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to Owner's Condominium Unit. Each Owner may separately insure the improvements not covered by the master fire policy and personal property within Owner's Unit. No Owner shall insure the Unit in any manner that would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision, Owner shall be responsible to the Association for any such diminution.

Section 8.6 Security Interest Approval. Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by holders of fifty-one percent (51%) of the First Security Interests on Units subject to a First Security Interest.

Section 8.7 Payment of Deductible by Owner Making Claim; Right to File and Settle Claims. The Association is required to maintain blanket fire, hazard and liability insurance which covers the roofs and exterior walls of all Buildings. If an Owner makes a claim against any policy owned by the Association, then the Owner shall be responsible for all deductibles up to \$1,000.00 per occurrence not covered by the policies on such claims. Any work to be done as a result of said Owner's claim shall begin only upon the Association's receipt of the deductible amount from the Owner.

The Association, as owner of the policies, shall have the exclusive right to file and administer the settlement of any claim made against an Association policy. Owners are responsible for carrying at their expense insurance to augment or cover losses and damages not covered by the blanket insurance carried by the Association.

**ARTICLE IX
USE OF LIVING UNITS AND COMMON ELEMENTS
AS DESCRIBED IN THE CONDOMINIUM PLAN**

Section 9.1 Alteration of Unit. Subject to the provisions of this Declaration and any applicable law, a Unit Owner:

- (a) May make improvements and alterations to the interior of a Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Building or other Common Elements;
- (b) May not change the appearance of the Common Elements, or the exterior appearance of a Unit, including, without limitation, color or any other portion of the Common Elements, except with the permission of the Board;
- (c) After acquiring an adjoining Unit or part of an adjoining Unit, an Owner may subject to Board or Architectural Review Committee approval remove or alter any intervening partition or create openings therein, even if the partition in whole or in part is a Common Elements, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Building or Common Elements. Removal of partitions or creation of apertures under this Section is not an alteration of boundaries; and
- (d) Association assessments of merged Units will continue to be assessed on the same basis as they were prior to the merger or combination of Units.

Section 9.2 Declarant's Exceptions. Declarant (and its sales agents and representatives) may maintain signs, models and sales and management offices within the Project until the earlier of the sale of the last Unit in the Project or seven (7) years from recordation of the Declaration. No provisions contained in this Section IX shall be applicable to or prohibit any acts or activities by Declarant (and its agents, suppliers, and contractors) in connection with or incidental to Declarant's improvement and development of the Property during Declarant's Control Period.

Section 9.3 Fire Lane. There shall be absolutely no double parking, parking in designated fire lanes or parking along any area that is designated as a "no parking" zone by red paint or signs. Any vehicle that is parked in violation of such no parking zone may be towed without any further notice as soon as reported by a member or guest of the Association or discovered by the employee of any manager retained by the Association. Members of the Association accept the responsibility to report such violation in the best interest of the public safety of the remaining Members. Parking violations shall be reported to the Board or the manager appointed by the Association. Owners of the vehicles found to be in violation shall be responsible for all fines and costs associated with such towing.

Section 9.4 Floor Covering. No changes may be made to the type of floor covering originally installed by Declarant in the Unit that is stacked upon another Unit until the Owner obtains prior approval of the Board. Such approval may not be sought unless the changes will comply with the Group R Occupancy Sound Transmission Control requirements of the Uniform Building Code, incorporated by reference in the Municipal Code applicable to this Project.

Section 9.5 Lease. Each Owner shall have the right to lease Owner's Unit provided such lease is in writing and that it provides that the tenants shall be bound by and obligated to comply with the provisions of this Declaration, the Articles, the Bylaws and the Rules and Regulations of the Board. Failure to comply with the provisions of such documents as the same may be amended or modified from time to time shall be a default of the Lease allowing the Association the same rights of action as the Owner against the tenant, including, without limitation, eviction because of the default, and the Association is hereby granted a special power of attorney for that purpose. No Owner shall lease Owner's Unit for transient or hotel purposes. Any Lease which is either for a period of less than thirty (30) days or pursuant to which the Owner provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. The Owner shall file or cause to be filed with the Association a signed copy of the lease within ten (10) days of occupancy by a tenant.

Section 9.6 Limited Common Elements Appurtenant. Each Limited Common Element shall be:

- (a) appurtenant to the Unit with which the Limited Common Element is conveyed, and
- (b) used only for the purposes set forth in this Declaration.

The right to use a Limited Common Element shall be exercisable only by the Owner(s) of the Unit appurtenant thereto and/or said Owner's tenants and licensee(s). No Limited Common Element or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Unit to which they are appurtenant. Each Limited Common Element shall be deemed to be Common Elements, for all those purposes set forth in this Declaration that are not inconsistent with this Article IX or Article IV.

Section 9.7 Nuisance. No Unit or Limited Common Element shall be used in such manner as to interfere with the quiet enjoyment of other Owners or annoy them by unreasonable noise or activities, nor shall any nuisance be committed or permitted to occur in any Unit, nor the Common Elements

Section 9.8 Outside Antennae. Other than satellite dishes exempted by the FCC, no television, radio or other electronic antenna, dish or device of any type shall be erected, constructed, placed or permitted to remain on any of the Units or buildings constructed on the Units unless and until the same shall have been approved in writing by the Architectural Review Committee or Board. Use of electronic devices that interfere with the reception of television signals, cellular phone signals or other wireless signals or that interfere with the operation of consumer electronic equipment or devices in any Unit or any Common Area is prohibited.

Section 9.9 Owners Liable for Damage. Each Owner shall be liable to the Association for all damages to the Association Property, Common Elements and any improvements thereto, including, without limitation, buildings, recreation facilities and landscaping, caused by such Owner, the Owner's licensee(s) or any occupant of said Owner's Unit.

Section 9.10 Parking and Vehicular Restrictions. Owners shall not park, store or keep on their Assigned Parking Space or on any street (public or private) within the Property, any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, or any inoperable vehicle. Subject to Board approval, camper trucks and similar vehicles up to and including one ton when used for everyday type transportation may be kept on the property. No Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. All boats, trailers, campers and similar recreational vehicles shall be stored off the Project. Owners shall not repair or restore any vehicle, boat or trailer on the Common Area or in the assigned parking space.

Section 9.11 Pets. A maximum of two (2) household pets (exclusive of caged birds or aquarium fish) weighing no more than fifty (50) pounds may be kept in any Condominium Unit or Limited Common Element without the prior written consent of the Board. Pets shall not be allowed on other portions of the Common Elements or Association Property except as may be permitted by Rules made by the Board. Except as provided herein, no animals, livestock, birds or poultry shall be brought within the Condominium Project or kept in any Condominium Unit, or on any portion of the Association Property or Common Elements. No pet shall be permitted to be kept within any portion of the Condominium Project if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

Section 9.12 Residential Purposes (Declarant's Exceptions). No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose except for sales offices on a temporary basis. The provisions of this Section shall not preclude an occupant who is engaged in individual professional work (e.g. accountant, bookkeeper) without external evidence thereof, for so long as (i) such occupant conducts activities in conformance with all ordinances, (ii) such business activity is merely incidental to the use thereof as a residence, and (iii) such occupant does not solicit or invite the public to such residence as a part of such business activity. Declarant may use any of the Condominium Units, Common and Limited Common Elements, owned or leased by the Declarant as model homes and sales offices during the period of time commencing when the Condominium Units are first offered for sale to the public and ending seven (7) years after any right to add the Units is exercised or seven (7) years after Declarant has ceased to offer Units for sale in the ordinary course of business, whichever first occurs. Declarant shall not knowingly or willfully sell more than two (2) Units to any one person or entity.

Section 9.13 Sign Control (Declarant's Exception). No signs other than one (1) sign of not more than 18 inches by 24 inches advertising a Condominium Unit for sale or rent shall be displayed in an Condominium Unit so that it is visible from such area without the prior written consent of the Board. Declarant, however, shall have the right to install and maintain during the sales period set forth in Section 9.2 above, such signs, poles and advertisement in the Project as it deems appropriate in connection with its sales of Condominium Units to the public.

Section 9.14 Time Share. No Unit shall be made subject to any time share programs, interval Ownership, or similar program whereby the right to exclusive use of the Unit rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years.

Section 9.15 Unit Maintenance. Each Owner shall, at Owner's sole cost and expense, maintain, replace, repair, paint, paper, panel, sheet rock, plaster, tile and walls, including, without limitation, inside facing walls, the interior partitions, ceilings, floors, windows, window frames and door frames of the Owner's Unit. Each Owner shall have the right to substitute new finished surfaces in place of those existing on said ceiling, floors (subject to Section 9.4), walls and interior doors of the Unit.

Section 9.16 Use Causing Loss of Insurance. No Condominium Unit, Limited Common Elements or improvements situated therein shall be used in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of an extended coverage endorsement to the Nevada Standard Fire Policy form or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

Section 9.17 Use of Common Elements. Except as otherwise provided herein, the Common Elements shall be improved and used only for the following purposes:

- (a) vehicular passage and pedestrian movement within the Condominium Project, including, without limitation, access to the Condominium Units;
- (b) use of recreational areas by the Owners and occupants of Condominium Units and their guests, subject to Rules as established by the Board;
- (c) beautification of the Common Elements and to provide privacy to the Owners and occupants of the Condominium Project through landscaping and such other means as the board shall deem appropriate;
- (d) parking of motor vehicles in areas provided herein or as may be designed and approved by the Board upon such terms and conditions and for such fees as may from time to time be determined by the Board.

Common Elements shall not be used by anyone so as to interfere with its use for the purposes herein permitted. Common Elements shall not be used for storage purposes (except as incidental to permitted uses) or for storage of maintenance equipment used exclusively to maintain the

Common Elements or Association Property or in storage areas designated by the Board, nor in any manner which shall increase the rate of insurance against loss by fire, or the perils of the extended coverage endorsement to the Nevada Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Elements and improvements situated thereon may be, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

Section 9.18 Use of Limited Common Elements. Each Owner shall have the following rights to use Limited Common Elements:

- (a) to maintain, furniture, playground equipment, and plants in said area;
- (b) to plant flowers and shrubs which do not unreasonably interfere with the enjoyment of the Owners of adjacent Condominium Units and Limited Common Elements;
- (c) as Limited Common Elements to be used in the manner hereinbefore described.

Nothing herein shall be deemed to allow persons other than the Owner (or Owner's tenants as lessees) of the Condominium Unit to which a Limited Common Element is appurtenant to enjoy the use thereof.

Section 9.19 Garages. Each Unit shall include a garage. The Garages shall be used only for the vehicle parking purposes. The storing of household goods of Owners and occupants within garages is strictly prohibited. Garage doors shall not be permitted to remain open except for the temporary purpose of entry in and exit from the garage. The garages shall not be used at any time for vehicle maintenance, repair, or restoration. The Board shall have the right to adopt additional rules and regulations relating to garages.

ARTICLE X DISPUTES

Section 10.1 Legal Proceedings. The Board shall not institute any Civil Action (as hereinafter defined) against any person without first providing the Members at least twenty-one (21) days' prior written notice of the meeting of the Association to consider institution of a civil action. The notice shall describe the purpose of the legal proceeding, the parties to the proceeding, the anticipated cost to the Association (including, without limitation, attorneys' fees and costs) in the proceeding, the source of funds to fund the proceedings (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the proceeding is being prosecuted. Except as otherwise provided in this Section 10.1, the Association may commence a civil action only upon a vote or agreement of the Owners of the Units to which at least sixty-seven percent (67%) of the votes of the members of the Association are allocated. The provisions of this Section do not apply to a civil action that is commenced:

- (a) To enforce the payment of an assessment;
- (b) To enforce the Declaration, Bylaws or Rules of the Association;
- (c) To proceed with a counterclaim; or
- (d) To protect the health, safety and welfare of the members of the Association.

Any monies recovered by the Association less legal fees and expenses arising out of construction defect litigation shall be used to restore or repair the defects, with any excess funds to be used as the Board may determine. As used herein, the term "Civil Action" shall mean any action for damages or equitable relief whether such action is in the form of civil litigation, arbitration, mediation or any other form of alternative dispute resolution but shall exclude an action for injunctive relief in which there is an immediate threat of irreparable harm, or relating to title.

Section 10.2 Arbitration/Mediation. Notwithstanding the foregoing and subject to NRS Chapter 38, with regard to Common Interest Communities, the Association the Declarant and the Owner shall have the right to enforce by an action at law or in equity, each covenant, condition, restriction and reservation, now and hereafter imposed by this Declaration. Each Owner shall have the right of Action against the Association for any failure by the Association to comply with the provisions of this Declaration, the Bylaws or Articles. In any action, including, without limitation, Arbitration, reasonable attorneys' fees and costs may be awarded to the prevailing party.

Section 10.3 Owners Compliance. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws, and Rules and Regulations of the Association by their guests, lessees and all occupants of the Unit, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Declaration, the Bylaws or Association Rules and Regulations for any violation by the Owner, Owner's guests, lessees and occupants of the Condominium Unit.

Section 10.4 Association/Declarant Arbitration. NRS §§ 40.600-695 (as the same .. may be amended from time to time and/or any successor or similar statutes hereinafter referred to as "Chapter 40") provides the statutory scheme for resolution of construction defects including, without limitation, the requirement for mediation to resolve the Dispute (as defined in Section 10.4.1 below). The developer, the Association and any Owner in the Project (collectively "Parties") agrees that if the mediation required by Chapter 40 does not resolve the Dispute, that the Dispute will be submitted to arbitration as provided in Section 10.4.1 below.

Section 10.4.1 Arbitration of Disputes. Any action, dispute, claim or controversy subject to Chapter 40 among the Parties, whether sounding in contract, tort or otherwise ("Dispute" or "Disputes") shall be resolved by binding arbitration as set forth in this Section 10.4.1. Such disputes shall be resolved by arbitration in accordance with NRS Chapter 38 (as the same may be amended from time to time and/or any successor statute) and the Construction

Industry Arbitration rules of the American Arbitration Association ("AAA") then in effect. If there is any inconsistency between such rules and this Section 10.4.1, this Section 10.4.1 shall prevail. All statutes of limitations that would otherwise be applicable shall apply to any arbitration proceeding under this Section 10.4.1. However, in any arbitration proceeding subject to this Section 10.4.1, the arbitrator is specifically empowered to allow discovery and decide pre-hearing motions that are substantially similar to pre-hearing motions to dismiss and motions for summary adjudication. Judgment upon the award rendered may be entered in any court having jurisdiction. Except as otherwise provided, the arbitrator shall be selected in accordance with the Construction Industry Arbitration Rules of AAA. Any arbitrator selected under this Section shall be knowledgeable in the area the subject matter of the Dispute. Qualified retired judges shall be selected through panels maintained by AAA by any court in which the site is located, or any private organization providing such services.

Section 10.4.2 Constructional Defect - Repairs. In the event an Owner of a Unit or the Association on behalf of itself and/or Unit Owners makes a claim relating to a construction defect or defects as provided for in Chapter 40, each Owner and/or the Association shall allow the Declarant, the general contractor, and/or the subcontractors involved in the construction of the Project or appurtenance, a reasonable opportunity to effectuate repairs of the alleged constructional defects. The Unit Owner(s) or Association shall select a general contractor who has been continuously licensed by the Nevada State Contractors Board for not less than twenty (20) years to determine what defects exist, how much time should be allotted to effectuate repairs, and whether the repairs are performed properly. The Declarant shall pay the reasonable charges of the contractor selected by the unit owner(s) or association. No legal action shall be commenced relating to a constructional defect or defects until such time as the Declarant, the general contractor, and/or subcontractors have been given a reasonable opportunity to effectuate repairs.

Section 10.4.3 Waiver of Jury Trial. All parties waive the right to jury trial in the event of any Dispute arising out of Sections 10.4, 10.4.1 and 10.4.2.

ARTICLE XI GENERAL PROVISIONS

Section 11.1 Non-Waiver. Failure by the Association, the Declarant, or any Owner to enforce any covenant, condition, restriction or reservation contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

Section 11.2 Partial Invalidity. If any term, provision, covenant or condition of this Declaration, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Declaration, and all applications thereof, not held invalid, void, or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 11.3 Amendments. During the period of time prior to expiration of Declarant's Control Period, but not later than seven (7) years from recordation of this Declaration, this Declaration may be amended by an instrument approved by sixty-seven percent (67%) of the

voting power of each class of Members of the Association. The amendment shall become effective upon its recording in the Office of the County Recorder of Clark County, Nevada. At the expiration of the Declarant's Control Period, the Declaration may be amended by approval of:

- (a) sixty-seven percent (67%) of the total voting power of the Association;
and
- (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant.

In addition to the approval of sixty-seven percent (67%) of the voting power of each class of Members of the Association required above, no amendment material to an Eligible First Security Interest may be made to this Declaration without the prior written consent of those Eligible First Security Holders holding fifty-one percent (51%) of the Security Interest encumbering Units within the Project. For these purposes, any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee;"

- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the general or Limited Common Elements, or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (l) a decision by the owners' association of a project that consists of 50 or more

units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;

- (m) restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or
- (n) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible First Security Interest holder who receives a written request to approve additions or amendments via certified or registered U.S. Mail, postage prepaid, return receipt requested, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. During the Declarant's Control Period, any amendment to this Declaration shall, if applicable, require the prior approval of the VA/FHA. A draft of any amendment should be submitted to the VA/FHA for its approval prior to the recordation of the amendment. Notwithstanding any other provisions of this Section 11.3, for so long as Declarant owns any portion of this Property, but not later than seven (7) years from recordation of this Declaration, Declarant may unilaterally amend this Declaration by recording a written instrument signed by the Declarant in order to correct technical and/or clerical errors or for clarification or to conform this Declaration to the requirements then in effect for the VA, FHA, FNMA, GNMA or FHLMC, the State of Nevada, or any County, City, or other applicable agency which has jurisdiction over the Project.

Section 11.4 Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2027, after which date they will automatically be extended for successive periods of ten (10) years unless sixty-seven percent (67%) of the Owners have executed and recorded at any time within six (6) months prior to December 31, 2027, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2027, or at the end of any such ten (10) year period.

Section 11.5 Encroachment Easement. In the event any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements or another Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to minor encroachments, not exceeding one foot (1'). There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owner shall not be altered in any way by said encroachments, settlement, or shifting, provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or

Common Elements shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 11.6 Annexation of Additional Property by Membership Approval. Upon approval in writing of the Association, pursuant to two-thirds (2/3rds) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file or record a "Declaration of Annexation" which shall extend the scheme of this Declaration to such property. At the expiration of the Declarant's Control Period, this action shall require the vote or written consent of

- (a) two thirds (2/3rds) of the voting power of Members of the Association, and
- (b) two-thirds (2/3rds) or more of the voting power of Members of the Association other than the Declarant.

Section 11.7 Annexation by Declarant. If, within seven (7) years of the date of the recording of this Declaration with the County Recorder of Clark County, Nevada, Declarant should develop additional lands within the property, as described in Section 1.30 (Phased Annexation), such additional lands or any portion thereof may be added to the Condominium Project, subjected to this Declaration, and included within the jurisdiction of the Association by action of Declarant without obtaining the consent of the Members of the Association or Eligible First Security Interest; provided, however, that the development of the additional land shall, be consistent with the improvements in the initial Phase of development in terms of quality of construction, and if applicable, be in accordance with the plan of development submitted to VA. The annexation shall be accomplished by the recording of a Declaration of Annexation or separate Declaration of Restrictions which require Owners of Condominium Units therein to be Members of the Association. The obligation of Owners to pay assessments to the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Unit by Declarant in that particular Construction Phase of Development. Prior to any annexation under this Section 11.7, (i) detailed plans for the development of the additional property must, if applicable, be submitted to the VA, and the VA must determine that such detailed plans are in accordance with the general plan and so advise Declarant, and (ii) all improvements in each Legal Phase will be substantially completed. Subject to annexation of additional property as set forth in Section 11.7:

- (a) Declarant hereby reserves for the benefit and appurtenant Owners of Units in each and every Phased Annexation, non-exclusive easements to use the Association Property and Common Elements (other than any Condominium Buildings or Limited Common Elements) in the Condominium Project, until such time as all of the Phases are annexed pursuant to this Section, or until expiration of the right to annex.
- (b) Declarant hereby grants, until expiration of the right to annex, for the

benefit of and appurtenant to each Unit in the Condominium Project Legal Phase 1, and their Owners, a non-exclusive easement to use the Common Elements or Association Property (other than any Condominium Buildings or Limited Common Elements) in Phased Areas, pursuant to the provisions of and in the manner prescribed by this Declaration, to the same extent and with the same effect as if each of the Owners of a Unit in the Condominium Project owned an undivided interest in the Common Elements of the property so annexed.

- (c) These reciprocal cross-easements shall be effective as to each Phase, and as to the Condominium Project, only until such time as each Phase has been annexed by the recordation of a Declaration of Annexation or a separate Declaration of Covenants, Conditions and Restrictions by Declarant, or expiration of the right to annex.

In the event any annexation is of a legally separate project, all reasonably necessary details and procedures required by law will be completed prior to the annexation.

Section 11.8 Deannexation. Declarant may delete all or any portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the Owner of all of said Phase of Development and provided that:

- (a) A "Declaration of Deannexation" is recorded in the same manner as the applicable Declaration of Annexation was recorded;
- (b) Declarant has not exercised any Association vote with respect to any portion of said Phase of Development;
- (c) Assessments have not yet commenced with respect to any portion of said Phase of Development;
- (d) No Unit has been sold in said Phase of Development to a member of the general public; and
- (e) The Association has not made any expenditures for any obligation respecting any portion of said Phase of Development.

Section 11.9 Declarant's Rights. Certain specific rights are reserved by this Declaration to the Declarant such as, Section 5.5 Declarant Exception; Section 9.2, Declarant's Exceptions; Section 9.12; Residential Purpose; Section 9.13, Signs; Section 11.7, Annexation; 11.8, De-Annexation; and this Section 11.9.

These Declarant's Rights are to facilitate the work of construction of Units and additional improvements upon the Condominium Project. The completion of the work, sale, rental or other disposition of said Units is essential to the establishment of the Condominium Project as a residential community. So that this work can be completed and the Condominium Project

established as a full occupied residential community as rapidly as possible, nothing in this Declaration shall be understood, deemed or construed to:

- (a) Prevent Declarant its contractors or subcontractors from doing on the Condominium Project or in any Unit, Limited Common Element, Common Elements, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant or its representative from constructing and maintaining on any part or parts of the Condominium Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Condominium Project as a residential community and disposing of the same by sale, lease or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Condominium Project its business of completing his work, and of establishing a plan of Unit ownership and of disposing of the Condominium Project in the form of Units by sale, lease or otherwise; or
- (d) Prevent Declarant from maintaining such sign or signs on any portion of the Condominium Project as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall, during the sales period set forth in Article IX, Section 9.13 above, not unreasonably interfere with the use by any Owner of his Unit, or Limited Common Areas.

The rights of Declarant provided for herein shall commence when the Units are first offered for sale to the public and end when all the Units in the Project are sold and conveyed by the Declarant to separate Owners thereof, or five (5) years after any right to add new Units was last exercised; or five (5) years after Declarant has ceased to offer Units for sale in the ordinary course of business, whichever shall first occur.

So long as Declarant, its successors or assigns owns one (1) or more of the Units described herein, Declarant, its successors or assigns shall be subject to the provisions of this Declaration, Declarant, in exercising its rights under this Section 11.9, shall not unreasonably interfere with the use of the Association Property or Common Elements by any Owner.

Section 11.10 Constructional Defect - Recorded Notice. In the event a unit owner or the association on behalf of a unit owner makes a claim relating to construction defect(s) pursuant to Chapter 40 or similar law, the owner of each unit effected by the claim hereby authorizes the Declarant or its authorized representative to record in the Office of the County Recorder of Clark County, Nevada, a "Notice of Construction Defect Claim". The "Notice of Construction Defect Claim" shall specify the unit(s) involved in the claim, the date of the claim, and the provision of NRS 40.688 or similar law. The notice may also attach a copy of the claim(s) with or without supporting documents.

Section 11.11. Termination of Declaration. The Members may terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the property upon approval of sixty-seven percent (67%) of the total allocated votes in the Owners' Association and the approval of sixty-seven percent (67%) of the Eligible First Security Interest Holders. An Eligible First Security Interest holder who receives a written request to approve a termination of the legal status of the Project via certified or registered U.S. Mail, postage prepaid, return receipt requested, who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.


Section 11.12 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creation of a plan for the development and administration of Aspen Peak.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.


ASPEN PEAK LLC, a Nevada limited liability company


BY: THE GARY DAY FAMILY TRUST dated October 21, 1997, Participating Member

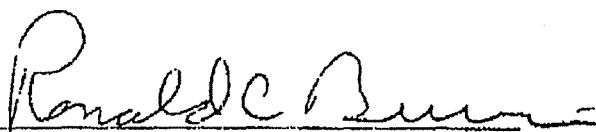
By: 
Name: Gary G. Day
Title: Trustee

BY: SOUTH VALLEY LIMITED PARTNERSHIP, a Nevada limited partnership, Participating Member

BY: CKC DEVELOPMENT COMPANY, INC., a California corporation, General Partner

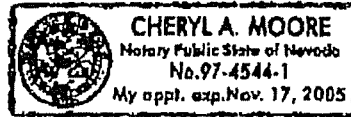
By: 
Name: Vivian Chiang
Title: President

By: 
Name: Dick Chiang
Title: Vice President

By: 
Name: Ronald C. Bures
Title: Participating Member

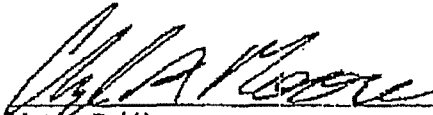
Declarant

STATE OF NEVADA)
) ss:
County of Clark)



This instrument was acknowledged before me on March 1st, 2004, by GARY G. DAY, the Trustee of THE GARY DAY FAMILY TRUST dated October 21, 1997, Participating Member of ASPEN PEAK LLC, a Nevada limited liability company, on behalf of that limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public

My commission expires:

11-17-05

STATE OF CA)
) ss:
County of San Diego)

This instrument was acknowledged before me on _____, 2004, by VIVIAN CHIANG, the President of CKC DEVELOPMENT COMPANY, INC., a California corporation, the General Partner of SOUTH VALLEY LIMITED PARTNERSHIP, a Nevada limited partnership, Participating Member of ASPEN PEAK LLC, a Nevada limited liability company, on behalf of that limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires:

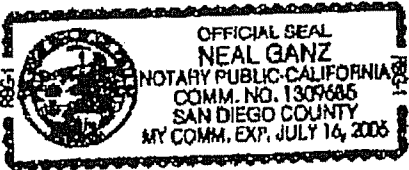
ALL-PURPOSE ACKNOWLEDGEMENT

State of California }
County of San Diego } SS.

On 3/25/04 before me, Neal Ganz

personally appeared Vivian Chiang

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Neal Ganz
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgement to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

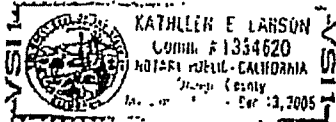
RIGHT THUMBPRINT
OF
SIGNER



STATE OF California)
) ss:
County of Orange)

This instrument was acknowledged before me on 3-29-04, 2004, by DICK CHIANG, the Vice President of CKC DEVELOPMENT COMPANY, INC., a California corporation, the General Partner of SOUTH VALLEY LIMITED PARTNERSHIP, a Nevada limited partnership, Participating Member of ASPEN PEAK LLC, a Nevada limited liability company, on behalf of that limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



KATHLEEN E. LARSON
Notary Public

My commission expires:
Dec. 13, 2005

STATE OF NEVADA)
) ss:
County of Clark)

This instrument was acknowledged before me on February 18, 2004, by RONALD C. BURES, Participating Member of ASPEN PEAK LLC, a Nevada limited liability company, on behalf of that limited liability company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My commission expires:
11-17-05

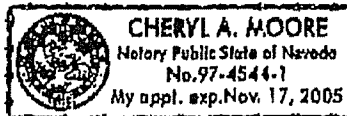


Exhibit A

Legal Description

All of that real property located in Clark County, Nevada, more particularly described as follows:

Lot Three (3) of South Valley Ranch, as shown by map thereof on file in Book 66 of Plats, Page 74, in the Office of the County Recorder of Clark County, Nevada, and by Certificates of Amendment recorded June 11, 1998 in Book 980611 as Document No. 00797 and recorded June 26, 2001 in Book 20010626 as Document No. 00314, Official Records.

Exhibit B

Form of Notice and Claim of Lien

NOTICE OF DELINQUENT ASSESSMENT AND CLAIM OF LIEN
OF
ASPEN PEAK HOMEOWNERS' ASSOCIATION

TO. (Owner)
(Address)
Las Vegas, Nevada

ASPEN PEAK HOMEOWNERS' ASSOCIATION, INC. ("Association") claims a lien in the sum of \$
for maintenance assessments with interest at percent (%) per annum on the property owned by you,
commonly known as, Las Vegas, Nevada, being Unit No., in Building as
shown by the certain Subdivision Map entitled ASPEN PEAK, a Condominium Development, filed in Book
of Plats, Page, Clark County, Nevada, Recorder, for failure to pay the maintenance assessments due for the
months of, and all subsequent installments, interest, accruing costs, and attorneys' fees and
costs from date hereof until paid.

Failure to pay said assessments, all accrued interest, costs, and fees within thirty (30) days from date hereof may
result in commencement of foreclosure of this lien upon your Unit, and/or filing of legal action to collect same.

Payment should be made payable to ASPEN PEAK, at
(insert address)

ASPEN PEAK HOMEOWNERS' ASSOCIATION, INC

By:
Its:

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On this day of, 20, personally appeared before me, a Notary Public in and for said
County and State, of ASPEN PEAK HOMEOWNERS' ASSOCIATION, INC, who
acknowledged to me that he executed the foregoing instrument freely and voluntarily and for the purposes and uses
therein mentioned.

1 Revise if it is a different type of assessment, i.e. capital or special unit assessment.

2 Interest is established by the Board, but not to exceed the statutory limit, now eighteen percent (18%) per Nevada
Revised Statutes 116.3115 2

Exhibit B

Form of Notice and Claim of Lien

NOTARY PUBLIC