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Association  
P.O. Box 10875  
Zephyr Cove, Nevada 89448

Douglas County - NV  
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FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
PINEWILD CONDOMINIUM HOMEOWNERS ASSOCIATION

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

I the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law: \_\_\_\_\_ (state specific law)



Signature

Attorney  
Title

Gayle A. Kern, Esq.

This page added to provide additional information required by NRS 111.312 Sections 1-2 and NRS 239B.030, Section 4.

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Recording Requested By &  
When Recorded Return To:

**PineWild Condominium Homeowners Association**

P.O. Box 10875  
ZEPHYR COVE, NEVADA 89448

**FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
PINEWILD CONDOMINIUM HOMEOWNERS ASSOCIATION**

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**FIRST RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
PINEWILD CONDOMINIUM HOMEOWNERS ASSOCIATION**

**RECITALS**

**R1.** Whereas, PineWild Condominium Homeowners Association is a Nevada non-profit corporation existing as a common-interest community under the laws of the State of Nevada, hereinafter Association;

**R2.** Whereas, the *Amended Declaration of Covenants, Conditions and Restrictions of PineWild* was recorded on March 11, 1974, as Document No. 72219, in the Official Records of the County of Douglas, State of Nevada;

**R3.** Whereas, a *Supplement to Amended Declaration of Covenants, Conditions and Restrictions of PineWild* ("1977 Supplement") was recorded on March 9, 1977, as Document No. 67465, in the Official Records of the County of Douglas, State of Nevada;

**R4.** Whereas, an *Amendment to Amended Declaration of Covenants, Conditions and Restrictions of PineWild, a Condominium Project* ("1979 Amendment"), was recorded on June 7, 1979, as Document No. 33236, in the Official Records of the County of Douglas, State of Nevada;

**R5.** Whereas, an *Amendment to Amended Declaration of Covenants, Conditions, and Restrictions of PineWild, a Condominium Project* ("1991 Amendment"), was recorded on January 25, 1991, as Document No. 243584 in the Official Records of the County of Douglas, State of Nevada;

**R6.** Whereas, the above-referenced documents, collectively the "Declaration" established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, the Lien and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of one hundred thirty-five (135) Units and various Common Elements located in the County of Douglas, State of Nevada, identified as Lot 1, which is defined as Unit Nos. 1 through 51 of the Official Plan of PineWild, a Condominium Project, Marla Bay, Douglas County, Nevada, and Lot 2, which is defined as Unit Nos. 52 through 135 of the Official Plan of PineWild, a Condominium Project, Marla Bay, Douglas County, Nevada, and more particularly described as set forth in Exhibit "A" attached hereto;

**R7.** Whereas, this PineWild common interest community also includes an additional facility this Restated Declaration is intended to govern, commonly described as Community Parking Structure combined with reconstructed tennis courts on the roof and maintenance storage for the Association; which structure is a common facility and contains forty spaces as limited common elements with long-term leases for the parking spaces, such spaces which revert to the

Association upon the expiration of these leases, all as set forth in the Foss-Rossini Plan, a copy of which is on file with the Association, and available for review, adopted by the membership and implemented to allow the Community Parking Structure and additional parking spaces to be constructed by the Association utilizing the funds contributed by the lessees under the Plan, and which is hereby confirmed and declared to be of full force and effect, except as provided for herein, for the duration specified in accordance with the terms and provisions contained therein and thereafter such parking spaces shall be common elements;

**R8.** Whereas, this PineWild common interest community also includes a buoy field, which this Restated Declaration is also intended to govern, in Lake Tahoe along the frontage of PineWild, existing under governmental permission for the entire field issued in the name of the Association for forty-two (42) buoys, for which each buoy has either been conveyed to the Owner and/or been granted a license to use by the Association to the licensee as the owner of the buoy as the Owner's personal property, which license to use and/or recognition of conveyance is hereby ratified and confirmed by this Restated Declaration. Since the creation of the buoy field, restrictions and obligations imposed by the Tahoe Regional Planning Agency ("TRPA"), the State of Nevada and other governmental agencies required that the continuation of the buoy field would be by permit to the Association only. In recognition of this requirement, the buoy users transferred their rights to the Association to operate the buoy field and comply with the requirements and consented to continue to be responsible for the costs and expenses of this operation and compliance with applicable governmental regulations and requirements. The buoy field will be subject to the Association's control and the Association will ensure compliance and standardization of the buoy field with all applicable governmental regulations including, but not limited to, TRPA regulations and requirements;

**R9.** Whereas, this PineWild common interest community is governed by the laws of the State of Nevada and particularly Chapter 116 of the Nevada Revised Statutes which was originally enacted in 1991 and amended through the years, which amendments require the amendment of or override various of the provisions of PineWild's current Declaration and therefore this revision is to bring our governing documents into compliance and conformance with the changes in Chapter 116 through the years PineWild has been in existence;

**R10.** Whereas, the Members of the Association, constituting at least sixty percent (60%) of the total voting power of the Association as required by the 1991 Amendment, desire to restate and amend the limitations, easements, covenants, restrictions, conditions, the Lien and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property;

**R11.** It is further hereby declared that all of the real property described herein constitutes a "Condominium" within the meaning of NRS 116.027 or superseding statute;

**R12.** It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Restated Declaration

of Covenants, Conditions and Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the real property and any part thereof;

**R13.** It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as defined in Nevada law and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns; and

**R14.** It is further hereby declared that each Owner, by acceptance of a deed to a Unit, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Restated Declaration which subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the PineWild Development, either individually or as a class, PineWild Condominium Homeowners Association or the public generally, regardless of whether the deed refers specifically to this Restated Declaration or to any such duty, obligation or agreement.

#### **ARTICLE 1: DEFINITIONS.**

**Section 1.1. "Action of the Association"** means and includes, other than actions required by the Restated Declaration or Governing Documents to be accomplished by vote of the Unit Owner membership, an action by the Board, or if lawfully delegated by action of the Board, action of a) the executive committee or other committee constituted by the Board, Restated Declaration or Governing Documents, b) the Association's officers or single officer, c) Association management, or d) any combination thereof so designated.

**Section 1.2. "Annexed Properties"** means those Units and/or Common Elements which are subsequently made subject to this Restated Declaration as provided by Article 18 of this Restated Declaration.

**Section 1.3. "Articles"** means the Articles of Incorporation of PineWild Condominium Homeowners Association, which are filed in the Office of the Secretary of State of Nevada, as such Articles may be amended.

**Section 1.4. "Assessment"** means Regular, Reserve, Special, or Special Individual Assessment assessed by the Association against Owners and their Unit in accordance with Article 5 of this Restated Declaration, any of which, except as provided herein, must be equal as to each and every unit affected by the assessment in that each Unit will pay the same dollar amount as each and every other unit upon which the assessment is imposed. A special

individual assessment may or may not be equal and any assessment may include additional charges, fees or costs as provided in Section 5.1(a) related to an individual Owner.

**Section 1.5. "Association"** means PineWild Condominium Homeowners Association, a Nevada nonprofit mutual benefit corporation. PineWild Condominium Homeowners Association is an "Association" as defined in NRS 116.011 or superseding statute.

**Section 1.6. "Architectural Standards"** means the Architectural Standards, Design Guidelines, Design Standards or Architectural Rules as may be established pursuant to Section 8.4.

**Section 1.7. "Association Rules" or "Rules"** means the rules and policies adopted by the Board, pursuant to Section 4.4 (a)(ii)(E) of this Restated Declaration, including any subsequent revisions as they may be amended from time to time. These Rules may include: a) Architectural Rules or Design Standards and Policies; b) Improvement Standards and Policies; or c) standards and policies governing utilization of Common Element or Limited Common Elements, as the Board may specifically adopt or otherwise develop through its actions, approvals or conditions over time so long as the membership is routinely informed at least thirty days prior to any enforcement action in writing and the standards and policies are adequately stated in the minutes of the Association relating to the specific action, approval or condition.

**Section 1.8. "Board of Directors" or "Executive Board" or "Board"** means the body designated in this Restated Declaration to act on behalf of the Association. The Board may act on behalf of the Association unless any action is specifically reserved to the Members or as required by Chapter 116.

**Section 1.9. "Bylaws"** means the Bylaws of the Association, including any subsequent revisions as they may be amended from time to time.

**Section 1.10. "Capital Improvements"** means the construction of a new and not previously existing component, structure or amenity. It does not include the repair, replacement, change or maintenance of the major components of the Common Elements.

**Section 1.11. "Chapter 116"** means Chapter 116 of the Nevada Revised Statutes as existing and as may be amended from time to time.

**Section 1.12. "Common Elements"** means any real estate and the improvements thereon within the Development other than a Unit and including Common Facilities as defined in Section 1.14. It includes all of the Limited Common Elements.

The buoy field, although located outside the Project's boundaries is also, or is considered to be, a Common Element as to the Association's ownership of its permit and rights thereto and the Association's management, supervision, and standardization of the buoy filed as a result of the applicable governmental regulations, including, but not limited to, TRPA regulations and

ordinances, subject to: a) the ownership of the buoy by Unit Owners as licensees and/or deed holders with rights to use, and the treatment of the buoys as limited common elements; and b) the assessment of the Unit Owners who are the buoy owners and/or licensee of all expenses for the buoy field and its permitting, maintenance, repairs and any costs of setting the buoys or buoy fields and/or other expenses attendant thereto.

**Section 1.13. "Common Expense"** means any use of common funds authorized by Article 5 hereof and includes, without limitation: (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Elements, Common Facilities, or any portion of any Unit that the Association is obligated to maintain or repair; (b) all expenses or charges reasonably incurred to procure insurance for the protection of the Association and its Board; (c) any amounts reasonably necessary for reserves for maintenance, repair and replacement of the Common Elements and Common Facilities or any portion of any Unit that the Association is obligated to maintain or replace, and for nonpayment of any Assessments; (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents; and (e) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Limited Common Elements as may be required by this Restated Declaration and/or Chapter 116.

**Section 1.14. "Common Facilities"** means landscaping, fences, utilities, berms, pipes, lines, irrigation systems, lighting fixtures, buildings, swimming pools, tennis courts, pier, buoy field, structures, and other facilities or improvements defined herein constructed or installed, to be constructed or installed, or currently located within the Common Elements.

The Community Parking Structure is a Common Facility containing the tennis courts and maintenance storage of the Association. It also includes the leased parking spaces as Limited Common Elements pursuant to and subject to the terms and conditions approved by a vote of the membership approving the Foss-Rossini Plan, a copy of which is on file with the Association and available for review, allowing for its construction, coverage and/or sharing of certain expenses, and transition out of any restrictions therefrom after completion of these terms and conditions. Pursuant to the Foss-Rossini Plan, the pre-paid leased parking spaces terminate on March 11, 2024 and these parking spaces will no longer be subject to any lease. The Foss-Rossini Plan provides that the use of the parking spaces will be subject to review by the Association. At the termination of the pre-paid parking leases and in the event the ongoing use of the Community Parking Structure remains available for parking spaces in the Community Parking Structure, the Foss-Rossini Plan is amended to require that all persons having the pre-paid parking leases shall have a first right of refusal on one parking space's proposed lease for a reasonable lease period to be offered by the Executive Board for such parking spaces. Those with multiple leases may identify which one of their leases they wish to exercise the first right of refusal. After the first right of refusal is offered to Owners as provided herein, in or about 2024, no such right will be

offered to any Owner thereafter. The terms and conditions of such proposed leases will be at fair market value determined by the Board in its sole discretion.

**Section 1.15. "Condominium"** means a common-interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions, as defined in NRS 116.027 or superseding statute.

**Section 1.16. "Crawl Space"** means that space between the bottom of the main floor and the ground on which the Unit is constructed.

**Section 1.17. "Design Standards"** means the Design Standards established pursuant to Section 8.4.

**Section 1.18. "Development"** means all real property and the improvements located thereon which comprise PineWild development and are intended to create a common-interest community as defined in NRS 116.021 or superseding statute.

**Section 1.19. "Director"** means a member of the Association's Board of Directors.

**Section 1.20. "Family"** means two or more persons who maintain a common household in a Unit whether or not they are all related to each other by birth, marriage or legal adoption.

**Section 1.21. "Foss-Rossini Plan"** means the plan adopted by the Members and implemented to allow the development and construction of the Community Parking Structure and reconstructed tennis courts on the roof and governs the leasing of the parking spaces through March 11, 2024. A copy of the Foss-Rossini Plan is on file with the Association and available for review. At the termination of the pre-paid parking leases and in the event the ongoing use of the Community Parking Structure remains available for parking spaces in the Community Parking Structure, the Foss-Rossini Plan is amended to require that all persons having the pre-paid parking leases shall have a first right of refusal on one parking space's proposed lease for a reasonable lease period to be offered by the Executive Board for such parking spaces. Those with multiple leases may identify which one of their leases they wish to exercise the first right of refusal. After the first right of refusal is offered to Owners as provided herein in or about 2024, no such right will be offered to any Owner thereafter. The terms and conditions of such proposed leases will be at fair market value determined by the Board in its sole discretion.

**Section 1.22. "Governing Documents"** is a collective term that means and refers to this Restated Declaration, the Articles, Bylaws, Association Rules, Architectural and Design Standards, Foss-Rossini Plan and the policies and resolutions adopted by the Board and distributed to the Members and other document provided in NRS 116.049 or superseding statute.

**Section 1.23. "Improvement"** means an alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any building, structure,



shed, driveway, parking space or parking area, paving, walk, fence, wall, stair, arbor, deck, pole, sign, tank, ditch, swimming pool and apron areas, pool storage and pump house, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of a Unit and which do not involve the roof or any load-bearing wall thereof.

**Section 1.24.** The "**Lien**" means the lien created by and perfected by the Amended Declaration of Covenants, Conditions and Restrictions for PineWild which was filed in the Official Records of the County of Douglas, State of Nevada, on March 11, 1974.

**Section 1.25. "Limited Common Element"** means the portion of the Common Elements and leased parking spaces in the Community Parking Structure which are for the exclusive use of one or more but less than all Units. Limited Common Element includes the portion of any chute, flue, duct, wire, conduit, bearing or other internal wall, front porch, bearing column, fireplace component, chimney component (except the chimney chase), plumbing facility or fixture, water line or fixture, electric line or fixture, gas line or fixture, sewer line or fixture, air conditioning line, duct or fixture, heating line, duct or fixture, dryer vent or fixture, or any other fixture, which serves one or more but less than all Units allocated solely to the Unit or Units which it serves, serving more than one or more but less than all Units or any portion of the Common Elements is a part of the Common Elements. Limited Common Elements include buoys, parking spaces, doorsteps, stoops, front entry ways, balconies, decks, air-conditioning systems, crawl spaces, and all exterior doors and windows. Other fixtures, including without limitation, plumbing or electrical, an internal parking space within the Community Parking Structure leased to a Unit Owner to serve a specific Unit, or buoys licensed or conveyed to a Unit Owner to serve a specific Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit. The term also includes any improvement specifically authorized by the Board as a Limited Common Element for one Unit or for more than one Unit but less than all Units. Limited Common Elements are subject to applicable provisions of Article 6.

**Section 1.26. "Maintenance"** means the exercise of reasonable care to keep buildings, landscaping, lighting, Units, Common Elements, Common Facilities, Limited Common Elements, Improvements, residences, and/or real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted.

**Section 1.27. "Map"** means the Subdivision Map and Condominium Plan entitled "Official Plan, PineWild, a Condominium, Marla Bay, Douglas County, Nevada," filed in the Office of the Douglas County Recorder on June 26, 1973, in Book 673, at Page 1089, as Document No. 67150, and that Subdivision Map and Condominium Plan entitled "Official Plat, PineWild, Unit No. 2, a Condominium," recorded October 23, 1973, in Book 1073, Page 1058, et seq., Official Records of Douglas County, Nevada, as Document No. 69660.

**Section 1.28. "Member"** means an "Owner" as defined in Section 1.30, below. When more than one person is an Owner of a Unit, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit or more than one Member of a Unit be eligible to serve on the Board of Directors. Member rights may be temporarily suspended under those circumstances described in Section 14.6, below.

**Section 1.29. "Mortgage"** means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably. **"First Mortgage"** means a mortgage having priority over all other Mortgages (except as provided by Section 5.10). **"Mortgage Lien"** means the lien or charge or equivalent security interest of any mortgage or deed of trust. **"Mortgagor"** shall refer to the trustor under a deed of trust, as well as a mortgage. **"Mortgagee"** shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. **"First Mortgage"** means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage which constitutes an encumbrance upon one or more Units first in priority of lien (except as provided by Section 5.10) over all other encumbrances upon said Unit(s) securing payment of money other than this Restated Declaration and liens for real estate taxes and assessments.

**Section 1.30. "Owner"** means a "Unit's Owner" as defined in NRS 116.095 or superseding statute. **"Owner of Record"** and/or **"Member of the Association"** includes an Owner and means any person, firm, corporation, trust, limited liability company or other entity in which title to a Unit is vested according to Association records.

For purposes of requiring compliance with the obligations hereunder and where the context requires, and not to change the preceding paragraph, the term **"Owner"** includes, the Owner's family, contract purchasers if such contract is recorded, lessees, tenants, servants, employees, guests, invitees, and licensees.

**Section 1.31. "Person"** means any individual, corporation, partnership, association, or other entity recognized by the laws of the State of Nevada.

**Section 1.32. "Regular Assessment"** means an Assessment levied on Owners and their Units in accordance with Section 5.2 hereof.

**Section 1.33. "Reserve Assessment"** means a regular Assessment levied on Owners and their Units to fund the Reserve Account in accordance with a reserve study in accordance with Section 5.2 hereof.

**Section 1.34. "Residential Use"** means occupation and use of a Lot for Residential dwelling purposes in conformity with this Restated Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of

Persons who may occupy Residential dwellings. **"Resident"** means any Person who resides in a Unit.

**Section 1.35. "Restated Declaration"** means this First Restated Declaration of Covenants, Conditions and Restrictions of PineWild Condominium Homeowners Association, recorded in the Office of the County Recorder of Douglas, Nevada as such may be amended.

**Section 1.36. "Separate Interest"** means each Owners' description of ownership of Unit or easements as provided herein or in Owner's deed and allocated use of Limited Common Elements.

**Section 1.37. "Special Assessment"** means an Assessment levied on Owners and their Units in accordance with Section 5.3 hereof.

**Section 1.38. "Special Individual Assessment"** means an Assessment made against an Owner and his or her Unit in accordance with Section 5.4 hereof.

**Section 1.39. "Unit"** means the portion of the Development designated for separate ownership or occupancy, the boundaries of which are described pursuant to NRS 116.093 and NRS 116.2102 or superseding statutes and include the interior surfaces of the perimeter walls, floors, ceilings, windows, and doors thereof, and a Unit includes both the portions of the buildings so described and the airspace so encompassed.

**ARTICLE 2: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.**

**Section 2.1. Elements of Separate Interest.** Ownership of each Separate Interest within the Development includes:

**(a) Unit.** A separate Unit as defined, depicted and described herein and identified by number on the Map.

**(b) Nonexclusive Easements.** Nonexclusive easements appurtenant to the Unit for the use and enjoyment of the Common Elements and as more particularly described in Section 2.2.

**(c) Limited Common Elements.** Limited Common Elements, as defined in Section 1.25.

The Limited Common Elements are set aside for the exclusive use and enjoyment of the Owners and occupants of the appurtenant Unit and the non-exclusive easements are subordinate to and must not interfere with the Limited Common Elements. The Limited Common Elements appurtenant to a Unit must not unreasonably interfere with Limited Common Elements appurtenant to another Unit or the Common Elements not set aside for exclusive use

and enjoyment. Except as provided in Section 14.6, no one may prevent access by an Owner to a Limited Common Element appurtenant to that Owner's Unit.

**(d) Furnaces, hot-water heaters and air conditioners.**

**(e) Altered or Improved Limited Common Elements.** Any altered or improved Limited Common Elements including, but not limited to crawl spaces and exterior doors and windows.

**Section 2.2. Owners' Nonexclusive Easements of Enjoyment to Common Elements.**

Subject to the provisions of this Restated Declaration, the Common Elements shall be held, maintained and used to meet the common interests of the Owners as provided in the Governing Documents. There shall be no use of the Common Elements except by the Owners or as may be delegated by Owners pursuant to Section 2.4 below.

**(a) Limitations on Nonexclusive Easements.** Every Owner (and Owner's Family, Resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the Common Elements, including ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following rights and restrictions.

**(i)** The right of the Association to adopt Rules as provided in Section 4.4(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's tenants and guests, subject to compliance with the due process requirements of Section 14.6 hereof.

**(ii)** The right of the Association, in accordance with this Restated Declaration, and/or the Association's Articles and Bylaws, to borrow money, which may or may not be secured and/or supported by an assignment to future income, for the purpose of improving, restoring or maintaining the Common Elements and Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage the property; provided, however, that the rights of any such Mortgagee in the property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 5.3 hereof.

**(iii)** The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting

power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Unit.

(iv) The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

(v) The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Unit in conjunction with other Units within the Development. The Owner of each Unit served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection shall be entitled to the full use and enjoyment of such portions of said connections as service Owners' Unit subject to terms and conditions of Section 14.6.

(vi) The right of the Association, by action of the Board, to charge reasonable admission, use and/or other fees for the use of the Common Elements or any portion thereof.

(vii) The right of the Association, by easement or through this Restated Declaration, of access into or on the Limited Common Elements for their maintenance, repair, replacement, connection or maintenance of utilities or services, health or safety concerns, emergencies, the ability of neighbors to connect utilities or services, or for any other Association purpose.

**(b) Waiver of Individual Owner's Right to Sever.** No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Unit or Units from the Common Elements or from the Association or from the rights in a buoy or the garage. Each Owner, by acceptance of a deed to a Unit hereby expressly waives all rights to do so. An Owner may convey or transfer his or her rights in a buoy or the garage to another Owner.

**Section 2.3. Persons Subject to Governing Documents.** All present and future Owners, tenants, lessees, contract purchasers and/or occupants of Units within the Development (on behalf of themselves, their Family, guests, tenants, invitees, agents, servants, employees, licensees and/or any other persons that might use the facilities of the Development in any manner, etc.) shall be subject to, and shall comply with the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.).

The mere accepting of a deed to any Unit; the entering into a lease, sublease or contract of sale with respect to any Unit; the occupancy of any Unit; and/or the acceptance of any guest pass shall constitute the consent and agreement of such Owner, tenant, occupant, guest and/or invitee that each and all of the provisions of this Restated Declaration, as the same or any of

them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents. It is the obligation of the Owner to ensure that any guest, invitee or other occupant is made aware of the Governing Documents and other conditions imposed by them and their obligation to read and comply with them.

Except as provided herein, the liability and obligation of any Owner for performance of any one and all provisions of the Governing Documents with respect to any Unit shall terminate upon the sale, transfer, or other divestiture of such Owner's entire interest in that Unit with respect to obligations arising hereunder from and after the date of such divestiture.

#### **Section 2.4. Delegation of Use.**

**(a) Delegation of Use and Membership Rights and the Leasing or Sale of Units.** Any Member who delegates use of their Unit or membership rights to guests, invitees, or other occupant, or who leases to or contracts with another person or entity for the use of their Unit shall post or make a copy of the Association Rules reasonably accessible within their Unit for the review by any such person

Unless otherwise restricted by law, every day for which a violation of this Restated Declaration, the Governing Documents, or Association Rules occurs may be considered a continuing violation.

Any fine or penalty levied pursuant to this Section 2.4 shall be considered a Special Individual Assessment as defined in Section 5.4, below.

**(i) Assignment of Rights to Family Members.** Any Member may delegate the Member's rights to use and enjoy the Common Elements and Common Facilities to members of the Owner's Family residing at the Development.

**(ii) Use by Invitees and Guests.** The invitees and guests of an Member shall have the right to use and enjoy the Common Elements and Common Facilities. Any such guest or invitee shall be subject to the same obligations imposed on the Member to observe the Governing Documents of the Association.

**(iii) Assignment of Rights and Responsibilities to Tenants/Lessees/Renters; Obligations of Rental Agent.** Any Member who leases or rents the Member's Unit to another person or persons will also ensure that such person or persons to whom are delegated, leased or rented the rights to use and enjoy the Common Elements or the Member's Unit are obligated to comply with the rules and other obligations of Members of the Association, that they have been given a copy of the Association's Rules and Regulations and confirmed that they have received, and agreed to abide by the Rules and Regulations in writing for the Member. Any violation by any such person or persons using or enjoying the Common Elements or the Member's Unit pursuant to any such lease or rental contract shall be deemed to be a violation by the Member or Unit Owner. The failure of the Member to control any such

person or persons using or enjoying the Common Elements or the Member's Unit, or the failure of the person or persons to comply shall be grounds for action by the Board or by Association Management to protect the use and enjoyment of the Development by others by appropriately imposing sanctions or conditions on the Member, or otherwise taking action to enforce the rules of the Association and other corrective action to reduce the effects of the actions of any such person or persons. Members who have leased or rented their Unit may, if they are a Member in good standing, use and enjoy the Common Elements.

Any Member who leases or rents the Member's Unit to another person or persons and has entered into an arrangement with a rental agent will also ensure: a) that such rental agent agrees to make sure that the Governing Documents, regulations, restrictions, Association rules or other conditions imposed upon anyone using or enjoying a Unit or the Common Elements are communicated to or read by any person or persons leasing or renting a Member's Unit; b) that the rental agent will inform any such person or persons that they are required to comply with these rules, restrictions or conditions whether they receive a copy of the Governing Documents or not, and confirm that they have received and agreed to do so by signature of at least one responsible individual; and c) that the rental agent has read and understands the requirements, will have their employees or other agents read and understand the rules, conditions or restrictions imposed on them, and that the rental agent and its employees or other agents agree to keep current on such provisions, and comply with them as confirmed in writing by the rental agent, a copy of which confirmation shall be delivered to the Association upon the signature of any such arrangement with a rental agent. Any violation by any such rental agent shall be deemed to be a violation by the Member or Unit Owner. The failure of the Member to control any such rental agent, or the failure of the rental agent to comply shall be grounds for action by the Board or by Association Management to protect the use and enjoyment of the Development by others by appropriately imposing sanctions or conditions on the Member, or otherwise taking action to enforce the rules of the Association and other corrective action to reduce the effects of the actions of any such rental agent, or otherwise correct or sanction the rental agent for any such violation.

**(iv) Assignment of Rights to Contract Purchasers.** Any Member who has sold that Member's Unit to a contract purchaser evidenced by a contract of sale that has been recorded, may delegate to such contract purchaser Member's rights and privileges of membership in the Association. Such Member shall be deemed to have delegated all rights to use and enjoyment of the Common Elements to a contract purchaser who has assumed occupancy of said Unit. No delegation of any membership rights or privileges to a non-Resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.5, below.

Notwithstanding any delegation, until fee title to the Unit has been transferred of record, a contract seller shall remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Member's Unit.

**(b) Submission of Lease.** All leases and rental agreements shall be in writing, require the tenant to comply with the Governing Documents, provide a copy of Rules and Regulations to be consistent with Section 2.2(a)(i) above, and state that any failure by a tenant to comply with the terms of the Governing Documents shall be a default under the lease. All tenants, when their tenancy is greater than 30 days, shall be registered with the Association and the Association shall have the right to charge a reasonable registration fee to each Owner.

**(c) No Timeshare or Interval Ownership Purposes.** No Owner shall offer or sell any interest in any residence under a "timesharing" or "interval ownership" plan as provided in Chapter 119A of the Nevada Revised Statutes. Transient occupancy should be in compliance with all local ordinances.

**(d) Discipline of Members for Violations by Lessees, Tenants, Renters, and Rental Agents.** An Owner who leases their Unit to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants, or the rental agent, with the provisions of the Governing Documents, and specifically Section 2.4(a)(iii) above.

In the event that any tenant, lessee, or renter fails to comply with the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include suspension of the tenant's, renter's, or Owner's privileges to use any Common Elements, except the Owner's Unit, access thereto and parking attendant thereto, or the imposition of fines and penalties against the Owner or restrictions on the right to rent. If the violation is of any parking rule or restriction, the Association may exercise all lawful rights to tow any vehicle immediately if the vehicle is: (a) blocking a fire hydrant, fire lane or parking space designated for the handicapped; or (b) poses an immediate threat of causing a substantial adverse effect on the health, safety, or welfare of the Unit's Owners or residents of the Development against tenant, renter or Owner with no obligation of actual notice to the vehicle's owner. The Association may direct the removal of vehicles improperly parked on property owned or leased by the Association as authorized pursuant to NRS 487.038, or improperly parked on any road, street, alley or in violation of the governing documents. The Association shall also comply with the provisions of NRS 116.3102(1)(s) or superseding statute.

Any fine or penalty levied pursuant to this Section 2.4 shall be considered a Special Individual Assessment as defined in Section 5.4, below.

**(e) Due Process Requirements for Disciplinary Action.** Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Development, or any part thereof, or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to impose disciplinary, corrective or other appropriate action against an Owner on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied:



(i) The Owner has received written notice from the Board or the Association's community manager detailing the nature of the lessee's or tenant's alleged infraction or misconduct and scheduling a hearing on the matter;

(ii) The Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing

(iii) If such voluntary action is insufficient to correct the violation or misconduct, the Member/Owner has the right to a hearing.

In the case of a violation of health or safety, or other emergency, appropriate action can be taken prior to a hearing so long as a hearing is conducted as soon as practicable thereafter.

**(f) Association Rules.** The right of any person to use and enjoy the Common Elements, Limited Common Elements, and Common Facilities shall at all times be subject to the Governing Documents.

With the exception of the right of use of any vehicular or pedestrian ingress or egress to go to and from the Unit, including any area used for parking, the Board shall have the right to impose monetary penalties or to suspend the use and enjoyment of any Common Elements and Common Facilities for the failure of a Member to pay any Assessments when due under the Restated Declaration, or to comply with any other rule or regulation imposed upon such Member pursuant to the Governing Documents; provided, however, that any such suspension shall be imposed only after such person has been afforded the notice and hearing rights more particularly described in Article 14 of the Restated Declaration.

Any fine or penalty levied pursuant to this Subsection shall be considered a Special Individual Assessment as defined in Section 5.4, below.

**Section 2.5. Obligations of Owners.** Owners of Units shall be subject to the following:

**(a) Maintenance by Unit Owner.** As provided herein and in Section 6.2, each Unit Owner shall have the exclusive right and obligation at his sole cost and expense to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the interior ceilings, floors and the perimeter walls of his Unit and surfaces of the bearing or other walls located within the Unit and the surfaces of any other finishes owned by the Unit Owner. The Owner shall have the exclusive right to substitute new finished surfaces for the finished surfaces then existing on interior ceilings, floors and walls, including, substitution to paint for paper or paper for paint, substitution of any type of paneling for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, substitution of work for linoleum or tile, or linoleum or tile for wood. Owners and their agents have the exclusive right to maintain, repair, paint, finish, alter, substitute, add or remove any fixture attached to the ceilings, floors or walls. This paragraph shall not be construed as permitting any interference with or damage to the

structural integrity of the building. Any other proposed change regarding any limited common element, floor, ceiling, roof, or any wall, or crawl space whether interior or not, whether believed to be load bearing or not, will require submission of such proposed change to the Association and no changes may be made without written approval. After obtaining written approval from the Association, the Unit Owner shall be responsible for obtaining governmental approval for all such changes and they must comply with the then-applicable building code. All such changes shall be the sole responsibility of the Owner for maintenance, repair and damages resulting therefrom. Any crawl spaces that have been improved or altered in any way shall be the sole responsibility of the Owner for maintenance, repair and damages resulting therefrom. If any change or alteration creates any instability or damage, the Association shall require the original condition be restored at the sole discretion of the Board of Directors and at the sole expense of the Owner.

Except as otherwise specified in the Deed, and the Subdivision Map, the Unit Owners do not own the undecorated and/or unfinished exterior surfaces of any structure nor the undecorated and/or unfinished inner surfaces of the perimeter walls, floors and ceilings, and/or any interior bearing walls and/or bearing partitions of the Unit except the inner decorated and/or finished surfaces thereof, such as paint, wallpaper, plaster, floor covering or other such portions of the project, of his Unit; nor does the Unit Owner own any pipes, wires, conduits, or other public utility lines running though the Unit except as tenant in common with the other Unit Owners. Such areas held in common shall constitute part of the Limited Common Elements.

**(b) Owner's Duty to Notify Association of Tenants & Contract Purchasers.**

**(i) Sale.** At least ten (10) days prior to the consummation of the closing of any sale or other transaction which will result in a change in the record ownership of the fee interest in a Unit, the transferring Owner or Owners shall provide the following information to the Association:

- (A)** The name of each transferor and transferee;
- (B)** The Unit number and street address of the Unit to be transferred;
- (C)** The mailing address of each transferee;
- (D)** The name and address of the escrow holder, if any, for such transfer and the escrow number; and
- (E)** The proposed date for consummation of the transfer.

**(ii) Lease.** Contemporaneously with (and in no event more than five days after) the execution of a lease or rental agreement for thirty (30) days or more, the Association shall be provided the following information in writing on a form provided by the Association:

- (A)** The name of each lessor and each lessee;
- (B)** The Unit number and street address of the Unit to be leased;
- (C)** The mailing address of each lessor (whether an Owner or prior lessee);
- (D)** The commencement and termination dates of the lease;
- (E)** The names of all persons who will occupy the Unit under the lease;
- (F)** The makes and models of all vehicles to be used by the persons who will occupy the Unit under the lease; and
- (G)** Other information designated.

**(iii) Effect of Failure to Notify.** In addition to other penalties within this Restated Declaration, until such time as the Association receives the notification required in Subsections (i) and (ii), above, a transferee or lessee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder which are duly provided to the transferor or lessor.

Pursuant to Section 4.4(a)(ii)(E), the Board has the power to adopt Association Rules consistent with this Restated Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

**(c) Contract Purchasers.** A contract seller may delegate the seller's Member rights, including voting rights, pursuant to Section 2.4(a)(iv), above. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the unit sold has been transferred to the purchaser. Any contract must be recorded.

**(d) Notification Regarding Governing Documents.**

**(i)** As more particularly provided in NRS 116.4109, and except as provided by NRS 116.4101, an Owner must furnish a purchaser before execution of any contract for sale of a Unit:

(A) A copy of the Governing Documents and the information statement required by NRS 116.41095;

(B) A statement setting forth the amount of the Regular Assessments, Special Assessment, Reserve Assessment, Special Individual Assessment, and any unpaid assessment of any kind currently due from the selling Owner;

(C) The current operating budget and/or reserve budget of the Association and a financial statement for the Association;

(D) A statement of any unsatisfied judgments or pending legal actions against the Association and the status of any pending legal actions relating to the Association of which the selling Owner has actual knowledge; and

(E) Any violations that are outstanding.

(ii) The Association must provide a statement, within ten (10) days after a written request by an Owner, that the Owner has been furnished the information set forth in Subsection (b)(i), above. The Association may impose a fee for providing copies of any documents equal to the reasonable cost of preparing and reproducing the requested materials as may be reviewed and revised by the Board from time to time as necessary. In addition, the Association may impose a reasonable fee to cover its costs incurred to change its records in connection with a change of ownership of a Unit, as may be reviewed and revised by the Board from time to time as necessary. The Association may also impose a transfer fee in any amount determined by the Association, which fee may be reviewed and set by the Board from time to time as necessary. The Association must provide a statement within ten (10) days after a written request by an Owner setting forth the amount of unpaid assessments against the Unit. The Association may charge additional fees if requested to provide the information on less than ten (10) days notice.

**(e) Payment of Assessments and Compliance with Association Rules.** Each Owner shall pay when due each Regular, Reserve, Special and Special Individual Assessment levied against the Owner and his or her Unit and shall observe, comply with and abide by any and all Governing Documents for the purpose of protecting the interests of all Owners or protecting the Common Elements and Common Facilities.

**(f) Responsibility for Conduct of Others.** Owners are fully responsible for informing members of their Family, contract purchasers, lessees, tenants, renters, rental agents, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, renters, rental agents, servants, employees, guests, invitees and/or licensees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family,

contract purchasers, lessees, tenants, renters, rental agents, servants, employees, guests, invitees and/or licensees.

**(g) Indemnification for Damage & Injury.** Owners are liable to the remaining Owners and the Association for any damage to the Common Elements or Limited Common Elements that result by reason of the willful misconduct, or negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, renters, rental agents, servants, employees, guests, invitees, or licensees (to the extent any such damage is not covered by insurance or subject to a deductible). Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Development due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees, unless the injury or damage incurred is fully covered by insurance. Any deductible or uncovered loss is the responsibility of the Owner.

Each Owner, by acceptance of his or her deed, agrees personally and for Family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and the Association and to hold such Owner(s) and the Association harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Limited Common Elements, if any, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner.

**(h) Discharge of Assessments.** Each Owner shall promptly pay any Assessments that are due and such assessments constitute a lien against his or her Unit.

**(i) Joint Ownership of Units.** In the event of joint ownership of any Unit, the obligations and liabilities of the multiple Owners are joint and several. Without limiting the foregoing, this Subsection (i) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Restated Declaration, including, without limitation, the payment of all Assessments.

**(j) Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Common Elements or Common Facilities, renunciation or abandonment of the Owner's Unit, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Unit pursuant to this Restated Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

Any outstanding or unpaid Assessment, obligation, lien, charge, fee, cost, amount due or other responsibility of Owner, whether monetary or not, shall be fully paid out of the proceeds of sale of the applicable Unit, for which the Member specifically agrees to and authorizes deduction and payment from such proceeds to the Owner/Member, unless fully satisfied prior to the close of escrow, or is otherwise resolved in a manner acceptable to the Association. This Restated Declaration specifically grants a right to instruct the Member's escrow agent, for which the Member's assent will not be withheld to accomplish such deduction and payment to the Association.

**(k) Obligation To Permit Entry by Association and/or Adjacent Owners.**

Each Owner shall be obligated to permit the Owners of adjacent Units to enter the Owner's Unit for purposes of performing installations, alterations or repairs to mechanical or electrical services which are reasonably necessary for the use and enjoyment of his or her Unit, provided that the adjacent Owner furnishes the Owner whose Unit is being entered upon with at least seventy-two (72) hours written notice of their intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform the use and schedule the entry in a manner that respects the privacy of the Residents of the Unit and the convenience of the Owner of the Unit. Each Owner shall also honor the right of the Association and its agents to enter Units as provided in Section 4.3(b) of this Restated Declaration.

**(l) Termination of Obligations.** Upon the conveyance, sale, assignment or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit which become due after the date of recording of the deed evidencing the transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Unit shall cease.

**Section 2.6. Transfer or Conveyance of Unit Terminates Obligations.** Except as allowed by law, and to the fullest extent allowed, upon the conveyance, sale, assignment or other transfer of a Unit to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Unit after the date of recording of the deed evidencing the transfer. No person, after the termination of the person's status as an Owner and prior to the person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Restated Declaration except as provided by law. The conveyance of a Unit to a new Owner will not extinguish any obligations of the transferring Owner for unpaid Assessments that were levied against the Unit prior to the subject transfer.

**Section 2.7. Ownership of Common Elements.** Ownership of each Unit includes ownership of an undivided fractional interest in the Common Elements, the numerator of which is one (1) and the denominator of which is the total number of Units, one - hundred thirty five (135).

**ARTICLE 3: RESTRICTIONS & USE OF PROPERTY.**

In addition to the restrictions established by law or set forth in the Governing Documents, the following restrictions are hereby imposed upon the use of Units, and/or Limited Common Elements, and/or Common Elements within the Development.

**Section 3.1. Residential Use.** Each Unit shall be used exclusively for residential purposes except as provided in Section 3.2, below. A Unit may not be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.

**Section 3.2. Restriction on Businesses.** No business of any kind shall be established, maintained, operated, permitted or conducted within the Development except home offices and/or such professional or administrative businesses provided, however, that there shall be no posted external evidence of such business/home office (*i.e.*, no signs, no increased pedestrian and/or vehicular traffic, activities are not apparent or detectable by sight, sound or smell from outside of the Unit, activities do not increase Association's insurance obligations and/or premiums, and/or activities are not inconsistent with Residential nature of the Development). Even if allowed by local ordinances, no day care shall be allowed.

**Section 3.3. Offensive Conduct, Nuisance, Obstructions, or Hazards.** The following activities are prohibited and shall not be performed on, upon or within the Development:

(a) Activities which are noxious, harmful or offensive as determined by the Board;

(b) Activities which are nuisances, harassment, annoy or cause unreasonable embarrassment, disturbance or annoyance to any Residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or which shall, in any way, interfere with Residents' use and enjoyment of their Units, Limited Common Elements, and/or the Common Elements and facilities thereon. When determining if any activity is a nuisance, the Association may or may not adopt Rules establishing such activities and in any event, shall exercise reasonable discretion based on an objective standard of what is normally and usually considered to be a nuisance or a material impact which reduces any other Member's right or rights of use or enjoyment of their Unit or the Common Elements;

(c) Activities which will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

(d) Activities which are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development;

(e) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Development;

(f) Activities which will obstruct entranceways or vehicular driveways located in or upon the Development or interfere with the free use thereof, except such obstruction as may reasonably be required in connection with repairs and maintenance;

(g) Activities which impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Development, without the prior written consent of the Association;

(h) Activities or conditions which would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

(i) Any excavation, improvement or work which in any way alters any Common Elements, Limited Common Elements or Common Facility from its existing state on the date such Common Element, Limited Common Element or Common Facility was originally constructed shall not be made or done except by the Association and, then, only in strict compliance with the provisions of the Governing Documents;

(j) Emission of unreasonable levels of exhaust fumes and/or noise and/or the parking, keeping and/or storage of dilapidated, unlicensed, non-operational and/or disabled vehicles;

(k) Division of Units in any manner, including into two or more apartments;

(l) Any improvement or alteration without all required governmental permits and approvals or other actions, and

(m) Any violation of the Rules or other governing documents of the Association.

Without limiting any of the foregoing, no Owner or other Resident shall cause and/or permit noise, sound(s) or sight(s) which would unreasonably disturb another's enjoyment of his or her Unit and/or the Common Elements.

**Section 3.4. Regulation of Owner Activity.** In order to promote the Owners' use and enjoyment of the Development and the esthetic and recreational purposes thereof, the Association, in its Rules, shall be entitled to set forth provisions that regulate or limit, subject to legal limitations, activities within the Development, including specifically any of the following:

(a) The rights of Owners (and Owner's Family, contract purchasers, lessees, tenants, renters and/or guests and invitees) to use portions of the Common Elements or Limited Common Elements;



**(b)** The number of guests each Owner may allow to use the Common Elements, including, but not limited to, recreational facilities;

**(c)** As allowed by the Board or Architectural Committee, the color and type of all drapes, blinds, curtains, shades, shutters or other window coverings visible to the Common Elements and/or another Unit. No tin foil, sheets, or other "non-window" covering shall be placed on any windows except as approved by the Board. No addition, alteration or modification, including but not limited to, shutters, including shutters or window hangings that may be seen from the exterior of any Unit, may be installed by a Unit Owner unless prior written authorization is received in accordance with any rules or regulations adopted by the Board;

**(d)** The decorations, furnishing, landscaping or embellishment of Units that are visible to the Common Elements and/or another Unit. Deck enclosures are not permitted;

**(e)** The placement or display of signs of any kind on or from any Unit or the Common Elements. However, the Association shall not prohibit such signs as are allowed by law. No Owner may place signs in or on the Common Elements;

**(f)** The display or flying of flags, windsocks and/or similar items within the public view from any portion of the Development, except that this limitation shall not prohibit or prevent the flying of a flag of the United States, as specifically allowed by law;

**(g)** The erection, construction, maintenance or placement of any radio, fiberoptics and/or electronic receiving and/or broadcasting service, including antennas, wiring or other means and/or any electrical, telephone or other wiring or similar items on the exterior of any Unit or any part thereof, except to the extent required to be allowed by state or federal law or as appropriate to allow common connection or reduced number of antennas or reception facilities attached to or on the Common Elements as may be determined in the sole discretion of the Board. There shall be no right of an Owner to require the Board to exercise its discretion;

**(h)** The erection, construction, maintenance or placement of any television service and/or wireless internet service, including multipoint video distribution service, antennas, masts, towers, poles, satellite dishes and/or wiring in Units or the Common Elements, except to the extent required to be allowed by law or as necessary to minimize such facilities and encourage common usage of antennas, dishes and other reception facilities attached to or on the Common Elements as may be determined in the sole discretion of the Board. There shall be no right of an Owner to require the Board to exercise its discretion.

**(i)** The erection, placement or maintenance of outbuildings, tents, shacks, sheds, trailer or other temporary building of any kind;

**(j)** The keeping, maintaining or breeding of animals, including, but not limited to, livestock, reptiles, domestic dogs and cats, rodents or birds. However, each Unit may keep not

more than two (2) domestic dogs, cats and other customary household pets, provided that the dog, cat, or other household pet is not kept, bred, or maintained for any commercial purposes. The Board may adopt size or other reasonable limitations. Service dogs are allowed in compliance with State and Federal laws.

While in the Common Elements, all dogs must be on a leash or otherwise controlled by a responsible person. Pet owners are responsible for the removal and/or proper disposal of their pets' bodily wastes and while in the Common Elements must always have a bag or utensil with them to remove or dispose of the waste. No pets are permitted to live in or on any deck or porch.

The Association has the right to prohibit the maintenance or presence of any animal within the Development which, after notice and hearing in compliance with Article 14, is found to be a nuisance to and/or threat to the safety of other Owners/Residents. In particular, no aggressive, dangerous and/or attack trained dogs or animals are permitted in the Development.

Any person whose pet or animal causes injury to another Owner or guest shall be solely liable to such Owner or guest and shall indemnify the Association for any responsibility or damages, including attorney fees and costs, arising out of any such incident or occurrence.

**(k)** The cost, assignment of rights to use, location and/or other matters related to the buoys or the buoy field, or other actions to manage the buoy field, or to comply with regulatory or governmental requirements, which the Owner consents to by exercising its rights under the license to use a buoy, except the Association shall not take any action that will infringe or adversely affect the Owner's property or personal rights in his buoy or its location;

**(l)** The use of power equipment, hobby/shop and/or wood-working equipment within the Development provided that this use is inside the Member's Unit, within reasonable hours, and without undue noise or nuisance to neighboring Unit Owners; and

**(m)** Modification or improvement of the Member's Unit or related Limited Common Elements.

Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article 14 hereof and enforcement as a Special Individual Assessment under Article 5, herein.

**Section 3.5. Parking Enforcement & Vehicle Maintenance.** As long as applicable ordinances and laws are observed, including but not limited to NRS 116.3102(1)(s), NRS 487.038 or comparable superseding statute, the Association may cause the removal of any vehicle which is in violation of the Governing Documents.

The Association shall set aside within the Common Elements at least one parking space for each Unit and such private roads and driveways as are necessary to provide vehicular access

from such parking spaces to any public road, including the traffic directions or other conditions on such roads. Each parking space shall be of suitable size for the parking of one automobile, and designated so as to provide maneuvering of automobiles in such a way that the automobiles may leave the parking area to enter any road in a forward direction. Each parking space may be used only for the parking of vehicles and objects as shall be permitted by the Rules, so long as the vehicle can fit within the dimensions of the parking space. The use of parking areas, roads, and driveways shall be subject to such rules as the Association may adopt. The parking spaces allocated to each Unit ownership shall entitle the Owner thereof to the exclusive right to use the space so allocated. Any remaining parking spaces may be allocated to Owners by the Association or may be designated as guest spaces, which guest spaces are available to Owners on a first-come, first-served basis. The Association may adopt rules and regulations to control parking in any way the Board deems appropriate.

No vehicle may be parked within the Development except within parking areas designated by the Association. Except as may be allowed in the Community Parking Structure, Owners may not park non-passenger vehicles, campers, trailers (of any kind), boats, recreation vehicles, commercial vehicles, or other vehicles within the Development, except as provided below in this paragraph and where required temporarily for deliveries, the construction, repair, refinishing, or maintenance of any part of the Development or for moving furnishing, equipment, or supplies into or out of the Development. However, such temporary parking is prohibited if it would prevent Residents from parking their passenger vehicles in their parking space, or parking area designated by the Association. An Owner may park a recreational vehicle within the Development if they have parked that recreational vehicle within the Development within areas designated by the Association both on and before the date that this Restated Declaration is filed with the Douglas County Recorder and the Association had given the Owner written authorization to do so.

Other than as provided below, no Owner shall lease the parking space(s) that they have the exclusive right to use separate and apart from the Unit to which it is appurtenant.

The cost of maintaining the roads, driveways and all common parking spaces shall be paid by the Association. A single parking space per Unit, as designated by the Association, shall never be severed from the Unit, except that the Owner or Owners involved may permit other Owners to use any such space, provided that such use is not prohibited and that this permission be revocable at any time without notice.

**Section 3.6. Owner Improvements.** No Owner may make any alterations or modifications to the exterior of the Units, to any Limited Common Element, to any crawl space, windows or doors without the prior written consent of the Association and all proper governmental and Association approvals, including the fulfillment of any conditions imposed to the satisfaction of the Association. Under no circumstances shall any Owner undertake any activity or work with respect to the Owner's Unit or any Limited Common Element that will impair the noise-carrying capacity, structural soundness or integrity of the Common Elements and/or another Unit.

**Section 3.7. Termination of Mechanics' Lien Rights and Indemnification.** No labor performed or materials furnished to and incorporated in a Unit with the consent or at the request of the Owner thereof, Owner's Family, lessees, tenants, renters or contract purchasers, or any of their agents, contractors, or subcontractors, shall be the basis for filing a lien against the Unit of any other Owner if said Owner has not expressly consented to or requested the labor performed or materials furnished, or against the Common Elements.

Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Elements for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Unit, at such Owner's request or with its consent.

The provisions of this section shall not apply to any labor performed or materials furnished at the request of the management agent or the Board. The Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Unit, the amount necessary to discharge any such lien, including all costs incident thereto, or to reimburse or indemnify any other Owner affected by any such lien to the extent known to the Association or otherwise made known to it by request of the other affected Owner.

**Section 3.8. Trash Disposal.** All trash, garbage, accumulated plant waste material, refuse, rubbish and debris shall be kept only in containers designated by the Association. No Owner or Resident shall permit or cause garbage, trash or other waste to be kept upon any portion of the Development, except in such containers. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Development to a public dump or trash collection area by the Owner, guest or invitee, tenant, renter at the Owner's own expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

**Section 3.9. Variances.** Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article 3, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Restated Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Section 8.9 for the granting of architectural variances.

**Section 3.10. Enforcement of Property Use Restrictions.** The objective of this Restated Declaration shall be to promote and seek voluntary compliance by Owners and other Residents with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use

infraction that does not necessitate immediate corrective action under Section 14.6 hereof, the Owner responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the non-complying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights. However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any enforcement action, including taking into consideration the potential benefits to the Association (and/or its Members) resulting from any such enforcement action as compared with the anticipated financial costs and may decide that analysis of these factors requires immediate or quick corrective action. In the event that corrective action is necessary and it is not practical or timely to give written notice to solve the problem in that health, safety, public appearance or other need makes earlier action necessary, the Association may act so long as written notice is given as soon as possible to the Owner and a hearing is allowed in a reasonable time shortly thereafter.

#### **ARTICLE 4: HOMEOWNERS ASSOCIATION.**

**Section 4.1. Association Membership.** Every record Owner of a Unit is a Member of the Association. The Owner(s) of a Unit will hold jointly one membership in the Association for each Unit owned. The membership will be appurtenant to each Unit and may not be separated from ownership of the Unit to which it relates. Persons who hold an interest in a Unit merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Unit through foreclosure or deed. Lessees who are delegated rights of use do not thereby become Members, although the lessee and members of the lessee's family will, at all times, be subject to the provisions of all Governing Documents.

Each Owner will remain a Member of the Association until their ownership in every Unit in the Development ceases, at which time their membership in the Association will automatically cease. Membership in the Association will not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Unit.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of their Unit, the Association will have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller will be null and void.

**Section 4.2. Voting.** Only Members and Owners in Good Standing will be entitled to vote, and only one vote may be cast for each Unit owned by said Member, as more particularly set forth in the Bylaws. When more than one person holds an interest in any Unit, all such persons will be Members, although in no event may more than one vote be cast with respect to any Unit and only one person may be a member of the Executive Board. Voting rights may be temporarily suspended under those circumstances described in Section 14.6, below.

**Section 4.3. Powers and Authority of the Association.**

**(a) Powers Generally.** The Association and its Board will have the responsibility of managing and maintaining the Common Elements and Common Facilities and will discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable law. In the discharge of such responsibilities and duties, the Association and its Board will have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of Nevada, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board will have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon will be as set forth in this Restated Declaration and Chapter 116.

**(b) Association's Limited Right of Entry.** The Association will have the right, when necessary, to enter any Unit or Limited Common Element, to perform the Association's obligations under this Restated Declaration, including: (i) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article 3 and Article 8 hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Elements, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subsection (b) is immediate in case of an emergency originating in or threatening the Unit where entry is required, or any adjoining Units or Common Elements, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Association must furnish the Owner or Owner's lessee with at least seventy-two (72) hours written notice or other method authorized by law of the Association's intent to enter the Unit, specifying the purpose and scheduled time of such entry and will make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Unit.

The Association's rights of entry under this subsection (b) will expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Development and the Owners of Units therein.

**(c) Association as Attorney-in-Fact for Owners.** Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to (i) manage, control and deal with the interest of

such Owners in the Common Elements so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with the Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles 9 and 10 hereof, and condemnation and condemnation awards, as provided in Article 11 hereof. The acceptance by any person or entity of any interest in any Unit will constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

**Section 4.4. Executive Board.** The affairs of the Association will be managed by or under the direction of the Board of Directors. The number and qualifications of the Directors will be as established in the Bylaws.

**(a) Powers of the Executive Board.** The Board of Directors will have all of the powers and duties set forth in the Governing Documents and Chapter 116, including:

**(i) Exclusive Power.** Except as expressly otherwise provided herein, the powers and duties of the Association which the Governing Documents do not reserve to the Members will be exclusively exercised and performed by the Executive Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association may not be exercised or performed by any Owner without the written consent of the Board of Directors.

**(ii) General Powers of the Executive Board.** Without limiting any powers of the Board of Directors conferred elsewhere in the Governing Documents or Chapter 116, the Board will have the following powers.

**(A)** To call meetings of the Members.

**(B)** To appoint and remove at pleasure all officers, committees or committee members, agents and employees of the Association, prescribe their duties, fix their compensation, and may require of them such fidelity bonds as it may deem expedient.

**(C)** To establish, fix, levy, assess and collect assessments against the Owners of Units within the Development and to enforce payment of such Assessments in accordance with Article 5 of this Restated Declaration. Any Assessments levied by the Association on its Members will be levied in accordance with and pursuant to the provisions of the Governing Documents.

**(D)** To authorize and cause the Association, subject to Section 4.5, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Elements or (3) subject to Section 2.2, enter into short term and limited special event agreements with Owners for use of dock, beach, garage, buoys, tennis court or clubhouse. No contract for professional

management may have a term of more than three (3) years and each such contract will be subject to all the other provisions hereof and may be terminable by either party for cause.

Any reference to the "term" of a contract as used in this Section 4.4(a)(ii)(D) will not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to the contract.

**(E)** To adopt, amend, and repeal Association Rules consistent with this Restated Declaration relating to: (1) the maintenance, repair, management and use of the Common Elements and all facilities thereon by Owners, their lessees, guests and invitees or any other persons who have rights of use and enjoyment of such Common Elements, Limited Common Elements and Common Facilities, including the right to restrict the use of certain land, facilities, air space, or structures to the Association or its officers, agents or employees; (2) minimum standards for the maintenance of landscaping or other improvements on Units; (3) architectural control and the rules governing the Architectural Committee under Article 8; (4) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article 3 hereof; (5) the conduct of an Owner and its family, contract purchasers, lessees, and their guests, invitees or licensees, with respect to the Development and the other Owners or occupants of the Development; (6) the conduct of disciplinary proceedings in accordance with Section 14.6 hereof; (7) reasonable charges for labor, services, or expenditures incurred at the request of an Owner or as a result of the actions of an Owner; (8) collection and disposal of refuse; (9) the interpretation of provisions of, and terms used in, this Restated Declaration (said interpretation will be conclusively presumed to be correct so long as it is not inconsistent with this Restated Declaration); and (10) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

The Association Rules may not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents will be deemed to prevail over those in the Association's Rules.

After adoption of a Rule or Rules, the Executive Board shall submit the Rules to the Members. Unless at least fifty percent (50%) of the Members vote in favor of the Rules, they shall not go into effect.

**(F)** To delegate its powers to committees, officers, or employees of the Association.

**(G)** To incur debt for the purpose of replacing, maintaining and improving the Common Elements, and to encumber the Development, including specifically member assessments, of the Association as security for the repayment of such debt.



**(H)** To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Restated Declaration and the intended use of the Development as a Planned Development.

**(I)** Except as expressly otherwise provided herein, the Board of Directors will have the exclusive right and obligation to manage and administer the Common Elements and to contract for all goods, services, and insurance, payment for which is to be made from the assessments.

**(J)** Open and maintain bank or other financial accounts on behalf of the Association and designate the signatories as required or prudent for such bank accounts.

**(K)** Subject to the requirements of NRS 116.31088 and any superseding statute, bring and defend actions on behalf of the Association to protect the interests of the Members or the Association as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. However, the Executive Board will have the sole discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

Prior to filing litigation (including mediation and / or arbitration) regarding any disciplinary action against a Member, the Board will comply with the requirements set forth in Section 14.6.

**(iii) No Active Business.** Nothing contained in this Restated Declaration, however, may be construed to give the Executive Board authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them. The Board of Directors will have no such power. However, this subsection (iii) will not prohibit the Association and/or its Board from acquiring, owning, leasing and/or selling any Unit or Common Element or Limited Common Element within the Development. The provisions of this section do not restrict or prohibit licensing of buoys or the leasing of parking spaces within the Community Parking Structure.

**(b) Duties of the Executive Board.**

**(i) Association Duties.** Cause all duties imposed on the Association by Governing Documents to be properly performed.

**(ii) Records.** Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.

**(iii) Supervise.** Supervise all officers, agents and employees of the Association and to see that their duties are properly performed.

**(iv) Assessments.** With reference to assessments of the Association:

**(A)** Fix, levy and collect assessments pursuant to the provisions of Article 5 of this Restated Declaration;

**(B)** Approve the annual operating and reserve budgets and fix the amount of the assessment against each Member for each assessment period in compliance with Nevada law;

**(C)** Prepare a roster of the Members and assessments applicable thereto;

**(D)** Send written notice of each assessment to every Member subject thereto; and

**(E)** Issue statements and / or certificates as required by Sections 5.11 and 8.15.

**(v) Insurance.** Contract for casualty, liability, earthquake, employees practices, and other insurance, sureties and/or bonds (including indemnity or fidelity bonds) on behalf of the Association with such coverages and in such amounts as required by this Restated Declaration and as deemed necessary by the Board in its sole discretion or as may be required by law.

**(vi) Vacancies.** Fill a vacancy or vacancies on the Executive Board.

**(vii) Discharge of Liens.** Pay any amount necessary to Bond or discharge any claim which may be or become a lien or encumbrance levied against the Development as a whole or any part thereof which constitutes a lien against the Common Elements, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they will jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens will be assessed against each such Owner and its Unit provided in Section 5.4. No decision resulting in such liability or assessment may be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 14.6 of this Restated Declaration.

**(viii) Enforcement.** Commence and maintain actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of the Governing Documents, the orders and awards of arbitration, or resolutions of the Board of Directors, or to enforce, by injunction or otherwise, the provisions of the foregoing.

The Executive Board will have the sole discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

The Board may suspend the voting rights of an Owner or suspend the privileges of an Owner to use the Common Facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the specific Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 14.6 of this Restated Declaration) with respect to the alleged violation before a decision to impose discipline is made. The Executive Board may delegate some or all of its enforcement rights to a Disciplinary Committee.

Notwithstanding anything to the contrary herein contained, neither the Board of Directors nor the Association will have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Unit, including access thereto over and across the Common Elements, except when such loss or forfeiture is the result of: (A) a judgment of a court; (B) a decision arising out of arbitration; or (C) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

If legal action is instituted by the Executive Board pursuant to this section, any judgment rendered in any such action must include all costs of collection, arbitration costs, mediation costs, court costs and reasonable attorneys' fees.

**(ix) Operating Requirements.** Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Restated Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Restated Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Units, the costs thereof will, as is reasonable, be assessed to such Units and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

**Section 4.5. Limitations on Powers of the Association.** Neither the Executive Board nor the Association will have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members.

**(a)** Entering into a contract with a third person to furnish goods or services for the Common Elements, the Units or the Association for a term longer than three (3) years with the following exceptions:

(i) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission or contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service or utility provider;

(ii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured;

(iii) Lease agreements for equipment not to exceed five (5) years' duration; and

(iv) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years' duration.

For purposes of this subsection, the five (5) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of the term. There shall be no automatic renewals of any contract.

(b) Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

The Board of Directors shall not convey, exchange, mortgage, encumber, transfer upon trust or otherwise dispose of any of the real property of the Association without the affirmative vote or written consent except as provided herein of at least a majority of the Members. No proxy vote shall be counted upon such issue at either an annual or special meeting unless the meeting notice shall have stated specifically that such a transaction would be considered and shall set forth the details thereof.

(c) Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

**Section 4.6. Nonliability of Officials.** Neither a Director, Officer, Committee of the Association or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), may be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith subject to the business judgment rule and which such person or entity reasonably believed to be in the interests of the Association. No

Released Party shall ever be liable to any Unit Owner or the Association for exemplary or punitive damages, regardless of the basis of any claim.

Without limiting the generality of the foregoing, this standard of care and limitation of liability will extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Elements and Common Facilities and enforcement of the Governing Documents.

The maximum indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents will be governed by Nevada law.

As set forth in Article 9, the Association shall purchase and maintain insurance on behalf of its Directors, officers, employees and/or agents against liability asserted against or incurred by any Director, officer, employee and/or agent in its capacity or status as such.

The provisions of this section are intended to reflect the protections accorded to volunteer directors and officers of common interest communities under Nevada law. In the event that Nevada law is amended, this section will be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

## **ARTICLE 5: ASSESSMENTS.**

### **Section 5.1. Assessments Generally.**

**(a) Covenant to Pay Assessments.** Each Owner of one (1) or more Units, by acceptance of a deed or other conveyance therefor (whether or not it will be so expressed in such deed or conveyance), covenants and agrees to pay to the Association: (i) Regular Assessments, (ii) Special Assessments, (iii) Reserve Assessments, and (iv) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance will be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board may deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. All Assessments specifically include any charge, claim, fine, fee, cost, collection expense, attorney's fee, and other charge or amount converted to such an assessment. No Owner may convey any interest in any Unit, buoy or garage unless all Assessments are paid in full prior to such conveyance. Any transfer of an interest in a buoy or the garage lease must be to another Owner.

Each such Assessment will be established and collected as hereinafter provided. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Elements or by abandonment.

**(b) Extent of Owner's Personal Obligation for Assessments.** The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions

and procedures for collection will run with the land, so that each successive Owner or Owners of record of any Unit within the Development will, in turn, become liable to pay all Assessments and charges assessed during the time they are record Owner of such Unit. All Assessments permitted or required herein, together with late charges, interest, costs, collection expenses, fines other charges, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, will be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Unit at the time the Assessment was levied. The Owner of such Unit will ensure that any outstanding charge, cost or obligation whatsoever, whether of a monetary, lien or other nature, will be satisfied prior to sale.

Any Grantee and/or Owner who acquires title to a Unit (whether at judicial sale, trustee's sale or otherwise) will be personally liable only for Assessments attributable to the Unit so purchased which become due and payable after the date of such sale, and will not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability and the Association agrees to such assumption. The Unit, however, will be subject to the lien as allowed by law and / or provided for in this Restated Declaration.

After a record Owner transfers, of record, any Unit they own, they will not be liable for any Assessments levied after the transfer with respect to that Unit only if the assessments or other claims, charges, obligations or liens have been fully paid or satisfied or if an express written assumption has been accepted by the Association prior to the transfer or any related close of escrow. If, for any reason whatsoever, an Assessment is unpaid after transfer and not assumed by the new Owner in a manner acceptable to the Association, any unpaid Assessment of a previous Owner will remain the debt of such previous Owner against whom assessed and the previous Owner will remain personally liable until paid or arrangements acceptable to the Association for full payment or satisfaction have been agreed to. A contract seller of any Unit will continue to be liable for all Assessments and charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder of Douglas County and only if any Assessments or other claims, charges, obligations, fines or liens have been fully paid or satisfied or if an express written assumption has been accepted by the Association.

**(c) Authority of Board.** The Board will have the power, duty and authority to levy Regular, Reserve and Special and Special Individual Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. Except for a fine or construction penalty, the Board may not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board will also have the power and authority to levy Special Individual Assessments against Owners.

**(d) Creation of Assessment Lien.** Since March 11, 1974, when the Amended Declaration of Covenants, Conditions and Restrictions of PineWild was filed in the Official Records of the County of Douglas, State of Nevada, all Assessments, together with late charges, interest, fines and reasonable costs (including reasonable attorneys' fees) for the collection thereof, have been, and continue to be, charges on the Units and the Restated Declaration of Covenants, Conditions and Restrictions of PineWild, including all amendments, such as the

Restated Declaration, has been, and continues to be, a continuing lien (the "Lien") upon the Unit against which such Assessment is made. The Lien is subject to foreclosure as provided in Section 5.9(b) hereof and Chapter 116. The Lien will continue to secure all Assessments, together with late charges, interest, costs, collection expenses, fines, other charges and reasonable costs (including reasonable attorneys' fees) for the collection thereof, made on any Unit notwithstanding the transfer of record title to such Unit, and any such transfer will be subject to the Lien.

**(e) No Avoidance of Assessment Obligations.** No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property owned by them from the Lien and charges hereof, by waiver of the use and enjoyment of the Common Elements or any facilities thereon or by abandonment or non-use of their Unit or any other portion of the Development.

**(f) Offsets.** All Assessments levied by the Association will be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment will be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

## **Section 5.2. Regular, Reserve and Emergency Assessments.**

**(a) Purpose of Regular Assessments.** All Regular Assessments levied by the Association will be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Units, Common Elements, and any real or personal property in which the Association holds an interest. Regular Assessments include Reserve Assessments.

**(b) Annual Budget; Regular Assessments, Reserve Assessments & Board Authority.** In accord with the timing provisions of NRS 116.31151 (or comparable superseding statute), if any, the Board must estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities, which may be levied as a Reserve Assessment), prepare, and adopt then distribute to all Members a proposed budget.

**(c) Membership Approval Requirements.** Within sixty (60) days after adoption of the proposed budget, the Board must provide the budget or a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the budget or summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, or is not timely ratified, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

**(d) Assessments to Address Emergency Situations.** In the event of an emergency situation, the Board may impose an assessment without ratification of a budget including such assessment. An emergency situation is any of the following.

**(i)** An extraordinary expense required by an order of a court.

**(ii)** An extraordinary expense necessary to repair or maintain the Common Elements or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

**(iii)** An extraordinary expense necessary to repair or maintain the Common Elements or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subsection (a), above, provided that, prior to the imposition or collection of an assessment under this subsection (d)(iii), the Board will pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution will be distributed to the Members together with the notice of assessment.

**(iv)** An extraordinary expense necessary to make up any shortfall or deficiency in insurance proceeds in the event of damage or destruction of one or more Units or the Common Elements or Limited Common Elements.

**(e) Allocation of Regular, Reserve or Emergency Assessment.** The total estimated Common Expenses, determined in accordance with subsections (a) and (b), above, will be divided and then allocated equally among, assessed against, and charged to each Owner/Unit, in that each Unit will pay the same amount as each and every other Unit upon which the Assessment is imposed. For Regular or Reserve Assessments, the total Assessment will be divided by the total number of Units, 135 at the time of this Restated Declaration, to determine the assessment per Unit.

**(f) Failure to Make Estimate.** If, for any reason, the Board fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year will be automatically assessed against each Owner and their Unit on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment will be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, is not a waiver or modification in any respect of the provisions of this Restated Declaration or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner will not affect the validity of Assessments based thereon so



long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

**(g) Assessment Due Date, Installment Payments & Delinquency.** The Regular Assessments levied annually against each Owner and their Unit for the current fiscal year may be divided into monthly, quarterly, semi-annual or annual installments so long as the respective Owner is not in default (i.e., current on all Assessments). Each installment is due and must be paid on the first day of the period in which it becomes due or in such other manner and/or on such other date or dates as may be established from time to time by the Association. To encourage prompt payment or early receipt of Assessments, the Board may assess a late fee or offer a discount for payments made quarterly, semi-annually, or annually so long as offered to each and every Owner equally and addressed in the Budget.

Installments of Regular Assessments will be late if: (a) not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due; or (b) sent with visible official postmark or date of the transmission on or before the tenth (10th) day of the month in which the Assessment is due. In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Sections 5.8 and 5.9, below, as to the late payment. Interest, late fees and other charges shall be assessed effective the 1<sup>st</sup> of the month if such assessments are late.

**Section 5.3. Special Assessments.**

**(a) Purposes for Which Special Assessments May Be Levied.** Subject to the membership approval requirements set forth in subsection (b), below, the Board may have the authority to levy Special Assessments against the Owners and their Units for the following purposes:

**(i) Capital Improvements.** Pursuant to Section 6.5, the Board may also levy Special Assessments for additional Capital Improvements within the Common Elements (i.e., improvements not in existence on the date of this Restated Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Elements or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves through Reserve Assessments) and to maintain adequate insurance on the Common Elements and existing Common Facilities in accordance with Article 9 hereof.

The Association shall provide written notice to each Owner of a meeting at which an Assessment for a Capital Improvement is to be considered or action is to be taken on such an Assessment at least twenty-one (21) days before the meeting. The Board, without member approval, may provide for Capital Improvements of less than 6% of the yearly Regular Assessment.

**(ii) Special Projects.** The Board may also levy Special Assessments for Special Projects that the Board determines would enhance the Project in the Board's discretion. The Board's assessment authority pursuant to this Section 5.3 (a)(ii) will be subject to membership approval requirements described in Section 5.3 (b).

**(b) Membership Approval.** In order for the Board to levy Special Assessments described in Section 5.3(a)(i), and (ii) hereof, the Board must adopt a proposed budget, and within thirty (30) days after adoption of the proposed budget with respect to the Special Assessment, the Board must provide a summary of the budget to all Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting a majority of all Owners reject the budget that includes the Special Assessment the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the Special Assessment shall not be imposed.

**(c) Allocation and Payment of Special Assessments.** When levied by the Board and approved by the Members as provided above, the Special Assessment will be divided among, assessed against and charged to each Owner and their Unit in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 5.2(e), above. Notice of the Special Assessment so levied must be mailed to each Owner.

Unless the time for payment is extended by the Board, payment of all Special Assessments will be due no sooner than fifteen (15) days after the Association gives the Owners written notice thereof.

The Board may, in its discretion, prorate the amount of any Special Assessment over any calendar period, proscribe frequency of payment and impose a late fee or offer a discount.

Installments of Special Assessments will be late if: (a) not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Assessment is due; or (b) sent with visible official postmark or date of the transmission on or before the tenth (10th) day of the month in which the Assessment is due. In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Sections 5.8 and 5.9, below, as to the late payment. Interest, late fees and other charges shall be assessed effective the 1<sup>st</sup> day of the month if such assessments are late.

#### **Section 5.4. Special Individual Assessments.**

**(a) Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board may impose Special Individual Assessments against an Owner in any of the circumstances described in subsections (i) through (x), below or as otherwise provided in the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner

pursuant to this section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 14.6 hereof. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Common Elements or Common Facilities.** If any damage to, or destruction of, any portion of the Common Elements or the Common Facilities, including any portion of a Unit which the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, the Board may cause the same to be repaired or replaced, and all costs and expenses and deductible, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) may be assessed and charged solely to and against such Owner as a Special Individual Assessment. If insurance covers the event or occurrence, the insurance proceeds shall be used first before any assessment is made.

**(ii) Expenses Incurred for a Unit.** If any damage to, or destruction of, any portion of a Unit which the Association repairs or maintains to prevent additional damage to Common Elements or an adjacent Unit and such damage is incurred because of any element or fixture within or serving exclusively a Unit, the Board may cause the repair and maintenance. All costs and expenses shall be charged solely to and against such Owner as a Special Individual Assessment.

**(iii) Expenses Incurred in Gaining Member Compliance.** If the Association incurs any costs or expenses, to accomplish: (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or their Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and other interest as allowed by law and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) may be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(iv) Required Maintenance on Units.** As more particularly provided in Section 4.3(b) and 6.3(b) (and without limiting the generality of those sections), if the Board, in its discretion, determines that any Unit is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash or improper vegetation control, the Association will have the right to enter the Unit, correct the offensive or hazardous condition, and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(v) Diminution in Insurance Proceeds.** As more particularly provided in Section 9.5, the Association may levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of Sections 3.3(c) and 9.5,

caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

**(vi) Increase in Insurance Burden.** The Association may levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, including but not limited to in violation of Sections 3.3(c) and/or 6.2(d), or any other violation of these governing documents caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance.

**(vii) Payment of Insurance Deductible.** The Association may levy a Special Individual Assessment for the amount of any insurance deductible as determined to be due pursuant to Section 9.9.

**(viii) Community Parking Structure Costs Required of Space Lessees.** The Association may levy a Special Individual Assessment for the amount of any cost or expense of the internal parking spaces of the Community Parking Structure in an equal amount to each lessee of any space as set forth in the Foss-Rossini Plan. This assessment must exclude any costs or expenses which are Common Expenses relating to the Community Parking Structure as a common element and will be assessed as Common Expenses.

**(ix) Costs of Buoy Field and Buoys.** The Association may levy a Special Individual Assessment on the Unit Owners who are the buoy owners for: (A) all expenses for the buoy field and its permitting, general maintenance or repairs and any costs of setting or positioning the buoys or buoy fields, which must be assessed equally as to each buoy; and (B) the costs and expenses of maintaining, repairing, or replacing a specific buoy or any special costs attributable solely to a specific buoy, directly to the Unit Owner who is the buoy owner.

**(x) Payment of Fines.** The Association may levy a Special Individual Assessment for the amount of any fine or other penalty properly imposed hereunder.

**(b) Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Section 5.4(a), notice thereof will be mailed to the affected Owner and the Special Individual Assessment will thereafter be due as a separate debt of the Owner payable in full to the Association within fifteen (15) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments will be delinquent if not received by the Association or its designated agent within fifteen (15) days from the due date. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Sections 5.8 and 5.9, below, as to the late payment.

**Section 5.5. Reasonableness of Assessments.** Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Unit against which the Assessment is imposed that will be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments will not pass to the Owner's successors in title unless expressly assumed by them with the express approval of the assumption by the Association.

**Section 5.6. Exemption of Certain Parts of the Development From Assessments.** The following real property subject to this Restated Declaration will be exempt from the Assessments, unless used as a residence:

- (a) Any portion of the Development dedicated and accepted by a local public authority;
- (b) The Common Elements and Common Facilities; and
- (c) Any Unit owned by the Association.

**Section 5.7. Maintenance of Assessment Funds.**

**(a) Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, must be promptly deposited in insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board which has offices located within the United States of America or as required by applicable state law, which accounts will be clearly designated as either an "operating" or "reserve" account or other accounts so designated by the Association.

The Association must establish and maintain cash deposit accounts into which will be deposited all Assessments. Disbursements from such account will be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Association will maintain other accounts necessary to carry out its purposes, including (at minimum) a reserve account for the repair, replacement, maintenance or restoration of the major replacement of the major components of the common elements as set forth in this Article 5, and applicable Nevada law. In addition, the Board will be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees, and as allowed by applicable Nevada law. The Board, and such officers or agents of the Association as the Board may designate, will have exclusive control of the accounts and investments and will be responsible to the Owners for the maintenance at all times of accurate records thereof. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as applicable Nevada law allows such commingling, and

so long as the separate accounting records described herein are maintained. Any interest received on such deposits will be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subsection (b), below.

**(b) Separate Accounts & Commingling of Funds.** Except as provided below, the proceeds of each Assessment will be used only for the purpose for which such Assessment was made, and such funds will be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association must maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 will be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Association is exempt from federal taxes, all sums allocated to capital replacement funds will be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service that will prevent such funds from being taxed as income of the Association.

**(c) Checks.** All checks (or other demands for payments of Association money) and/or notes of the Association must be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts will require the signatures of two Directors or an Officer (who is not a Director) and a Director.

### **Section 5.8. Collection of Assessments; Enforcement of the Lien.**

**(a) Late Assessments.** If any payment of a Regular, Reserve, Special (installment or lump sum), or Special Individual Assessment assessed to any Owner is not received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment will be late and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning from the due date until the same is paid, and be subject to a late charge approved by the Board for any late Assessments, such late charge to be applied for each thirty day period any assessment remains unpaid.

**(b) Effect of Nonpayment of Assessments.**

**(i) Remedies Available to the Association to Collect Assessments.** In the event of default in payment of any Assessment, the Association may commence any procedure for collection. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation by doing both or either of the following: initiating a legal action, assessing any and all late charges, fees, interest, liens and loss of access to common elements against the Owner personally obligated to pay the late Assessment and/or foreclosing the Lien against the subject Unit (or accepting a deed in lieu of foreclosure). The Association may perform judicial or nonjudicial foreclosure.

**(ii) Nonjudicial Foreclosure.** Each of the Owners, by acceptance of a deed to a Unit, gives the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose the Lien by private power of sale, and/or in accordance with NRS 116.3116, et seq., or superseding statutes, and further grants to the Association the authority and power to sell the subject Unit of such defaulting Owner, or any part thereof to satisfy the Lien, for lawful money of the United States to the highest bidder. The Association may assign its right and obligation as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and the Association will be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of an assignment of trusteeship, the Association may employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder. So long as the law so provides, the Association may not foreclose a Lien based on a fine for violation of the Governing Documents unless the violation threatens the health, safety, or welfare of the Residents of the Development. In the event of a nonjudicial foreclosure, whether completed or not, the Association shall recover all foreclosure expenses, attorney's fees, costs, expenses, interest or charges, of any kind and whatsoever nature.

**(iii) Judicial Foreclosure.** In the event that foreclosure is by action in court, reasonable costs, including attorneys' fees, will be allowed to the Association.

**(iv) Actions for Money Judgment.** In the event of a default in payment of any Assessment, or any other amount owing, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, or any other amount owing and attorneys' fees without foreclosure or waiver of Assessments.

**Section 5.9. Transfer of Unit by Sale or Foreclosure.** The following will govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Unit.

(a) Except as provided in subsection (b), below, the sale or transfer of any Unit will not affect the requirement and obligation with respect to the Unit of the payment of Assessments before the sale or transfer, and the Association can continue to foreclose the Lien in spite of the change in ownership.

(b) A holder of a prior encumbrance is responsible to pay Assessments, late charges, fines, transfer fees, interest, and costs of collection incurred before the sale or transfer of a Unit under a foreclosure or deed-in-lieu of foreclosure.

(c) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, will relieve the new Owner of that Unit (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Unit) from liability for any assessments thereafter becoming due or that became due prior to foreclosure and in the maximum amount allowed by law, whether it be six, nine or some other period of months allowed by law.

(d) No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, will affect the Association's right to maintain an action against the foreclosed previous Owner of the Unit personally to collect the delinquent assessments, late charges, fines, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**Section 5.10. Priorities.** Assessments are prior to all other liens and encumbrances on a Unit except: (a) liens and encumbrances recorded before the recordation of this Restated Declaration and liens and encumbrances which the Association creates, assumes or takes subject to; (b) a first security interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent, except that Assessments, late charges, collection costs, fines, any assessments made, attorneys fees and costs, are prior to all such first security interests to the extent of the amount of Assessments which would have become due in the absence of acceleration in the maximum amount as allowed by law; and (c) liens for real estate taxes and other governmental assessments or charges against the Unit. This section does not affect the priority of mechanics' or material men's liens, or the priority of other Assessments made by the Association.

**Section 5.11. Estoppel Certificate.** A certificate executed by the Association setting forth the amount of any due and unpaid assessments with respect to a Unit (or the fact that all Assessments due are paid, if such is the case) will be conclusive against the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner will be entitled to such a certificate within ten (10) business days after written demand therefore and upon payment of a reasonable fee.

**Section 5.12. Unallocated Taxes.** In the event that any taxes are assessed against the Common Elements, or the personal property of the Association rather than being assessed to the Units, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.2



and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

**Section 5.13. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments and other charges due the Association pursuant to this Restated Declaration which are in default.

The Association's rights under this Section 5.13 will be subordinate to the rights of any First Mortgagee.

**Section 5.14. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of the Lien, the benefit of any homestead or exemption law of Nevada in effect at the time any Assessment or installment thereof becomes delinquent.

#### **ARTICLE 6: MAINTENANCE RESPONSIBILITIES.**

The Development must be maintained in an attractive, safe, and sanitary condition and in a good state of repair.

##### **Section 6.1. Association Maintenance Responsibility.**

**(a) Common Elements.** Except as is provided in this Section 6.1 and Section 6.2(a), the Association is solely responsible for all maintenance, repair, and replacement within the Common Elements, Limited Common Elements, pier, buildings, foundations, roofs, siding, facilities, improvements, sidewalks, landscaping, parking spaces, parking areas, parking garages, storage containers, shelves, bins, streets, the clubhouse, tennis courts, swimming pools, swimming pool areas, porches, decks, deck extensions, fences, chimney chase, flue or chimney component, and utility facilities (excluding those utility facilities maintained by utility companies or agencies). With respect to Limited Common Elements, the cost and expense associated with the obligations contained herein shall be assessed to the Owners to which the Limited Common Elements are allocated, as required by Section 6.2(a) and to the extent not included in Section 6.2(a), the Association shall be responsible.

The Association is not responsible to maintain, repair, or replace the window frames, or components, including sliding doors, glass portions of windows or exterior doors appurtenant to Units, except if the existing glass breaks, the Association shall replace it with the equivalent glass as originally installed. The Owner shall be responsible for any additional expense associated with any glass that constitutes an improvement.

Only the Association may construct, reconstruct, refinish, alter or maintain any Improvement upon, or will create any excavation or fill or change the natural or existing drainage of any portion of the Common Elements or Limited Common Elements. No person may remove any vegetation from, or plant any vegetation upon the Common Elements, without the Association's express written approval.

**(b) Units.** The Association is not responsible to maintain, repair, or replace Limited Common Elements except as provided in this Restated Declaration. Pursuant to Sections 4.3(b) and 5.4(a)(v), above, the Association may, when necessary, enter any Unit to perform the Association's obligations under this Restated Declaration, including making necessary repairs that an Owner has failed to perform under Section 6.2, below, and/or perform work because a Unit or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

### **Section 6.2. Owner Maintenance Responsibilities.**

**(a) Common Elements.** Owners are solely responsible and liable for the costs incurred in order to repair or replace any portion of the Common Elements that is due to or caused by the willful or negligent act/omission of an Owner, unless such repair or replacement is covered by insurance carried by the Association. If the repair or replacement is covered by insurance carried by the Association, then the Association is only responsible to the extent of such insurance coverage, and the Owner whose willful or negligent act or omission caused the repair or replacement is responsible to pay the insurance deductible and the amount in excess of insurance coverage.

Owners are responsible to maintain, repair, and replace the components which are within the interior of their units or crawl space and specifically including, but not limited to, furnaces, duct work, water heaters, hot tubs, toilets, sinks, interior doors, windows, crawl space or other improvements to their units.

Owners are responsible for maintenance or repair of any improvements made to any Limited Common Element of their Unit, including, but not limited to the crawl spaces of the Owner's Unit.

Each owner will be responsible to maintain in good repair the chimney components within the interior of the Unit, such as the fireplace, fireplace screen, etc. The Unit Owner is also obligated to periodically (in such time periods as determined by the Board) maintain and clean the chimney/flue servicing the Owner's Unit. The Owner shall advise the Association maintenance of the Unit's chimney/flue has been completed or that in the professional opinion of a chimney cleaning company that such maintenance is unnecessary (e.g., that the owner has converted a wood burning fireplace to gas). If the Owner does not certify such maintenance has been completed or is unnecessary, the Association may effect such cleaning or maintenance, the expense of which shall be assessed to the Unit Owner. The Board

shall establish policies and procedures to implement the maintenance responsibilities set forth herein.

Owners are responsible to maintain, repair, and replace any air conditioning component, hot tub, or other improvement, including pads and mounts, which are installed on the exterior of the buildings.

Owners are responsible to keep in a clean and neat condition the parking spaces, front entry ways, decks, porches and areas under the decks, which are appurtenant to their Unit.

**(b) Units.** Each Owner will be responsible for any and all maintenance, repair and replacement of the Owner's Unit in every respect, excluding those utility facilities maintained by utility companies or agencies. During those months when a danger of freezing exists, Owners must maintain a temperature in the Units to preclude freezing and breakage of water lines.

**(c) Personal Property.** The duty to maintain, repair, or replace personal property and components and fixtures within Units that is due to and/or results from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Unit or any part of a building; and/or any other place or cause, will be borne by the owner of said personal property, components, and fixtures. Persons bound by this Restated Declaration agree to bear the risk of any such loss and that the Association will not be liable to reimburse them for property damage that is not covered by the Association's insurance.

**(d) Improvements or other additions.** The duty to maintain, repair, or replace and keep in quiet and good working order any improvements made by an Owner will be borne by the Owner. By way of example, and not intended to be an exhaustive list, such improvements may include new front doors, skylights, windows, and sliding glass doors. If such elements are damaged in the normal course, the Association shall replace the damaged element with the equivalent of the originally installed element. The Owner shall be responsible for any additional expense associated with an improvement. This obligation extends to improvements added to the property by the Owner with the Association's approval (or without, if installed in violation of the Governing Documents) which may include, but not be limited to, doors or windows different than those originally installed, hot tubs, skylights, utility reception systems or apparatus, doors in or changes to foundation walls, or those not requiring Association approval such as unit numbers or other decorative additions.

### **Section 6.3. Recovery of Costs of Certain Repairs and Maintenance.**

**(a)** In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts or omissions of an Owner and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs will be subject to recovery by the Association through the imposition of a Special Individual

Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 14.6.

**(b)** In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within thirty (30) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Sections 4.3(b) and 5.4(a)(iii) to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 14.6, hereof.

**Section 6.4. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association will cooperate in the performance of maintenance work.

**Section 6.5. Capital Improvements.**

**(a) Petition; Association Approval; Owner Approval.** One-third (1/3) of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of Capital Improvements on or to the Common Elements. Such petition will be in such form and will contain such information as the Association may require, including, without limitation, preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own motion move for the construction, installation or acquisition of a Capital Improvement, in which case such motion will be treated as if it were a petition duly submitted by the Owners.

**(b) Approval of Petition.** The Association may approve the petition if it determines that the proposed Capital Improvement is desirable for the beneficial use and enjoyment of the Common Elements and/or the Units, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

**(c) Bids.** Upon the approval of such petition by the Association, the Association will obtain firm bids on the total cost of constructing, installing, or acquiring the proposed Capital Improvement, and the most reasonable and best value bid or bids will be deemed the estimated total cost of such Capital Improvement.

**(d) Approval by Owners.** If during the fiscal year aggregate expenditures for Capital Improvements are expected to exceed 6% of the annual Regular Assessments for that fiscal year, the Association will present the proposed Capital Improvements and the estimated total cost thereof to all Owners for approval by a majority vote of the Owners. Upon approval by the Owners, a Special Assessment for Capital Improvement will be levied as provided in Section 5.3.

**(e) Construction.** After the levy of the Special Assessment for Capital Improvement, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such Capital Improvement as determined above, the Association will construct, install, or acquire, or contract for the construction, installation or acquisition of the proposed Capital Improvement.

**(f) Expenses for Development Not Approved.** If for any reason the construction or acquisition of the proposed Capital Improvement is not approved by the Association, or the Owners, if required, all expenses incurred by the Association with respect to the proposed Capital Improvement will be paid proportionately by the petitioning Owners. The Association may levy a Special Individual Assessment pursuant to Section 5.4 against said Owners for the purpose of paying such expenses. If the proposed project was initiated by the Board, such expenses will be paid by the Association.

#### **ARTICLE 7: EASEMENTS & RESERVATIONS.**

**Section 7.1. Encroachment Easements.** If any portion of the Common Elements encroaches on any Unit, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Elements are made subject to such easements. If the dimensions or location of a Unit or other Improvement differs from that shown and depicted on the Map, the actual dimensions and location will prevail over that shown and depicted on the Map for any and all purposes.

A valid easement for encroachment will never be created in favor of an Owner if the encroachment occurred due to the willful or negligent conduct of the Owner.

**Section 7.2. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewer, storm water drains and pipes, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage, electricity, cable television systems, communication facilities and similar public or quasi-public improvements or facilities.

By virtue of this easement, it will be expressly permissible for a providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Elements. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated except as initially designed and approved by the Association, whereby the Association's approval may not be unreasonably withheld. The easements provided for in this Section 7.2 will in no way affect any other recorded easement on the Development.

**Section 7.3. Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Elements, and any Unit, to

perform the duties of maintenance and repair of the Units, Common Elements and/or Common Facilities provided that any entry by any Member, the Association or its agents into any Unit may only be undertaken in strict compliance with Section 4.3(b).

**Section 7.4. Other Easements.** Each Unit and its Owner, and the Association as to the Common Elements, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Unit and Common Elements as shown on the Map, including but not limited to driveways now or hereafter located upon the Common Elements for ingress, egress and utility purposes.

**ARTICLE 8: ARCHITECTURAL REVIEW.**

**Section 8.1. Improvements Generally & Approval by Board.** No Improvement of any kind may be commenced, erected or maintained within the Development, nor may any addition to or change or alteration be made in or to the exterior of any Unit or which would affect the structural integrity of any Unit, or which would affect the common utility services or installations until plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same will have been submitted to and approved in writing by the Board as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography, finish grade elevations, etc.

**Section 8.2. Appointment of Architectural Committee.** If created by the Board, the Architectural Committee will consist of not less than three (3) Members of the Association, of which at least one member must be a Director and serve as chairman. All members of the Architectural Committee must be Owners.

The Architectural Committee, if created, will submit a copy of its findings and determinations to the Board. Upon its own initiative or upon the written request of the Architectural Committee or any Association Member, the Board shall review (and affirm, deny or alter) any decision of the Architectural Committee, provided that any such request be presented to the Board within ninety (90) days after submission of the Architectural Committee's findings and determinations to the Board.

If at any time there is not an Architectural Committee, the Board will exercise the functions of Architectural Committee in accordance with the terms of this Article 8.

**Section 8.3. Architectural Review Duties of Board.** It will be the duty of the Board to consider and act upon the proposals and plans submitted to it pursuant to this Restated Declaration subsequent to review and recommendation of the Architectural Committee, and to adopt Architectural Standards pursuant to Section 8.4.

**Section 8.4. Architectural Standards.** The Board may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Standards." The Architectural

Standards may interpret and implement the provisions of this Restated Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Development, provided that the Architectural Standards will not be in derogation of the minimum standards required by this Restated Declaration. In the event of any conflict between the Architectural Standards and this Restated Declaration, the Declaration will prevail. These Architectural Standards may include such interpretations and implementations as the Board may adopt or develop through its actions, approvals or conditions over time so long as the membership is routinely informed within thirty (30) days of adoption of new Standards, publication of the revised rules, through the Associations' website, or as part of the minutes relating to any approval where the revised Standards are set forth.

The Board may adapt and amend these Standards as necessary or appropriate in the opinion of the Board and publish them to the membership as set forth above.

**Section 8.5. Submission of Plans; Action by Architectural Committee and/or Board.**

Written proposals including applications, plans, specifications, warranties and other required promises or commitments, and such information and documentation, as the Board or Architectural Standards may require, for all proposed Improvements must be in writing and be delivered to the Association at least thirty (30) days prior to the next meeting of the Board, unless this requirement is specially waived by the Chairman of the Architectural Committee (or in this Chairman's absence, by the Chairman of the Board) and a later date is set before the Board meeting sufficient to allow review and processing of the application. These proposals will be submitted to the Architectural Committee for its review, analysis, recommendation and conditions or requirements prior to submission to the Board. Approval by the Board can contain conditions or requests for modification of particular aspects of the Owner's plan and specifications.

All approvals and rejections of requests must be in writing.

**Section 8.6. Basis for Approval of Improvements.** When a proposed Improvement is submitted to the Board for review subsequent to the submission to the Architectural Committee, the Board will grant the requested approval only if the Board, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner has complied with those provisions of the Architectural Standards, if any, pertaining to the content, and procedures for submittal, of plans and specifications;

(b) The Owner's plans and specifications: (i) conform to this Restated Declaration and to the Architectural Standards if any, in effect at the time such plans are submitted to the Board; and (ii) will not interfere with the reasonable enjoyment of any other Owner of their property; and

(c) The proposed Improvement(s), if approved, will be performed by licensed contractors and otherwise be consistent with the architectural and aesthetic standards prevailing within the Development, in harmony with the external structures and/or landscaping within the Development and are consistent with the overall plan and scheme of development and the purposes of this Restated Declaration.

The Board may determine that a proposed Improvement or component thereof is unacceptable when proposed on a particular Unit, even if the same or a similar Improvement or component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Elements or other Units or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development mitigate against erection of the Improvement or use of a particular component thereof on the Unit involved in the Owner's submittal.

It is expressly agreed that the Board will be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the Board acts reasonably and in good faith.

In approving a request for construction of an Improvement, the Board may condition approval upon the adoption of modifications in the plans and specifications or observance of restrictions as to location, noise abatement, color or materials modifications or similar mitigating conditions.

If rejected or denied, the Owner may modify the proposed Improvement and resubmit it to the Architectural Committee and Board for additional review and possible approval.

**Section 8.7. Non-Waiver.** The approval by the Board of any plans, drawings or specifications for any work done or proposed or for any other matter requiring the approval of the Board under this Restated Declaration, may not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval or impose different conditions upon other approvals. No rights are given other than those expressly set forth herein.

**Section 8.8. Meetings.** The Board will meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of a majority of the Board will constitute the action of the Board. The Board will keep and maintain a written record of all actions taken.

**Section 8.9. Variances.** The Board may, but is not required to, allow reasonable variances with respect to this Article 8 or any restrictions specified in Article 3 in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:



(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Restated Declaration, the Board must conduct a hearing on the proposed variance after giving at least forty-five (45) days prior written notice to all Owners of Units as determined by the Architectural Committee. The Owners receiving notice of the proposed variance will have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision will be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(b) The Board must make a good faith determination that: (i) the requested variance does not constitute a substantial deviation from the overall plan and scheme of development within the Development or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not detrimentally effect, or create an unreasonable nuisance, with respect to any other Unit, Common Elements or Owner within the Development.

(c) If the conditions justifying the variance cease to exist, the Owner will remove or modify the Improvement as the Board may direct to comply with the Architectural Standards at the time of the application, or if approved, any subsequent Architectural Standards.

**Section 8.10. Compliance with Governmental Requirements.** The application to the Association and the review and approval of any proposal, plans or other submittals will in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements. The Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

**Section 8.11. Commencement.** Upon receipt of approval pursuant to this Article 8, the Owner must, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction pursuant to the approval. Commencement must occur within one hundred twenty (120) days from the date of the approval or, if the activities required for such construction are restricted by governmental requirements, at the beginning of the next period allowing such construction.

If the Owner fails to comply with this section, any approval previously given will be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the one hundred twenty (120) day period, extends the time for the commencement. No extension will be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

**Section 8.12. Completion.** The Owner will complete the construction, reconstruction, refinishing or alteration of any such Improvement within eighteen (18) months after commencing

construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 8.12 the Board will proceed in accordance with the provisions of Sections 8.13 and 8.14, below, as though the failure to complete the Improvements was a non-compliance with approved plans. In any event, the Owner will finish the construction as soon as reasonably possible after its commencement.

**Section 8.13. Inspection.** Inspection of work and correction of defects therein will proceed as follows:

(a) Upon the completion of any construction of an Improvement, the Owner must deliver written notice thereof to the Association not later than thirty (30) days.

(b) Within ninety (90) days thereafter, the Board, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Association finds that such construction was not done in substantial compliance with the approved plans, it will notify the Owner in writing of such non-compliance within such ninety (90) day period, specifying the particulars of noncompliance and will require the Owner to remedy such noncompliance. There is no liability on the Association if such inspection failed to reveal any defect later discovered. This inspection is not for the Owner's benefit and no Owner or other party may rely in whole or in part on the inspection.

(c) If the Owner fails to remedy such noncompliance upon the expiration of thirty (30) days from the date of such notification or such other reasonable time as the Association may set, upon application of the Owners, the Board will then set a date on which a hearing before the Board will be held regarding the alleged noncompliance.

The hearing date will be not more than sixty (60) nor less than fifteen (15) days after the Board determines the existence of the noncompliance. Notice of the hearing date will be given to the Owner and, in the discretion of the Board, to any other interested party at least ten (10) days in advance of the hearing.

(d) At the hearing, the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board will determine whether there is a noncompliance, and, if so, the nature thereof.

If noncompliance exists, the Board may require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance. All expenses

incurred in connection therewith will be assessed against the Owner as a Special Individual Assessment.

(e) If the Board fails to notify an Owner of any noncompliance within ninety (90) days after receipt of the notice of completion, the Improvement will be deemed to be in accordance with approved plans.

**Section 8.14. Enforcement.** If it comes to the attention of the Association that a work of Improvement is proceeding without proper approval and/or in noncompliance with approved plans (and without the Owner notifying the Board of completion), the Association will be entitled to exercise enforcement remedies specified in Article 14, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Board review and approval is obtained.

**Section 8.15. Liability.** Neither the Board nor any Member thereof will be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) any inspection of the performance of any work; and/or (d) the development of any property within the Development; whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or them. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

#### **ARTICLE 9: INSURANCE.**

**Section 9.1. Types of Insurance Coverage.** Subject to such insurance coverage being “reasonably available,” the Association shall purchase, obtain, and maintain, with the premiums therefore being paid out of Association funds, the following types of insurance for the benefit of the Association with the coverage’s described below. Insurance is deemed to not be reasonably available if: (1) such insurance is not available from a reputable insurance company; or (2) if such insurance is available only at an unreasonable cost. If the Association determines that any coverage will not be maintained because it is not reasonably available, there is no requirement to secure such coverage and there shall be no liability imposed on the Association or its Board or Directors for failure to obtain any required coverage or for any loss or damage resulting from such failure.

(a) **Fire and Casualty Insurance.** Subject to the above, the Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on an all peril, replacement cost basis on all real property and improvements within the Development which, under Article 6 of this Restated Declaration, are the responsibility of the Association to maintain, repair and/or replace.

The insurance must be kept in full force and effect and the full replacement value, if applicable, of the insured property must be redetermined on an annual basis. The Association shall not be responsible for obtaining any insurance to cover Improvements or betterments installed by the Owners. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section must contain: (1) an agreed amount endorsement or its equivalent; (2) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent; (3) an extended coverage endorsement; (4) vandalism, malicious mischief coverage; (5) loss or damage by fire coverage; (6) other standard extended-coverage risks and all other perils customarily covered in projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement; (7) demolition and foundation cost coverage; and (8) a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The policies will name as insured the Association, all Owners and all Mortgagees as their respective interests may appear.

**(b) Public Liability & Property Damage Insurance.** The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each Director, any manager, the Owners and Residents of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Elements and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance will not be less than one million dollars (\$1,000,000.00) for claims for death, personal injury and property damage arising out of a single occurrence. The insurance must include coverage against water damage liability, liability for non-owned and hired vehicles, liability for property of others, and any other liability customarily covered with respect to similar developments unless not reasonably or commercially available or not offered at a reasonable cost in relation to the desired coverage, limits or exceptions. The Board may decide whether additional coverages or higher limits may be required, whether the insurance is reasonable as to cost or availability, appropriate limitations or ranges of deductibles.

**(c) Directors & Officers Insurance.** The Association shall obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association's directors and officers as insured parties. The limits of such insurance will not be less than one million dollars (\$1,000,000.00). Directors' and officers' errors & omissions insurance must insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director or officer, whether elected or appointed, while acting in its capacity as such.

**(d) Employee Practices Coverage.** If the Association has employees, the Association shall obtain and maintain a policy of employee practices insurance.

**(e) Personal Property Insurance.** The Association shall obtain and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable, or that is required by any institutional First Mortgagee.

**(f) Earthquake Insurance.** To the extent such insurance is available at a reasonable premium, the Association shall obtain and maintain a policy of earthquake insurance in such amounts and terms, including but not limited to deductibles, as the Association determines in its sole discretion.

**(g) Fidelity Bonds.** The Association shall obtain and maintain fidelity or theft bonds for such employees, agents, independent contractors, directors, or other persons who either handle, control or are responsible for, funds held or administered by the Association, whether or not such persons receive compensation for their services. The bond must name the Association as an obligee, and shall be in an amount at least equal to the sum of the following: (i) the maximum amount of funds that will at any one time, be in the custody of the Association and the persons and entities covered by the bond, (ii) an amount equal to three (3) months' Regular Assessments on all Units, and (iii) the amount of the Association's reserve fund. Such bond shall include a provision requiring at least ten (10) days' written notice before the bond can be cancelled or modified for any reason, which notice shall be given to the Association and each servicer which services a Mortgage owned by the Federal National Mortgage Association. In addition, a manager of the Association who is not an employee must obtain a fidelity or theft bond in an amount at least equal to the maximum amount of Association funds which will be in the manager's control at any one time.

**(h) Flood Insurance.** To the extent such insurance is available at a reasonable premium, the Association shall obtain and maintain a policy of flood insurance in such amounts and terms as the Association determines in its sole discretion.

**Section 9.2. Owners Right to Copies of Policies & Notice of Significant Changes in Coverage.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) will be retained by the Association and will be available for inspection by Members at any reasonable time. The Association will notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

**Section 9.3. First Mortgagees' Minimum Coverage Requirements & Right to Obtain Copies of Policies.** A First Mortgagee for a Unit may supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those First Mortgagees who have provided minimum requirements to the Association, the First Mortgagees can request that the Association increase its coverage to

match those minimum insurance requirements. The requesting First Mortgagees must pay any increase in the Association's insurance premiums due to the request. All First Mortgagees for any Unit in the Development have the right, upon written request, to obtain copies of current insurance policies and/or satisfactory evidence of the Association's payment of premiums, for which a reasonable fee may be charged.

**Section 9.4. Coverage Not Available.** If any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association will obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board will notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 9.5. Individual Fire & Casualty Insurance.** The Association shall not be held responsible for insuring those portions of the Development which are not included within the portions of the Development that the Association is responsible to maintain, repair and/or replace pursuant to Article 6 of this Restated Declaration. Notwithstanding anything contained in the Governing Documents to the contrary, Owners shall be responsible for obtaining the following insurance: their own personal liability insurance; insurance on the personal property contents of their Unit; insurance for those portions of the Development which pursuant to Article 6 of this Restated Declaration are the responsibility of the Owners to maintain, repair, and/or replace; insurance for improvements to the crawl spaces; insurance on the following types of property contained within a Unit, regardless of ownership: fixtures, improvements, and alterations that are part of the building or structure, and appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping, upgraded windows and upgraded doors; and the insurance for any additions to or alterations that the Owners may make which increases the value of the Development or Unit above the value of the Development or Unit as originally constructed, or otherwise increases the risk to the Development.

Except as provided in this section, no Owner may separately insure any portion of the Development which is covered by insurance maintained by the Association. In all cases, the Owner's insurer shall have the primary responsibility for any loss or claim before the Association's insurance coverage takes effect. An Owner who violates this section shall be liable to the Association for any diminution in insurance proceeds otherwise payable to the Association, and the Association shall levy a Special Individual Assessment against such Owner in the amount of such diminution.

**Section 9.6. Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 9.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

**Section 9.7. Distribution to Mortgagees.** Any Mortgagee has the option to apply insurance proceeds payable on account of a Unit in reduction of the obligation secured by the Mortgage of such Mortgagee.

**Section 9.8. Owner's Insurance.** Except as set forth in this Article 9, an Owner may carry whatever additional insurance with respect to their Unit that they desire.

**Section 9.9. Deductibles/Costs in Excess of Insurance Proceeds.**

(a) An Owner responsible for causing an insurable loss as defined in Section 2.5 will be obligated to contribute the Owner's proportional share of the insurance deductible, and/or costs in excess of insurance proceeds if any, corresponding to the insurance covering the loss. The proportional share (as determined by the Board) of each Owner responsible for causing the insurable loss under this subsection will be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of the total of Owners responsible for causing the insurable loss.

(b) With respect to losses other than as set forth in Subsection (a), all Owners shall be obligated to contribute their proportionate share of the insurance deductible or costs in excess of insurance proceeds whether or not that Owner's Unit suffered damage.

(c) If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under subsection (a) or (b) of Section 9.9, any Owner fails or refuses to pay his proportionate share, the Association may, in accordance with Section 5.4, levy a Special Individual Assessment against the Unit of such Owner which may be enforced in any manner provided in this Restated Declaration.

(d) Within fifteen (15) days of the date that the notice to the Owner of his share of the liability is mailed, any Owner may contest the amount of his proportionate liability under subsection (a) or (b) of Section 9.9 by submitting to the Association written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board will set a hearing date on the matter to be held within thirty (30) days. Following such hearing, the Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision will be final and binding.

**ARTICLE 10: DAMAGE OR DESTRUCTION.**

**Section 10.1. General Provisions.** In the event of damage by fire or other casualty, the Association will have exclusive authority to negotiate losses/insurance proceeds or settlement of any matter.

(a) **Allocation.** If more than a single Unit is damaged/destroyed, the insurance proceeds received will be fairly allocated between and among the damage or destruction to the

Unit(s) and/or the Common Elements. Any shortfall or deficiency in insurance proceeds will be allocated to all 135 Units, and assessments evenly and charged to all Owners/Units where each Unit pays the same as any other generally assessed.

**(b) Repair, Reconstruction and Notice.** If repair and reconstruction is to take place, 1) the Board will have the authority to enter into a written contract with contractor(s) for the repair and reconstruction and, on behalf of the Association and its Members, will enter into a construction contract for any work required; 2) all, or any such portion of the insurance proceeds, as are necessary will be expended to rebuild or repair in accordance with conditions prior to the event of damage or destruction, or as the Association, the Owner(s) and Mortgagee(s) may elect to alter the same in accordance with their respective rights; 3) the Board will be required to execute, acknowledge and record in the office of the County Recorder, not later than one hundred and twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild or not to rebuild as provided in NRS 116.31135 or any superseding statute. It will be the obligation of the Board to take all steps necessary to assure the commencement and the completion of authorized repairs and reconstruction occur at the earliest possible date.

**(c) Emergency Assessment.** If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board will obtain the additional proceeds required to complete the work in the following manner and as provided in Section 5.2(d): Additional sums required to repair or rebuild Unit(s) and/or the Common Elements will be obtained by Special Assessment levied against all Units without vote of the members and as assessed by the Board, unless the proceeds are insufficient due to an Owner's willful or negligent act or omission, in which case the additional sums required may be assessed against that Owner as a Special Individual Assessment, in accordance with Section 5.4 and/or Section 14.6.

Within fifteen (15) days from the date of the mailing of the notice to the Owner of their share of the liability, any Owner can dispute the amount of their proportionate liability under this Section 10.1 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of an Owner's written objections, the Board will schedule a hearing. The Owner may be represented by counsel at this hearing. Following such hearing, the Board will give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. The decision of the Board will be final and binding on all Owners.

**(d) Advancement of Special Assessment.** If any Member fails to pay, within thirty (30) days of the levy, the Special Assessment levied against that Member's Unit, the Board may advance (without relieving the Member(s) or the Members' Unit(s) from liability therefore) an amount equal to the unpaid assessments.

**(e) Procedures if Rebuilding Not Approved by Members.** If, in accordance with the procedures set forth in Section 10.3, below, the Members determine not to rebuild the damaged or destroyed portions of the Development, the Board will, within twenty (20) days, or



as soon as practicable, after the Members determined not to rebuild, propose such alternative reconstruction of the damaged or destroyed portions of the Development at a lesser cost as the Board deems reasonable or adequate. The Board's proposal will be placed before the Members and voted upon in accordance with the appropriate method set forth in Sections 10.2 and 10.3, below.

If Members are unable to approve any of the reconstruction proposals and at least one hundred and twenty-five (125) days have elapsed since the casualty event occurred, the Association will have the power (with the consent of eighty percent (80%) of all Owners, including one hundred percent (100%) of every Owner of a Unit or assigned Limited Common Element that will not be rebuilt), to purchase all Unit(s) rendered uninhabitable by the casualty event (as conclusively determined by the Board) at value of such Unit(s) immediately prior to the casualty event less the amount of any Special Assessment assessed against the Unit(s) needed to fund the purchase. The Association's purchase will be funded from the insurance proceeds and, if necessary, from a Special Assessment pursuant to subsection (e), above. Payments will be made proportionately to the Owners, as their respective interests may appear. Each Owner agrees, by accepting the deed to the Owner's Unit, to be bound by these provisions and to convey the Owner's Unit to the Association by grant deed as may be required herein. After such payment, the recipient(s) will no longer be deemed Owners/Members and the Map may be redrawn, as necessary, to adjust the undivided ownership interests.

All Units that were not rendered uninhabitable must be repaired to a condition as near as possible to their condition immediately prior to the casualty that caused the damage. Such repair and restoration will be paid for in the following order: any remaining insurance proceeds and, then, a Special Assessment levied equally against all remaining Owners if insurance proceeds equal or exceed 70% of the cost to rebuild, or as determined by the Board of Directors and approved by a majority vote of the affected Owners if the insurance proceeds are less than 70% of the cost to rebuild.

**Section 10.2. Minor Deficiency in Insurance Proceeds.** If the available proceeds of the insurance maintained pursuant to Article 9 are sufficient to cover not less than seventy percent (70%) of the costs of repair and reconstruction, the Improvements will be promptly rebuilt unless, within ninety (90) days from the date of destruction, eighty percent (80%) of the total voting power and every Owner of a Unit that will not be rebuilt determine, in accordance with the procedures set forth in Section 10.3, below, that such repair and reconstruction will not take place. If repair and reconstruction is to take place, the Board will be required to execute, acknowledge and record in the office of the County Recorder, not later than 120 days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

**Section 10.3. Major Deficiency in Insurance Proceeds.** If Section 10.2 is not applicable, then:

**(a) Insurance Proceeds.** As diligently as possible, the Association will determine the total amount of insurance proceeds which will be available for repair and rebuilding.

**(b) Contract Award.** Unless the Members vote as provided in Section 10.2 that the repair and reconstruction will not take place, the Board must award the repair and reconstruction work to the most reasonable and best value, not necessarily the lowest bidder, or to such other bidder that the Board determines is more favorable.

**Section 10.4. Emergency Repairs.** Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as the Board may deem necessary or desirable under the circumstances, and the Board may charge the maintenance fund for the costs thereof where such repairs are done prior to settlement of insurance claims.

**Section 10.5. Termination of Partition Waiver.** The prohibition against judicial partition of the Development will terminate upon the recordation of a certificate not to rebuild as described and required in Section 10.1(b). Upon final judgment of a court of competent jurisdiction decreeing a partition, the proceeds or property resulting from the partition will be distributed to and among the respective Owners and their Mortgagees, as their interests appear, as follows: The Board will select an independent appraiser who will determine the relative fair market values of the Units. The proceeds or property will then be apportioned among the Owners, and their respective Mortgagees, according to such relative values. Such relative values will be determined as of a date immediately prior to any sale, taking or destruction of the Development. The covenants, conditions and restrictions of the Restated Declaration will then terminate.

#### **ARTICLE 11: CONDEMNATION.**

**Section 11.1. Sale by Unanimous Consent or Taking.** If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners, the Properties, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium in the Properties hereby grants and which will be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners do not consent to a sale of all or a portion of the Properties, and the condemning authority institutes condemnation proceedings, the court will fix and determine the condemnation award.

#### **Section 11.2. Distribution and Sale Proceeds of Condemnation Award.**

**(a) Total Sale or Taking.** A total sale or taking of the Properties means a sale or taking that: (i) renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a

taking); or (ii) renders the Properties as a whole uneconomical as determined by the vote or written consent of eighty percent (80%) of those Owners whose Condominiums remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Properties, after payment of all expenses relating to the sale or taking, will be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums on the Properties. The fair market value of Condominiums will be determined in the condemnation action, if such be instituted, or by an appraiser.

**(b) Partial Sale or Taking.** In the event of a partial sale or taking of the Properties, meaning a sale or taking that is not a total taking, as determined in Section 11.2(a), above, the proceeds from the sale or taking will be paid or applied in the following order of priority and any judgments of condemnation will include the following provisions as part of its terms:

**(i)** To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then any remaining proceeds,

**(ii)** To Owners and their respective Mortgagees, as their interests may appear, of Condominiums on the Properties whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 11.2(b)(i), above, (which share will be in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Condominiums). After such payment, the recipient will no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners will amend the Subdivision Map and this Restated Declaration to eliminate from the Properties the Condominiums so sold or taken; then any remaining proceeds,

**(iii)** To any remaining Owner(s) and to their Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then any remaining proceeds,

**(iv)** To all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

**Section 11.3. Appraiser.** The costs of appraisals will be paid from the condemnation proceeds as an expense of the Association.

**ARTICLE 12: PARTITION OF COMMON ELEMENTS.**

**Section 12.1. Suspension of Right of Partition.** Except as expressly provided in this article, an Owner will have no right to partition or divide their ownership of the Common Elements. Partition of the Common Elements can be had on a showing that the conditions to such partition as stated in Article 10 (relating to damage or destruction) or in Article 11 (relating to condemnation) have been met. Nothing in this Restated Declaration may prevent partition of a co-tenancy in a Unit.

**Section 12.2. Distribution of Proceeds Upon Partition.** Proceeds of property resulting from a partition will be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Unit bears to the fair market value of all Owners' Units determined by appraisal, but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Elements.

**Section 12.3. Power of Attorney.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Development, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had and under the circumstances authorizing partition under this Restated Declaration. The power of attorney will: (a) be binding on all Owners, whether they assume the obligations under this Restated Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of eighty percent (80%) of the Owners; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable. This certificate will be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

**ARTICLE 13: NONSEVERABILITY OF COMPONENT INTERESTS.**

**Section 13.1. Severance Prohibited.** An Owner will not be entitled to sever their Unit from their membership in the Association, and will not be entitled to sever their Unit or their membership from the Owner's undivided interest in the Common Elements for any purpose. None of the component interests in a Unit can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with; and any violation or attempted violation of this provision will be void. Similarly, no Owner can sever any exclusive easement appurtenant to their Unit over the Common Elements from the Owner's Unit and any attempt to do so will be void. The suspension of such right of severability will not extend beyond the period set forth in Article 12 respecting the suspension of partition.

**Section 13.2. Limitation on Interests Conveyed.** After the initial sales of the Condominiums, unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner will be presumed to convey the entire Condominium. However, nothing contained in this section may preclude the Owner from creating an estate for life or an estate for years or from creating a co-tenancy or joint tenancy in the ownership of a Unit with any other person or persons.

**ARTICLE 14: BREACH & DEFAULT.**

**Section 14.1. Remedy at Law Inadequate.** Any Owner or the Association may enforce, by any proceeding at law or in equity, the provisions of the Governing Documents against any Owner. The failure of any Owner to strictly comply with any provision of the Governing Documents will be grounds for: (1) an action to recover sums due for damages; and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner or the Association; and/or (3) fines or other appropriate action by the Association, and their conversion to Special Individual Assessments in accordance with Section 5.4.

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the Governing Documents is inadequate.

**Section 14.2. Nuisance.** Without limiting the generality of Section 14.1, the result of every act or omission whereby any covenant contained in the Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or any Owner. Every remedy against nuisance, either public or private, will be applicable against every such act or omission. The Board will not be obligated to take action to abate or enjoin a violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin the violation is not likely to protect the interests of the Association and its Members or some other alternative is more favorable to the interest of the Association.

**Section 14.3. Violation of Law.** Any violation of any governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Restated Declaration and subject to any and all of its enforcement procedures.

**Section 14.4. Cumulative Remedies.** The respective rights and remedies provided by this Restated Declaration or by law will be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies will not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Restated Declaration or any of the Governing Documents.

**Section 14.5. Failure Not a Waiver.** The failure of any Owner or the Association to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the Association's Governing Documents will not constitute a waiver of the right to enforce the same thereafter, nor will such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**Section 14.6. Rights and Remedies of the Association.**

**(a) Rights Generally.** In the event of a breach or violation of any of the restrictions or rules contained in any Governing Document by an Owner, the Board may enforce the obligations of each Owner to obey such Rules or restrictions or rules through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Elements or suspension of the Owner's voting rights as a Member. The Association's right to undertake disciplinary action against its Members will be subject to the conditions set forth in this Section 14.6. The initiation of legal action will be subject to Section 14.7, below. The Association is specifically allowed to take immediate corrective action to protect the Development or at any time necessary to protect the health and safety of the Units, Unit Owners or others on the Development.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance will be within the sole discretion of the Board. If the Association declines to take action in any instance, any Owner will have such rights of enforcement as may exist by virtue of Nevada law.

Upon the Board's determination, after prior notice to the affected Member and an opportunity for a hearing pursuant to Sections 14.6(e) and (f), that the Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Member is deemed to be a Member not in good standing. Such Member will be deemed to be a Member not in good standing until the Board determines in writing that the violation which resulted in the Board's determination that the Member was not in good standing has been remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member may again be deemed to be a Member in good standing.

**(b) Schedule of Fines.** The Board may adopt, implement and amend from time to time by majority vote a schedule of reasonable fines and penalties for particular offenses, including violations of the Association Rules and Governing Documents for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and will be enforceable as a Special Individual Assessment pursuant to Section 5.4. If the Board adopts a policy imposing fines, the Board must, as required by law, e-mail, hand-deliver or send

by United States mail to each Owner, a schedule of the fines, as it may be revised from time to time.

**(c) Definition of "Violation" and "General Record of Violations".** A violation of the Governing Documents will be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the continuing violation and / or detrimental effect continues. Similar violations on different days will justify cumulative imposition of disciplinary measures.

The Association will take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Elements at the cost of the responsible Owner, which cost is supplemental to and may not be considered part of any fine imposed.

The Board must maintain a general record concerning each violation of the Governing Documents, other than a violation involving a failure to pay an Assessment, for which the Board has imposed a fine or any other sanction. The general record:

**(i)** Must contain a general description of the nature of the violation and the type of the sanction imposed. If the sanction imposed was a fine, the general record must specify the amount of the fine;

**(ii)** Must not contain the name or address of the person against whom the sanction was imposed or any other personal information which may be used to identify the person or the location of the Unit, if any, that is associated with the violation; and

**(iii)** Must be maintained in an organized and convenient filing system or data system that allows an Owner to search and review the general records concerning violations of the Governing Documents.

**(d) Limitations of Disciplinary Rights.**

**(i) Loss of Rights: Forfeitures.** The Association will have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of their Unit due to the failure by the Owner to comply with any provision of the Governing Documents, except where the loss or forfeiture is the result of: (A) the judgment of a court of competent jurisdiction; (B) a decision arising out of arbitration; (C) a foreclosure or sale conducted in accordance with Chapter 116 for failure of the Owner to pay Assessments levied by the Association; or (D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 14.6(e) and (f).

**(ii) Special Individual Assessments.** A monetary fine or penalty imposed by the Association is a Special Individual Assessment enforceable by the sale of the Unit.

**(e) Hearings.** No penalty or temporary suspension of rights will be imposed pursuant to this Article 14 unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 14.6(g), and not less than thirty (30) days before the violation, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the Governing Documents that form the basis of the violation.

**(f) Notice of Hearing and Disciplinary Decision.** The notice of hearing required by this article will, at a minimum, set forth the date, time, and place for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision alleged to have been violated, the amount of any potential fine or penalty, and a statement that the Member has a right to attend and may address the Board or committee at the hearing. The notice must be delivered by either personal delivery or first-class mail or, as allowed by law, email to the Member at least ten (10) days prior to the hearing. If the Board or committee decides to discipline the Member, the Association must notify the Member of the disciplinary action by either personal delivery or first-class mail or, as allowed by law, email following the decision. The discipline will not be effective until five (5) days after the notification of the decision.

The Board must hold a hearing before it may impose the fine, unless the person against whom the fine will be imposed: (a) pays the fine; (b) executes a written waiver of the right to the hearing; or (c) fails to appear at the hearing after being provided with proper notice of the hearing.

If a fine is imposed and the violation is not cured within fourteen (14) days, or within any longer period that may be established by the Board, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for each seven (7)-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard.

The Board may appoint a committee, with not less than three (3) members, to conduct hearings on violations and to impose fines. While acting on behalf of the Board for those limited purposes, the committee and its members are entitled to all privileges and immunities and are subject to all duties and requirements of the Board and its members.

**(g) Rules Regarding Disciplinary Proceedings.** The Board may adopt rules that set forth the procedures for conducting disciplinary proceedings. The rules, when approved



and adopted by the Board, will become a part of the Association Rules and may provide for notices and procedures satisfying the alternative dispute resolution requirements of Nevada law.

**Section 14.7. Court Actions; Mediation.** Whether or not Nevada law requires alternative dispute resolution, unless there is an emergency, no person or the Association, may initiate court action until alternative dispute resolution is pursued.

(a) Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon Board approval. Before initiating any court action to enforce the Governing Documents, the Association and/or Members must first comply with the provisions of NRS 38.300 to 38.360 or superseding statute, inclusive, relating to alternative dispute resolution. The provisions of this section are intended to satisfy the alternative dispute resolution requirements. All notices issued and procedures followed in the mediation process must comply with the specific requirements imposed by NRS 38.300 to 38.360 or superseding statute, inclusive.

(b) In the event NRS 38.300 to 38.360 is repealed, the Association and/or Members must first proceed with alternative dispute resolution before commencing a court action.

**Section 14.8. Joint and Several Liability of Co-Owners.** If a Unit is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Restated Declaration will be joint and several.

**Section 14.9. Costs and Attorneys' Fees.** If the Association takes any action because of any breach or default of any Owner or other party hereto under the Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association will be entitled to recover from that Owner (or other party) the costs, including attorneys' fees, the Association incurred as a result of the breach or default. The Association's remedies to recover its costs and attorneys' fees will include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

If an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Governing Documents, the court may award to the prevailing party in any such action attorneys' fees and other costs, including, but not limited to, court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

#### **ARTICLE 15: NO PUBLIC RIGHTS IN THE DEVELOPMENT.**

**Section 15.1. Dedication of Development.** Nothing contained in this Restated Declaration may be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

**ARTICLE 16: NOTICES.**

**Section 16.1. Mailing Addresses.** Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents will be in writing and may be served, as an alternative to personal service, by mailing the same as follows.

**(a) Owners.** To the last known address of the Owner of the Unit or to such other address as the Owner may from time to time designate in writing to the Association or if designated in writing by the Owner, to the Owner's e-mail address.

**(b) The Association.** The mailing address of the Association is P.O. Box 10875, Zephyr Cove, NV 89448 (or to such other address as the Association may from time to time designate in writing to the Owners).

**(c) Directors/Officers.** To the street address as the Director and/or officer may from time to time designate in writing to the Association and if no address is designated to the mailing address of the Association. No director or officer is required to provide an address separate from that of the Association's address identified in Section 16.1(b).

The foregoing addresses may be changed by written notice given as herein provided. Unless so changed, the last address provided for each party, whether herein or pursuant to notice hereunder, will be deemed to be the address of such party for any and all purposes.

**Section 16.2. Personal Service Upon Co-Owners & Others.** Personal service of a notice to one of the co-Owners of any Unit, to any general partner of a partnership which is the Owner of Record of a Unit, or to any officer or agent for service of process of a corporation which is the Owner of Record of a Unit, will be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**Section 16.3. Deemed Delivered.** All notices and demands served by mail will be by first-class or certified mail, with postage prepaid, and will be deemed delivered seventy-two (72) hours after deposit in the United States mail unless specified otherwise by this document. All notices and demands served by personal delivery are delivered upon service.

**ARTICLE 17: AMENDMENT OF RESTATED DECLARATION.**

**Section 17.1. Amendment in General.** This Restated Declaration may be amended or revoked in any respect by the vote or assent by written ballot of Members representing at least fifty-one percent (51%) of all eligible Owners. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Restated Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision.

**Section 17.2. Effective Date of Amendments.** Any amendment to this Restated Declaration will be effective upon the recording in the Office of the Recorder of Douglas County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 17.1, above, have been duly met.

Notwithstanding anything to the contrary herein contained, no such amendment will affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment if such holder of any first deed of trust or Mortgage provided written request for notice of any amendments or if such amendment adversely affects any holder of a first deed of trust or Mortgage.

**Section 17.3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Restated Declaration will be presumed valid by anyone relying on them in good faith.

**ARTICLE 18: ANNEXATION.**

**Section 18.1. Annexation.** Any real property which consists of a parcel or parcels shown on a final subdivision or parcel map of Record may be annexed to the Development in accordance with this article, and shall thereupon become subject to this Restated Declaration with the consent of the Owner of the property.

The Association may annex real property to the Development provided that such annexation is approved by a vote or written consent of sixty-six and two thirds percent (66 2/3%) of the Owners.

**Section 18.2. Method of Annexation.** Any annexation undertaken in accordance with this Section shall be effective when a Restated Declaration of Annexation executed by the annexing party and the owner of the interest to be annexed covering the property to be annexed, and includes the following information.

(a) A description of the property to be annexed.

(b) A description of any parcel of the property to be annexed which is Common Elements, and of any property to be annexed which is designated for maintenance in accordance with Section 6.1.

**Section 18.3. Effect of Declaration of Annexation.** Upon any annexation becoming effective, the Declaration of Annexation shall become a part of this Restated Declaration, and shall be deemed amended by any amendment to this Restated Declaration.

**Section 18.4. Adjustment for Capital Improvements.** Where annexation of a Phase occurs after existing Units within the Development have been assessed for Capital Improvements

to Common Elements, the Association may adjust the assessment on the annexed Units so that the annexed Units pay their proportionate share of the Capital Improvement.

**Section 18.5. Ownership Interest in Common Elements.** Each Owner of a Unit within the property to be annexed shall have an undivided interest in the Common Elements in the fractional proportion set forth in Section 2.7, herein.

**ARTICLE 19: RIGHTS AND DUTIES OF FIRST MORTGAGEES WHO HAVE, IN WRITING, REQUESTED NOTICE.**

**Section 19.1. General.** Unless at least sixty percent (60%) of the first mortgagees, who have submitted a request, in writing, to receive information under Article 19, based upon one vote for each first mortgage owned, or owners other than the sponsor, developer, or builder of the Units have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the condominium project;
- (b) Change the pro rata interest or obligations of any individual condominium Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each condominium Unit in the Common Elements;
- (c) Partition or subdivide any condominium Unit;
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the condominium project shall not be deemed a transfer within the meaning of this clause; and/or
- (e) Use hazard insurance proceeds for losses to any Condominium property whether to Units or to Common Elements for other than the repair, replacement or reconstruction of such Condominium property, except as provided by statute in case of substantial loss to the unit and/or common elements of the Development.

In no event shall the Association be obligated to seek prior written approval from any first mortgagee who has not requested, in writing, to be notified by the Association of any action by the Association.

**Section 19.2. Subordination.** Any lien created or claimed under the provision of this Restated Declaration is expressly made subject and subordinate to the rights of an institutional first Mortgagee with a trust deed or mortgage upon the entire Development, or upon any Unit therein, made in good faith and for value, and no such lien shall in any way impair the obligation or the priority of such trust deed or mortgage unless the Mortgagee thereof shall expressly

subordinate his/her interest, in writing, to such lien, except as to the maximum extent allowed by law.

**Section 19.3. Amendment.** No amendment to this Restated Declaration shall affect the rights of the Mortgagee who has, in writing, requested notice of any amendments under a trust deed made in good faith and for value, and recorded prior to the recordation of such amendment, unless said Mortgagee shall either join the execution of such amendment, or approve the same in writing as part of such amendment.

**Section 19.4. Default.** In the event of a default by any Owner in the payments due upon a promissory note secured by trust deed to his/her individual Unit, the Mortgagee under said trust deed shall have the right, upon giving written notice to the defaulting Owner, and filing for record a notice of default, to exercise the vote of such Owner of any regular or special meeting of the Owners held during such time as the default may continue. No breach of any provisions of this Restated Declaration shall invalidate the lien of any deed of trust made in good faith to the maximum extent allowed by law and for value, but all of the Covenants, Conditions and Restrictions shall be binding upon any owner whose title is derived through foreclosure of trustee sale or otherwise. In addition, Mortgagee shall have the right to cure default in taxes, insurance premiums and other charges against the Common Elements.

**Section 19.5. Notice.** A Mortgagee that has requested, in writing, notice, shall receive written notification from the Association of any default in the performance by an owner of any obligation under the Condominium constituent documents, which is not cured within sixty (60) days.

**Section 19.6. Right.** Upon the Mortgagee's acquisition of a Unit, the Association shall have no right to first refusal or other restriction on sale, lease or rental of same. It is intended that any loan to facilitate the resale of any Unit after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

**Section 19.7. Assessments.** It is specifically understood that any Mortgagee shall be liable for all such Assessments during the actual period of time that such Mortgagee holds title to a Unit and before such title vests as provided herein. This liability for Assessments on the part of the Mortgagee is on a pro rata basis with the pro rata period commencing on the date the Mortgagee acquires title and ending upon resale or other transfer by the Mortgagee, whereupon the liability for new future assessments will attach to the transferee. Except as provided herein, the sale or transfer of any Unit which is subject to any deed of trust, pursuant to a decree of foreclosure or any proceeding in lieu of foreclosure thereof, including sale under a deed of trust, shall extinguish any lien of an assessment which became a lien prior to such sale or transfer. Such sale or transfer shall not release such Unit from liability from any assessments thereafter becoming due or from the lien thereof.

**Section 19.8. Meetings.** Any Mortgagee may appear, but may not vote, at meetings of the owners and/or the Board of Directors to draw attention to violations of this Restated Declaration of Restrictions which have not been corrected or made the subject of remedial proceeding or assessments.

**Section 19.9. Information.** A Mortgagee is authorized to furnish information to the Board concerning the status of any loan encumbering a Unit.

**Section 19.10. Books and Records.** A Mortgagee shall have the right to examine the books and records of the Association.

**Section 19.11. Insurance.** All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees who encumber units by deed of trust as their interest may appear.

**ARTICLE 20: GENERAL PROVISIONS.**

**Section 20.1. Effective Date.** This Restated Declaration will become effective upon its recordation in the Official Records of the County of Douglas, State of Nevada.

**Section 20.2. Term.** The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, the Lien, charges and equitable servitudes contained in this Restated Declaration will run with, and will benefit and burden the Units and the Common Elements as herein provided, and will inure to the benefit of and be binding upon the Owners, the Association, its Board, and its officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of the recording of this Restated Declaration, after which time the same will be automatically extended for successive terms of ten (10) years each unless, within six (6) months prior to the expiration of any term (initial or successive), a recordable written instrument, approved by a majority of all Owners terminating the effectiveness of this Restated Declaration will be filed for recording in the Office of the County Recorder of Douglas County, Nevada.

**Section 20.3. Construction of Restated Declaration.**

**(a) Restated Restrictions Construed Together.** All of the covenants, conditions, and restrictions of this Restated Declaration will be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Restated Declaration.

Failure to enforce any provision hereof will not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

**(b) Restrictions Severable.** Notwithstanding the provisions of subsection (a) above, the covenants, conditions, and restrictions of this Restated Declaration will be deemed

independent and severable, and the invalidity or partial invalidity of any provision or portion thereof will not affect the validity or enforceability of any other provision which will remain in full force and effect.

**(c) Singular Includes Plural/Gender.** The singular will include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter will each include the masculine, feminine and neuter, as the context requires.

**(d) Captions.** All captions, titles or headings used in this Restated Declaration are intended solely for convenience of reference and will not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Restated Declaration.

**(e) Conflicts.** In the event of any conflict between any of the provisions of this article and any other provisions of this Restated Declaration, the provisions of this article will control. In the event of any conflict between any of the provisions of this Restated Declaration and any other provisions of the Governing Documents, the provisions of this Restated Declaration will control.

Further, neither the Articles nor the Bylaws will be restated so as to be inconsistent with this Restated Declaration; and, in the event of any inconsistency, the provisions of this Restated Declaration will control.

**(f) Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

**Section 20.4. Power of Attorney.** To the extent necessary to carry out and enforce the provisions of this Restated Declaration and the Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

CERTIFICATION AND SIGNATURES ON NEXT PAGE

**Certification**

We, the undersigned, hereby certify, under penalty of perjury, that this First Restated Declaration of Covenants, Conditions and Restrictions of PineWild Condominium Homeowners Association was provided to its members for action and that ninety-one (91) voted in favor of this Restated Declaration; that the affirmative action was taken by those members whose votes are recorded in the official records of the Association, and that such affirmative vote conforms with the requirements that there be at least sixty percent (60%) affirmative vote found in the 1991 Amendment.

PINEWILD CONDOMINIUM HOMEOWNERS ASSOCIATION

Dated: January \_\_, 2010

By: \_\_\_\_\_  
John Kurylo, President

Dated: January \_\_, 2010

By: \_\_\_\_\_  
William G. Cobb, Secretary

STATE OF NEVADA        )  
                                  : ss.  
COUNTY OF DOUGLAS    )

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2010 by John Kurylo as President of PineWild Condominium Homeowners Association, a Nevada non-profit corporation.

\_\_\_\_\_  
Notary Public

STATE OF NEVADA        )  
                                  : ss.  
COUNTY OF WASHOE     )

This instrument was acknowledged before me on the \_\_\_\_ day of January, 2010 by William G. Cobb, as Secretary of PineWild Condominium Homeowners Association, a Nevada non-profit corporation.

\_\_\_\_\_  
Notary Public







CERTIFICATE OF SECRETARY

I, William G. Cobb, being duly elected and acting as Secretary of the PineWild Condominium Homeowners Association hereby certifies as follows:

1. That the affirmative votes of the record owners of Units representing at least sixty percent (60%) of the PineWild Condominium Homeowners Association approved the First Restated Declaration of Covenants Conditions and Restrictions of PineWild Condominium Homeowners Association; and
2. The affirmative action was taken by those members whose votes are recorded in the official records of the Association; and
3. The total number of record owners of the Association is one-hundred thirty-five (135) and the number of Owners indicating their approval of this Restated Declaration is ninety-one (91).

DATED this 15<sup>th</sup> day of January, 2010.

BY: William G. Cobb  
William G. Cobb, Secretary

STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF WASHOE    )

On this 15<sup>th</sup> day of January, 2010, personally appeared before me, William G. Cobb, known to me or proved to me to be the person mentioned in the above and foregoing documents, and who acknowledged to me that he executed the same for the uses and purposes therein mentioned.



Susan C. Davis  
Notary Public

## Exhibit "A"

All that real property described as follows:

Lot 1:

Units 1 to 51, inclusive, and the Common Areas, all as shown on that certain Subdivision Map and Condominium Plan entitled "Official Plat, PINEWILD, a Condominium, Marla Bay, Douglas County, Nevada, filed in the Office of the Recorder of Douglas County, State of Nevada, on the 26<sup>th</sup> day of June, 1973 in Book 673 at Page 1089 as Document No. 67150 (hereinafter sometimes referred to as the "Subdivision Map" or as the "Condominium Plan").

and

Lot 2:

All that real property shown on the "OFFICIAL PLAT, PINEWILD, UNIT NO. 2, A CONDOMINIUM," recorded October 23, 1973, in Book 1073, page 1058, et seq., Official Records of Douglas County, Nevada, Document No. 69660.