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Costa Mesa, CA 92627  
Attn: Kevin Coleman

WERNER CHRISTEN  
RECORDER  
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(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS**

**FOR**

**MINDEN VILLAGE ASSOCIATION**

0609732

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**Minden Village  
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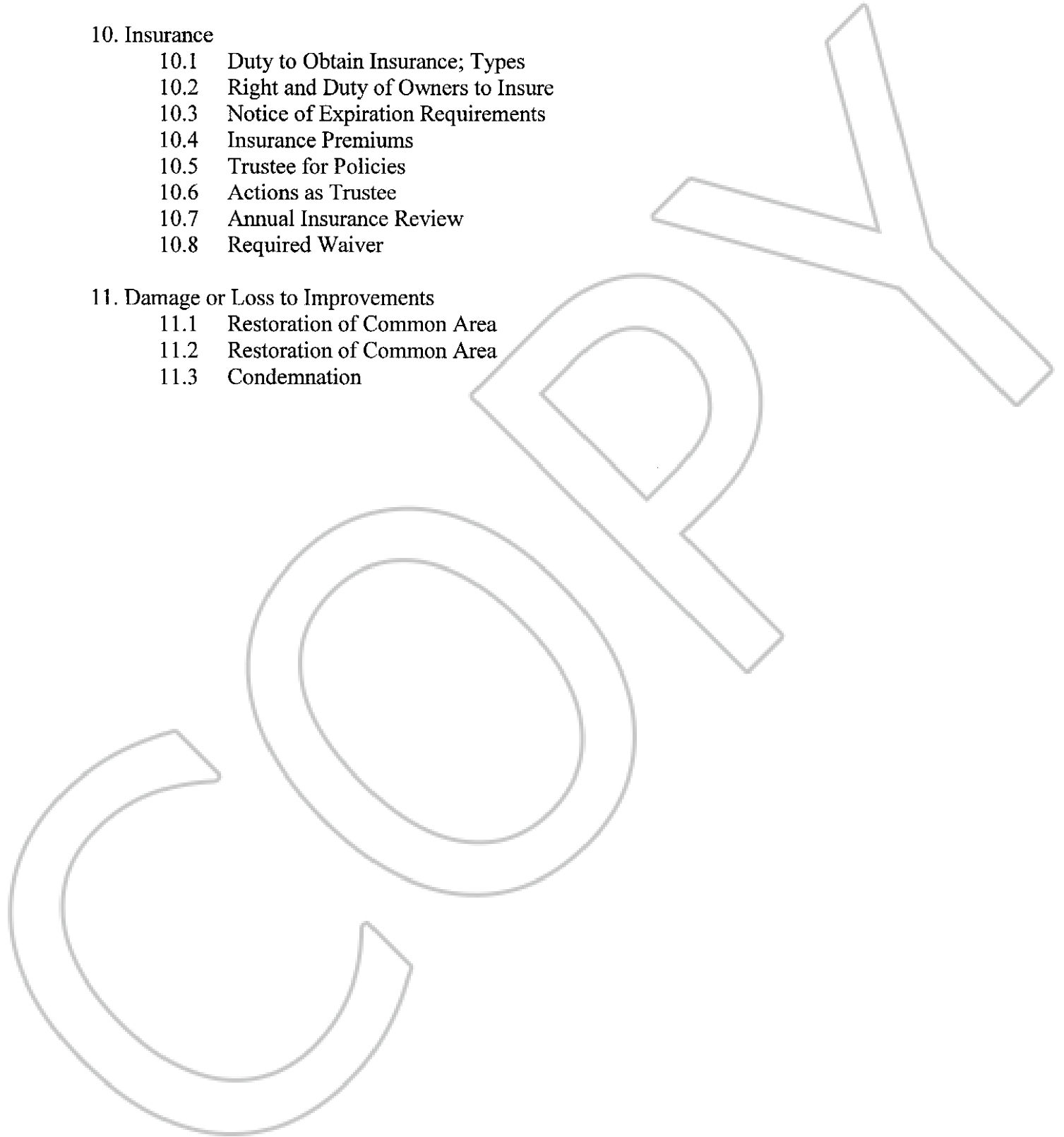
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Costa Mesa, CA 92626  
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS FOR MINDEN VILLAGE ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS FOR MINDEN VILLAGE ASSOCIATION is made as of this 23 day of March, 2004, by K&S PROPERTIES, a California General Partnership (the "Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in the TOWN of Minden, County of Douglas, State of Nevada, more particularly described on Exhibit "A" attached hereto (the "Property").

B. Declarant intends to improve the Property as a planned development business park. Accordingly, Declarant deems it desirable to impose a general plan for the improvement, development and maintenance of the Property and to adopt and establish covenants, conditions and restrictions upon the Property for the purpose of enforcing and protecting the value, desirability and attractiveness thereof.

C. Declarant deems it desirable to provide for the maintenance of all areas in the Property not separately owned by an Owner for the collective use of all Owners and to create a nonprofit corporation to which shall be delegated and assigned the powers of collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to, and administering and enforcing these covenants, conditions and restrictions.

D. Minden Village ASSOCIATION, a nonprofit mutual benefit corporation, will be incorporated under the laws of the State of Nevada for the purpose of exercising the powers and functions aforesaid.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property shall be held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions, restrictions and easements which are hereby declared to be for the benefit of the Property, the Owners thereof and their successors and assigns. These covenants, conditions, restrictions and easements shall run with the Property and shall be binding upon, and inure to the benefit of, the Property, any portion thereof, and any

interest therein and shall be binding upon, and inure to the benefit of, all parties having or acquiring any right, title or interest in the Property or any portion thereof, and are imposed upon the Property and every part thereof as equitable servitudes in favor of each and every portion thereof. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall incorporate the provisions of this Declaration, whether or not such deed or other instrument makes reference hereto.

1. DEFINITIONS.

1.1 "Architectural Committee" shall mean and refer to the committee appointed pursuant to Section 6.

1.2 "Articles" shall mean and refer to the Articles of Incorporation of the Association, and any amendments thereto.

1.3 "Assessment" shall mean and refer to any or all of the assessments hereinafter defined:

a. "Regular Assessments" shall mean and refer to a charge against each Owner and each Owner's Lot for the payment of the Common Expenses incurred by the Association to provide for and promote the health, safety and welfare of the Members of the Association and, in particular, for the improvement and maintenance of the properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including, without limitation, establishing and maintaining reserves for such purposes.

b. "Special Assessment" shall mean and refer to a charge against a particular Owner and the Owner's Lot, directly attributable to such Owner, for (i) a reasonable fine or penalty levied by the Association for a violation of this Declaration, the Articles, Bylaws or Association Rules, (ii) reimbursement to the Association for costs incurred in bringing an Owner or an Owner's Lot into compliance with the provisions of this Declaration, the Articles, Bylaws or Association Rules, which costs shall include, without limitation, attorneys, fees, or (iii) for certain costs incurred by the Association or Declarant for materials or services furnished to such Owner or such Owner's Lot at the request of or on behalf of such Owner as a result of any Owner failing to maintain any portion of such Owner's Lot in accordance with the provisions of this Declaration or for material or services furnished to the Common Area or any portion of any Lot which the Association maintains pursuant to this Declaration, as a result of the negligence or willful misconduct of any Owner, the Owner's employees, guests or invitees, or for excessive use or special use of the services or facilities provided by the Association, including, without limitation, painting, trash removal and maintenance of improvements.

c. "Capital Improvements Assessment" shall mean and refer to a charge against each Owner and each Owner's Lot representing a portion of the cost to the Association for the installation, construction, unexpected repair or replacement of any capital improvements, including the necessary fixtures and personal property related thereto, on any Common Area or other portion of the Property upon which the

Association may be required to install, construct, repair or replace any capital improvements as provided in this Declaration, which cost has not been provided for by reserves established by Regular Assessments paid by the Members.

1.4 "Association" shall mean and refer to Minden Village Association, a nonprofit mutual benefit corporation, incorporated under the laws of the State of Nevada.

1.5 "Association Rules" shall mean and refer to the rules and regulations from time to time adopted by the Board pursuant to Section 7.1(i) below.

1.6 "Board" shall mean and refer to the Board of Directors of the Association, who shall be appointed and elected as provided in Article VI of the Bylaws.

1.7 "Bylaws" shall mean and refer to the Bylaws of the Association, and any amendments thereto.

1.8 "TOWN" shall mean and refer to the Town of Minden and its various departments.

1.9 "Common Area" shall mean and collectively refer to Lot 5 of PD #03-007, including without limitation, all landscaping, streets, driveways, sidewalks and improvements thereon, and any other real or personal property owned, leased, maintained or administered by the Association, or over which the Association has an easement, for the common use and enjoyment of the Members of the Association, less any parcel or lot created on Lot 5 of PD #03-007, now or in the future by a record of survey filed with the City and recorded in the Official Records. In no event shall the Common Area include any property or improvements conveyed to an Owner. The Common Area may change in size due to creation of Lots in Property as set forth in Section 1.13 below.

1.10 "Common Expenses" shall mean and refer to the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Area to the extent provided in this Declaration; unpaid assessments; management and administration of the Association, including, without limitation, compensation paid by the Association to accountants, attorneys and employees, if such services benefit the Common Area; reasonable reserves as appropriate; taxes and assessments paid by the Association; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or portions thereof; amounts paid or incurred by the Association in collecting Assessments pursuant to Section 5 hereof, including amounts expended to purchase a Lot in connection with the foreclosure of the Assessment lien against such Lot, amounts paid or incurred by the Association in complying with and/or performing the restrictions and obligations as such restrictions and obligations relate to the Common Area; and expenses incurred by the Association for any reason whatsoever in connection with the Common Area, this Declaration or any amendment to this Declaration, the Articles, of Bylaws or in furtherance of the purpose of the Association or in the discharge of any obligations imposed on the Association or the Board by this Declaration or any amendment to this Declaration.

1.11 "Conveyance(s)" shall mean and refer to the conveyance of a fee simple title interest in or to any part of the Property.

1.12 "Declarant" shall mean and refer to K&S PROPERTIES, a California General Partnership, its successors and assigns.

1.13 "Lot" shall mean and refer to any parcel or portion of the Property, which now or in the future, is created by a record of survey filed with the Town of Minden and recorded in the Official Records for conveyance as a separate legal parcel to an Owner. For purposes of this Agreement, none of the Common Area shall be deemed a Lot. Notwithstanding anything in this Declaration to the contrary, there shall be no limit or restriction, (other than applicable laws, statutes or ordinances) on the number, size, configuration or re-configuration of Lots that Declarant may create within the Property at any time, and no Owner shall have approval rights over same, except with respect to their own Lot. Each Owner acknowledges that Declarant has made no representation or warranty as to the number, size, configuration or re-configuration of Lots it intends to create or establish within the Property. In no event shall the Common Area include any property or improvements conveyed to an Owner.

1.14 "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in Section 2.1.

1.15 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust encumbering a Lot.

1.16 "Mortgagee" shall mean and refer to the mortgagee or beneficiary under any Mortgage.

1.17 "Official Records" shall mean and refer to the Official Records of Douglas County, State of Nevada.

1.18 "Owner" shall mean and refer to the person or entity who is the record owner of a Lot, and including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation. "Ownership" shall mean the status incident to being an Owner.

1.19 "Property" shall mean and refer to all of the real property described in Recital A above.

1.20 "Pro Rata Share" shall mean and refer to a fraction, the numerator of which is the total square footage of a respective Lot in the Property and the denominator is the total of the square footage in the Lots in the Property then existing. The preliminary estimated Pro Rata Shares for the Lots at the time this Declaration is recorded in the Official Records is set forth on Exhibit "B" attached hereto. However, as set forth in Section 1.13 above, the Declarant may, in its sole and absolute discretion, at any time change or modify the number, size, or configuration of any proposed Lots to be created within the Property. Notwithstanding anything herein to the contrary, once every six (6) months following recordation of this Declaration, the Declarant or the Board shall be entitled to record in the Official Records an amendment to this Declaration which sets forth the Pro Rata Share for the Lots as may be equitably modified on a prorata basis to reflect any changes in the total square footage of each respective Lot in the Property and/or the total of the square footage of all the Lots in the Property at such time.



1.21 "Restrictions" Restrictions means this Declaration, the Articles, Bylaws and the Association Rules.

2. MEMBERSHIP.

2.1 Membership. Every Owner shall automatically be a Member of the Association upon becoming an Owner of a Lot. The terms and provisions set forth in this Declaration, which are binding upon all Owners and all Members in the Association, are not exclusive restrictions, as both the Member and the Member's Lot shall, in addition to the Declaration, be subject to the terms and provisions of the Articles and the Bylaws. Membership shall be appurtenant to and may not be separated from an Owner's fee interest in a Lot. Ownership of such Lot shall be the sole qualification for membership.

2.2 Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or assignment of such Lot and then only to the purchaser or assignee thereof. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of such Lot, the Association shall have the right to record such transfer upon the books of the Association upon receipt of evidence of such transfer satisfactory to the Association.

2.3 Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A Members shall be all Owners excepting Declarant until the Class B membership has been converted to Class A membership. Class A Members shall be entitled to the number of votes set forth on Exhibit "B" attached hereto. The number of votes shall not be adjusted to conform to any measurements of the actual square footage of an Owner's Lot; provided, however, in the event of any lot line adjustments to the Lots, the square footage and number of votes per lot shall be equitably adjusted, and the Association shall be entitled to record in the Official Records a statement reflecting such change. When more than one person owns a portion of the interest in a Lot required for membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine; provided, however, that said co-Owners shall file with the Association a writing executed by all of such co-Owners designating one of said co-Owners as the sole co-Owner having the right to cast the vote of said co-Owners as Members of the Association.

Class B. The Class B Member shall be Declarant. Notwithstanding the foregoing, the Class B Member shall be entitled to the number of votes set forth on Exhibit "B" attached hereto multiplied by three (3). Class B membership shall cease and shall be converted to Class A membership on the happening of the first to occur of the following:

- a. When Declarant no longer owns any of the Property;
- b. When Declarant forever relinquishes such Class B voting power by recording a document to such effect and notifying the Board.

All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws of the Association.

3. PROPERTY RIGHTS IN THE LOTS AND COMMON AREAS.

3.1 Title to the Lots. Declarant hereby covenants for itself, its successors and assigns, that it will convey the Lots by deed and such interest shall be free and clear of all monetary encumbrances and liens, except current real property taxes and any assessments, which taxes and assessments shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration, except as may otherwise be expressly provided in a Conveyance to a particular purchaser.

3.2 Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey title to the Common Area to the Association (if permitted by applicable law), or alternatively grant an easement to the Association for the purposes set forth in this Declaration, and such transfer shall be made free and clear of all monetary liens and encumbrances, except current real property taxes and assessments, which taxes and assessments shall be prorated to the date of transfer, and easements, conditions and reservations then of record, including those set forth in this Declaration. Conveyance of title to the Common Area or granting of an easement for purposes set forth herein shall be made to the Association prior to or concurrently with the first Conveyance of an improved Lot to an Owner at such later time as the Declarant in its sole and absolute discretion determines is reasonable.

3.3 Access Easements. Declarant does hereby create, reserve and establish in favor of and grant to each Member and their customers, lessees, and invitees, nonexclusive easements for the ingress and egress and passage of vehicles, and pedestrians including, without limitation, an easement for parking purposes, into, out of, on, over, and across the Common Area from time to time established within the Property as provided in this Declaration so that the Property may be used as an integrated area by the Members and their customers, lessees, and invitees.

3.4 Utility Easements. Declarant does hereby create, reserve to itself the absolute right in its sole and absolute discretion to create, establish and assign nonexclusive easements under, through and across the Common Area for water drainage systems or structures, water mains, sewers, water lines, telephones or electrical conduits or systems, gas mains and other utilities and service easements.

3.5 Restrictions on Easements. Each of the easements established under this Declaration shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:

a. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area;

b. The right of the Association to suspend the voting rights and right to use the Common Area (other than for access, ingress and egress purposes) by a Member for any period during which any Assessment against such Member's Lot remains unpaid and delinquent and for a period not to exceed thirty (30) days from any single infraction of the Association Rules, provided that any suspension of such voting rights or right to use the Common Area, except for failure to pay Assessments, shall be made only by the

Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with Article IV of the Bylaws; and

c. The right of the Association or Declarant to grant or transfer all or any part of its easements for utilities, sewage and drainage in the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such grant or transfer shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than sixty (60) days in advance.

3.6 Delegation of Use. Any Member may delegate, in accordance with the Bylaws, such Member's right of enjoyment of the Common Area to such Member's employees, customers, tenants, invitees and independent contractors.

3.7 Waiver of Use. No Member may be exempt from personal liability for Assessments duly levied by the Association nor may a Member release the Member's Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of the Member's Lot.

3.8 Encroachments. Each Lot within the Property is hereby declared to have an easement over all adjoining property (including Lots and Common Area) for the purpose of:

a. Accommodating eaves, overhangs and other similar projections created during the original construction of the improvements on the Property, if any, or the reconstruction or repair of any improvements in accordance with plans and specifications approved by the Architectural Committee;

b. Accommodating minor encroachments due to original engineering or surveying errors, errors in original construction, or settlement or shifting or movement of a building or other structure, errors in reconstruction or repair in accordance with plans and specifications approved by the Architectural Committee, or settlement or shifting or movement of a building or other structure;

c. Maintaining, repairing and reconstructing such eaves, overhangs, projections and encroachments; and

d. Maintaining or repairing of necessary services, including, without limitation, fire protection systems, security lighting systems and utilities.

Each Owner agrees for such Owner and such Owner's heirs, successors, executors, administrators and assigns and the Association agrees, for itself and its successors and assigns, that each will permit free access at reasonable times and upon reasonable notices by each Owner for whose benefit an easement is created hereunder for the purpose of exercising his rights with respect to such maintenance, repair and/or reconstruction.

3.9 Utilities. There are hereby reserved by Declarant, together with the right to grant and transfer the same, easements over the Common Area, the Lots and the exterior and roofs of any improvement constructed thereon for the installation, maintenance, service, repair, reconstruction and replacement of electric telephone, water, gas, sanitary sewer lines, drainage facilities and the fire sprinkler water lines, as such facilities are shown on the recorded map of record of survey with respect to the Property or otherwise created.

3.10 Common Area. There are hereby reserved by Declarant, including, without limitation, its agents and representatives and prospective purchasers of Lots, together with the right in Declarant to grant and transfer the same, easements over the Common Area as the same may from time to time exist, for construction, display, sales offices and incidental parking and exhibit purposes in connection with the construction, development and sale of the Lots within the Property and for such other purposes as are consistent with this Declaration.

3.11 Discharge of Rights and Obligations. There is hereby reserved by Declarant, together with the right to grant and transfer the same, easements over each of the Lots for the purpose of permitting the Association, the Board, the Architectural Committee, Declarant and others to discharge their rights and obligations as described in this Declaration.

3.12 Parking. Each Owner upon acquiring a Lot hereby acknowledges and agrees that all parking spaces on the Property may be used by any Owner and/or the guests, customers and/or invitees of any Owner. There shall be no exclusive parking areas within the Common Area. The Association has full power to enforce any parking violations, including, without limitation, the right to call local police to issue citations or tow the vehicles (at the expense of the Owners of such vehicles) which are violating any parking rules adopted by the Association or the laws or ordinances of the Town of Minden. There shall be no parking in any designated loading area or loading zone within the Common Area. Temporary parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishings of services to the Association, the Owners, their guests, tenants, employees, and invitees and parking of vehicles belonging to or being used by Owners for loading or unloading purposes shall be allowed, provided that such temporary parking shall not unreasonably interfere with use of another Owner's parking. Pursuant to its authority in Section 7.1(i) below to adopt reasonable rules and regulations, the Association may place time limits on any trucks associated with delivery of materials, loading or transfer of materials, equipment service, and maintenance of any equipment for or within any lot or the Common Area from accessing the Property between specified hours. No (i) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (ii) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks etc.), (iii) buses or vans designed to accommodate more than ten (10) people, and (iv) vehicles having more than two (2) axles, (v) trailers, inoperable vehicles or parts of vehicles, may be parked within the Common Area. No vehicle may be parked in a manner which either restricts the passage of pedestrians or vehicles over streets or sidewalks within the Common Area, or extends beyond the limits of the space where the vehicle is parked. No maintenance of any vehicle may be conducted on the Common Area. The Association shall not redesign the parking areas that would be in violation of the parking requirements of the Town of Minden.

The Association may appropriately post the parking areas and driveways "ASSIGNED PARKING ONLY – SUBJECT TO TOW-AWAY" in accordance with any and all applicable

statutes, regulations and/or ordinances. The Association, or any Owner of any Lot, shall have the right to enforce the parking restrictions referenced in this Section 3.12, including towing of vehicles from the parking areas or driveway areas as may be allowed by law. Any disputes with respect to parking may be referred to the Association for review and disposition in its sole discretion.

3.13 General Restrictions. All present and future Owners of the Lots, by their acceptance of their respective deeds, covenant and agree as follows:

a. That the Common Area shall remain undivided (except as set forth in Section 1.13 above), and no Owner shall bring an action for partition, it being agreed that this restriction is necessary in order to preserve the rights of Owners with respect to the operation and management of the Property.

b. That if any portion of the Common Area encroaches upon the Lots, a valid easement for the encroachment and for the maintenance, so long as it stands, shall and does exist. In the event any structure is partially or totally destroyed and then rebuilt, the Owners of the Lots agree that minor encroachments of parts of the Common Area due to construction shall be permitted and that valid easements for said encroachments and the maintenance thereof shall exist.

c. That the Common Area is and shall always be subject to easements for minor encroachments of the Lots thereon and that a non-exclusive easement for ingress, egress and support for the Common Area is appurtenant to each Lot and the Common Area is subject to such easement.

d. A perpetual and non-exclusive easement for the purpose of ingress and egress in connection with the maintenance of the Common Area by the Association is hereby granted to the Association by each Owner over the entire Common Area.

#### 4. COVENANT FOR MAINTENANCE ASSESSMENTS.

4.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot of which it is the Owner, hereby covenants and agrees to pay, and each Owner by acceptance of a deed conveying a Lot, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association (1) Regular Assessments, (2) Special Assessments and (3) Capital Improvement Assessments, as such Assessments may be fixed, established and collected from time to time as hereinafter provided. The Regular, Special and Capital Improvement Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and improvements thereon and shall be a continuing lien upon interest in the Lot of the Owner against whom each such Assessment is made. Each such Assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due and shall bind such Owner's successors and assigns.

4.2 Regular Assessments. The amount of Regular Assessments for a fiscal year of the Association shall be determined by the Board pursuant to this Declaration, the Articles and Article VII of the Bylaws after giving due consideration to the current maintenance costs and

future needs, including the buildup of reserves for working capital and contingencies (i.e. painting and asphaltting), of the Association. The Regular Assessments for a fiscal year of the Association shall be paid in monthly installments. If the amount budgeted to meet Common Expenses for any period proves to be excessive in light of the actual Common Expenses, the Board at its discretion may either, by resolution, reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate.

Notwithstanding anything herein to the contrary, concurrently with the original conveyance of a Lot to an Owner by Declarant, the Owner shall be obligated to deposit funds into an account established by the Association or by Declarant (on behalf of the Association) in an amount equal to the estimated budget for Regular Assessments for the first year of operation for the Association.

4.3 Special Assessments. Each Owner shall be liable to the Association by way of Special Assessments for any damage to the Common Area or to any of the equipment or improvements thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of said Owner's employees, customers, agents, guests or invitees, both minor and adult. In the case of joint Ownership of a Lot, the liability of such Owners shall be joint and several. Any expense incurred by the Association in repairing such damage, together with costs and attorneys' fees, shall be a debt of the Owner causing the same, and the Board may specifically assess, by way of Special Assessment, said Owner for the amount thereof to the extent that any such damage shall not be covered by a policy of insurance. The Board may also levy Special Assessments against Owners who are specifically found to be excessive users of the services or facilities furnished or provided by the Association, including, but not limited to, trash removal or for any violation of this Declaration.

4.4 Capital Improvement Assessments. In addition to the Regular and Special Assessments, the Association may levy in any calendar year, a Capital Improvement Assessment applicable to that year only, provided that any such Assessment shall have the approval by vote or written consent of Members entitled to exercise not less than two-thirds (2/3) of the voting power of the membership.

4.5 Allocation of Assessments. Regular and Capital Improvement Assessments shall be levied against Lots in proportion to the Pro Rata Share.

4.6 Date of Commencement of Regular Assessments and Fixing Thereof. The Regular Assessments provided for herein shall commence as to any Lot (then existing by a record of survey) upon the first day of the month following the first Conveyance of a Lot by Declarant to an Owner. Until such time as all improvements and landscaping within the Common Area are completed, all Owners shall be exempt from paying that portion of any Regular Assessment which is for the purpose of defraying costs, expenses and reserves attributable to the uncompleted portion of the Common Area, including, without limitation, (i) property taxes, assessments and insurance premiums attributable to such uncompleted portions of the Common Area, and (ii) expenses incurred and reserves established for any weed abatement and trash pick-up for such uncompleted portions of the Common Area. The amount of such an exemption shall be determined by the Board in its reasonable discretion. Notwithstanding the foregoing, the Association, by a majority vote of the Board, may extend the

commencement date of Regular Assessments to a time not later than three (3) months following the completion of all improvements and landscaping within the Common Area, if Declarant, by a written agreement with the Association, agrees to maintain the Common Area until such extended date. Until a Lot is created by a record survey filed with the City and recorded in the Official Records, there shall be no Assessment levied against such Lot

4.7 Certificate of Payments. The Association shall, upon demand, furnish to any Owner liable for any Assessment, a certificate in writing signed by an officer of the Association, setting forth whether the Assessments on a specified Lot have been paid and the amount of the delinquency, if any. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

4.8 Duties of the Board of Directors. The Board of Directors shall use reasonable efforts to fix the amount of Regular Assessment against each Lot for each year at least ten (10) days in advance of such year and shall, at that time, prepare a roster of the Lots within the Property and Regular Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner during normal business hours. The Board shall use reasonable efforts to deliver written notice of the Regular Assessment to every Owner subject thereto at least fifteen (15) days prior to each fiscal year of the Association. The Board shall use reasonable efforts to fix the amount of all Capital Improvement Assessments at least thirty (30) days in advance of the date such Assessments shall become due and shall use reasonable efforts to give written notice at least fifteen (15) days in advance of the date such Assessments shall become due to each Owner subject thereto. In the event that the Board fails to follow such procedures, the Assessments shall not be invalidated.

4.9 Assessment of Lots Owned by Declarant. Without exception, each Lot of which Declarant is the Owner shall be subject to assessment in the same manner as any other Lot owned by any individual Owner.

4.10 Nonuse and Abandonment. No Owner may waive or otherwise escape personal liability for the Assessments provided for herein by nonuse of the Common Area or abandonment of such Owner's Lot.

## 5. NONPAYMENT OF ASSESSMENTS.

5.1 Delinquency. Any installment of any Assessment provided for in this Declaration which is not paid when due shall be delinquent. If any such installment is not paid within thirty (30) days after the delinquency date, a late charge equal to five percent (5%) of the delinquent amount may be levied by the Board for each delinquent installment and the delinquent installments shall bear interest from the date of delinquency at the then maximum legal rate, and, in addition to all legal and equitable rights or remedies, the Association may, at its option, declare all the installments of Assessments for the current Association fiscal year immediately due and payable. The Association may bring an action at law against the Owner personally obligated to pay the same or, upon compliance with the notice provisions set forth in Section 5.2 hereof, to foreclose the lien (provided for in Section 4.1 hereof) against the Lot, and there shall be added to the amount of such Assessment, interest thereon, the late charges, the costs of

preparing and filing the complaint in such action and, in the event a judgment is obtained, such judgment shall include said interest, late charges and actual attorneys' fees, together with the costs of such action. Each Owner vests in the Association or its assigns the right and power to bring all actions at law or lien foreclosure against such Owner or other Owners for the collection of such delinquent Assessments or installments thereof. In lieu of judicially foreclosing the lien, the Association, at its option, may foreclose such lien by proceeding under a power of sale as provided in Section 5.3, such a power of sale being given to the Association as to each and every Lot for the purpose of collecting delinquent Assessments.

5.2 Notice of Lien. No action shall be brought to foreclose an Assessment lien or to proceed under the power of sale provided herein less than thirty (30) days after the date of notice of claim of lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Official Records of Douglas County, Nevada. Said notice of claim of lien must (i) recite a good and sufficient legal description of any such Lot; (ii) the record Owner or reputed Owner thereof; (iii) a statement of the nature of the default and the amount claimed (which may, at the Association's option, include, in addition to the amount of the Assessments then due and owing, late charges, costs of collection and interest on the unpaid Assessments at the legal rate); (iv) the name and address of the claimant; and (v) if the lien is to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. Said notice of claim of lien must be signed by the person designated by the Association for that purpose or, if no one is designated, by the President of the Association.

5.3 Foreclosure Sale. Any such sale provided for above is to be conducted in accordance with the provisions of Nevada law, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same.

5.4 Curing of Default. Upon the timely curing of any default for which a notice of claim of lien was filed by the Association (which cure shall include, without limitation, the payment of all delinquent Assessments, accrued interest, late charges, attorneys' fees and other costs of collection), the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a fee, to be determined by the Association, to cover the costs of preparing and filing or recording such releases together with payment of such other costs, late charges, interest or fees as shall have been incurred.

5.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Assessments as provided above or to bring an action for injunctive relief.

5.6 Protection of Mortgagees. A breach of any of the restrictions, conditions, covenants or reservations herein contained shall not defeat or render invalid the lien of any bona fide Mortgage made in good faith and for value as to any Lot, or any portion or portions thereof,



but such restrictions, conditions, covenants and restrictions shall be binding upon and effective against any Owner or Owners of any such Lot, or any portion or portions thereof, whose title is acquired by foreclosure, trustee's sale or otherwise. Should any notice be sent by the Association to an Owner in connection with a breach by such Owner of any of the restrictions, conditions, covenants or reservations herein contained, a copy of any such notice shall be sent to such Owner's Mortgagee if such Mortgagee has filed a written request with the Association to receive such notice. No modification, amendment or termination of this Declaration shall be binding upon or affect the rights of any Mortgagee holding a Mortgage upon the interest of any Lot recorded in the Office of the Douglas County Recorder prior to the date of any such modification, amendment or termination is recorded in such office, without the prior written consent of such Mortgagee, provided that so long as such modification does not materially and adversely affect the Mortgagee's security, any modification or amendment to this Declaration in accordance with the terms set forth herein shall be binding upon such Mortgagee, so long as written notice of such modification is delivered to the Mortgagee.

5.7 Effect of Foreclosure. If any Lot subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (a) the foreclosure of any lien created herein or pursuant hereto shall not operate to affect or impair the lien of such Mortgage; and (b) the foreclosure of the lien of such Mortgage, the acceptance of a deed in lieu of foreclosure of such Mortgage or a sale under a power of sale included in such Mortgage shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the events of foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for charges as shall have accrued to the time of any of the events of foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the events of foreclosure. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay any Assessment levied pursuant hereto.

## 6. ARCHITECTURAL CONTROL.

6.1 Architectural Approval. No building, fence, wall, sign (except for identification signs which conform to the requirements set forth in Section 8.4 below) or other structure shall be commenced, erected or maintained upon the Property (including the Common Area), nor shall any exterior addition to or change or alteration therein (including painting) be made to any Lot until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee as provided for in Section 6.3 hereof. In the event the Architectural Committee, or its designated representatives, fails to approve or disapprove any plans and specifications within thirty (30) days after such plans and specifications have been submitted to the Architectural Committee, and the Architectural Committee acknowledges the receipt of same in writing to the applicant, the plans and specifications shall be deemed approved and this Section 6 will be deemed to have been fully satisfied. All improvement work approved by the Architectural Committee shall be diligently completed.

6.2 Landscaping Approval. No trees, bushes, shrubs or plants shall be planted or otherwise placed upon a Lot until the plans and specifications describing the species and showing the placement of any such trees, bushes, shrubs or plants have been submitted to and

approved in writing by the Architectural Committee as provided for in Section 6.3 hereof. Said plans as submitted shall show in detail the proposed elevations and locations of said trees, bushes, shrubs, or plants, including the locations and elevation of same in relation to all other Lots subject to these restrictions.

6.3 Appointments of Architectural Committee. Declarant shall initially appoint the Architectural Committee consisting of not less than three (3) members. Declarant shall have the right to appoint, remove and replace all members of the Architectural Committee until all of the Lots in the Property have been sold by Declarant. From and after such time, the Architectural Committee shall be appointed by the Board and shall be composed of three (3) or more representatives who need not be Owners. In the event of the death or resignation of any member of the Architectural Committee prior to the time when the Board is vested with authority, the Declarant shall have the right to appoint such member's successor.

6.4 No Liability. Neither Declarant, the Association, nor the Architectural Committee or the members thereof shall be liable for damages to anyone submitting plans or specifications to them for approval, or to any Owner affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve or disapprove any such plans or specifications. Every Owner and every person who submits plans or specifications agrees that he or she will not bring any action or suit against Declarant, the Association, the Architectural Committee or any of the members thereof to recover any such damages.

6.5 Notice of Non-Compliance or Non-Completion. Notwithstanding anything herein to the contrary, after the expiration of the later of: (a) one (1) year from the date of issuance of a building permit by the TOWN of Minden or other governmental authority for any improvements or, (b) one (1) year from the date of commencement of construction of any improvements on a Lot, said improvement shall be deemed to be in compliance with all provisions of this Article 6, unless notice of such non-compliance and noncompletion, executed by the Architectural Committee or its designated representatives, shall appear of record in the Official Records, or unless legal proceedings shall have been instituted to enforce compliance or completion.

6.6 Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, amend and repeal rules and regulations interpreting and implementing the provisions of this Section 6.

6.7 Variances. Where circumstances, such as topography, location of property lines, location of landscaping, or other matters require, the Architectural Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of the Architectural Committee, on such terms and conditions as it shall require; provided, however, that all such variances shall comply with the general plan for the improvement and development of the Property, the laws and ordinances of the Town of Minden and all other applicable governmental laws or regulations.

6.8 Appointment and Designation. The Architectural Committee may from time to time, by the vote or written consent of a majority of its members, delegate any of its rights or

responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of said Architectural Committee in all matters delegated.

6.9 Review Fee and Address. Any plans and specifications shall be submitted in writing for approval together with a reasonable processing fee established by the Architectural Committee. The address of the Architectural Committee shall be the principal place of business of the Association or such other place as the Architectural Committee may from time to time designate in writing to the Board. Such address shall be the place for the submittal of any plans and specifications and the place where the current rules and regulations, if any, of the Architectural Committee shall be kept.

6.10 Inspection. Any member or agent of the Architectural Committee may, from time to time, at any reasonable hour or hours, and upon reasonable notice, enter and inspect the improvements on any Lot subject to the jurisdiction of said Architectural Committee to assure compliance with the provisions hereof.

6.11 Compliance With Governmental Laws. Declarant and its successors and assigns, all future Owners of any Lot, and their successors and assigns, by their acceptance of their respective deeds, and the Association each agree to be, and they hereby are, bound by and subject to all laws and ordinances of the Town of Minden and all other applicable governmental laws or regulations. No building or other structure or addition or change or alteration thereof shall be commenced, constructed, erected, placed, altered, maintained or permitted to remain on any of the real property within the Property, including the Common Area, which is in violation of any of the laws or ordinances of the Town of Minden or any other applicable governmental laws or regulations.

6.12 Installation, Repair and Maintenance Duties of Owners. Each Owner shall construct, maintain, repair, replace, finish and restore or cause to be so maintained, repaired, replaced, finished and restored, at his sale cost and expense, the buildings and structures on such Owner's Lot including, without limitation, the roofs of such buildings, structural components and the heating and air conditioning equipment located thereon, repainting of all exterior painted surfaces and repairing surface cracks, cleaning the exterior side of all windows, and maintaining all curbs and walkways (if any) which have been installed by Declarant on the Lots, including the replacement thereof, in a safe, clean, sanitary and in a first class condition, and in good order, and repair subject to the control and approval of the Architectural Committee. It shall further be the duty of each Owner to pay when due all charges for all utility services which are separately metered to his Lot and the improvements thereon, unless the Association is paying for such services. Each Owner shall pay all costs for trash collection and removal if the Association has not contracted for common trash collection and removal for the Property.

6.13 Destruction of Owner's Building or Other Structures. Notwithstanding anything to the contrary contained in Section 6.12 above, if any building or other structure located on an Owner's Lot is damaged or destroyed by any casualty, the Owner of such Lot may elect not to restore such building or other structure following such damage or destruction, in which event such Owner shall promptly raze such damaged or destroyed building or other structure and shall forthwith grade, pave and/or landscape the area on which such building or other structure was located in a safe and sightly condition. If the Owner elects to rebuild the improvements on the

Owner's Lot, Owner shall diligently proceed to repair any such damage or destruction and reconstruct the damaged building improvements to substantially the same condition as existed immediately prior to the casualty.

7. DUTIES AND POWERS OF THE ASSOCIATION.

7.1 Duties and Powers. In addition to the duties and powers enumerated in the Articles, Bylaws or elsewhere in this Declaration and without limiting the generality thereof, the Association shall:

a. Maintain, repair, operate and otherwise manage all of the Common Area and all facilities, improvements, and landscaping thereon, and all property acquired by the Association. The Association shall be the exclusive entity to pursue any warranties or remedies with respect to the Common Area; and it shall be empowered to bring suits and settle and compromise any claims with respect to the construction, improvements, repair or replacement of the Common Area. Furniture, furnishings and personal property placed in the Common Area by the Association shall also be subject to the control of the Association and shall be maintained, repaired or replaced from time to time as necessary or desirable;

b. Have the authority (subject to Declarant's rights) to obtain and maintain, for the benefit of all of the Common Area, all fire hydrants, all water, gas and electric services and refuse collection, including refuse collection to each Member's Lot;

c. Subject to Declarant's rights, Grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Lots;

d. Maintain such policy or policies of insurance as are required under this Declaration or as the Board may deem necessary or desirable for furthering the purposes of and protecting the interests of the Association and the Members. If the particular type of business, use or special circumstances of any individual Owner is responsible for an increase in the premiums to obtain said policy or policies of insurance, the Board may require reimbursement from such Owner to compensate the Association for the higher premium payments or may levy a Special Assessment upon such Owner in the amount of the higher premium payments;

e. Have the authority to employ a property manager or other persons and to contract with independent contractors or managing agents to perform for a fee all or any part of the duties and responsibilities of the Association, provided that any contract with a person or firm appointed as a manager or managing agent shall be limited to a duration of not more than three (3) years, except with the approval by vote or written consent by Members entitled to exercise not less than a majority of the voting power of the Association;

f. Have the power to establish and maintain a working capital and contingency fund from Regular Assessments for such purposes and in such amounts as may be determined by the Board;

g. In the event an Owner fails to properly maintain, repair or replace the improvements on Owner's Lot, the Association shall have the right, upon the vote of a majority of the Board and after not less than thirty (30) days' notice to such Owner, to provide for such maintenance or repair or replacement, in which event the cost thereof shall be charged as a Special Assessment against such Owner;

h. Have the power and duty, subject to the rights of Declarant as provided herein, to enforce the provisions of this Declaration by appropriate means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel and the commencement of actions;

i. Have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (the "Association Rules") which may include the establishment of a system of fines and penalties enforceable against each Owner as Special Assessments. The Association Rules shall govern such matters in furtherance of the purpose of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association Rules may not discriminate among Owners (except based upon distinctions due to differing sizes of the Lots), and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices. Upon fulfillment of the notice requirements, said Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby, in the event of any conflict between any such Association Rules and any other provisions of this Declaration, the Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or Bylaws to the extent of any such conflict.

j. Have the responsibility and duty to manage and maintain all of the Common Area and the improvements thereon, including, without limitation, providing for common trash collection areas and containers, exterior security lighting, maintenance of all landscape areas and water irrigation system and such landscape areas, all lighting controls for Common Area, all fire sprinkling units and fire prevention systems located upon or within the Common Area, and mail delivery and collection facilities.

k. Maintain, manage and control the water system on the Property to and including the back of the meter to a building on the Lots; provided, however, each Owner is responsible for maintaining and managing the water system from the back of the meter into each Owner's respective Lot;

l. Maintain, manage and control the sewer and drainage system on the Property, to and including the main sewer and drainage lines; provided, however, each individual Owner is responsible for maintaining and managing the sewer and drainage system for all lateral lines from said mains to and for the benefit of the Owner's Lot;

m. Have the authority to enter upon any Lot in the event of any emergency involving perceived illness or perceived potential danger to life or property; and

n. The Manager shall keep and preserve separate and complete books of account covering the Common Expenses. Any Owner and/or its authorized representatives shall have the right to examine and/or audit the books of the Association at their sole cost and expense during reasonable business hours, following reasonable notice and without unreasonable frequency.

7.2 Nonliability and Indemnification. All members of the Board and Architectural Committee shall be indemnified for all acts or omissions performed within the scope of their office to the maximum extent permitted under applicable law.

7.3 Declarant Rights. Nothing in this Declaration limits, and no Owner or the Association may do anything to interfere with, the right of Declarant to (a) subdivide or resubdivide any portion of the Property, including, without limitation, changing the number, size or configuration of Lots in the Property as set forth in Section 1.13 above, (b) complete or modify improvements to and on the Common Area or any portion of the Property owned solely or partially by Declarant, (c) alter the foregoing or its construction plans and designs, (d) modify its development plan for the Property, or (e) construct such additional improvements as Declarant deems advisable in the course of development of the Property so long as any Lot in the Property remains unsold. Declarant's rights hereunder include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Lots by sale, resale, lease or otherwise. Each Owner, by accepting a deed to a Lot, hereby acknowledges that Declarant's activities may temporarily or permanently constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. Declarant may use any Lots owned by Declarant in the Property as models or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any improvement Declarant constructs or places on any portion of the Property. Declarant and its prospective purchasers of Lots are entitled to the nonexclusive use of the Common Area without further cost for access, ingress, egress, use or enjoyment, in order to (a) show the Property to prospective purchasers and (b) dispose of the Property as provided herein. Declarant, its successors and tenants, are also entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. Declarant may assign its rights under this Declaration to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Each Owner hereby grants, upon acceptance of his deed to his Lot, an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

## 8. USE RESTRICTIONS.

8.1 Applicable Law. Each Lot and improvements thereon shall be used in strict compliance with the zoning and other applicable ordinances of the Town of Minden and other governmental agencies having jurisdiction thereof; and any other document of record. All users

or occupants of the Property shall secure all necessary permits and licenses from the TOWN OF MINDEN prior to commencement of operations or occupancy.

8.2 Prohibited Uses. Without limiting any other restrictions herein, in no event shall any improvements be constructed, placed or used on the Property, nor shall the Property in any event be used for, any of the following purposes: (a) hotels and motels; (b) junk yards and recycling facilities; (c) commercial excavation of building or construction materials, except in the usual course of construction of improvements for the Lots; (d) distillation of bones; (e) dumping, disposal, incineration, or reduction of garbage, sewage, dead animals, or refuse; (f) stockyards and slaughter of animals; (g) refining of petroleum or any of its products; (h) smelting of iron, tin, zinc, or other ores; (i) cemetery; (j) jail and honor farms; (k) labor or migrant work camps; or (l) use as a mobilehome park or recreation vehicle campground.

8.3 No Residential Use. 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 residential or other non-business purpose.

8.4 Signs. Each Individual Owner shall be responsible for the cost of erecting and maintaining any and all identification signs on their Lot as provided for herein below. No sign or billboard of any kind shall be displayed on any portion of the Property or any Lot without the consent and approval of the Town of Minden and of the Architectural Committee; as may be amended or supplemented from time to time by the Association or Declarant. In addition, all signs advertising the sale, lease or rent of any Lot must be approved by the Architectural Committee prior to their placement upon any Lot. The Board, at its election, may summarily cause all unauthorized signs to be removed and destroyed, or, at the expense of the offending Owner to be brought into conformity with this Declaration and any sign standards adopted hereunder. Declarant, its successors and assigns, may erect and maintain such signs and other advertising devices or structures as it may deem necessary or proper in connection with the conduct of its operations for the development, improvement, leasing and sale of the Property.

8.5 Nuisances. No noxious or offensive trade or activity shall be carried on upon any Lot or any part of the Property, nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or the Owner's Lot, or which shall in any way increase the rate of insurance thereon.

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

8.7 Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot except for guide dogs for handicapped persons.

8.8 Rubbish. All rubbish, trash and garbage shall be regularly removed from the Property and the Lots and shall not be allowed to accumulate thereon. All exterior refuse containers, woodpiles, storage areas, machinery and equipment shall be prohibited upon any Lot without the prior written approval of the Board.

8.9 Hazardous Materials. Each Owner agrees that, to the extent that any hazardous or toxic materials or wastes (as defined by the laws of any local government, the State of Nevada and the United States) are used, stored or disposed of in and/or about any improvements on any Lot or the Common Area, such materials or wastes will be used, stored and disposed of in full and complete compliance with all applicable federal, state and local laws and regulations. Each Owner further agrees that it will not permit any escape of toxic or hazardous fumes or other emissions from any building or any Lot within the Property. Each Owner agrees to and does hereby indemnify, defend and hold harmless the Association, Declarant and the other Owners from and against any and all losses, costs, claims, suits or damages (including, without limitation, attorneys' fees) arising directly or indirectly from any violation of this provision by such Owner or any tenant or occupant of such Lot or improvements thereon.

8.10 Outside Installations. No outside television or radio pole, or antenna, shall be constructed, erected or maintained on any Lot. No wiring or installation of air conditioning or other machines shall be installed on the exterior of any buildings in the Property or be allowed to protrude through the walls or roof of the buildings, nor shall any other improvement or object be erected, constructed or maintained, without the prior written approval of the Architectural Committee.

8.11 No External Commercial Activity. Except as to maintenance and construction or reconstruction as provided for by this Declaration, no auction, sale or other commercial activity of any type shall be conducted upon any portion of the Common Area.

9. GENERAL PROVISIONS.

9.1 Covenants Run With The Land. Each easement, restriction and covenant contained herein shall be appurtenant to and for the benefit of all portions of the Property and shall be a burden thereon for the benefit of all portions of the Property, and shall run with the land and be enforceable as an equitable servitude. Each covenant to do or refrain from doing some act on the property of the covenantor (i) is for the benefit of the land of the covenantee, (ii) runs with the land owned by the covenantor and the land owned by the covenantee, and (iii) shall benefit or be binding upon each successive owner, during its ownership of the fee interest or leasehold interest in and to any portion of the land affected hereby and each person having any interest herein derived through any owner of the land affected hereby. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant and its successors, transferees and assigns.

9.2 Enforcement.

a. The Association and any Owner, including Declarant, shall have the right to enforce by proceedings at law or in equity all covenants, conditions, restrictions,



easements, reservations, liens and charges now or hereafter imposed by this Declaration, as amended and supplemented, the Articles and Bylaws, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these covenants, conditions restrictions, easements, reservations, liens or changes to enjoin or prevent them from doing so, to cause said violation to be remedied or to recover damages for said violation.

b. Should any Owner fail to comply with any of the provisions of this Declaration and should any such failure of an Owner continue for a period of thirty (30) days following written notice of such failure from the Association to the Owner (unless different time periods are therein stated), the Association shall have the right, but not the duty, to correct any such non-compliance by an Owner, and the cost thereof shall be borne by such Owner; provided, however, that if such costs are not paid to the Association within thirty (30) days after the Association has furnished a statement therefor, the Association shall have the right, but not the duty, to levy a Special Assessment against such Owner to cover such costs of maintenance and repair or correction, of such noncompliance. No one or more failures or refusals by the Association to accomplish such compliance which an Owner shall have failed to perform shall be deemed a waiver of the right in the Association to perform such work at a later time as to the same or different work or compliance.

c. The result of every action or omission whereby any covenant, condition, restriction, easement, reservation, lien or charge herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Association or any Owner, including Declarant, subject to these restrictions.

d. In any legal or equitable proceeding for the enforcement or to restrain the violation of these covenants, conditions, restrictions, easements, reservations, liens or charges or any provisions thereof, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

e. Failure by the Declarant, the Association or by an Owner to enforce any covenant, condition, restriction, easement, reservation, lien or charge herein contained shall in no event be deemed a waiver of the right to do so thereafter.

f. Nothing herein contained shall be deemed to require Declarant to enforce any covenant, condition, restriction, easement, reservation, lien, charge or provision hereof.

9.3 Negligence or Willful Misconduct. The cost of any maintenance services required to be performed by the Association which are caused by the negligence or willful misconduct of any Owner, or an Owner's employees, guests or invitees shall be borne entirely by such Owner.

9.4 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. In the event of any inconsistency with applicable law, this Declaration shall be deemed modified to comply with such law.

9.5 Term. Each easement established hereunder shall be in perpetuity. The covenants, conditions and restrictions of this Declaration shall run with and bind the Lots and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective, legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date of recordation of this Declaration, after which time they shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial ninety-nine (99) year term or any ten (10) year renewal period, all Owners execute and record an agreement in the Office of the County Recorder of Douglas County, Nevada terminating this Declaration.

9.6 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a planned development business park and Common Area within the Property. The article and section headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

9.7 Amendments. Except as set forth in Section 1.20 above, this Declaration may be amended only by an instrument in writing signed by not less than sixty-six and two-thirds percent (66 $\frac{2}{3}$ %) of the voting power of the membership of the Association; provided, however, this amendment provision shall not be amended to allow amendments by the assent or vote of less than seventy-five percent (75%) of the voting power of the membership of the Association. In the event a Lot is owned by more than one Owner, any one of the co-Owners may sign such instrument in writing on behalf of all co-Owners. Any amendment must be properly recorded in the Official Records of Douglas County, Nevada. Notwithstanding any other provisions of this Section 9.7 to the contrary, at any time prior to the first transfer of fee title to a Lot in the Property, Declarant may unilaterally amend or terminate this Declaration in its sole and absolute discretion by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.

9.8 Mergers and Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established upon any other property, as one general plan and scheme.

9.9 Merger of Ownership. The ownership of the entire Property by the same party shall not effect the termination of this Declaration.

9.10 Applicability of Governmental Regulation. The covenants, conditions and restrictions contained herein are separate and distinct from any zoning building or other law,

ordinance rule or regulation of the Town of Minden or any other governmental authority having jurisdiction over the Property, which law, ordinance, rule or regulation now or in the future may contain different requirements from or in addition to those contained herein or which may prohibit uses permitted herein or permit uses prohibited herein. In the event of any conflict between the provisions hereof and the provisions of any such law, ordinance, rule or regulation, the Owner must first comply with all governmental laws, ordinances, rules or regulations and then to the extent possible, the Owner must comply with those covenants, conditions and restrictions unless such compliance would result in a violation of such law, ordinance, rule or regulation, in which case, upon a finding that compliance herewith would result in such a violation, the Architectural Committee shall waive any such covenant, condition or restrictions to the extent that compliance therewith would result in such a violation, and, in connection therewith, the Architectural Committee may impose such conditional covenants, conditions and restrictions as may be necessary to carry out the intent of this Declaration.

9.11 Leases. Each lease of any Lot or building thereon shall be in writing and shall provide that (i) the tenant will fulfill, during the term of the lease, the obligations and responsibilities of an Owner under this Declaration (provided that the responsibility for the payment of Assessments may be allocated between an Owner and such Owner's tenant in such manner as they may agree; provided, however, that any such agreement relating to the payment of Assessments shall in no way affect or vitiate either such Owner's obligation to pay Assessments or the lien and charge upon such Owner's Lot of the Assessments levied), and (ii) the failure of the tenant so to comply shall be a default under the lease. Notwithstanding the failure of an Owner either to include such provisions in the lease or to enter into a written lease, the tenant shall be deemed to have entered into such tenancy subject to the provisions of this Section 9.11.

9.12 Notices. Any notice to be given to the Association or an Owner under the provisions of this Declaration shall be in writing and shall be delivered as follows:

a. Notice to the Association shall be deemed to have been properly delivered when delivered personally or sent by certified mail, postage prepaid, return receipt requested, to the address furnished by the Association or the address of its principal place of business.

b. Notice to Declarant shall be deemed to have been properly delivered when delivered personally or sent by certified mail, postage prepaid, return receipt request to:

K& S Properties  
3130 Airway Avenue  
Costa Mesa, CA 92626  
Attention: Kevin Coleman  
Telephone: (714) 754-4454  
Facsimile: (714) 754-0198

c. Notice to all Owners shall be deemed to have been properly delivered when delivered personally or placed in the first class United States mail, postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the

purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Owner's Lot. Any notice so deposited in the mail within Douglas County shall be deemed delivered forty-eight (48) hours after such deposit.

9.13 No Public Benefit. Neither Declarant nor any Owner nor any of the tenants or other occupants of the Property shall have the right to authorize, license or permit the use of the Common Areas for the benefit of any real property other than the Property. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Property or of any portion or portions thereof is by permission, and subject to control of the Owners. Notwithstanding any other provisions herein to the contrary, the Declarant may periodically restrict ingress to and egress from the Property as may reasonably be required to prevent a prescriptive easement from arising by reason of continued public use, so long as such restriction does not materially and adversely impact any access, ingress and egress to and from any Lot(s) within the Property.

9.14 Hold Harmless and Indemnification. Each Owner other than Declarant shall indemnify and hold harmless Declarant and the other Owners and their respective occupants from and against any and all claims, losses, liabilities and expenses (including court costs and reasonable attorneys' fees) arising from or in respect to (i) the death of, or any accident, injury, loss, or damage whatsoever caused to, the person or property of any Person as shall occur in or on the Lot of such indemnifying Owner (except to the extent such claims, losses, liabilities and expenses shall arise from or in respect of negligence or willful misconduct of Declarant or any Owner so indemnified), and (ii) any act or omission whatsoever of the indemnifying Owner and such Owner's occupants, to the extent such act or omission involves negligence with respect to the respective Lots of such other Owners, or any part or parts thereof or any improvements located thereon, or with respect to the Common Area.

9.15 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees in connection with any Lot or the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof.

## 10. INSURANCE.

10.1 Duty to Obtain Insurance. The Board shall obtain and continue in effect adequate blanket public liability insurance to an amount not less than Three Million Dollars (\$3,000,000.00), combined single-limit coverage, or in such greater amount as the Board may from time to time determine, covering all claims for personal injury and property damage arising out of a single occurrence on the Common Area. The Board shall also obtain and continue in effect fire insurance with extended coverage in an amount as near as possible to the full replacement value of the Common Area, without deduction for depreciation. Such insurance shall be maintained by the Association as named insured for the benefit of the Association, the Owners and the encumbrancers upon the respective Lots or any part thereof as their interests

may appear, subject, however, to loss payment requirements as set forth herein. The Board shall purchase such other insurance as the Board deems necessary, including, without limitation, errors and omissions, medical payments, malicious mischief, and vandalism insurance, fidelity bonds, workers' compensation and such other risks as shall customarily be covered with respect to planned developments similar in construction, location and use of the Property.

10.2 Right and Duty of Owners to Insure. Each Owner shall obtain "All-Risk" casualty and fire insurance in an amount as near as possible to the full replacement value, without deduction for depreciation or coinsurance, of all of the structural portions of the improvements on the Lot owned by such Owner in the Property. Each Owner shall provide fire and extended coverage insurance on the Owner's personal property and fixtures within all buildings and improvements located on the Owner's Lot. Each Owner shall carry public liability insurance to cover the Owner's individual liability for damage to person or property occurring upon the Owner's Lot or elsewhere upon the Property and arising out of the use of the Owner's Lot. Such insurance shall be in an amount not less than Two Million Dollars (\$2,000,000.00), or in such other minimum amount as the Board may from time to time determine, covering all claims for personal injury and property damage arising out of a single occurrence. All such policies as may be carried by Owners shall, to the maximum extent possible, contain waivers of subrogation of claims against Declarant, the Association, the Board, the officers of the Association and all other Owners. Each Owner shall review annually the limits of the Owner's insurance coverage and shall increase such limits as appropriate. Notwithstanding the requirement for annual review, the insurance policies carried by each Owner shall, to the maximum extent possible, provide for automatic adjustments of coverage levels to reflect the changes in costs resulting from inflation. Each Owner shall designate the Association as a named insured on all policies of insurance carried by such Owner, and shall furnish the Association with a current certificate of such insurance at all times. Such policies shall not adversely affect or diminish any liability under any insurance obtained by the Association, and duplicate copies of such other policies shall be deposited with the Board. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by the Owner to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

10.3 Notice of Expiration Requirements. All of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled or terminated, nor expire by their terms, without thirty (30) days' prior written notice to the Board, Declarant, and Owners and their respective first Mortgagees (provided that such Mortgagees have filed written requests with the carrier for such notice) and every other person in interest who shall have requested such notice of the insurer.

10.4 Insurance Premiums. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the Owners.

10.5 Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interest of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 10.1 shall be paid to the Board as trustees. The Board shall have full power to receive the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the Property for which the insurance was carried or otherwise disposed of as provided in Section 10 of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire. Any two Members of the Board may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

10.6 Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

10.7 Annual Insurance Review. The Board shall review the insurance carried by the Association at least annually for the purpose of determining the amount of the insurance referred to in Section 10.1 above. Prior to each such annual review, the Board shall obtain a current appraisal of the full replacement value of the Common Area and structural improvements thereon, without deduction for depreciation, by a qualified independent insurance appraiser. Notwithstanding the requirement for annual review, the insurance policies carried by the Association shall, to the maximum extent possible, provide for automatic adjustments of coverage levels to reflect the changes in costs resulting from inflation.

10.8 Required Waiver. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the right without such waivers: (a) subrogation of claims against tenants of the Owners, (b) any defense based on co-insurance, (c) any right of set-off, counter-claim, apportionment, proration or contribution by reason of other insurance not carried by the Association; (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of the insurer to repair, rebuild or replace, and, if the building is not repaired rebuilt or replaced following loss, any right to pay under the insurance, an amount less than the replacement value of the improvements insured or the fair market value thereof; (f) notice of the assignment of any Owner of its interest in the insurance by virtue of a Conveyance of any Lot; and (g) any right to require any assignment of any Mortgage to the insurer. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by

negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11. DAMAGE OR LOSS TO IMPROVEMENTS.

11.1 Restoration of Common Area. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Area and any other improvements insured by the Association, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical. The proceeds of any insurance maintained pursuant to Section 9 hereof shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Area and all other improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans if such plans are available, with such changes as are recommended by the Architectural Committee, subject to the provisions of Section 6. If the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than the estimated cost of restoration and repair, a Capital Improvements Assessment shall be levied by the Board upon the Owners and their Lots in order to provide the necessary funds for such reconstruction over and above the amounts of any insurance proceeds available for such purpose. Capital Improvements Assessments shall be borne by the Owners in the same proportions as Regular Assessments.

11.2 Restoration of Common Area. Subject to the terms of any grant deed of a Lot from Declarant to an Owner to the contrary, in the event of the damage or destruction of any portion of the Property which is not insured by the Association ("Destroyed Properties") then it shall be the duty of such Owner, as soon as may be practical, to repair and replace the Destroyed Properties or such portion thereof as will render such damage or destruction indiscernible from the exterior of the Destroyed Properties. Any reconstruction, replacement or repair required by this Section shall be in accordance with the original plans and specifications of the Property or plans and specifications approved by the Architectural Committee and the Mortgages of the first mortgage of record which encumbers the Lot.

11.3 Condemnation.

a. In the event of a taking or partial taking of any Lot, including any Common Area located thereon, by condemnation proceedings, the Owner of such Lot together with the Owner's Mortgagees shall have exclusive rights to prosecute the proceedings for the respective taking awards.

b. In the event of taking or partial taking of all or part of the Common Area owned by the Association by condemnation proceedings, Declarant shall have exclusive rights to prosecute the proceedings for the respective taking awards and Declarant shall be entitled to retain the proceeds of any such award provided, however, all other Owners may file collateral claims with the condemning authority over and above the value of the land of the area so taken.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

K&S PROPERTIES, a California General Partnership

By:

Its:

  
KEVIN A. Coleman

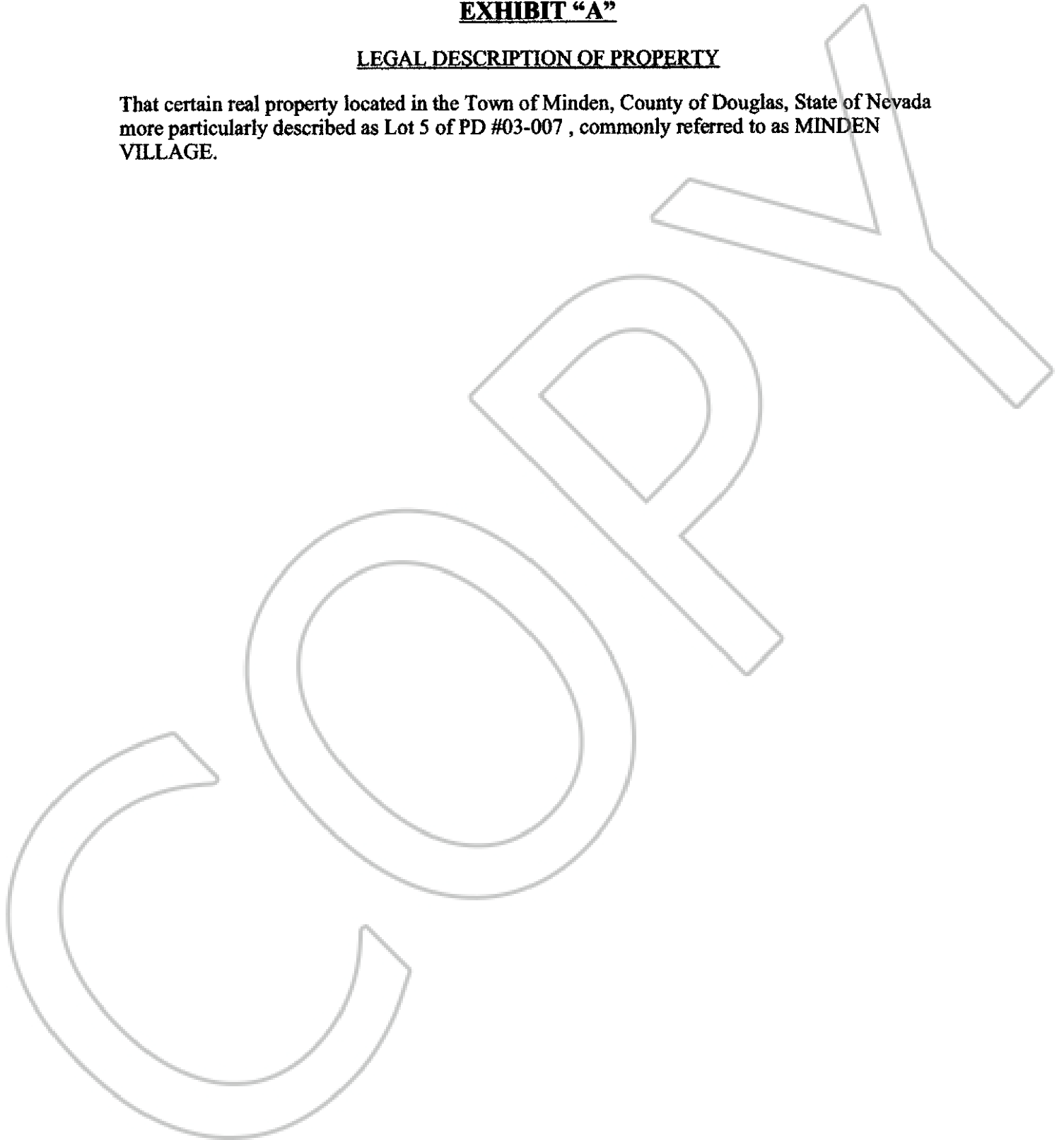
**COOPER**



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

That certain real property located in the Town of Minden, County of Douglas, State of Nevada more particularly described as Lot 5 of PD #03-007 , commonly referred to as MINDEN VILLAGE.



0609732  
BK0404PG03898

EXHIBIT "B"

SUMMARY OF PRO RATA SHARE

<u>Lot Number</u>	<u>Pro Rata Share Assessments</u>	<u>Votes</u>
Lot A	5.74%	5.74
Lot B	5.07%	5.07
Lot C	7.09%	7.09
Lot D	4.27%	4.27
Lot E	4.68%	4.68
Lot F	6.09%	6.09
Lot G	8.79%	8.79
Lot H	4.32%	4.32
Lot I	8.78%	8.78
Lot J	5.86%	5.86
Lot K	10.57%	10.57
Lot M	9.61%	9.61
Lot N	4.49%	4.49
Lot O	5.86%	5.86
Lot P	8.78%	8.78
TOTAL:	<u>100%</u>	<u>100</u>

EXHIBIT "B"

TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND GRANT OF EASEMENTS

0609732

BK0404 PG03899