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DOUGLAS COUNTY, NV 2014-851412  
Rec:\$40.00  
Total:\$40.00 10/21/2014 11:10 AM  
GORDON CONSULTING INC Pgs=27

Assessor's Parcel Number: 1418-34-101-001,  
-004,-007,-008,-009,  
-010

Recording Requested By: Nicole Zaborsky

Name: Gordon Consulting Inc.

Address: 584 Kiowa Drive

City/State/Zip S. Lake Tahoe, CA 96150

Real Property Transfer Tax: \$ \_\_\_\_\_



KAREN ELLISON, RECORDER

Cave Rock Glen HOA CC&R's

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

*This cover page must be typed or legibly hand printed.*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF CAVE ROCK GLEN HOMEOWNERS ASSOCIATION**

THIS DECLARATION is made this 21 day of October, 2014, by CAVE ROCK JUNCTION, LLC and PHAT PADS, INC. (collectively, Declarant).

**RECITALS**

- A. Declarant is the owner of certain real property located in Douglas County, Nevada, described in Exhibit A hereto.
- B. By this Declaration, Declarant intends to establish a planned community on the real property described in Exhibit A in accordance with the provisions of Chapter 278, 278A and 116 of the Nevada Revised Statutes.

**DECLARATION**

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit A is and shall be held, conveyed, encumbered, leased, used, occupied, improved, and otherwise affected in any manner subject to the provisions of this Declaration, all of which are hereby declared to be in furtherance of a general plan for the development, improvement, and sale of such property, and for the purpose of enhancing, maintaining, and protecting the value and attractiveness of such property. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens of the Declarant and its assigns and to all persons hereafter acquiring or owning any interest in such property; however such interest may be obtained.

**ARTICLE I  
DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings set forth in this Section.

**Act.** The "Act" means Chapter 116 of Nevada Revised Statutes.

**Allocated Interests.** The "allocated interests" means the interest allocated to each Lot for liability for common expenses and votes in the Association.

**Articles.** The "Articles" means the articles of incorporation of the Association.

**Association.** The "Association" means the Cave Rock Glen Homeowners' Association, a Nevada non-profit corporation.

**Association Property.** The term "Association Property" refers to ANY property owned and controlled by the Cave Rock Glen Homeowners Association, including Limited Common Areas.

**Beneficiary.** A "Beneficiary" means a beneficiary under a deed of trust or a mortgagee under a mortgage, and/or the assignee of such beneficiary or mortgagee.

**Board.** The "Board" means the Board of Directors of the Association.

**Bylaws.** The "Bylaws" means the Bylaws of the Association.

**Common Elements.** The "Common Elements" means any real estate designated as common area, common elements, or similar descriptions within the planned community, owned or leased by the association other than a Lot, together with Improvements constructed thereon.

**Common Expenses.** The term "Common Expenses" means all expenditures made by, or all financial liabilities of the Association, together with any allocations to reserves pursuant to NRS 116.019.

**County.** The "County" means Douglas County, Nevada.

**Declarant.** The "Declarant" Cave Rock Junction, LLC and Phat Pads, Inc.

**Declaration.** The "Declaration" means this instrument and amendments thereto.

**Eligible Mortgage Holder.** An "Eligible Mortgage Holder" means an Institutional Holder that has submitted a written request that the Association notify it on any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

**Executive Board.** An "Executive Board" means the body, regardless of name, designated in this

Declaration to act on behalf of the Association.

**First Deed of Trust.** A "first deed of trust" means a deed of trust or a mortgage having priority over all other deeds of trust encumbering the same portion of the Project.

**Foreclosure.** A "foreclosure" means a foreclosure of a mortgage or exercise of power of sale pursuant to a deed of trust.

**Identifying Number.** An "identifying number" means the symbol that identifies only one Lot in the Project. (I.e. Number of Respective Lot)

**Institutional Holder.** An "Institutional Holder" means a mortgagee that is a bank, savings and loan association, established Mortgage Company, or other entity chartered under federal or state laws, or any corporation or insurance company, or federal or state agency.

**Lease.** A "lease" means any agreement for the leasing or rental of any portion of the Project.

**Liability for Common Expenses.** The "liability for common expenses" means the liability for common expenses allocated to each Lot.

**Limited Common Areas.** The term "limited common areas" refers to Association Property, which may be used by the individual Lot owners on a limited basis (i.e. designated parking areas or decks).

**Lot.** A "Lot" means a physical portion of the Project that is designated for separate ownership described under paragraph (e) of subsection 1 of NRS 116.2105. The identifying number and boundaries of each Lot are defined on the Plat and by this Declaration.

**Manager.** The "Manager" means the person or entity designated by the Board to manage designated affairs of the Association and to perform various other duties assigned by the Board and by the provisions of this Declaration.

**Member.** A "Member" means every person or entity that holds a membership in the Association.

**Owner.** An "Owner" means the person(s) or entity that owns a Lot and is also referred to herein as Member.

**Plat.** The "Plat" means the subdivision map of Cave Rock Glen, a planned community, created in accordance with NRS 116.2109(2), NRS Chapter 278 and NRS Chapter 278A and filed in the Office of the County Recorder of Douglas County, Nevada, on 2014-851411

**Project.** The term "Project" refers to the Cave Rock Glen and its ultimate goal of development.

**Property.** The term "Property" refers to ANY real property within the context of this document.

**Rules and Regulations.** The "Rules and Regulations" means such rules and regulations as the Board from time to time may adopt concerning the use of the Project or any part thereof.

**Timeshare.** "Timeshare" has the meaning set forth in RS 116.091.

**Subdivision.** The term subdivision refers specifically to "Cave Rock Glen", a planned community.

## **ARTICLE 2** **DESCRIPTION OF PROPERTY RIGHTS**

**2.1 Legal Description and Voting Rights.** A legal description that sets forth the name of the Project, the identifying number of the Lot, the County, and the file number and book or other information to show where the Declaration is recorded shall be a legally sufficient description of the Lot, and all rights, obligations, and interests appurtenant to that Lot that are created by this Declaration.

**2.2 Ownership of Lot/Voting Rights.** Ownership of each Lot within the Project shall include a fee interest in a Lot, any exclusive or nonexclusive easements appurtenant to such Lot, and a membership in the Association. The votes in the Association are allocated as follows: one vote to each Lot.

**2.3 Ownership of Common Elements.** The Association shall own the common elements.

**2.4 Limited Common Area.** The Limited Common Area shall be designated and allocated as shown on the Plat and/or this Declaration. Additionally, any other portions of the Common Elements may be allocated by an appropriate amendment to this Declaration to create for the benefit of any Lot an exclusive easement appurtenant for use as Limited Common Area as described in the amendment.

**2.5 Conveyances and Encumbrance of Common Elements.** Portions of the Common Elements may be conveyed or subjected to a security interest by the Association in accordance with NRS 116.3112.

**2.6 Owner's Non-Exclusive Easement of Enjoyment.** Every Owner of a Lot shall have a non-exclusive easement of use and enjoyment in, to, and throughout the Common Elements and for ingress, egress, and support over and through the Common Elements. Such non-exclusive easements shall be subordinate to, and shall not interfere with, exclusive easements for use and enjoyment of any Limited Common Area appurtenant to any Lot. Each such non-exclusive easement shall be appurtenant to and pass with title to

each Lot, subject to the following rights and restrictions:

- (a) The right of the Board to adopt, amend and enforce the Rules and Regulations, subject to the veto by a vote of not less than 60% of the voting rights of the Members;
- (b) The right of the Association to borrow money to improve, repair, or maintain the Common Elements;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or entity for such purposes, and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, has been executed by Owners having a majority of the voting rights of the Members has been recorded.

**2.7 Easements for Encroachments.** If any part of the Common Elements encroaches or shall hereafter encroach upon a Lot, an easement for such encroachment and for the maintenance of the same does and shall exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Lot, an easement for such encroachment and for the maintenance of the same does and shall exist. Such encroachment shall not be considered to be encumbrances either on the Common Elements or the Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by initial construction, settling, rising, or shifting of the earth, or by changes in positions caused by repair or reconstruction of the Project or any part thereof.

**2.8 Easements of Access for Repair, Maintenance and Emergencies.** Some of the Common Elements are or may be located within the Lots or may be conveniently accessible only through the Lots. The Owners of other Lots shall have the irrevocable right, to be exercised by the Board or its agent, to have access to each Lot and to all Common Elements from time to time during such reasonable hours as maybe necessary for the maintenance, repair, or replacement of any of the Common Elements located therein or accessible there from or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Lot. The Board shall have such right independent of any agency relationship. Damage to any part of a Lot resulting from the maintenance, repair, emergency repair, or replacement of any of the Common Elements or as a result of emergency repairs within another Lot at the instance of the Board or of the Association shall be an expense of all of the Owners; provided, however, if such damage is the result of negligence of an Owner, then such Owner shall be financially responsible for all of such damage. The Association shall collect amounts owing by Owners pursuant hereto by assessment pursuant to Article 6.

**2.9 Utility Easements.** There is reserved for the benefit of each Lot easements for location, maintenance, and replacement, including necessary excavation and other construction activities, utility services over, under, or through such portions of the Common Elements and other Lots, where such utilities are constructed when construction of the Project is completed. In addition, this Declaration reserves, and the Association is granted, the right to establish and convey subsequent utility easements; and each Owner in accepting a deed to a Lot, expressly consents to such easements. However, no such easement can be granted if it would interfere with the use, occupancy, or enjoyment by an Owner of his Lot, any Limited Common Area, or other Common Elements unless approved by the vote or written consent of the holders of a majority of the voting rights of the Members.

**2.10 Easements Deemed Created.** All conveyances of Lots hereafter made shall be construed to grant and reserve such reciprocal easements as shall give effect to Sections 2.4, 2.6, 2.7, 2.8, and 2.9 above, even though no specific reference to such easements or to those Sections appear in any such conveyance.

**2.11 Non-Severability of Component Parts.** No part of a Lot, and its easements and other appurtenant rights created by law or by this Declaration shall be severed from each other; such components shall always be conveyed, devised, encumbered, or otherwise affected only together. Every gift, devise, bequest, transfer, encumbrance, conveyance, or other disposition of a Lot, or any interest therein, shall be presumed to be a gift, devise, bequest, transfer, encumbrance, or conveyance, respectively, of the entire Lot and all easements and other appurtenant rights created by law or by this Declaration.

**2.12 Taxes and Assessments.** Each Owner shall execute such instruments and take such actions as may reasonably be specified by the Board to obtain separate real property tax assessments for the Owner's Lot. Each Owner shall pay the taxes or assessments assessed against the Owner's Lot. The Association shall pay all taxes, and assessments levied against the Common Elements, unless the County Assessor allocates such taxes proportionately among the Lots.

**2.13 Delegation of Use; Purchasers; Tenants.** Any Owner may delegate his rights of use and enjoyment in the Project, including any recreational facilities, to the members of his family, guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Rules and Regulations, subject, however, to this Declaration, the Bylaws, and the Rules and Regulations. However, if an Owner has sold his Lot to



a contract purchaser or rented it to a tenant, then the Owner, members of his family, his guests, and his invitees shall not be entitled to use and enjoy the recreational facilities of the Project, if any, while the Owner's Lot is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such Lot, shall be entitled to use and enjoy the Common Elements, and during the period of this occupancy, can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner. Each Owner shall notify the secretary of the Association of the names of any contract purchaser or tenants of such Owner's Lot. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment in the Project and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners; and the Owner shall at all times be responsible for any and all activities of his tenant in the use of the Project.

**2.14 Private Streets.** Declarant/Association acknowledge that the County will not assume responsibility for maintenance of any private streets in the Project. Declarant/Association acknowledge that the Project is a private, gated community.

### **ARTICLE 3** **USE RESTRICTIONS**

**3.1 Residential Use.** Each Lot shall be used primarily as a dwelling or for personal, family, or household purposes. Tmeshare use is expressly prohibited.

**3.2 Commercial Use.** Except as otherwise provided in this Declaration, no part of the Project, shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose, except for commercial use of the any access, easement and related rights upon the Common Elements that may or may not encumber the subdivision, specifically as such rights relate to Heavenly.

**3.3 Improvements and Alterations.** No construction, placement, or alteration (including exterior siding or roofing materials and colors) of any improvement, excavation, or fill or any other work that alters the exterior appearance of any Lot, Limited Common Area, or the improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to another Owner shall be accomplished or permitted without the prior approval of the Board, except as specifically authorized herein. All forms and types of construction activities within the Property, including but not limited to, the construction of a residence on a Lot or the construction of Improvements, shall be permitted only between the hours of 7:00 a.m. to 7:00p.m. Pacific Standard Time, Monday through Friday; 8:00 a.m. to 6:00 p.m. on Saturdays; provided, however, that all such construction activities are prohibited the entire New Year's Day, Christmas Day, and the following legal holidays: Easter Sunday, Memorial Day, Independence Day, Labor Day and Thanksgiving Day.

**3.4 Maintenance and Repair of Lots and Limited Common Areas.** Except as otherwise provided herein, each Owner shall at his own expense, maintain his Lot, any Limited Common Area appurtenant to this Lot, and all improvements in a clean and attractive condition and good state of repair. Except for patio furniture and barbecue equipment, the outside portions of the Lot and Common Elements shall not be used for storage or other unsightly use. The Association shall be responsible for the maintenance and repair of the portions of the common water and sewer systems located outside of the Lot boundaries, provided that such systems serve the individual Owner Lots or Association Property. Each Owner shall be responsible for maintenance and snow removal on the driveway, parking decks, and any concrete pads, if any, on the Lot's Limited Common Area. No Owner shall do or allow any work to be done or any condition to exist on his Lot or Limited Common Area that will impair the structural soundness or safety of any improvement located thereon. Each Owner shall at all times maintain and repair the exterior of all residences, buildings, structures and improvements on his or her Lot, including, without limitation, all exterior walls, windows, glass, ceilings, floors, patios, decks, stairwells, fixtures and appurtenances thereto in a clean, neat, sanitary and orderly fashion. If any improvements are damaged or destroyed by fire or other calamity, the respective Owner shall, within a time period determined to be reasonable by the Board, rebuild or repair the damage or otherwise restore his Lot and Limited Common Area to a state that is not offensive to the general appearance of the Project.

**3.5 Maintenance of Landscaping.** All landscaping shall be subject to the approval of the Board or Architectural Committee. The use of decorative rock or bark in landscaping shall be at the discretion of

the Board or Architectural Committee. In the event any Owner fails to landscape such Owner's Lot in accordance with the landscape plan approved by the Board or Architectural Committee within the time specified herein, Declarant and/or the Association shall have the right to seek a mandatory injunction to compel such Owner to undertake and complete such landscaping, or, in the alternative, the Association may cause such landscaping to be installed after levying a Violation Assessment against the Owner of such Lot for the cost of such landscaping. The Owner of such Lot shall be deemed to have given an easement over, across, under and through such Lot for the purpose of causing such landscaping to be installed. Any landscaping that is to remain natural but is disturbed through the course of construction must be hydro seeded or revegetated back to its natural state. No Owner shall allow or permit upon his Lot or Limited Common Area, and the Association shall not allow or permit in the remainder of the Common Elements, anything or condition to exist that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects. Landscaping within the access roadway right of way (snow storage easement), if any, shall be restricted to low growing shrubs and ground cover. All landscaped areas abutting driveways, drive aisles, parking stalls, etc., shall be protected by a standard Type 1 concrete curb.

**3.6 Parking Restrictions.** There shall be no "on street" parking within the Project. No Owner shall park, store or keep within the Association Property, or park, store or keep on his Lot, any inoperable vehicle or any vehicle used for commercial purposes (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), or any camper, motor home, bus, trailer, trailer coach, camp trailer, boat, aircraft, horse trailer (collectively "Restricted Vehicles") the term Restricted Vehicles shall not include camper trucks or similar vehicles up to and including one (1) ton in weight or sport utility vehicles; provided that such excluded vehicles are not used for commercial purposes and are duly licensed. In addition, no Owner shall park, store, or keep anywhere within the Association Property any vehicle or vehicular equipment, mobile or otherwise, reasonably deemed to be a nuisance by the Board. The Board shall have the power to enforce all parking and vehicle use restrictions applicable to the Association Property, including the power to remove vehicles from any of the Association Property to the extent permitted by applicable law and to adopt Rules and Regulations covering parking and vehicle use which are not inconsistent with this Declaration. Owners may not park any vehicle on the streets within the Association Property. The Board or Architectural Committee may include additional restrictions regarding snow removal, contractors and their employees.

**3.7 Utility Installations.** Except as otherwise permitted by the Board or Architectural Committee, no antenna, or other device for transmission of electric current, telephone, television or radio signals, no pipe for conduit of water, gas, or sewer, and no machinery or equipment of any kind shall be constructed, placed, or maintained anywhere within the Project unless it is underground or concealed under improvements. Nothing shall be deemed to forbid the erection and use of temporary power or telephone services incidental to the construction of improvements approved by the Board. No pole, flagpole (except as allowed in NRS 116.320), mast, solar panel, satellite dish, receiver, or other outdoor antenna or related device shall be allowed on any Lot or Association Property without the prior written consent of the Board or Architectural Committee. In addition, no towers and, except as hereinafter provided, no exposed or outside radio, television or other electronic antennae shall be allowed, constructed or permitted on any Lot without the approval of the Board or Architectural Committee. Satellite dishes and ham radio facilities, if any, may be installed on a Lot strictly in accordance with the Board or Design Guidelines, provided, however, that all satellite dishes and ham radio facilities shall be so located so as to be shielded from view from other Properties as determined by the Board or the Architectural Committee.

**3.8 Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered, bear proof containers of a type and style approved by the Board. All permanent storage of trash receptacles shall be within completed residences' garages. In no event shall such containers or trash be kept on any portion of the Project other than in places specifically designated for such purpose, except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. Each residence shall be equipped with a garbage disposal.

**3.9 Clotheslines Drying Facilities.** No outside clothes lines or other outside clothing drying or airing facilities shall be maintained on any Lot or Limited Common Area.

**3.10 Mailboxes.** There shall be no exterior newspaper tubes or freestanding mailboxes in the Project except those otherwise approved by the Board or Architectural Committee. All mailboxes, if any, shall be of one of the designs specified in the Design Guidelines and installed in a location approved by the Board or Architectural Committee. In accordance with U.S. Postal Service requirements.

**3.11 Fires.** There shall be no exterior fires except barbecue fires contained within receptacles, gas fired

only, designed for such purpose.

**3.12 Fences.** No fences, hedges, or walls shall be erected or maintained on any Limited Common Area. No fences, hedges, or walls, which are not structural retaining walls, shall be erected or maintained on any residence without the written consent of the Board or Architectural Committee. Structural retaining walls are governed by the Design Guidelines.

**3.13 Signs.** Except for the Project name sign and as otherwise provided herein, no sign of any kind shall be displayed to the public view on or from any part of the Project without the approval of the Board, except an 18" by 24" for sale or lease sign. The Association shall post on the driveway access to the public street stop signs to the satisfaction of the Douglas County Engineer, which signs shall at all times be maintained in good order and repair by the Association. Nothing herein contained shall restrict the right of Declarant to place signs within the Association Property for the purpose of marketing of the Lots within. This Declaration shall not restrict the rights of Declarant and the Association to place and maintain street signs and monument signs identifying the Association Property.

**3.14 Temporary Occupancy and Temporary Structures.** No temporary building or structure of any kind, such as a tent, recreational vehicle, boat, house trailer, shack, garage, or barn, and no incomplete building shall be used at any time for a dwelling, either temporarily or permanently, on the Project. Temporary buildings and structures used during the construction or repair of improvements in the Project shall be expressly approved by the Board and shall be removed immediately after the completion of the construction or repair.

**3.15 Mineral Development and Mineral Rights.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Project. No portion of the Association Property and the individual twelve (12) lots shall be used in any manner to explore for minerals of any kind, gravel, or earth substances. No wells, tanks, tunnels, mineral excavations, shafts, pumps, other than K.G.I.D. water and sewer lines shall be allowed on the Association Property or the twelve (12) lots. Declarant shall own any and all mineral rights on the Property and the Limited Common Area.

**3.16 Animals.** No reptiles, rodents, birds, fish, livestock, poultry, or other animals shall be kept in any Lot or elsewhere within the Project, except that domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Lot and Limited Common Area, if they are not kept, bred, or raised for commercial purposes. The Rules and Regulations may prohibit or limit the keeping of any household pets in any Limited Common Area or any part thereof. The Board may prohibit maintenance of any animal that constitutes a nuisance to any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet upon the Project shall be absolutely liable to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or by members of his family, his guests, or invitees. Kennels, if any, must be constructed of materials and erected in a manner substantially similar or identical to the residence on the Lot and must be approved by the Board or Architectural Committee in all respects, including, but not limited to, the location of such kennel on said residence. The Board or Architectural Committee shall have the absolute right to require any Owner or Resident to remove any pet or animal owned or controlled by such Owner or Resident if the pet or animal is not disciplined or constitutes an undue annoyance to other Owners or residents. Pets and animals are at all times subject to applicable governmental statutes, regulations, rules and ordinances. Each Owner shall frequently remove any animal excrement from such Owner's residence. The Board shall strictly regulate such removal.

**3.17 Operation of Motor Vehicles.** Motor vehicles within the Project shall be operated in a safe and prudent manner, observing all speed limit and traffic control signs posted or set by the Rules and Regulations.

**3.18 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate in the Project. No odors shall be permitted to arise from the Project so as to render any portion of the Project unsanitary, unsightly, offensive, or detrimental to any other portion of the Project in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Project so as to be offensive or detrimental to any other portion of the Project in the vicinity thereof or to its occupants. Without limiting the generality of any of the following provisions, no exterior speakers, horns, whistles, bells, or other sound devices (other than security systems used exclusively for security purposes) shall be located, used, or placed on the Project without the prior written approval of the Board. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or become an



annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of Lots. Unless otherwise permitted by the Rules and Regulations, no Owner shall serve food or beverages, cook, barbecue, or engage in similar activities except within such Owner's Lot or Limited Common Area. Alarm devices used exclusively to protect the security of a Residence and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. No unsightly articles, including, without limitation, clotheslines, machinery, junk, debris, or building materials shall be permitted to remain on any Lot so as to be visible from neighboring property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, bear proof, sanitary containers located in the Owner's or Resident's garage or otherwise not visible from the front of the residence or from neighboring property. There shall be no exterior fires whatsoever, except barbecue fires, in gas fired barbecues, contained within receptacles designed therefore, such that they do not create a fire hazard and except as specifically authorized in writing by the Association (subject, however, to applicable ordinances and fire regulations).

**3.19 Compliance with Laws.** No Owner shall permit anything to be done or kept on his Lot or Limited Common Area that violates any law, ordinance, statute, rule, or regulation of any local, county, regional, state, or federal body. Each Owner shall comply with all statutes, rules or regulations promulgated by Douglas County governing the subdivision. No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Common Elements except in his Limited Common Area or as otherwise permitted by the Board. Without prior written consent from the Board, nothing shall be done or kept on any Lot or in the Common Elements or any part thereof that would result in the cancellation of the insurance on the Project or any part thereof or increase the rate of insurance on the Project or any part thereof over what the Association would pay but for such activity.

**3.20 Rules and Regulations.** No Owner shall violate the Rules and Regulations as adopted from time to time by the Association.

**3.21 Indemnification.** Each Owner shall be liable to the other Owners and to the Association for any damage to the Common Elements that may be sustained by reason of the negligence of such Owner, members of his family, his contract purchasers, tenants, guests, or invitees, but only to the extent that any such damage is not covered by insurance. Each Owner, by acceptance of his deed, agrees for himself and for the members of his family, his contract purchaser, tenants, guests, or invitees, to indemnify the other Owners, and to hold them harmless from, and to defend them against any claim of any person for personal injury or property damage occurring within the Lot or Limited Common Area of that particular Owner, unless the injury or damage occurred by reason of the negligence of any of the other Owners or persons temporarily visiting in such Lot or Limited Common Area and is fully covered by insurance.

**3.22 Right of Entry.** Upon reasonable notice and during reasonable hours, Declarant or any member of the Board, or any authorized representative of any of the Board, shall have the right to enter upon and inspect any Lot or Limited Common Area for the purposes of ascertaining whether or not the provisions of this Declaration or the Rules and Regulations have been or are being violated. Such persons shall not be deemed guilty of trespass by reason of such entry, provided, however, the granting of such right shall not be construed as creating any duty or obligation to determine compliance with the Declaration. Upon reasonable notice and during reasonable hours, the Association and its agents and employees shall have the right, but not the duty, to enter any Lot or Limited Common Area for the purpose of undertaking such work as may be necessary or desirable to remedy any unsightly, unsanitary, or hazardous condition existing in violation of this Declaration. The Association shall be entitled to recover the cost of such work from the Owner of such Lot or Limited Common Area by an assessment levied pursuant to Article 6.

**3.23 Emergency Entry.** To facilitate access by the Fire Department in case of fire or other emergency, each Owner shall deliver to the Association to make available to the Fire Department a duplicate key to the front door of the Lot. No Owner may cause the key to the front door to the Lot to be changed without notifying the Association and immediately delivering a duplicate key to the Association.

**3.24 Fire Codes.** The following fire codes shall be enforced with respect to the subdivision and Limited Common Areas, Association Property, and all structures located thereon:

- a. A fuels management/reduction program around all structures shall be maintained at a minimum of thirty (30) feet in accordance with Uniform Fire Code.
- b. All vegetative growth shall be cleared from roadways in accordance with Uniform Fire Code.
- c. A fuels modification plan for the subdivision, including a property line thirty (30) feet minimum fuel break shall be accomplished to the satisfaction of the Nevada Department of Forestry and Douglas County Fire Department.



d. All structures shall be constructed with fire retardant roofing materials in compliance with N.R.S. 472.100 and the Board or Architectural Committee.

e. All house numbers for the individual properties shall be properly displayed in accordance with Uniform Fire Code Article 10, Section 10.207-L.

**3.25 Exterior Lighting.** The Board or Architectural Committee shall approve all exterior lighting. No exterior lighting shall shine onto any building or other structure within another Owner's residence. Nothing contained herein shall prohibit, or require the Board or Architectural Committee approval of, outdoor lighting or other displays during the Christmas Holiday Season of December 1 to January 2 of each and every year.

**3.26 Lot Survey Stakes and Marks.** At the time of sale of each Lot by Declarant to the non-Declarant Owner thereof, the corners of such Lot shall be marked by the Declarant with permanent survey marks or stakes. It shall be the obligation of each Owner or occupant of a Lot to preserve such marks and stakes and to replace the same at his or her own expense if required by the Association to determine the location of Lot boundary lines.

**3.27 Tanks.** No tanks or fluid storage devices of any kind whatsoever shall be erected placed or otherwise permitted upon any Lot, unless the device is a water pressure booster pump.

**3.28 Drainage.** There shall be no interference with the established drainage in the subdivision unless adequate alternative provision previously approved in writing by the Board or Architectural Committee is made for proper drainage. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time a Lot is conveyed to an Owner by Declarant or later grading changes which are shown on plans approved by the Committee. Notwithstanding the generality of the foregoing, each Owner shall be obligated to provide storm water runoff management on their Lot or residence, which complies with applicable master plan concepts for the Project, and each Lot shall so comply at the time of application for a building permit.

#### **ARTICLE 4** **THE ASSOCIATION**

**4.1 Formation.** The Association is a non-profit corporation formed under the laws of the State of Nevada, specifically NRS Chapter 82. Prior to the first conveyance of a Lot from Declarant to another Owner, Declarant shall cause the Articles to be filed with the Secretary of State of the State of Nevada. Upon recording of the first Lot sale to an Owner (other than Declarant), the Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Declaration.

**4.2 Ownership of Lots and Membership of the Association.**

**4.2.1 Ownership Qualifications.** Except as provided in Section 4.2.1, the Membership of the Association shall at all times consist exclusively of (a) all the Owners, including Declarants of the twenty (20) Lots in the Project, their heirs, successor, or assigns. Persons or entities that hold an interest in a Lot merely as security for performance of an obligation are not to be regarded as Owners; however, a contract of sale buyer of a Lot shall be a Member.

**4.2.2 Owners' Rights and Duties.** Each Owner shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws and Rules and Regulations as the same may from time to time be amended.

**4.2.3 Transfer of Ownership.** The Association Membership of each person or entity who owns, or owns an interest in, one or more Lots shall be appurtenant to each such Lot, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to each such Lot or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot or interest in it shall operate automatically to transfer the appurtenant Ownership rights in the Association to the new Owner. Immediately after any transfer of title to a Lot, and upon the payment of the transfer fee to be determined by the Board, either the transferring Owner or the acquiring Owner shall give notice to the Board of such transfer, including the name and address of the acquiring Owner and the date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on the date of transfer of title to the Lot, which transfer fee shall be assessed against the Lot as a Violation Assessment if not paid when due. The initial transfer fee shall be set by the Board and shall not exceed \$300.00. The Board may increase such transfer fee from time to time in its sole reasonable discretion to cover administrative costs of the Association in connection with such transfer.

**4.3 Meeting of Owners.** A meeting of the Association must be held at least once each year. The first annual meeting of the Members of the Association shall be held not later than one (1) year after the date of the filing of the Articles with the Secretary of State of the State of Nevada. Such meeting shall be called, noticed and conducted in accordance with the Articles and the Bylaws. Special Meetings of the Association may be called by the president or secretary, a majority of the Board or by Owners having 20%, or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than 10 or more than 60 days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including, but not limited to, the general nature of any proposed amendment to the Declaration or Bylaws, any fees or assessments to be imposed or increased, any budgetary changes, and any proposal to remove an officer or member of the Board. The notice must include notification of the right of an Owner to have a copy of the minutes or a summary of the minutes of the meeting distributed to him upon request if he pays the Association the cost of making the distribution.

**4.4 Voting Rights.** Only Owners of the Lots in the Association shall be entitled to vote. The voting privileges of each Owner shall be as set forth herein. Each Owner shall be entitled to one (1) vote for each Lot owned by such Owner. In the case of a Lot owned by two (2) or more persons or entities, the voting power shall be exercised by only one of them. The Owner ("Voting Owner") who is designated to cast votes on behalf of all the Owners of a Lot must be designated in writing to the Board by all Owners of such Lot, and the Association may refuse to accept the vote for any such Lot by any Owner other than the Voting Owner. If there is no such designation then such Lot shall have no vote until such designation is made.

**4.4. A Appointment and removal Of Members of Association Board and Officers of Association.**

Subject to the provisions herein, Declarant reserves the right to appoint and remove the Members of the Board and the Officers of the Association until the earlier of the following events:

- (i) Sixty (60) days after conveyance of seventy-five percent (75%) of the Lots to Owners other than Declarant; or
- (ii) Five (5) years after Declarant (including Successor Declarants) has ceased to offer for sale in the ordinary course of business any Lots within the Project or (c) five (5) years after any right to add new units was last exercised. Declarant shall have the right to designate a person or persons who are entitled to exercise the rights reserved to Declarant under this Section. The date on which the rights reserved by Declarant under this section terminate is herein called "The Declarant's Control Termination Date". From and after the Declarant's Control Termination Date, the Board of Directors and the officers of the Association shall be elected and appointed as provided in the Articles and Bylaws. Except as otherwise provided in the Bylaws or the Declaration, the affairs of the Association shall be conducted by and through the Board, by such officers and committees appointed by the Board in accordance with this Declaration and the Bylaws, and by persons and entities described in Section 5.1.

**4.4.1 Incorporators.** Any Incorporator who is not also an Owner shall have no voting rights.

**4.4.2 Owners.** Owners shall have the votes set forth in Section 2.3 and the manner in which to vote as set forth in Section 4.4 herein. If only one of several Owners of a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot only if that Owner is the Voting Owner. The voting rights for each Lot may not be cast on a fractional basis. If the joint owners of a Lot are unable to agree among themselves as to how their voting rights shall be cast and who the Voting Owner for that Lot may be, then they shall forfeit the vote on the matter in question. If more than one person or entity exercises the voting rights for a particular Lot, none of their votes shall be counted; and their votes shall be deemed void.

**4.4.3 Proxies.** Votes allocated to a Lot may be cast pursuant to a proxy executed by an Owner of such Lot. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through an executed proxy. An Owner may revoke a proxy only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice or does not comply with the provisions of NRS 116.311(4). A proxy terminates immediately after the conclusion of the meeting, and any recessed session for which it is executed.

**4.4.4 Lot Owned by Association.** No votes allocated to a Lot owned by the Association may be cast.

**4.5 Owners' Approval.** Except as otherwise provided in the Bylaws or this Declaration, all matters requiring the approval of Owners shall be deemed approved if Owners holding a majority of the total

voting rights assessed to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Owners at any regular or special meeting held in accordance with the Bylaws.

**4.6. Composition of Board of Directors.** Notwithstanding anything to the contrary set forth herein, not later than sixty (60) days after Declarant's conveyance of Lots equal to twenty-five (25%) percent of the total number of Lots within the Project to owners other than Declarant, at least one (1) member and not less than twenty-five percent (25%) of the Members of The Board shall be elected by Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty (50%) percent of the Lots within the Project to owners other than Declarant, not less than thirty-three (33.3%) and one third percent of the Members of The Board shall be elected by Owners other than Declarant. Not later than the Declarant's Control Termination date, the Owners shall elect an executive Board of at least three (3) to five (5) members.

**4.6.1 Qualifications.** Except as otherwise provided in the Declaration, the members of the Board shall be Owners. An officer, employee, agent, or director of a corporate Owner of a Lot, a trustee or designated beneficiary of a trust that owns a Lot, a partner of a partnership that owns a Lot, and a fiduciary of an estate that owns a Lot may be an officer or member of the Board. In all events where the person serving or offering to serve as an officer or member of the Board is not the record Owner, he shall file proof of authority in the records of the Association.

**4.6.2 Removal.** Notwithstanding any provision of the Declaration or Bylaws to the contrary, the Owners, by a two-thirds vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant.

**4.6.3 Limitations on Authority of the Board.** The Board may not act on behalf of the Association to amend the Declaration, to terminate the Project, or to elect members of the Board or determine their qualifications, powers, and duties or terms of office, or to pay compensation to members of the Board or officers for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board or an officer to be reimbursed for expenses incurred in carrying on the business of the Association; and the Board may fill vacancies for the unexpired portion of any term.

**4.6.4 Fiduciaries.** In the performance of their duties, the officers and Members of the Board are fiduciaries and are subject to the insulation from liability provided for directors of corporations by the laws of the State of Nevada. The Members of the Board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

**4.6.5 Personal Liability; Indemnification.** Except to the extent such liability, damage, or injury is covered by any type of insurance, no member of the Board or Architectural Committee or any other committee of the Association or any officer of the Association, or any Manager, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other party, including the Association for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct. When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense; until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring on the Project. Punitive damages may not be recovered against the Association.

**4.7 Bylaws.** The Bylaws of the Association must provide:

- (a) The number of Members of the Board and the title of the officers of the Association;
- (b) For election by the Board of a president, treasurer, secretary, and any other officers of the Association the Bylaws specify;
- (c) The qualifications, powers, and duties, terms of office, and manner of electing and removing Owners and officers of the Board and filling vacancies;
- (d) Which, if any, of its powers the Board or officers may delegate to other persons or to an Association Manager;
- (e) Which of its officers may prepare, execute, certify, and record amendments to the Declaration on behalf of the Association?
- (f) A method for amending the Bylaws; and
- (g) Procedural rules for conducting meetings of the Association. Subject to the provisions of the



Declaration, the Bylaws may provide for any other matters the Association deems necessary and appropriate.

**4.8 Rules and Regulations.** The Association may adopt Rules and Regulations to govern the use of the Common Elements by all Owners, or their families, guests, invitees, or by any contract purchaser, or tenant, or their respective family members, guests, or invitees. Rules and Regulations shall be signed by the Secretary of the Association, noting the date of their adoption. The Rules and Regulations may be amended with the approval of at least a three-fourths majority of the Owners. The Association shall mail a copy of the Rules and Regulations and each amendment thereto to each Owner. Amendments shall be effective upon such mailing or upon such later date as specified in the amendment. The Rules and Regulations shall not be inconsistent with or materially alter any provisions of this Declaration, the Articles or the Bylaws. In case of any conflict between any provision of the Rules and Regulations and any provisions of this Declaration, the Articles or Bylaws, then the conflicting provision of the Rules and Regulations shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws.

**4.9 Inspection of Association Books and Records.** Any Ownership register, accounting records, minutes of meetings of the Owners, the Board and committees of the Board of the Association, and other books, records and papers of the Association shall be made reasonably available for review by any Member of the Association, or his duly appointed representative, or any mortgagee, during regular working hours of the Association, at the office of the Association or at such other place as the Board prescribes. The Board shall establish by resolution reasonable rules with respect to

- (a) notice to be given to the custodian of the records of the Association by the Member, representative, or mortgagee, as long as such rules are consistent with the requirements of NRS 116.31175, NRS 116.31177, and NRS 116.3118.
- (b) hours and days of the week when an inspection may be made, and
- (c) Payment of the cost of reproducing copies of documents requested by a Member or by a representative or mortgagee. Every Member of the Board shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Member of the Board includes the right to make extracts and copies of documents. Not more than 30 days after any meeting, the secretary or other officer specified in the Bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner in electronic format at no cost or if unable to do so in paper format at a cost not to exceed \$.25 per page for the first ten (10) pages and \$.10 per page thereafter.

**4.10 Period of Declarant Control.** Operation of the Association is subject to the period of Declarant control provided in Article 4.

**4.11 Termination of Contracts and Leases of Declarant.** If entered into before the Board elected by the Owners pursuant to Article 4 takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities, any other contract or lease between the Association and a Declarant or an affiliate of a Declarant or any contract or lease that is not in good faith or was unconscionable to the Owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the Association at any time after the Board elected by the Owners takes office upon not less than 90 days' notice to the other party. This section does not apply to any lease the termination of which would terminate the Project or reduce its size, unless the real estate subject to that lease was included in the Project for the purpose of avoiding the right of the Association to terminate a lease under this Section.

## **ARTICLE 5**

### **POWERS AND DUTIES OF THE ASSOCIATION**

**5.1 Powers.** The Association shall have the powers of a non-profit corporation organized under the laws of the State of Nevada and the powers conferred upon it pursuant to Chapters 82 and 116 of the Nevada Revised Statutes, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, consistent with NRS 116.3102, including, without



limitation, the following:

1. Assessments. The Association shall have the power to establish, fix, and levy assessments as set forth in Article 6 hereof (herein collectively "Assessments") and to enforce payment of such Assessments in accordance with the provisions of this Declaration and the Nevada Revised Statutes.
2. Adopt and amend the Bylaws and the Rules and Regulations;
3. Adopt and amend budgets for revenues, expenditures, and reserves and collect special assessments for common and capital expenses from Owners;
4. Hire and discharge the Manager and other employees, agents, and independent contractors; however, any agreement for professional management of the Project shall be terminable by either party with or without cause and without payment of a termination fee on 30 days' written notice; and the term of any such agreement shall not exceed one year, although such agreement may be renewed from year to year by the Board;
5. Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Project;
6. Make contracts and incur liabilities;
7. Regulate the use, maintenance, repair, replacement, and modification of Common Elements;
8. Cause additional improvements to be made as a part of the Common Elements;
9. Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but only pursuant to Section 2.5 herein;
10. Grant easements, leases, licenses and concessions through or over the Common Elements;
11. Impose and receive any payments, fees, or charges for the use, rental or operation of the Common Elements, other than Limited Common Elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to Owners pursuant to the Declaration;
12. Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and Rules and Regulations;
13. Impose reasonable charges for the preparation and recordation of amendments to the Declaration, the information required by NRS 116.4109, or statements of unpaid assessments;
14. Provide for the indemnification of its officers and Board and maintain directors' and officers' liability insurance;
15. Assign its right to future income, including the right to receive assessments for common expenses, but only to the extent the Declaration expressly so provides;
16. Exercise any other powers conferred by the Declaration or Bylaws;
17. Exercise all other powers that may be exercised in this State by legal entities of the same type as this Association.
18. Direct the removal of vehicles improperly parked on property owned or leased by the Association, pursuant to NRS 487.038; and
19. Exercise any other powers necessary and proper for the governance and operation of the Association.
20. The Association acting by and through the Board shall have the power, but not the obligation to delegate its powers, duties, and responsibilities to committees of Members, employees, agents and independent contractors, including a professional managing agent. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Project and the enforcement of this Declaration.

**5.2 Duties.** Except as otherwise provided, the Association has the obligation to conduct all business concerning the common interests of the Owners and concerning the Common Elements, and without limitation, to perform the following duties:

1. Adopt the Bylaws and the Rules and Regulations;
2. Adopt budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from Owners;
3. Acquire and hold the Common Elements;
4. Operate, perpetually fund, maintain in good repair, and replace the Common Elements, including, without limitation, water and sewer to the main lines of the Tahoe Douglas District and/or Douglas County any storm water management system, all other utilities therein, driveway access (excluding driveway and concrete pad maintenance and snow removal in the Limited Common Areas), landscaping, fuel modification areas, fire break areas, and signs in the Common Elements;
5. Obtain and pay for sewer and water service for the Common Elements;
6. Pay all taxes and assessments levied against the Common Elements;

7. Obtain the insurance required by Article 9;
8. Provide for the indemnification of its officers and Board;
9. Keep financial records sufficiently detailed to enable the Association to comply with NRS 116.3118 and 116.4109;
10. Make all financial and other records reasonably available for examination by any Owner and his authorized agents; and
11. Carry out the other duties of the Association set forth in the Declaration, Articles, or Bylaws.

## ARTICLE 6 ASSESSMENTS

**6.1 Purpose.** The assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively, to pay the Common Expenses of the Association, and shall include, but are not limited to, expenditures for the following purposes:

- (i) To operate, manage, maintain and repair the Common Elements and personal property which is Association Property, and to administer the operation of the Association;
- (ii) To provide for reasonable reserves consistent with sound business practice for the repair and replacement of Improvements to the Common Elements and any Association Property, and for such other purposes as are consistent with good business practice;
- (iii) To provide for the possibility that some Assessments may not be paid on a current basis;
- (iv) Assessments shall also include a working capital fund for the initial months of operation of the Association equal to at least two months' estimated assessments for every Lot.

Each Lot's share of the working capital fund shall be collected either at the time the sale of the Lot is closed or when control of the Project is transferred to the Owners, whichever is earlier. Any amounts paid into the working capital fund shall not be considered as advance payments of regular assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Owners. Declarant is prohibited from using the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. When unsold Lots are sold, however, Declarant may reimburse itself for funds it paid the Association for an unsold Lot's share of the working capital fund by using funds collected at closing when the Lot is sold.

**6.2 Agreement to Pay.** Each Owner, including Declarant, for each Lot owned, covenants and agrees to pay to the Association such regular, special, and capital improvement assessments as are established, made, and collected as provided in this Declaration. Except as provided below, until the Association makes an assessment for common expenses, the Declarant shall pay all common expenses. After an assessment has been made by the Association, assessments shall be made at least annually, based on a budget adopted at least annually by the Association.

**6.3 Personal Obligations.** Each assessment or installment, together with any late charge, interest (as allowed by NRS 116.3115(3)) collection costs, and reasonable attorneys' fees, all as established by the Board, shall be the personal obligation of the person or entity who was an Owner at the time such assessment or installment became due and payable. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. Subject to the provisions of Section 6.11, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid assessments against the Lot up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments. No Owner may avoid or diminish such personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Lot.

**6.4 Allocation of Assessments.** All common expenses shall be assessed equally on a pro-rata basis against all the Lots, except as follows:

- (a) Any common expense associated with the maintenance, repair, or replacement of a Limited Common Area, if any, must be assessed against the Lots to which that Limited Common Area is assigned, equally;
- (b) Any common expense or portion thereof benefiting fewer than all of the Lots must be assessed exclusively against the Lots benefited;
- (c) The costs of insurance must be assessed in proportion to risk, and the costs of utilities must be assessed in proportion to usage;
- (d) Assessments to pay a judgment against the Association may be made only against the Lots in the

Project at the time the judgment was entered, in proportion to their liabilities for common expenses;

(e) If any common expense is caused by the misconduct or negligence of any Owner, the Association may assess that expense exclusively against his Lot;

(f) If liabilities for common expenses are reallocated, assessments for common expenses, and any installment thereof not yet due must be recalculated in accordance with the reallocated liabilities. Except as otherwise provided, the Association shall not change the pro rata interest or obligation of any Lot for purposes of levying assessments unless all Owners and all institutional first mortgagees have given their prior written consent.

**6.5 Surplus Funds.** Any surplus funds of the Association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid to the Owners in proportion to their liabilities for common expenses or credited to them to reduce their future assessments for common expenses as determined by the Board.

**6.6 Regular Assessments.** Board shall, not less than 30 days or more than 60 days before the beginning of the fiscal year of the Association, prepare and distribute to each unit's owner a copy of:

(a) The budget for the daily operation of the Association. The budget must include, without limitation, the estimated annual revenue and expenditures of the Association and any contributions to be made to the reserve account of the Association.

(b) The budget to provide adequate funding for the reserves required by paragraph (b) of subsection 2 of NRS 116.3115. The budget must include, without limitation:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the common elements and any other portion of the common-interest community that the Association is obligated to maintain, repair, replace or restore;

(2) As of the end of the fiscal year for which the budget is prepared, the current estimate of the amount of cash reserves that are necessary, and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the common elements and any other portion of the common-interest community that the Association is obligated to maintain, repair, replace or restore;

(3) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be necessary to repair, replace or restore any major component of the common elements or any other portion of the common-interest community that the Association is obligated to maintain, repair, replace or restore or to provide adequate funding for the reserves designated for that purpose; and

(4) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subparagraph (2), including, without limitation, the qualifications of the person responsible for the preparation of the study of the reserves required by NRS 116.31152.

(c) In lieu of distributing copies of the budgets of the Association, required by subsection 1, the Board may distribute to each unit's owner a summary of those budgets, accompanied by a written notice that:

(1) The budgets are available for review at the business office of the Association or some other suitable location within the county where the common-interest community is situated or, if it is situated in more than one county, within one of those counties but not to exceed 60 miles from the physical location of the common-interest community; and

(2) Copies of the budgets will be provided upon request.

Within 30 days after adoption of any proposed budget for the Association, the Board shall provide a summary of the budget to all the Owners, and shall set a date for the meeting of the neither Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting at least 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, 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. The Board shall establish the regular annual assessment without vote of the Owners; provided, however, that the Board may not establish a regular assessment for any fiscal year of the Association that is more than 120% of the regular assessment of the prior fiscal year of the Association (except the first such fiscal year of the Association if it should be less than 12 months) without the approval by vote or written consent of Owners holding at least 60% of the voting rights. In addition to all other uses of the regular assessments as herein provided, the Association shall, from each payment of regular monthly assessments, fund a reserve for replacement of Common Elements.

**6.7 Special Assessments.** If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet



expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, or replacements of capital improvements on the Common Elements, then the Board shall determine the approximate amount necessary to defray such expenses. If the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or immediately levy the assessment against each Lot. Additionally, the Association shall have the power to incur expenses for maintenance and repair of any Lot or appurtenant Limited Common Area, provided such maintenance and repair is necessary, in the opinion of the Board, to protect the Common Elements or any other portion of the Project, or provided such repair or maintenance is required by Section 3.5 or 3.6, and provided the Owner of such Lot has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of such maintenance or repair has been delivered by the Board to such Owner. The Board shall levy a special assessment against the Owner of any such Lot to pay for the cost of such maintenance, repair, and any other costs or expenses arising out of or incident to such maintenance and repair, and the assessment therefore. Additionally, the Board may levy a special assessment against a Lot to collect a fine imposed on the Owner by the Board.

**6.8 Capital Improvement Assessments.** Upon approval of a proposed capital improvement and the estimated total cost thereof pursuant to Section 8.1 or 8.2, such estimated total costs shall be assessed to the Owners of each Lot in an equal amount for each Lot, or 1/20th as a capital improvement assessment. If at any time and from time to time a capital improvement assessment proves or appears likely to prove inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, without obtaining any further approval from the Owners, levy a further capital improvement assessment in the amount of such actual or estimated inadequacy, which shall be assessed to all Owners in equal amounts. However, if such additional assessment shall be in excess of 5% of the original assessment, the affirmative vote or written consent of at least 60 % of Owners shall be required for such further assessment. Capital improvement assessments shall be due and payable by all Owners in such installments and during such periods, as the Board shall designate.

**6.9 Assessment Period.** The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year. Regular assessments shall be payable in equal semi-annual installments unless the Board adopts some other basis for collection. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale of the first Lot to a purchaser is closed and recorded, and shall terminate on December 31 of the year in which the initial sale is closed and recorded. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

**6.10 Notice of Assessments; Time for Payment.** The Association may, in its discretion, give written notice of assessments to each Owner, which notice shall specify the amount of the assessment and the date of payment of the assessment. No payment shall be due fewer than 15 days after such written notice has been given. An assessment payment is delinquent if not paid within 30 days after such due date. Failure of the Association to give notice of the assessment shall not affect the liability of the Owner of any Lot for such assessment, but the date when payment shall become due in such a case shall be deferred to a date 15 days after such notice shall have been given.

**6.11 Statement of Account.** The Association, upon written request, shall furnish to Owner a statement setting forth the amount of unpaid assessments against the Lot. The statement must be in recordable form. The statement must be furnished within 10 business days after receipt of a written request and is binding on the Association, the Board and every Owner.

**6.12 Collection of Assessments.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, including any Manager, can enforce the obligations of commencement and maintenance of a suit at law or in equity; or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments, together with all other amounts described in Section 6.3 shall be maintainable without foreclosing or waiving the lien rights.

## **ARTICLE 7** **LIENS FOR ASSESSMENTS**



**7.1 Lien for Assessments.** From the time the assessment becomes due, all sums assessed to any Lot pursuant to this Article, together with interest thereon and other charges as provided herein shall be secured by a lien on such Lot in favor of the Association. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. Recording of the Declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment is required. A lien under this Section is prior to all other liens and encumbrances on a Lot except:

(a) Liens and encumbrances recorded before the recordation of the Declaration;

(b) A first security interest on the Lot recorded before the date on which the assessment sought to be enforced became delinquent;

(c) Liens for real estate taxes and other governmental assessments or charges against the Lot. The lien is also prior to all security interests described in paragraph (d) to the extent of any charges incurred by the Association on a Unit/Lot pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the Association pursuant to Section 6.6 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due. The existence of the lien does not prohibit the Association from actions to recover sums secured by the lien or from taking a deed in lieu of foreclosure.

**7.2 Foreclosure of Lien.** The Association may foreclose its lien and conduct the sale upon foreclosure in accordance with the procedures set forth in NRS 116.31162, 116.31163, 116.311635, 116.31164, 116.31166 and 116.31168, inclusive.

**7.3 Owner's Written Request for an Accounting.** The Association, upon written request shall furnish to a Lot's Owner a statement setting forth the amount of unpaid assessments against the Lot. The statement must be in recordable form. The statement must be furnished within twenty (20) business days after receipt of the request and is binding on the Association, the executive Board and every Lot's Owner.

## **ARTICLE 8** **CAPITAL IMPROVEMENTS**

**8.1 Petitions; Board Approval.** A majority of the twenty (20) Lot Owners, with each Lot receiving one (1) vote, may petition the Association for the construction, installation, or acquisition of a Capital Improvement in the Common Elements. As used herein, "Capital Improvement" relates only to a new capital improvement. Also as used herein, "Capital Improvement" means (i) any Improvement upon the Common Elements which is not a repair or replacement of an existing Improvement, or (ii) any expenditure relating to the Common Elements which is outside the ordinary course of business of the Association. No such petition or approval shall be required to replace existing Capital Improvements or to make expenditures from any capital replacement reserve. Such petition shall be in writing and be in such form and shall contain such information as the Board may require, including, without limitation, preliminary plans and costs estimates. The Board may, on its own motion, move for the construction, installations, or acquisition of a capital improvement, in which case such motion shall be treated as if it were a petition duly submitted by an Owner. The Board shall approve the petition if it determines that the proposed Capital Improvement is desirable for the beneficial use and enjoyment of the Common Elements by the Owners. Upon the approval of such petition by the Board, the Board shall obtain a minimum of two (2) firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement. The lowest acceptable bid or bids shall be deemed the estimated total cost of such capital improvements.

**8.2 Owner Approval.** If the estimated total cost of the proposed capital improvement exceeds the sum of \$5,000.00 in any one fiscal year, then the Board shall present the proposed capital improvement and the estimated total cost thereof to all Owners. Such improvements shall be deemed approved if at least seventy (70%) percent of Owners vote to approve such capital improvement.

**8.3 Construction of Improvements.** After the levy of the capital improvement assessment pursuant to Section 6.8, and at such time and upon such terms and conditions as the Association may deem appropriate, but not exceeding the estimated total cost of such capital improvement determined pursuant to Section 8.1, the Board shall cause the proposed capital improvement to be constructed, installed, or acquired.

**8.4 Costs of Petition.** If for any reason the construction, installation, or acquisition of the proposed capital

improvement is not approved by the Board or the Owners, all expenses incurred by the Association with respect to the proposed capital improvement shall be paid proportionately by the petitioning Owners; and the Board may levy a special assessment against such Owners for the purpose of paying such expenses.

## **ARTICLE 9** **INSURANCE**

**9.1 Insurance to be obtained.** The Association shall obtain and maintain in full force and effect at all times insurance coverage, provided by companies duly authorized to do business in Nevada, as set forth in this Article. In order to facilitate the providing and maintaining of adequate and proper insurance, it is contemplated that Declarant may contract for blanket insurance coverage covering the Project as contemplated by this Article prior to or concurrently with the first conveyance of a Lot; and in which case, the Association and Declarant shall each pay their proportionate share of the premium.

**9.2 Casualty Insurance.** The Association shall obtain a policy of insurance equal to full replacement value on all insurable improvements or equipment upon the Common Elements and any other Improvements under the control of the Association (including all service equipment and the like) and all other personal property, which is Association Property. As used herein, full replacement value means not less than eighty percent (80%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Items of such insurance shall include fire and extended coverage, crime, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice

**9.3 Public Liability and Property Damage Insurance.** The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms, as it deems advisable to provide adequate protection. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements. The liability insurance shall name as separately protected insured Declarant, Declarant's project manager, the Association, the Board, and their representatives, Owners, and employees, with respect to any liability arising out of the maintenance or use of any Common Elements. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Declarant's project manager, the Board, and their representatives, Owners, and employees. After Declarant has no further interest in any portion of the Project, then the above insurance provisions regarding Declarant and Declarant's project manager shall not apply.

**9.4 Worker's Compensation and Employer's Liability Insurance.** The Association shall purchase worker's compensation and employer's liability insurance and all other similar insurance in respect of employees of the Association in the amounts and in the forms now or hereafter required by law.

**9.5 Fidelity Insurance.** The Association shall purchase in such amounts and in such forms, as it shall deem appropriate, coverage against dishonesty of employees, destruction or disappearance of money or securities, and forgery.

**9.6 Other Insurance.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood, and liability insurance and fidelity bonding meeting the insurance and fidelity bond requirements for common-interest projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

**9.7 Premiums and Review.** Except as provided above, premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the assessments or charges made by the Association. The Board shall review the limits of all insurance policies of the Association at least once a year and adjust the limits, as the Board deems necessary or appropriate.

**9.8 Form.** The insurance policies carried pursuant to Sections 9.2 and 9.3 shall provide to the extent reasonably available that:

- (a) Each Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Elements or Ownership in the Association;
- (b) The insurer waives its right to subrogation under the policy against any Owner or member of his household;
- (c) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (d) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each insurer shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

**9.9 Adjustment of Losses.** Any loss covered by any policy carried pursuant to Sections 9.2, 9.3, 9.5 or 9.6 shall be adjusted with the Association; but the proceeds for the loss shall be payable to any trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The trustee or the Association shall hold any proceeds in trust for the Association, Owners, and lien holders as their interests may appear. Subject to the provisions of NRS 116.31135 and Article 11, the proceeds must be disbursed first for the repair or restoration of the damaged property; and the Association, Owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Project is terminated.

**9.10 Owner's Insurance Responsibilities.** Each Owner shall be responsible for obtaining the following insurance coverage: casualty and theft insurance on the Owner's Lot, including, without limitation, all structures located therein, furnishings and personal property therein; public liability and property damage insurance for the Lot and for the activities of the Owner, not acting for the Association, with respect to the Common Elements. Provided, however, pursuant to Section 9.6, the Association may elect to arrange for insurance coverage of some of the casualties and liabilities described above; in such event, each Owner shall be responsible for the amount, if any, by which the damages exceed the insurance proceeds.

## **ARTICLE 10** **ARCHITECTURAL CONTROL**

**10.1 Design Guidelines.** Declarant reserves the right to adopt Design Guidelines by a separate instrument. The Design Guidelines applicable to the subdivision may vary from Lot- to- Lot based on size, topography and location of the Lot. The Design Guidelines may be, but are not required to be recorded as a Supplement to this Declaration. In the event the Design Guidelines are in conflict with this Declaration, this Declaration shall control. In connection with the initial construction of a residence on a Lot, the Owner or such Lot shall be bound by the Design Guidelines in effect on the date such Owner acquired title to his, her or its Lot unless such Owner has consented in writing to modifications thereto enacted after the conveyance of such Lot by Declarant. Any future modifications to existing Improvements or construction or new Improvements on a Lot shall be governed by the Design Guidelines and the Board of Directors immediately prior to the commencement of construction. No additions or modifications to the Design Guidelines shall affect existing Improvements or Improvements under construction. For purposes of this Section, Improvements under construction shall include Improvements approved by the Board or Architectural Committee in accordance with applicable procedures.

### **10.2 The Architectural Committee.**

**10.2.1 Organization.** The Architectural Committee shall consist of the Board of Directors. The Board at its discretion and by a majority vote of its Directors may expand the Architectural Committee to include a licensed Nevada architect as well as a representative of Heavenly.

**10.2.2 Duties.** It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopt Design Guidelines, to perform other duties delegated to it by the Association, and to carry out all other duties imposed upon it by this Declaration.

**10.2.3 Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder, upon no less than three (3) business days notice given by the chairperson of the Architectural Committee. The vote or written consent of a majority of the members of the Architectural Committee present at a duly called meeting shall constitute an act by the Architectural Committee. The



Architectural Committee may charge a reasonable filing fee to be used to pay an architect, who may or may not be a member of the Architectural Committee, to review the submitted plans and specifications. The Board may reimburse members for reasonable expenses incurred by them in the performance of any Architectural Committee function.

**10.2.4 Design Guidelines.** The Architectural Committee may from time to time and in its sole discretion adopt amend and repeal rules and regulations ("Design Guidelines") in addition to the provisions of this Declaration, which Design Guidelines shall set forth procedural rules for the submission of plans, fees to be charged, and reasonable restrictions relating to construction activities within the Project. The Design Guidelines as may from time to time be adopted, amended, or repealed, shall be maintained in the office of the Association and available for inspection and copying by any Owner or any Beneficiary at any reasonable time during the business hours of the Association.

**10.2.5 Application for Approval of Plans and Specifications.** Any Owner of a Lot proposing to make any Improvements or to perform any work that requires the prior approval of the Architectural Committee shall apply to the Architectural Committee for approval by notifying the Architectural Committee of the nature of the proposed work. Prior to the commencement of construction the Owner shall submit to the Architectural Committee for its review and approval such information and materials as the Architectural Committee in the exercise of its reasonable discretion deems necessary for it to be adequately Informed with respect to the work to be undertaken by such Owner. All plans and specifications submitted for the construction of a residence or any Improvements must be prepared by an architect or a residential designer licensed in the state or Nevada. Procedure for submission of plans shall be in accordance with the Design Guidelines.

**10.2.6 Basis for Approval of Improvements.** The Architectural Committee shall grant the required approval only if:

- (a) The Owner shall have strictly complied with the provisions of Paragraph 10.2.5 and the Design Guidelines; and
- (b) The Architectural Committee finds that the plans and specifications conform to this Declaration, the Design Guidelines in effect at the time such plans were submitted to the Architectural Committee, and
- (c) The Architectural Committee, in its reasonable discretion determines that the proposed Improvements would be compatible with the other property in the subdivision and the purposes of the Declaration as to the quality of workmanship and materials and harmony of external design with existing structures. Any disapproval shall be specific as to the reasons therefore.

**10.2.7 Form of Approval.** All approvals or disapprovals by the Architectural Committee shall be in writing; provided, however, any request for approval which has not been rejected within sixty (60) days from the date of submission thereof to the Architectural Committee shall be deemed approved. The approval may be conditioned upon the deposit by the Owner of a performance bond. Cash deposit or other undertaking to assure completion of the approved Improvement in accordance with the terms of the approval once construction thereof is commenced.

**10.2.8 Proceeding with Work.** Upon receipt of approval from the Architectural Committee pursuant this Section 10.2; the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to the approval. Construction of the approved Improvements shall commence, in all cases, within two (2) years from the date of such approval and shall, in all cases, be completed within one (1) year of such date of commencement. If the Owner shall fail to comply with this paragraph, any approval given by the Architectural Committee shall be deemed revoked unless the Architectural Committee, upon written request of the Owner made prior to the expiration of the one-year period extends the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

**10.2.9 Failure to Complete Work.** The Owner shall in any event complete the construction, reconstruction, refinishing or Alteration of any such Improvement within one year after commencing construction thereof except and for so 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

**10.2.10 Waiver and Variances.** The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed or for any other matter requiring the approval of the Architectural Committee under this Declaration shall 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. The Architectural Committee may grant variances or adjustments from the provisions of this Article 10 where, in the sole and absolute judgment of the majority of the Architectural Committee, literal application of these provisions will result in unnecessary hardship and the granting of such variances or adjustments will not be materially detrimental or injurious to other Owners' Lots.

**10.2.11 Liability.** Provided that the Architectural Committee or a particular member of the Architectural Committee has acted in good faith on the basis of the information as may be possessed by the Architectural Committee or the member, as the case may be, then neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner, or any other person 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) With respect to the construction or performance of any work, whether or not such performance complied with approved plans, drawings, and specifications
- (c) The development of any property subject to this Declaration. Without limiting the generality of the foregoing, the Architectural Committee and any member thereof may, but it 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 Architectural Committee.

**10.2.12 Enforcement.** Only the Declarant shall have the right to enforce the Design Guidelines for so long as Declarant (including any Successor Declarant) owns any of the Lots. Thereafter, the Design Guidelines shall be enforced by the Board or Architectural Committee, or if none has been appointed, by the Board.

**10.2.13 Amendment.** For so long as the Declarant (including any Successor Declarant) owns any of the Lots only the Declarant shall have the right to amend the Design Guidelines. Thereafter the same may be amended only by the affirmative vote or written consent of the members of the Board and a majority of the members or the Architectural Committee.

## **ARTICLE 11** **DESTRUCTION**

**11.1 Repair or Reconstruction.** Any portion of the Project for which the Association is required to obtain insurance pursuant to Article 9 that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Project is terminated, in which case Article 13 applies;
- (b) Repair or replacement would be illegal under any state, regional, or local statute or ordinance governing health or safety; or
- (c) Eighty percent of the Owners, including every Owner of the assigned Limited Common Area that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

**11.2 Use and Distribution of Insurance Proceeds.** If the entire Common Elements are not repaired or replaced, the proceeds attributable to the damaged Common Elements must be used to restore the damaged area to a condition compatible with the remainder of the Project; and, except as provided in Article 13:

- (a) The proceeds attributable to Limited Common Areas that are not rebuilt must be distributed to the Owners of the Lots to which those Limited Common Areas are allocated, or to lien holders, as their interests may appear; and
- (b) The remainder of the proceeds must be distributed to all the Owners or lien holders, as their interests may appear, in proportion to their liability for common expenses.

## **ARTICLE 12** **CONDEMNATION**

**12.1 Consequences of Condemnation.** If at any time during the continuance of the Project all or any part of the Project shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

**12.2 Association's Authority.** The Association is designated to represent the Owners in any proceedings relating to condemnation. The Association may act in the capacity of attorney-in-fact for the Owners, acting under an irrevocable power of attorney that each Owner grants to the Association by accepting a Lot. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Association.

**12.3 Complete Taking.** In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the planned community ownership pursuant hereto shall terminate. The Condemnation Award shall apportioned among the Owners in the same manner as set forth in Section 12.4, provided that if a standard different from the value of the Project as a whole is employed to measure the Condemnation Award in the negotiation, judicial decree, or otherwise, then in determining such shares, the same standard shall be employed to the extent it is relevant and applicable. On the basis of the principle set forth in the last preceding paragraph, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be disbursed as soon as practicable in the same manner provided in Section 11.2 of this Declaration.

**12.4 Partial Taking.** In the event that less than the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Project hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable, the Association shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

- (a) The total amount allocated to taking of or injury to Common Elements other than Limited Common Areas shall be apportioned equally among Owners;
- (b) The total amount allocated to severance damages shall be apportioned to those Lots that were not taken or condemned;
- (c) The respective amounts allocated to the taking of or injury to a particular Lot and/or improvements an Owner has made within his own Lot and Limited Common Area appurtenant to the Lot shall be apportioned to the particular Lot involved; and
- (d) The total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable in the circumstances. If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award, the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made in the same manner provided in Section 11.2 of this Declaration.

**12.5 Reorganization.** In the event partial taking results in the taking of a complete Lot, the Owner thereof automatically shall cease to be a Member of the Association. Thereafter, the Association shall reallocate the allocated interests according to the same principles employed in this Declaration at its inception and shall submit such reallocation to the Owners of remaining Lots for amendment of this Declaration as provided in Article 16 hereof.

**12.6 Reconstruction and Repair.** Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article 11 above.

### **ARTICLE 13** **TERMINATION OF PLANNED COMMUNITY**

**13.1 Agreement to Terminate.** Except in the case of a taking of all of the Lots by eminent domain, the planned community regime may be terminated only by agreement of the Owners to whom at least 80% of the votes in the Association are allocated and of Eligible Mortgage Holders who represents at least 51% of the Lots that are subjected to deeds of trust held by Eligible Mortgage Holders; provided, however, if the termination is for reasons other than substantial destruction or condemnation of the Project, then the vote of at least 75% of the Eligible Mortgage Holders is required. An agreement to terminate must be evidenced by the execution of an agreement to terminate, or ratifications thereof, in the same manner as a deed, by the requisite number of Owners. The agreement must specify a date after which the agreement will be void unless it is recorded before that date. An agreement to terminate and all ratifications thereof must be recorded in the County and is effective only upon recordation. The agreement to terminate may provide that all of the Common Elements and Lots of the planned community must be sold following termination. If, pursuant to the agreement, any real estate in the Project is to be sold following termination, the agreement must set forth the minimum terms of the sale. Following termination of the planned community, the proceeds of any sale of real estate, together with the assets of the Association, are held by the Association as trustee for Owners and holders of liens on the Lots as their interests may appear.

**13.2 Sale of Real Estate.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project; but the contract is not binding on the Owners until approved and recorded in the same

manner as an agreement to terminate as set forth in Section 13.1. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the Association as trustee for the holders of all interests in the Lots. Thereafter, the Association has all powers necessary and appropriate to effect the same. Until the sale has been concluded and the proceeds thereof distributed, the Association shall continue in existence with all powers it had before termination. Proceeds of the sale must be distributed to Owners and lien holders as their interests may appear, in accordance with NRS 116.21183 and 116.21185. Unless otherwise specified in the agreement to terminate, as long as the Association hold title to the portion of the real estate, each Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Lot. During the period of that occupancy, each Owner and his successors in interest remain liable for all assessments and other obligations imposed on Owners by the Declaration.

**13.3 No Sale of Real Estate.** If the real estate constituting the Project is not to be sold following termination, title to each Lot shall remain with its Owner and title to the Common Elements vests in the Owners upon termination as tenants in common in proportion to their respective interests as provided in NRS 116.21185, and liens on the Lots shift accordingly. While the tenancy in common exists, each Owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the Lot.

**13.4 Interests of Owners Following Termination.** Following termination, the respective interests of Owners are as follows: (a) Except as otherwise provided in (b) below, the respective interests of Owners are the fair market values of their Lots, allocated interests, and any Limited Common Area immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraisers must be distributed to the Owners and becomes final unless disapproved within 30 days after distribution by Owners to whom 25% of the votes in the Association are allocated. The proportion of interest of any Owner to that of all Owners is determined by dividing the fair market value of that Lot and its allocated interests by the total fair market values of all the Lots and their allocated interests; (b) If any Lot or any Limited Common Area is destroyed to the extent that an appraisal of the fair market value thereto before destruction cannot be made, the interests of all Owners are their respective liabilities for common expenses immediately before the termination.

**13.5 Rights of Creditors Following Termination.** Following termination, creditors of the Association holding liens on the Lots that were recorded before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the Association are to be treated as if they had perfected liens on the Lots immediately before termination.

## **ARTICLE 14** **PROTECTION OF LENDERS**

**14.1 General.** Notwithstanding any other provisions in this Declaration to the contrary but subject to the requirements of NRS 116.1201 and NRS 116.3116, in order to induce institutional lenders to participate in the financing of sales of Lots in the Project, the following provisions are included. To the extent that the provisions of Article 14 conflict with any other provisions in this Declaration, the provisions of Article 14 shall control.

**14.2 Encumbrance of Lots Permitted.** Any Owner may encumber his Lot with a deed of trust.

**14.3 Subordination.** Any lien created or claimed under Article 7 of this Declaration is subject and subordinate to the lien of any first deed of trust encumbering any Lot or other property in the Project and recorded before the date on which the assessment sought to be enforced became delinquent, unless the priority of such first deed of trust is expressly subordinated to such assessment lien.

**14.4 Non-Liability for Unpaid Assessments.** Any beneficiary of a first deed of trust who comes into possession of a Lot pursuant to the remedies provided in the deed of trust shall take such Lot free of any claims for unpaid assessments or charges against the encumbered Lot that accrued prior to the time such beneficiary came into possession of the Lot, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Lots in the Project. Provided, however, after the foreclosure of any such deed of trust or conveyance of any Lot to such beneficiary by deed in lieu of foreclosure, such Lot shall remain subject to the Declaration; and the amount of all regular and special assessments, to the extent they related to expenses incurred subsequent to such foreclosure, shall be assessed hereunder to the grantee or purchaser at such foreclosure sale.

**14.5 Breach of Covenants.** No breach of any of the provisions of this Declaration or the reentry by reason



of any such breach shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any Lot; provided, however, the provisions of the Declaration shall be binding upon the Owners whose title thereto is acquired under foreclosure, trustee's sale, or otherwise.

**14.6 Notice of Default.** Upon written request to the Association, the beneficiary of a first deed of trust encumbering a Lot shall be entitled to written notification from the Association of any default by the trustor in the performance of trustor's obligations under the Declaration, Articles, Bylaws or Rules and Regulations that is not cured within 30 days.

**14.7 Other Notices.** Any Institutional Holder, insurer, or guarantor of a first deed of trust encumbering a Lot shall be entitled to timely written notification from the Association of: any condemnation or casualty loss that affects either a material portion of the Project or the Lot securing its deed of trust; a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. Such holder, insurer, or guarantor may send a written request for such information to the Association and state its name, address and number or address of the Lot that such deed of trust encumbers.

**14.8 Insurance Proceeds and Condemnation Awards.** Except as otherwise provided by NRS 116.2119, no provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of a beneficiary pursuant to its deed of trust in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of the encumbered Lot or Common Elements.

**14.9 Appearance at Meetings.** Any institutional holder of a first deed of trust on a Lot, upon request, shall be entitled to written notice of all meetings of the Owners of the Association and shall be permitted to designate a representative to attend all such meetings.

**14.10 Right to Examine Books and Records.** Any institutional Holder of a first deed of trust can examine the books and records of the Association during normal business hours and, upon request, shall be entitled to have an annual audited financial statement of the Project prepared at its own expense.

**14.11 Amendments of a Material Nature.** Amendments to the Declaration of a material nature must be agreed to by Eligible Mortgage Holders who represent at least 51% of the Lots encumbered by deeds of trust held by Eligible Mortgage Holders. An implied approval may be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment (including an agreement to terminate pursuant to Section 13.1) within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested. Any change to the Declaration provisions governing the following is considered as material:

- (a) Voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (c) Reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Elements or Limited Common Area, or rights to their use;
- (f) Redefinition of any Lot boundaries;
- (g) Convertibility of Lots into Common Elements or vice versa;
- (h) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (i) Hazard or fidelity insurance requirements;
- (j) Imposition of any restrictions on the leasing of Lots;
- (k) Imposition of any restrictions on Owner's right to sell or transfer his or her Lot;
- (l) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration; or
- (m) Any provisions that expressly benefit mortgage holders, insurers, or guarantors.

**14.12 Participation of Eligible Mortgage Holders.** The Association shall notify Eligible Mortgage Holders of any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders. Eligible Mortgage Holders shall have the right to join in the decision-making concerning amendments of the Declaration of a material nature.

## **ARTICLE 15**

### **SPECIAL DECLARANT'S RIGHTS**

**15.1 Completion of Improvements and Sales.** Nothing in this Declaration shall be understood or

construed to:

- (a) Prevent Declarant, its contractor, or subcontractors from doing any work in the planned community.
- (b) Prevent Declarant or its representatives from erecting, constructing, and maintaining on any part of the Project, such structures as may be reasonably necessary for the conduct of its business of completing the work, establishing the Project as a planned community, and disposing of the Project by sale, lease, or otherwise;
- (c) Prevent Declarant from maintaining such on any part of the Project owned by Declarant or on the Common Elements, signs as may be necessary for the sale, lease, or disposition thereof;
- (d) Prevent Declarant, at any time, from utilizing any Lot owned by Declarant as a model home, sales office, or for construction activities, or from utilizing trailers or temporary structures located in the Project as sales offices or for construction activities;
- (e) Exercise any "special declarant's rights" as defined by NRS 116.089.

**15.2 Damage.** Nothing in this Article shall give the Declarant the right to damage any Lot not owned by Declarant.

**15.3 Future Capital Improvements.** The Association shall be the party primarily responsible for any future capital improvements to the Common Elements of the Project, as well as maintenance and repairs to such improvements, if any such improvements are required by any federal, state, or local authority having jurisdiction over the Subdivision. In the event Declarant, or any of its principals, is or becomes liable for any costs, fees, expenses, or damages associated with such improvements, or to the maintenance or repair thereof, the Association shall indemnify, defend, and hold Declarant, and its principals, harmless from any such costs, fees, expenses, or damages.

## **ARTICLE 16** **AMENDMENT**

**16.1 Association, Owner, Lender Approval.** Subject to the exceptions set forth in NRS 116.2117, the Declaration, including any Plats and Plans, may be amended only by vote or agreement of Owners of Lots to which at least 75% of the votes in the Association are allocated and by Eligible Mortgage Holders as provided in Section 14.11.

**16.2 Governmental Approval.** No amendment to this Declaration shall be effective to eliminate the perpetual funding for maintenance of the Common Elements as provided in Section 5.2(4), modify the last sentence of Section 3.6, or modify Section 2.14, without the written consent of Douglas County. No amendment to the Declaration modifying the rights and benefits extended to any governmental entity shall be made without the written consent of such entity.

**16.3 Restrictions on Amendments.** Except to the extent expressly permitted or required by the Declaration or the Act, no amendment may change the boundaries of any Lot, the allocated interests of a Lot, or the uses to which any Lot is restricted, in the absence of unanimous consent of the Owners affected and the consent of a majority of the Owners of the remaining Lots.

**16.4 Form.** Amendments to the Declaration shall be prepared, executed, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

**16.5 Effective upon Recordation.** Every amendment to the Declaration shall be recorded with the County Recorder and shall be effective only upon such recordation.

## **ARTICLE 17** **MISCELLANEOUS**

**17.1 Term of Declaration.** The provisions of this Declaration shall continue and be effective for a period of 50 years from the date of recordation and shall be automatically extended for successive periods of 10 years until at least a two-thirds vote of the Owners of all of the Lots within the Project shall determine by vote that they shall terminate, and all the institutional holders of first deeds of trust encumbering the Lots shall have given their prior written approval, and notice thereof is recorded in the Office of the County Recorder.

**17.2 Enforcement and Waiver.**

**17.2.1 Right of Enforcement by Association.**

- (a) The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can

commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any provision of this Declaration, the Articles, Bylaws, Rules and Regulations, or any resolutions of the Board, or to enforce by mandatory injunction, or otherwise, all of these provisions;

(b) In addition, the Association can suspend the voting rights, can suspend use privileges of the Common Elements, or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation, of this Declaration, the Articles, Bylaws, Rules and Regulations, or Board resolutions. However, any such suspension of use privileges cannot exceed a period of 60 days for any one violation, and must be consistent with NRS 116.31031. Before invoking any such suspension or fine, the Board shall give such violating Owner or other person a hearing upon at least 5 days' written notice. Each suspended or fined Owner or other person can appeal such action by filing written notice of his intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all Board Owners at a regular or special meeting of the Board at which all Board Owners are present; provided, however, if the fined or suspended Owner is a Board member, then such Board member need not be present at such hearing or approve of such sanction. The Owner or other person to be fined or suspended can appear, be represented by counsel, and be heard at the meeting. The Board may impose a special assessment against such Owner's Lot; collect any fine that remains unpaid for a period of 14 days or more. Except as provided in this Section, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Lot if the Owner does not comply with provisions of this Declaration, the Articles, Bylaws, or the Rules and Regulations, except when the loss or forfeiture is the result of a court judgment or arbitration decision or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association.

**17.2.2 General Right of Enforcement.** Except as otherwise provided herein, Declarant, the Association, and any Owner shall have the right (but not the duty) to enforce, by an action for damages or injunctive relief or both, any or all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any of the Project; provided, however, the County shall be a third party beneficiary of this Declaration. Except as otherwise provided, nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not Owners of property subject hereto; and there shall be no right of enforcement by anyone else who does not own property in the Project.

**17.2.3 Violations and Nuisance.** Every act or omission whereby a covenant, condition, or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declaration, the Association, or any Owner. Any other provision to the contrary notwithstanding, only Declarant, the Board, and their duly authorized agents may enforce by self-help any covenant, condition or restriction herein set forth.

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

**17.2.5 Remedies Cumulative.** Each remedy provided by the Declaration is cumulative and not exclusive.

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

**17.3 Notices.** All notices hereunder to the Association or the Board shall be sent by registered or certified mail to the Board at the Project or to such other address as the Board may designate from time to time by notice in writing to the Owners. All notices hereunder to an Owner shall be sent by registered or certified mail to the Owner at his Lot or to such other address as the Owner may give from time to time in writing to the Board. All notices shall be deemed to have been given when mailed except notices of change of address, which shall be deemed to have been given when received, and except as otherwise provided herein.

**17.4 Construction of the Declaration.**

**17.4.1 Restrictions Construed Together.** All of the covenants, conditions and restrictions of the Declaration shall be liberally construed together to promote and effectuate the fundamental concepts set forth in the "Declaration" at the beginning of this Declaration.

**17.4.2 Restrictions Severable.** Notwithstanding the provisions of Section 17.4.1, the covenants, conditions and restrictions of the Declaration shall be deemed independent and severable. The invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other



provision.

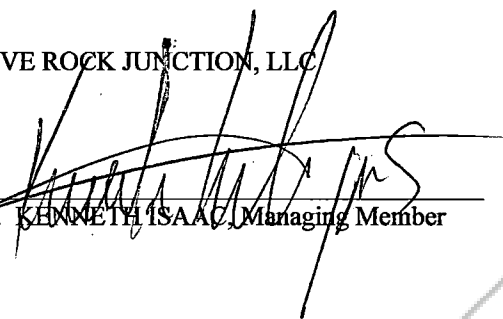
**17.4.3 Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary. The masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

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

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

CAVE ROCK JUNCTION, LLC

PHAT PADTS, INC.

By:  KENNETH ISAAC, Managing Member

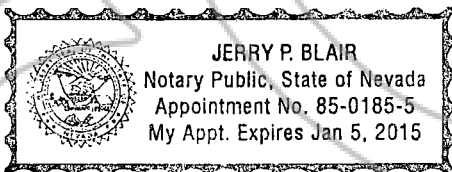
By:  KENNETH ISAAC, President

**ACKNOWLEDGEMENT**

STATE OF NEVADA )  
 ) ss.  
COUNTY OF DOUGLAS )

On the 01 day of OCT, 2014, before me, KENNETH ISAAC, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument, the person, or the entities upon behalf of which the person acted, executed this instrument.

WITNESS my hand and official seal.



  
NOTARY PUBLIC