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**KAREN ELLISON, RECORDER**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
TAHOE BEACH CLUB CONDOMINIUMS**

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
TAHOE BEACH CLUB CONDOMINIUMS**

This Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for Tahoe Beach Club Condominiums (“**Declaration**” and/or “**Condominium Declaration**”) is made by Beach Club Development, LLC, a Nevada limited liability company, (“**Declarant**”)

**RECITALS**

A Declarant is the owner of that certain real property located in Douglas County, Nevada that is more particularly described in Exhibit “A”, attached hereto (the “**Property**”)

B Declarant intends to improve the Property by constructing thereon a Condominium Project (the “**Condominium Project**” and/or “**Project**”) that will consist of 143 Condominium Units and the Common Area. The Condominium Units will be contained in twelve (12) Buildings. At times herein, the Condominium Project is referred to by its marketing name which is the Tahoe Beach Club Condominiums. It is Declarant’s further intention to pursue its plan of development of the Condominium Project in several Phases.

C The owner of a Condominium in the Condominium Project possesses a separate interest in an individual Condominium Unit that is coupled with an undivided interest as a tenant-in-common in the Common Area (those two interests constituting a “**Condominium**,” as defined in Section 1 26 ) Each Condominium shall also have appurtenant to it a membership in the Tahoe Beach Club Owners Association, a Nevada nonprofit corporation (the “**Association**”) The Association will be responsible for the care and maintenance of the Project and the Common Area and enforcement of the Governing Documents.

D Declarant intends by this Declaration to impose on the Property and the Project mutually beneficial restrictions under a general plan of improvement for the benefit of the Owners of Condominiums and their tenants, guests and invitees. Initially, only 101 Units contained in six (6) buildings, the road, parking areas, drainage facilities and other infrastructure improvements to be constructed on the real property described in Exhibit “B” will be subject to this Declaration upon its Recordation (the “**Initial Covered Property**”) The 101 Units are anticipated to be constructed in six (6) phases as follows: Phases 1 through 6 include 25 Units in Building Number 1, 21 Units in Building Number 2, 21 Units in Building Number 3, 27 Units in Building Number 4, 4 Units in Building 6 and 3 Units in Building 12. Declarant currently intends to annex additional Phases of development to the Project (the “**Annexable Property**”) in accordance with the provisions of Article XV, below. In the event that one or more Phases are annexed to the Project in accordance with Article XV, the annexed Phase or Phases shall be subject to this Declaration upon the Recordation of a Declaration of Annexation applicable to the Phase(s) in the manner provided in Article XV, below.

E Declarant hereby declares that the Initial Covered Property (and the Condominium Units, Common Area, and Limited Common Elements in each subsequent Phase of the Project upon annexation in accordance with the process of annexation described in Recital “D”, above, and Article XV, below) shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan of the Project for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part of it, in accordance with the plan for the improvements of the Project and its division into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants that run with the land and are binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project or the Property comprising the Project. It is the express intention of Declarant that this Declaration satisfy the requirements of Nevada Revised Statutes 116 (the Uniform Common Interest Ownership Act), as applied to Condominium projects, as defined in NRS §116 027

## **ARTICLE I DEFINITIONS**

Section 1 01 “**Act**” means and refers to the Nevada Uniform Common Interest Ownership Act, NRS §116 001 et seq

Section 1 02 “**Annexable Property**” means the property described in Exhibit “C” attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article XV, below, entitled “Annexation of Additional Property”

Section 1 03 “**Architectural Committee**” means and refers to the Committee that is or may be formed to administer and enforce the architectural review and approval of Improvement projects in accordance with Articles V and VI of this Declaration

Section 1 04 “**Architectural Rules**” means and refers to any rules adopted by the Board of Directors pursuant to Article V, below

Section 1 05 “**Articles**” means the Articles of Incorporation of the Association, which are filed in the Office of the Secretary of State of the State of Nevada, as such Articles may be amended from time to time

Section 1 06 “**Assessment**” means any Regular, Special, Emergency or Special Individual Assessment made or assessed by the Association against an Owner and the Owner’s Condominium in accordance with the provisions of Article IV, below

Section 1 07 “**Association**” means the Tahoe Beach Club Owners Association, a Nevada nonprofit corporation, its successors and assigns. The Association is an “association” as defined in NRS §116 011

Section 1 08 “**Association Rules**” means the rules and regulations adopted by the Board of Directors of the Association pursuant to Section 3 08 of this Declaration, as the same may be in effect from time to time

Section 1 09 “**Beach Access Easement**” is defined and described in Sections 2 05 and 9 03, below

Section 1 10 “**Beach Club License Agreement**” means and refers to the license agreement between the Association and the Club Owner (including the Tahoe Beach Club License Agreement Terms and Conditions) pursuant to which the Association has been given certain non-exclusive use rights in the Club Facilities in accordance with the Club Documents. As of the effective date of the Beach Club License Agreement and as a result of membership in the Association, each Association Member enjoys certain privileges of Membership in the Club and the Club Facilities as described in the Club Membership Plan and its Exhibits. The Beach Club License Agreement does not convey to the Association or to any of its Members any ownership interest in the Club or the Club Facilities, nor any voting rights, management rights or vested interest in the Club Owner/entity

Section 1 11 “**Board of Directors**” or “**Board**” means the Board of Directors of the Association

Section 1 12 “**Building**” means a residential structure in the Project containing Units and designated as “Building” (followed by its respective number) on the Condominium Plan. Each Building shown on the Plan includes the Units located within the Building, the Limited Common Elements appurtenant to each such Unit, and the Building Common Area

Section 1 13 “**Building Common Area**” includes all elements within the Building Envelope as shown on the Plan, other than the Units within the Building, including without limitation the Limited Common Elements, outside perimeter walls, bearing walls, columns, girders, ceiling joists, sub-floors, unfinished floors, roofs, hallways and corridors, stairs, elevator and associated equipment, and foundation, pumps, motors, ducts, and chutes, conduits, pipes, plumbing, wires, utility meters and other utility installations (except the outlets thereof when located within the Unit) required to provide power, light, telephone, gas, water, sewage, and drainage, exterior sprinklers and sprinkler pipes that service the Building and any areas outside of the Building structure that are included in the Building Envelope

Section 1 14 “**Building Envelope**” means the Building airspace envelope that defines the boundaries of that portion of the Project that includes the Building Common Area and the Units, as shown on the Condominium Plan. As shown on the Plan, the Building Envelope includes the ground forty (40) feet beneath and the airspace ten (10) feet outside of, surrounding and above the Building

Section 1 15 “**Bylaws**” means the Bylaws of the Association as such Bylaws may be amended from time to time

Section 1 16 “**Club**” means and refers to the Tahoe Beach Club, which is a private recreational facility that is owned by the Club Owner Neither the Club nor the Club Real Property is subject to this Declaration

Section 1 17 “**Club Charges**” means and refers to the charges imposed by the Club on the Association pursuant to the provisions of this Declaration and Article VI of the Tahoe Beach Club License Agreement Terms and Conditions for the privilege of permitting access to, and use of, the Club Facilities by the Association’s Members, their guests and invitees Club Charges are a Common Expense of the Association

Section 1 18 “**Club Documents**” is a collective term that means and refers to the Club Membership Plan, Club Fee Schedules, Club Rules and Regulations, Tahoe Beach Club License Agreement and Tahoe Beach Club License Agreement Terms and Conditions, as those documents may be amended from time to time

Section 1 19 “**Club Facilities**” is a collective term that means and refers to any facilities and improvements now existing or hereafter constructed on the Club Real Property It is contemplated that those Club Facilities will include a clubhouse facility, a private sand beach, a 160 foot pier into Lake Tahoe, fire pits, cabanas, fitness and spa facilities, a bar and grill facility, and a swimming pool The Club Facilities are owned by the Club Owner and are not part of the Common Facilities within the Condominium Project

Section 1 20 “**Club Owner**” means and refers to **Tahoe Beach Club, LLC**, a Nevada limited liability company, and its successors or assigns who may subsequently acquire the Club Real Property

Section 1 21 “**Club Real Property**” means and refers to all real property now owned or hereafter acquired by the Club Owner

Section 1 22 “**Common Area**” is a collective term that refers to the General Common Areas and the Building Common Areas of the Project

Section 1 23 “**Common Expense**” means any use of Common Funds authorized by Article IV, below, and Article IX of the Bylaws and includes, without limitation (a) all expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of those elements of the Property and the Project that the Association is obligated to maintain, repair and replace, as incurred or as may be estimated from time to time by the Association’s Board of Directors, (b) any amounts reasonably required to be set aside as reserves for maintenance, repair and replacement of the Common Area and Common Facilities and for nonpayment of any Assessments, (c) the use of such funds to defray costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents, and (d) the Association’s obligations under the Beach Club License Agreement, including the obligation to pay **Club Charges** (as defined in Section 1 17, above), with respect to any Condominium that is owned by an Owner other than Declarant

Section 1 24 “**Common Facilities**” refers to the road, parking areas, greenbelt areas, that portion of any residential Building structure that is not defined as a Unit or Limited Common Element herein, and to the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures, master antenna system and other facilities constructed or installed, to be constructed or installed, or currently located on or within any portion of the Common Area. The Common Facilities do not include the Club Facilities.

Section 1 25 “**Common Funds**” means all funds collected or received by the Association (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, addition to, alteration or reconstruction of all or any portion of the Common Area and Common Facilities, and (b) for use in discharging any and all of the Association’s duties as provided in the Governing Documents and the Beach Club License Agreement.

Section 1 26 “**Condominium**” means an estate in real property as defined in NRS §116 027 and NRS §117 010(2), consisting of an undivided interest as a tenant-in-common in the Common Area together with a fee interest in a space designated as a Unit and described in the Condominium Plan.

Section 1 27 “**Condominium Plan**” collectively refers to those final subdivision maps to be recorded against the Property legally creating the Units and Common Area, including any amendments thereto.

Section 1 28 “**County**” means the County of Douglas, State of Nevada, and its various departments, divisions, employees and representatives.

Section 1 29 “**Declarant**” refers to **Beach Club Development, LLC**, a Nevada limited liability company, its successors and assigns, if such successors and assigns acquire or hold record title to any portion of the Project for development purposes and the successor or assign is identified as a successor Declarant (“**Successor Declarant**”) in a Recorded instrument that makes reference to this Declaration and specifically to this right of assignment.

Section 1 30 “**Declarant Control Period**” or “**Period of Declarant Control**” is the period identified in NRS §116 31032 when Declarant is permitted to control the Association, by having the authority to appoint and remove the officers of the Association and members of the Board of Directors. *See also* Section 4 03 of the Bylaws and NRS §31032. The Period of Declarant Control is one of the **Special Declarant Rights** identified in NRS §116 089 and Section 16 01, below.

Section 1 31 “**Declaration**” means this instrument as it may be amended from time to time.

Section 1 32 “**Declaration of Annexation**” means and refers to a declaration that is Recorded pursuant to Section 15 03, below, in order to annex future Phases of the Project and to subject those annexed Phases to this Declaration.

Section 1 33 “**Emergency Assessment**” means and refers to an Assessment imposed by the Association to respond to an emergency situation in accordance with Section 4 05, below.



Section 1 34 “**Family**” means one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not so related who maintain a common household in a Unit. In no event shall a Unit be occupied by more persons than permitted by local ordinances or codes relating to the occupancy of residential structures.

Section 1 35 “**General Common Areas**” refers to those areas of the Property and elements of the Project that are located outside of the Building structures and Building Envelopes and contain the road, surface parking areas, greenbelt areas, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures, master antenna system and other facilities constructed or installed, to be constructed or installed, or currently located thereon. General Common Areas do not include Building Common Areas or Limited Common Elements.

Section 1 36 “**Governing Documents**” refers collectively to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1 37 “**Improvement**” is a term that is used in this Declaration to identify those remodeling and renovation projects that an Owner may wish to pursue within his or her Unit that need the prior review and approval of the Association pursuant to Article V, below. As so defined, the term “Improvement” includes, without limitation, any improvement or project undertaken or contemplated by an Owner (other than Declarant) within any portion of the Owner’s Unit involving the construction, installation, alteration or remodeling of any exterior walls, bearing walls, ceilings, patio awnings, solar heating equipment, spas, antennas, television satellite reception equipment, utility lines or any other structure of any kind. Painting of a Unit’s interior is not an Improvement project. Improvement projects are subject to review and approval by the Association pursuant to Article V, below.

Section 1 38 “**Initial Covered Property**” means and refers to that portion of the Project initially subject to this Declaration upon its Recordation which consists of 101 Units contained in six (6) buildings, the road, parking areas, drainage facilities and other infrastructure improvements to be constructed on the real property described in Exhibit “B” and

Section 1 39 “**Limited Common Elements**” refers to certain portions of the Building Common Areas (including, without limitation, the decks, balconies, exterior doors, door frames and hardware incidental thereto, screens, and windows) designated as “**Limited Common Elements**” on the Condominium Plan. Limited Common Elements are set aside and allocated for the exclusive use of the Owner of the Unit to which they are allocated as provided on the Condominium Plan and are appurtenant to that Unit.

Section 1 40 “**Maintenance Manual**” refers to the manual or manuals that may be prepared by Declarant or its agents, and provided to the Association and to each Owner specifying obligations for maintenance of the Common Area and Common Facilities by the Association and maintenance of Units by the Owners, as updated and amended from time to time. Declarant may, in its discretion, create a Maintenance Manual for the Association (“**Association Maintenance Manual**”) relating to its maintenance obligations with respect to the Common Area and Common Facilities and a Maintenance Manual for the Owners (“**Owner Maintenance Manual**”) relating to their maintenance obligations with respect to Units within the Project. The term Maintenance

Manual shall also refer to any amendments or supplements to any Maintenance Manual that Declarant may adopt and provide to the Association and/or the Owners from time to time

Section 1 41 **“Maintenance Obligations”** means the obligations of the Association and each Owner pursuant to NRS §116 3107(1) to perform (i) all reasonable maintenance obligations and schedules identified in the Maintenance Manual that pertain to the Common Area, Common Facilities, Limited Common Elements and Units at the times and in a manner consistent with the terms, recommendations and requirements of the applicable Maintenance Manual, (ii) any maintenance obligations and schedules contained in any warranty offered by Declarant or any manufacturer of any products or components originally installed in a Unit or Common Facility, and (iii) any maintenance obligations and/or schedules otherwise provided, in writing, by Declarant or a manufacturer to the Association or the Owners The term “Maintenance Obligations” shall also include and refer to any commonly accepted maintenance practices to prolong the useful life of the materials and construction of the Common Area and Common Facilities and Units within the Project

Section 1 42 **“Majority of a Quorum”** means the vote of a majority of the votes cast by Members in Good Standing at a meeting or by written or secret ballot when the number of Members attending the meeting in person or by proxy or the number of Members casting written ballots equals or exceeds the quorum requirement for Member action, as specified in the Bylaws or otherwise by statute

Section 1 43 **“Member”** means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 13 07, below

Section 1 44 **“Mortgage”** means any security device encumbering all or any portion of the Property and the Project, including any deed of trust **“Mortgagee”** shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense **“First Mortgage”** means any Mortgage encumbering a Condominium in the Project that is not subordinate in legal priority to any other Mortgage, but may be subordinate to liens for taxes, assessments and bonds, and other liens that are given priority by statute, as well as easements, covenants, conditions and other restrictions, including, but not limited to, this Declaration

Section 1 45 **“NRS”** means and refers to the Nevada Revised Statutes, as amended from time to time

Section 1 46 **“Owner”** means any person, firm, corporation or other entity (including contract sellers, but excluding any person or entity holding such interest merely as security for the payment of a debt or the performance of an obligation) which holds a fee simple interest in any Condominium and includes (except when the context otherwise requires) the Family, guests, tenants and invitees of such Owner The term “Owner” shall also include Declarant for so long as Declarant owns any Unit within the Project If a Condominium is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of the trust

Section 1 47 **“Phase”** means and refers to each Building in the Project, including the Units, Building Common Area and Limited Common Elements within and/or associated with the

Building, that is made subject to the provisions of this Declaration, either by Recording this Declaration or by Recording a Declaration of Annexation in accordance with Article XV, below

Section 1 48 “**Project**” means and refers to the Tahoe Beach Club Condominium Project that Declarant is constructing on the Property

Section 1 49 “**Property**” means the real property described in Recital “A”, including all structures and improvements located thereon and any additional real property and improvements as may hereafter be annexed to the Property and the Project pursuant to Article XV, below The Property is being developed as a statutory “condominium” as defined in NRS §116 027

Section 1 50 “**Record**” means, with respect to any document, the recordation or filing of such document in the Office of the Recorder of Douglas County, Nevada

Section 1 51 “**Regular Assessment**” means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4 02, below

Section 1 52 “**Resale Package**” shall have the meaning given to that term in Section 2 06(c), below, and NRS §116 4109(1)

Section 1 53 “**Reserves**” and “**Reserve Accounts**” mean and refer to those funds that the Board of Directors of the Association has identified and set aside for use to defray the future repair or replacement of, or additions to, the major capital improvements within the Project that the Association is obligated to maintain, repair and eventually replace in one or more Reserve Accounts The obligation to contribute funds in Reserve Accounts pursuant to Section 4 08 of this Declaration and NRS §116 3115(b)(2) shall be a Common Expense of the Association The amounts required to properly fund Reserves (the “**Reserve Funds**”) shall be determined annually by the Board in accordance with the standards prescribed by maintenance cost guidelines prepared in accordance with prudent property management practices generally applied in “common interest developments” in the geographic region in which the Project is located Among other elements, the Reserve planning process set forth in NRS§116 3115(2)(b) requires the Board to conduct periodic studies of Reserve Account requirements (each a “**Reserve Study**”) which must include a “**Reserve Funding Plan**” that indicates how the Association intends to fund the contributions to Reserve Accounts required to meet the Association's maintenance, repair and replacement obligations See Section 12 07 of the Bylaws and Section 4 08(d), below

Section 1 54 “**Single Family Residential Use**” means occupancy and use of a Unit for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations In no event shall a Unit be occupied by more individuals than permitted by applicable law, zoning or regulation

Section 1 55 “**Special Assessment**” means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4 03, below

Section 1 56 “**Special Individual Assessment**” means an Assessment levied against an Owner and his or her Condominium in accordance with Section 4 04, below



Section 1 57 “**Supplemental Declaration**” means and refers to an instrument by that name that is Recorded in accordance with Section 15 04, below Typically a Supplemental Declaration is Recorded together with a Declaration of Annexation, although a Supplemental Declaration can be Recorded with respect to any Phase (i) prior to the conveyance of any Condominium in the Phase by Declarant or (ii) thereafter if the Supplemental Declaration is executed by Declarant and all other Owners of Condominiums in the Phase

Section 1 58 “**Tahoe Regional Planning Agency**” or “**TRPA**” means and refers to the agency by that name which was formed pursuant to a bi-state compact between the State of California and the State of Nevada which was ratified by the United States Congress in 1969 The Bi-State Compact has been revised and updated several times in subsequent years and is implemented by Ordinances adopted by TRPA which are designed to preserve and protect the unique environmental features of the Lake Tahoe Basin The Condominium Project is subject to a Plan Revision Permit and its Special Conditions (TRPA File No ERSP2014-0375-01) issued by TRPA

Section 1 59 “**Unit**” or “**Condominium Unit**” means a physical portion of the Condominium Project that is designated for separate ownership and occupancy, the boundaries of which are described on the Condominium Plan for each Phase as to the Unit’s boundaries and identifying number and its location within one of the Project Buildings (NRS §§116 093 and 116 2105(10(f)) Each such Unit shall be a separate estate generally consisting of the space within the unfinished interior surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit Specifically, the boundaries of each Unit extend to the exterior face of studs at the exterior walls, to the centerline in the air gap at the demising walls, and to the centerline of studs at the walls separating the Unit from Building Common Area The respective elements and the boundaries of each Unit are more particularly described in the Condominium Plan In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the Unit’s boundaries rather than the description expressed in the deed or plans, regardless of minor variances between the boundaries as shown on the plans or the deed and those of the building containing the Unit and regardless of settling or lateral movement of the building

Whenever reference is made to a “Unit,” whether in this Declaration, the Condominium Plan, any deed or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements (including the airspace so encompassed), and to any and all Limited Common Elements, if any, appurtenant to the Unit The term “Unit” does not include those areas of the Project that are defined herein as General Common Areas (except for the undivided interest in the Common Area appurtenant to the Unit) or Common Facilities

Section 1 60 “**Voting Power**” means those Members who are eligible to vote for the election of directors or with respect to any other matter, issue or proposal properly presented to the Members for approval at the time any determination of the Voting Power of the Members is made To be part of the Voting Power, a Member must be in Good Standing, as that term is defined in the Bylaws

**ARTICLE II**  
**DECLARATION AND PROPERTY RIGHTS**

Section 2 01 Description of the Project The Project is a Condominium Project consisting of the Property, the Units and all other improvements located thereon. Reference is made to the Condominium Plan for further details. Initially, the Project and this Declaration shall be limited to 101 Units in Condominium Building Nos 1, 2, 3, 4, 6 and 12 and associated Common Area as shown on the Condominium Plan. Additional Units, Buildings and Common Area located in other Phases of the Property and the Project may be annexed to and become a part of the Project in accordance with the provisions for annexation of additional Phases set forth in Article XV, below. However, pursuant to the TRPA Code of Ordinances, the Common Area is not eligible to be further subdivided or developed with a primary use and does not contain a development right. The Project elements are more particularly described as follows:

(a) Units Each Owner of a Condominium owns a separate fee simple interest in a space called a “*Unit*” (as defined in Section 1 59, above) and an undivided equal interest in common in the Common Area (as defined in Section 1 22, above).

(b) Building Common Areas The *Building Common Areas* consist of those portions of the Project that are more particularly defined in Section 1 14, above, in each Phase, title to which shall be held in common by the Owners, each as to an undivided equal interest. Each Owner’s interest in the Building Common Areas of the Project is appurtenant to the Owner’s separate interest in its Unit and may not be separated therefrom. Notwithstanding the foregoing, access to the interior Building Common Areas may be regulated by the Association by access control device or other instrumentality such that only those Owners that own Units in the Building will be allowed access.

(c) General Common Areas The *General Common Areas* consist of those areas of the Property and elements of the Project defined in Section 1 35, above, in each Phase, title to which shall be held in common by the Owners, each as to an undivided equal interest. Each Owner may use the General Common Areas in accordance with the purposes for which it is intended, subject to this Declaration and the Association Rules. When an undivided interest in the General Common Areas is conveyed by Declarant to the Owners as appurtenant to the Unit, an easement shall be deemed automatically reserved over the General Common Areas so conveyed in favor of Declarant for ingress and egress, the construction or completion of construction of utilities and other amenities included in plans approved by the County, and construction or completion of construction of Condominium Buildings (and the Units, Building Common Areas and Limited Common Elements therein) (and the utilities serving the same) on the Initial Covered Property or Annexable Property. After an undivided interest in the General Common Areas has been conveyed to Owners, Declarant shall have the right under the reserved easement to prohibit Owner access to or use of any portion of the General Common Areas under construction. The easement shall automatically terminate upon Recordation of the Declaration of Annexation for the final Phase of the Project to be constructed unless sooner relinquished by Declarant in a Recorded quit claim of the easement. Each Owner’s interest in the General Common Areas of the Project is appurtenant to the Owner’s separate interest in its Unit and may not be separated therefrom.

In the event that the remaining Phases, or any of them, are not annexed as provided above, and the easement(s) reserved by Declarant are terminated automatically as provided above, should any of the properties located in future Phases of the Project require access for ingress and egress over private streets located within the Project, such easements shall exist for utility connections and for reasonable vehicular and pedestrian traffic (including ingress and egress) for residential developments of comparable size and density, constructed in any of the future Phases of the Project, provided, however, that the unannexed properties (and the Owner(s) of Units in the annexed property), shall be obligated to pay their equitable share of the cost of maintenance and repair of such private streets in the General Common Areas

(d) Limited Common Elements Certain portions of the Building Common Areas referred to as “**Limited Common Elements**” on the Condominium Plan are set aside and allocated for the exclusive use of the Owner of the Unit to which they are attached or assigned

Except as described herein, no other portion of the Common Area shall be Limited Common Elements. The rights of Owners in the Limited Common Elements are appurtenant to the Unit to which the rights are assigned and may not be separated from that Unit. Any transfer of the Unit to which the rights are appurtenant automatically transfers the Limited Common Element rights appurtenant thereto, regardless of whether the instrument of transfer describes the Limited Common Element rights as set forth in the Governing Documents.

Section 2 02 Owners’ Exclusive Easements of Enjoyment Every Owner of a Condominium shall have an exclusive right and easement of enjoyment in and to the Limited Common Elements appurtenant to his or her Unit, subject to the following provisions:

(a) The Association shall be entitled to adopt rules and regulations as provided in Section 3 08, below, (the “**Association Rules**”) and, in the event of a breach of the Association Rules or of any other Governing Document provision, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13 07, below. Such action may include the levying of fines and/or the temporary suspension of an Owner’s voting rights and/or the right of an Owner and the Owner’s tenants and guests to use any recreational Common Facilities.

(b) In accordance with Section 3 07(d), below, the Association, or its agents, shall have the right, when necessary, to enter any Unit in order to perform the Association’s obligations under this Declaration, including its obligation to (i) enforce the covenants and restrictions of this Declaration, (ii) to construct, maintain and repair Common Facilities as necessary for the benefit of the Common Area or the Owners in common or to perform maintenance obligations within a Unit for which the Association is responsible (if any), and (iii) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat or nuisance to, or cause an unreasonable interference with, the Common Area or the Owners in common.

Section 2 03 Owners’ Nonexclusive Easements of Enjoyment Every Owner of a Condominium shall have a nonexclusive right and easement of enjoyment in and to (i) the General Common Areas, and (ii) the Building Common Area of the Building in which his or her Unit is located, including ingress and egress to and from the Owner’s Unit. However, such nonexclusive easements shall be subordinate to, and shall not interfere with, Limited Common Element

easements appurtenant to the Units. Each such nonexclusive easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The Association shall have the right to assign, reassign, rent, license, lease, charge reasonable fees for, and to otherwise designate and control the use of the parking and storage spaces situated within the Common Areas.

(b) The Association shall be entitled to adopt rules and regulations as provided in Section 3.08, below, (the “**Association Rules**”) and, in the event of a breach of the Association Rules or of any other Governing Document provision, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 13.07, below. Such action may include the levying of fines and/or the temporary suspension of an Owner’s voting rights and/or the right of an Owner and the Owner’s tenants and guests to use any recreational Common Facilities.

(c) In accordance with Section 3.07(d), below, the Association, or its agents, shall have the right, when necessary, to enter any Unit in order to perform the Association’s obligations under this Declaration, including its obligation to (i) enforce the covenants and restrictions of this Declaration, (ii) to construct, maintain and repair Common Facilities as necessary for the benefit of the Common Area or the Owners in common or to perform maintenance obligations within a Unit for which the Association is responsible (if any), and (iii) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat or nuisance to, or cause an unreasonable interference with, the Common Area or the Owners in common.

(d) The right of the Association to dedicate or transfer all or any part of any private street or roadway within the General Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the Voting Power of the Members and their first Mortgagees, which consents to such dedication or transfer has been Recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any individual Unit. Any instrument approving a dedication hereunder may be executed in counterpart so long as each counterpart is in recordable form.

(e) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and Common Facilities.

(f) The rights of particular Owners in the Limited Common Elements that are appurtenant to the Owner’s Unit (*see Section 2.01(d)*, above).

#### Section 2.04 Delegation of Use

(a) Delegation of Use and Leasing of Condominium Units. Any Owner may delegate his or her rights to use and enjoy the Common Area and Common Facilities to his or her Family members or tenants, lessees or contract purchasers who reside in the Unit, provided, however, that any rental or lease may only be to a Family or other group of responsible individuals in numbers that do not exceed the total number of permitted occupants under local laws or ordinances. During any period when a Unit has been rented or leased, the Owner-lessor, his or her



Family, guests and invitees shall not be entitled to use and enjoy the Common Area or Common Facilities of the Project (other than roads), except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Unit, provided, however, that this restriction shall not apply to any Owner-lessor who is contemporaneously residing in another Unit within the Project

Owners are prohibited from converting rooms in their Unit to "lock-off" areas so as to permit persons either unknown to each other or in unrelated parties or groups to rent the Unit at the same time, although nothing herein shall prevent an Owner from placing locks on cabinets, closets or loft areas so as to prevent the use of a particular area or areas of a Unit while the Owner is not present or to protect the Owner's personal property. Furthermore, nothing shall be construed to prohibit short-term seasonal rental to persons who are not a conventional single family, although Owner-lessors shall inform short-term renters that parking in the Project is limited and subject to Association rules pertaining to parking. The Beach Club License Agreement may include provisions which require the Association to collect and remit to the Club Owner a daily Club Facilities use fee as an additional charge to any Owner who leases or rents his or her Unit for a term of less than thirty (30) days, it being recognized that short-term renters are more likely to create greater management and supervisory problems for both the Association and the Club Owner

Any rental or lease of a Unit in the Project shall be subject to the provisions of the Governing Documents all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of this Declaration or, in the alternative, a disclosure prepared by the Association that focuses on the Project's rules and restrictions relating to such issues as the parking, loading and unloading of vehicles, trash disposal, nuisances, and other use restrictions that are most pertinent to the occupancy of Units. Owner-lessors shall be responsible for compliance by the Owner's tenant or lessee with all of the provisions of the Governing Documents during the tenant's/lessee's occupancy and use of the rented or leased Unit

(b) Discipline of Lessees Subject to subparagraph (c) below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances which may include suspension of the tenant's privileges to use any recreational facilities or the imposition of fines and penalties against the Owner or tenant. Notwithstanding the foregoing, in accordance with NRS §116 31031(2) the Board of Directors may not impose a fine pursuant to this subparagraph (b) against an Owner-lessor for a violation of any provision of the Governing Documents committed by an invitee of the Owner or the tenant unless the Unit Owner (i) participated in or authorized the violation, (ii) had prior notice of the violation, or (iii) had an opportunity to stop the violation and failed to do so

(c) Due Process Requirements for Disciplinary Action Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Property and the Project or to preserve the rights of quiet enjoyment of other Owners and residents, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied (1) the Owner has received written

notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary, (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner, and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 13.07, below.

Section 2.05 Beach Club License Agreement, Beach Access Easement, and the Absence of Other Rights in the Club Facilities With the exception of the limited rights of access to the beach area to the west of the project granted pursuant to the easement described in Section 9.03, below, ownership of a Condominium in the Tahoe Beach Club Condominiums shall not confer any property rights or rights of access, use or enjoyment in and to the Club Facilities, as defined in Section 1.19, above, and in the Beach Club License Agreement. The Club Real Property and the Club Facilities now located or hereafter constructed thereon are not Common Areas of the Project and there is no guarantee that the Club Facilities will be operated as such indefinitely. Accordingly, neither being an Owner of a Condominium in the Project nor being a Member of the Association shall confer any property rights, ownership interest, or rights of access, use or enjoyment in and to the Club Facilities, except as expressly stated in the non-exclusive Beach Club License Agreement. Rights to use and enjoy the Club Facilities are within the exclusive control of the Club Owner and will be given by the Club Owner to such persons, including without limitation, members of the general public, and on such terms and conditions as the Club Owner may determine from time to time. Except as expressly stated in the Beach Club License Agreement, the Club Owner may amend or waive its determinations and policies with respect to use of the Club Facilities at any time. The Beach Access Easement confers a limited right for the Owners of Condominiums in the Project to access the Club's beach area and the waters of Lake Tahoe adjacent to the Club beach areas, separate and apart from the Beach Club License Agreement (*see* Section 9.03, below).

Section 2.06 Obligations of Owners Owners of Condominiums within the Project shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers Each Owner shall notify the secretary of the Association or the Association's property manager, if any, and the Club Owner or its designee of the names of any contract purchaser or tenant residing in the Owner's Unit.

(b) Contract Purchasers A contract seller of a Condominium must delegate his or her voting rights as a Member of the Association and his or her right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification to Prospective Purchasers Regarding the Governing Documents

(i) Enumeration of Documents That Must be Provided to Purchasers and Prospective Purchasers As more particularly provided in NRS §116 4109, except in the case of a sale in which delivery of a Public Offering Statement is required pursuant to NRS §116 4102, or unless exempt under subsection NRS §116 4101 (which enumerates several property transfers for which a Resale Package is not required), an Owner of a Condominium or his or her authorized agent shall, at the expense of the Owner, furnish to a prospective purchaser a **Resale Package** containing all of the information and documents that are required to be provided by that statute. Currently those documents and information include

(A) Governing Documents and Information Statement A copy of the Declaration, other than any plats, the Bylaws, the Association Rules, and the information statement required by NRS §116 41095 (this is the statutory common interest disclosure form)

(B) Statement of Assessments and Other Fees Due from the Seller A statement from the Association setting forth the amount of the monthly Assessment for Association Common Expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling Owner

(C) Copy of the Current Operating Budget and Year-to-Date Financial Statement (with Reserve Study Information) A copy of the current operating budget of the Association and current year-to-date financial statement for the Association, which must include a summary of the reserves of the association required by NRS 116 31152 and which must include, without limitation, a summary of the information regarding Reserves and Reserve Studies described in NRS §116 31152(3), subparagraphs (a) through (e) Upon the request of a selling Condominium Owner or his or her authorized agent, or upon the request of a purchaser to whom the Owner has provided a Resale Package pursuant to this subparagraph (c) or his or her authorized agent, the Association must provide a copy of the entire Reserve Study required by NRS §116 31152 reasonably available for the selling Owner, the purchaser or authorized agent to inspect, examine, photocopy and audit. The Reserve Study must be made available at the business office of the Association or some other suitable location within Douglas County, Nevada

(D) Statement of Any Unsatisfied Judgements or Pending Legal Actions Against the Association A statement of any unsatisfied judgments or pending legal actions against the Association and the status of any pending legal actions relating to the Project of which the selling Owner has actual knowledge

(E) Statement Regarding Transfer Fees Upon Resale, If Any A statement of any transfer fees, transaction fees or any other fees associated with the resale of a Condominium

(F) Statement Regarding Other Assessments, Fees, or Charges In addition to any other document, a statement describing all current and expected fees or charges for each Condominium, including, without limitation, Association fees, fines, Assessments, late

charges or penalties, interest rates on delinquent Assessments, additional costs for collecting past due fines and charges for opening or closing any file for each Condominium

(ii) Prospective Purchaser's Right of Cancellation In accordance with NRS §116 4109, following receipt of the information required in subparagraphs (A) through (F) of subparagraph (c)(i), above, the purchaser or prospective purchaser may, by written notice, cancel the contract of purchase until midnight of the fifth (5<sup>th</sup>) calendar day following the date of receipt of the selling Owner's Resale Package and the contract for purchase must contain a provision to that effect. If the purchaser elects to cancel a contract pursuant to that right under the contract, the purchaser must hand deliver the notice of cancellation to the selling Owner or his or her authorized agent or mail the notice of cancellation by prepaid United States mail to the Owner or his or her authorized agent. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly. If the purchaser has accepted a conveyance of the Condominium, the purchaser is not entitled to cancel the contract pursuant to this subparagraph (ii), or to damages, rescission or other relief based solely on the ground that the selling Owner or his or her authorized agent failed to furnish the Resale Package, or any portion thereof, as required by this subparagraph (ii).

(iii) Documents that Must be Provided by the Association for the Resale Package Within ten (10) days after receipt of a written request by an Owner or his or her authorized agent, the Association shall furnish all of the following to the Owner or his or her authorized agent for inclusion in the Resale Package: (1) copies of the documents required pursuant to subparagraphs (A) and (C) above, and (2) a certificate containing the information necessary to enable the Owner to comply with subparagraphs (B), (D), (E) and (F) above. In accordance with NRS §116 3118, the Association shall maintain financial records sufficiently detailed to enable the Association to comply with its obligations to furnish information pursuant to this subparagraph (iii) and subparagraph (iv), below.

If the Association furnishes the documents and certificate pursuant to the preceding paragraph then it is the Owner's (or his or her authorized agent's) obligation to include the documents and certificate in the Resale Package provided to the purchaser, and neither the Owner nor his or her authorized agent is liable to the purchaser for any erroneous information provided by the Association and included in the documents and certificate. The Association may charge the requesting Owner a reasonable fee to cover the cost of preparing the certificate furnished pursuant to the preceding paragraph. Such a fee must be based on the actual cost the Association incurs to fulfill the requirements of this subparagraph (c) in preparing the certificate. The Association shall adopt regulations establishing the maximum amount of the fee that an Association may charge for preparing the certificate.

The other documents provided by the Association pursuant to this subparagraph (c)(iii) must be provided by the Association in electronic format to the Owner. The Association may charge the Owner a fee, not to exceed Twenty Dollars (\$20.00), to provide such documents in electronic format. If the Association is unable to provide such documents in electronic format, the Association may charge the Owner a reasonable fee, not to exceed twenty-five cents (\$0.25) per page for the first ten (10) pages, and ten cents (\$0.10) per page thereafter, to cover the cost of copying. The Association may not charge the Owner any other fees for preparing or furnishing the documents and certificate pursuant to this subparagraph (c).



Neither a purchaser nor the purchaser's interest in a Condominium is liable for any unpaid Assessment or fee greater than the amount set forth in the documents and certificate prepared by the Association. If the Association fails to furnish the documents and certificate within the ten (10) days allowed by this Section, the purchaser is not liable for the delinquent Assessment.

(iv) Statement of Demand Regarding Outstanding Fees and Costs Owed by a Selling Owner An Owner, the authorized agent of the Owner or the holder of a security interest on an Owner's Condominium may request a statement of demand, as further described below ("**Statement of Demand**"), from the Association. Not later than ten (10) days after receipt of a written request from an Owner, the authorized agent of the Owner or the holder of a security interest on the Condominium for a Statement of Demand, the Association shall furnish the Statement of Demand to the person who requested the Statement. The Association may charge a fee of not more than One Hundred Fifty Dollars (\$150.00) to prepare and furnish a Statement of Demand and an additional fee of not more than One Hundred Dollars (\$100.00) to furnish a Statement of Demand within three (3) days after receipt of a written request for a Statement of Demand. The Statement of Demand

(A) Must set forth the amount of the monthly Assessment for Common Expenses and any unpaid obligation of any kind, including, without limitation, management fees, transfer fees, fines, penalties, interest, collection costs, foreclosure fees and attorney's fees currently due from the selling Owner, and

(B) Remains effective for the period specified in the Statement of Demand, which must not be less than fifteen (15) business days after the date of delivery by the Association to the selling Owner, the authorized agent of the Owner or the holder of a security interest on the Condominium, whichever is applicable.

(v) Correction of Known Errors in Information Provided by the Association If the Association becomes aware of an error in a Statement of Demand furnished pursuant to subparagraph (iv), above, during the period in which the Statement is effective but before the consummation of a resale for which a Resale Package was furnished pursuant to this subparagraph (c), the Association must deliver a replacement Statement of Demand to the person who requested the Statement. Unless the person who requested the Statement of Demand receives a replacement Statement, the person may rely upon the accuracy of the information set forth in the Statement of Demand provided by the Association for the resale. Payment of the amount set forth in the Statement of Demand constitutes full payment of the amount due from the selling Owner.

(d) Discharge of Assessment Liens Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium in accordance with Article IV, below.

(e) Compliance with Association Rules Each Owner shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities of the Project.

(f) Joint Ownership of Condominiums In the event of joint ownership of any Condominium in the Condominium Project, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments

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

Section 2 07 Parking Areas The Association shall have the right to assign, reassign, rent, license, lease, charge reasonable fees for, and to otherwise designate and control the use of the parking and storage spaces situated within the Common Areas subject to the terms of any agreement between Declarant and/or the Association and an Owner regarding the Owner's parking rights within the Project The parking spaces within the Common Areas shall be subject to regulation by the Association Among other things, the Association shall have the authority to enter into a lease or license agreement with the Club Owner to rent unassigned parking spaces in the vicinity of the Club Facilities for the parking of vehicles of persons who are members or guests of the Club

### **ARTICLE III THE TAHOE BEACH CLUB OWNERS ASSOCIATION**

Section 3 01 Formation The Tahoe Beach Club Owners Association is a Nevada nonprofit corporation (the "*Association*") that has been formed by Declarant as part of the common plan of development contemplated by this Declaration and the Condominium Plan On or before the first close of escrow for the sale of a Condominium in each Phase of the Project to an Owner, the Association shall be charged with the duties and invested with the powers set forth in this Declaration, the Bylaws and the other Governing Documents, including, but not limited to, control, maintenance and repair of the Common Area and Common Facilities located in each Phase

Section 3 02 Association Action, Board of Directors and Officers With the exception of those matters requiring approval of Members under the Governing Documents or Nevada law, the affairs of the Association shall be conducted and all corporate powers shall be exercised by the Board of Directors and such officers, managers and/or agents as the Board may elect or appoint Except as otherwise provided in the Governing Documents or Nevada law, all matters requiring the approval of Members shall be deemed approved if approved by a Majority of a Quorum of the Members

#### Section 3 03 Membership

(a) Qualifications for Membership Each Owner of a Condominium, including Declarant, shall be a Member of the Association An Owner shall hold one membership in the Association for each Condominium the Owner owns Sole or joint ownership of a Condominium

or interest in it shall be the sole qualification for membership in the Association, provided, however, that each Condominium shall be entitled to one vote. Each Owner shall remain a Member of the Association until its ownership of, or ownership interest in, all Condominiums within the Project ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not Members.

(b) Members' Rights and Duties Membership in the Association shall give rise to the rights, duties, and obligations set forth in the Governing Documents and any amendments thereto.

#### Section 3 04 Membership Voting

(a) Commencement of Voting Rights Voting rights attributable to the ownership of Condominiums shall not vest until Assessments against those Condominiums have been levied by the Association.

(b) Single Class of Membership The Association shall have one class of membership composed of all Owners of Condominiums within the Project. Each Owner shall have one equal vote for each Condominium in which the Owner holds an interest, provided that there shall only be one vote for each Condominium and no vote shall be exercised with respect to any property that is exempt from the payment of Assessments.

(c) Special Declarant Rights The Special Declarant Rights, including the right to approve, or to withhold approval of, action proposed under this Declaration or the other Governing Documents of the Association during the Declarant Control Period are specified in the relevant sections of this Declaration and the Bylaws of the Association. Declarant has the right and the power to appoint a majority of the members of the Board of Directors during the Declarant Control Period, as stated in the Bylaws.

(d) Suspension of Voting Rights Voting rights of any particular Owner may be temporarily suspended under those circumstances described in Section 13 07, below.

Section 3 05 Assessments The Association shall have the obligation and the power to establish, fix and levy Assessments against Owners and to enforce payment of such Assessments, as more particularly provided in Article IV, below, and NRS §§116 3115 through 116 31152. Any Assessments levied by the Association against the Owners shall be levied in accordance with, and pursuant to, the provisions of this Declaration and the Act.

Section 3 06 Transfer of Memberships Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Condominium shall pass automatically to the purchaser upon the Recordation of a deed evidencing the transfer of title. In the case of an encumbrance Recorded with respect to any Condominium, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2 04, above, do not thereby

become Members, although the tenant and his or her Family and guests shall at all times be subject to the property use restrictions and enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon the membership appurtenant to the sold Condominium outstanding in the name of the seller shall be null and void.

### Section 3.07 Powers and Authority of the Association

(a) Powers, Generally The Association shall have the responsibility of controlling, managing and maintaining the Common Area and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents and applicable Nevada laws. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit corporation organized under the laws of the State of Nevada in the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents and Chapter 116 of the Nevada Revised Statutes. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners and the proper management and maintenance of Common Facilities, including, without limitation, those powers set forth in NRS §116.3101. The specific powers of the Association and the limitations thereon are set forth in Article IX of the Bylaws.

(b) Association as Attorney-In-Fact for Owners Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owner of each and every Condominium to (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder, (ii) deal with the Project and the Property upon their destruction or obsolescence as hereinafter provided, and (iii) to deal with and handle insurance and insurance proceeds, as provided in Article X, below, and condemnation and condemnation awards, as provided in Article XII, below. The acceptance by any person or entity of any interest in any Condominium shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

(c) Specific Duties and Powers of the Association In addition to its general powers and duties as stated in subparagraph (a), above, the Association has the following specific powers and duties:

(i) Management and Maintenance of the Common Area The power and the duty to accept, maintain and manage the Common Area and Common Facilities.

(ii) Levy and Collect Assessments and Club Charges The right, duty and power to levy and collect Assessments, including Regular Assessments, Special Assessments, Emergency Assessments and Club Charges.



(iii) Insurance The power and the duty to maintain insurance in accordance with Article X, below

(iv) Rules and Regulations The power, but not the duty, to establish and modify rules and regulations in accordance with Section 3 08, below

(v) Borrowings The power, but not the duty, to borrow money for purposes authorized by the Governing Documents

(vi) Contracts The power, but not the duty, to enter into contracts, including the following

(A) Contracts for Services Contracts with Owners or other persons that obligate the Association to provide services or to maintain improvements within the Project, however, any such contract shall provide that the Association is reimbursed for the costs of providing such services or maintenance so that the costs incurred do not become a Common Expense that is borne by all Owners,

(B) Management Contracts The Association shall have the authority to contract with a manager or management company for the performance of bookkeeping, maintenance and repair of those portions of the Project for which the Association has maintenance responsibility and for conducting other activities or performing other obligations on behalf of the Association and its Members as may be determined by the Board, in its discretion

(C) Community Services Contracts to provide various community services to the residents of Tahoe Beach Club Condominiums, such as Association management services and private patrol services

(D) The Beach Club License Agreement The Association has the right and power to enter into the Beach Club License Agreement in order to afford its Members with the ability to access, use and enjoy the Club Property and the Club Facilities on a non-equity, membership basis, pursuant to the terms and conditions of the Beach Club License Agreement which calls for payment by the Association of Club Charges (as defined in Section 1 17, above) in exchange for licensed privileges of access, use and enjoyment by Condominium Owners of the Club Facilities

(E) Shared Maintenance and Use Agreements The Association has the right and power to enter into shared maintenance agreements, cost sharing arrangements, joint use agreements, or other appropriate contracts with Declarant, the Club Owner, and any other person, with regard to the use and maintenance of the Common Area and Common Facilities, or any portion thereof, (including snow removal from the Project's private roads, the rental or long-term lease of certain Project parking spaces that are in excess of the required parking allocations for Condominium Owners, or any other jointly used improvement) or to share in the cost of providing services jointly by such parties

(d) Association's Limited Right of Entry

(1) Right of Entry, Generally Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Unit to perform the Association's obligations under this Declaration, including

(A) obligations to enforce the architectural and land use restrictions of Articles V and VIII, below,

(B) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities or to perform maintenance obligations within a Unit for which the Association is responsible (if any), or

(C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, any portion of the Property, the Project, or the Owners in common

(11) Limitations on Exercise of Right The Association's right of entry pursuant to this subparagraph (d) shall be subject to the following

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency (as defined in NRS §116 31083(12)) originating in or threatening the Unit where entry is required or any adjoining Units or Building Common Area (to the extent that entry through a Unit to a specific Building Common Area is required) The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing in the Unit The Association and its management company shall have the right to disregard these prior notification requirements when the occupants of a Unit are established on reasonable information and belief to be a short-term vacation renters or similar circumstances in which prior notification to the Owner-lessor is not feasible and an immediate response is required to efficiently and cost effectively discharge the Association's responsibilities

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 13 07, below

(D) Neither the Association nor any Owner shall have any right of entry onto the Club Real Property or the Club Facilities, other than as provided in the Beach Club License Agreement or the Beach Access Easement, without the prior consent of the Club Owner

(11) Notwithstanding any other provision of law, the Association, its directors or members of the Board of Directors, employees, agents or community manager who enter a Unit in accordance with this Section 3 07(d) are not liable for trespass as a result of any exercise of this right of entry NRS §116 310312(8)

### Section 3 08 Association Rules

(a) Rule Making Power The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners (“**Association Rules**”) The Association Rules may concern, but need not be limited to (i) matters pertaining to use of the Common Area and Common Facilities, (ii) architectural control and the rules of the Architectural Review Committee under Article V, below (iii) regulation of parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article VIII, below, (iv) collection of delinquent Assessments, (v) minimum standards of maintenance of Units in the Project, (vi) the conduct of disciplinary proceedings in accordance with Section 13 07, below, (vii) and any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents

(b) Minimum Requirements for Association Rules Any Association Rule adopted by the Board must be consistent with the following requirements

(i) The Association Rule must be reasonably related to the purpose for which the Association Rule has been adopted,

(ii) The Association Rule must be sufficiently explicit in its prohibition, direction or limitation to inform a person of any action or omission required for compliance,

(iii) The Association Rule must not be adopted to evade any obligation of the Association, and

(iv) The Association Rule must be consistent with the other Governing Documents of the Association and must not arbitrarily restrict conduct or require the construction of any capital improvement by an Owner that is not required by the Governing Documents of the Association

(c) Enforcement of Association Rules All Association Rules must be uniformly enforced under the same or similar circumstances against all Condominium Owners Any Association Rule that is not so uniformly enforced may not be enforced against any Owner Subject to the foregoing limitation, Association Rules may be enforced by the Association through the imposition of a fine only if the Association complies with the requirements set forth in NRS §116 31031 and Section 13 07(b), below

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the Governing Documents or the rights, preferences and privileges of the Owners thereunder In the event of any material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail All Association

Rules shall be adopted, amended and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and Section 116 31065 of the Nevada Revised Statutes

(d) Distribution of Rules A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner

Section 3 09 Breach of Rules or Restrictions Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XIII, below

Section 3 10 Limitation on Liability of the Association's Directors and Officers Directors and officers shall exercise their powers in good faith and with a view to the interests of the Association In performing their respective duties, directors and officers are entitled to rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by

(a) One or more directors, officers or employees of the Association reasonably believed to be reliable and competent in the matters prepared or presented,

(b) Counsel, public accountants or other persons as to matters reasonably believed to be within the preparer or presenter's professional or expert competence, or

(c) A committee upon which the person relying thereon does not serve, as to matters within the committee's designated authority and matters on which the committee is reasonably believed to merit confidence

However, a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if the director or officer has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted

In order for a director or officer to be adjudged to have failed to exercise his or her powers in good faith and with a view to the interests of the Association it must be proved, by clear and convincing evidence, that the director or officer has not acted in good faith and in a manner reasonably believed by the director or officer to be with a view to the interests of the Association Except to the limited extent otherwise provided by Nevada law, no action may be brought against an officer or director of a nonprofit corporation based on any act or omission arising from failure in his or her official capacity to exercise due care regarding the management or operation of the corporation unless the act or omission involves intentional misconduct, fraud or knowing violation of the law NRS §82 221

#### **ARTICLE IV ASSESSMENTS**

##### Section 4 01 Assessments Generally

(a) Covenant to Pay Assessments Declarant, for each Condominium that Declarant owns within the Project and each subsequent Owner by acceptance of a deed therefor



(whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, (iii) Emergency Assessments, and (iv) Special Individual Assessments Each such Assessment shall be established and collected as hereinafter provided

(b) Extent of Owner's Personal Obligation for Assessments In accordance with NRS §116 3116(1), all Assessments and fees, together with late charges, interest, and reasonable costs for the collection thereof (including reasonable attorneys' fees), shall be a personal obligation of the assessed Owner as of the date that the Assessment is levied. In addition, the Association has a lien on a Condominium for any Assessment levied against that Condominium or any fines imposed against the Owner of the Condominium from the time the construction penalty, Assessment or fine becomes due. Any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of NRS §116 3102(1) are enforceable as Assessments under this Article IV. Any lien for unpaid Assessments may be subject to foreclosure to the extent and as provided in Section 4 09(b), below. If an Assessment is payable in installments, the full amount of the Assessment is a lien on the Owner's Condominium from the time the first installment thereof becomes due.

(c) Creation of Assessment Lien Recordation of this Declaration constitutes record notice and perfection of the lien. No further Recordation of any claim of lien for Assessment under this Section is required, provided, however, that the lien for delinquent Assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the full amount of the Assessment becomes due. (NRS § 116 3116 10 )

(d) No Avoidance of Assessment Obligations No Owner may exempt himself/herself or the Owner's Condominium from liability or charge for the Owner's share of any Assessment made against the Owner or his or her share of any Regular or Special Assessment made against the Owner's Condominium, by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities, or by the Owner's non-exercise of any derivative rights to use and enjoy Club Facilities pursuant to the Beach Club License Agreement, or by the abandonment or non-use of the Owner's Condominium.

(e) Prohibition on Improper Assessments and Fees The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is imposed. This limitation is not intended, however, to restrict the Board's discretion in the discharge of its duty to prepare the annual budgets of the Association, including the exercise of reasonable discretion in the estimation of Reserve funding requirements in accordance with NRS §116 31151.

#### Section 4 02 Regular Assessments

(a) Preparation of Annual Budget and Annual Budget Report In accordance with NRS §116 31151, not less than thirty (30) days nor more than sixty (60) days before the beginning of the Association's fiscal year, the Board shall prepare and distribute to each Owner a budget for the current operations of the Association as well as a budget to provide adequate funding for the Reserves, based on the Association's Reserve Funding Plan (*see* Section 12 07 of the

Bylaws) Based on the information and analysis that is presented in the annual budgets, the Association shall advise its Members of any increase in the Regular Assessment not less than thirty (30) nor more than sixty (60) days prior to the increased Regular Assessment becoming due. Notwithstanding the foregoing, in lieu of distributing copies of the two budgets required by this subparagraph (a), the Board of Directors may distribute a summary of the budgets to all Owners together with a statement that the complete budgets are available for inspection at the Association office and will also be provided to requesting Owners upon request.

(b) Right of Owners to Approve Proposed Budgets. Within sixty (60) days after adoption of any proposed budget for the Association, the Board of Directors shall provide a summary of the proposed budgets to each Owner and shall set a date for a meeting of the Owners to consider ratification of the proposed budgets not less than fourteen (14) days or more than thirty (30) days after the mailing of the summaries. Unless at that meeting a majority of all Owners of Condominiums reject the proposed budget, the proposed budget is ratified, whether or not a quorum is present. If a 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. NRS §116 31151(3)

(c) Establishment of Regular Assessment, Board/Membership Approval Requirements. The total Common Expenses estimated in the Association's ratified budgets (less projected income from sources other than Assessments) shall become the aggregate **Regular Assessment** for the next succeeding fiscal year.

(d) Commencement of Regular Assessments. Regular Assessments shall commence with respect to all Condominiums within each Phase of the Project on the first day of the month next following the closing date of the first sale of a Condominium in that Phase to an Owner other than Declarant.

(e) Allocation of Regular Assessments

(i) Association Common Expenses. Except as provided in subparagraphs (e)(ii) and (e)(iii), below, Regular Assessments shall be levied equally among the Condominiums as set forth in the Association's budget, except that those portions of the Assessment specifically allocated to meet the cost of casualty insurance, certain operating costs and reserves that vary in proportion to total Unit area, and any commonly metered domestic water, gas or electricity shall be levied among the Units in the proportion that the square footage of each Unit bears to the total square footage of all the Units subject to the Declaration (as determined by the Condominium Plan) and set forth in the Association's budget.

(ii) Exemption for Payment of Assessments Attributable to Uncompleted Common Facilities. All Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Facility that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph (ii) shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Facility has been Recorded, or (B) the Common Facility has been placed in use.

(iii) Expenses for Limited Common Elements Any Common Expense associated with the maintenance, repair, restoration or replacement of a Limited Common Element must be assessed against the Unit or Units to which that Limited Common Element is assigned, equally, or in any other proportion the Declaration provides,

(iv) Special Benefit Expenses Any Common Expense benefiting fewer than all of the Units or their Owners may be assessed exclusively against the Owners benefited, provided, however, that under no circumstances shall this provision be applied to the Association's obligations under the Beach Club License Agreement regardless of the level of usage by any Owner of the Club Facilities, and

(v) Insurance and Utility Expenses The costs of fire and casualty insurance maintained by the Association and the costs of utilities must be assessed in proportion to risk (in the case of insurance) and in proportion to usage (in the case of utility Common Expenses)

(f) Assessment Roll That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as an Owner or as a Member of the Association. Any such inspection shall be limited to the information disclosed in the Assessment Roll with respect to the Condominium or Condominiums that are owned by the Owner who has requested access to the Assessment Roll. To the extent permitted in NRS §116.31175, the Assessment Roll shall show, for each Condominium, the name and address of the Owner, all Regular, Special, Emergency, and Special Individual Assessments levied against each Owner and his or her Condominium, and the amount of such Assessments which have been paid or remain unpaid.

(g) Failure to Make Estimate If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(h) Installment Payment The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments, or on such other installment schedule as the Association's Board of Directors may establish, on the first day of each month or on such other date as the Association's Board of Directors may establish. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board.

#### Section 4.03 Special Assessments

(a) Purposes for Which Special Assessments May Be Levied Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors

shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes

(i) Regular Assessment Insufficient in Amount If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors may levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder

(ii) Capital Improvements The Board may also levy Special Assessments for additional capital improvements within the Common Area (i.e., improvements that are not in existence on the date that this Declaration has been Recorded, that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities) The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable Reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X, below In accordance with NRS §116 3115(9), the Association shall provide written notice to each Unit Owner of a meeting at which a Special Assessment for capital improvements is to be considered or action is to be taken on such a Special Assessment at least twenty-one (21) days prior to the date of the meeting

(b) Special Assessments Requiring Membership Approval The following Special Assessments require prior membership approval (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, and (ii) any Special Assessments imposed pursuant to subparagraph (a)(1) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4 02(a), above The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4 05, below When approval of a Special Assessment by the Members is required, the requisite Member approval shall be the affirmative vote of a Majority of a Quorum of the Members with the quorum fixed at fifty percent (50%) of the Voting Power of the Members

(c) Allocation and Payment of Special Assessments When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Condominium (including Declarant as to any unsold or retained Condominiums) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4 02(e), above Notwithstanding the foregoing, any Special Assessment levied to raise funds for the rebuilding or major repair of any Building housing Units shall be levied on the basis of the ratio of the square footage of floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner



Special Assessments for purposes described in subparagraph (a)(1) of this Section shall be due as a separate debt of the Owner and a lien against his or her Condominium, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year or on such other installment schedule as the Association's Board of Directors may establish. Special Assessments for purposes described in subparagraph (a)(11) shall be due as a separate debt of the Owner and a lien against his or her Condominium, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

#### Section 4 04 Special Individual Assessments

(a) Circumstances Giving Rise to Special Individual Assessments In addition to the Special Assessments levied against all Owners in accordance with Section 4 03, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (1) through (11) below, provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 13 07, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(1) Damage to Common Areas or Common Facilities In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portion of any Unit which the Association is obligated to repair and maintain, is caused by the willful misconduct or gross negligence of any Owner, any member of his or her Family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment. NRS §116 3115(6)

(11) Expenses Incurred in Gaining Member Compliance In the event that the Association incurs any costs or expenses to (A) accomplish the payment of delinquent Assessments, (B) perform any repair, maintenance or replacement to any portion of the Project that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) otherwise bring the Owner and/or his or her Unit into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorney's fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(11) Required Maintenance With Respect to Separate Interests As more particularly provided in Section 3 07(d), above, (and without limiting the generality of that Section), if any Unit or Limited Common Element is maintained so as to become a nuisance, or a fire or safety hazard for any reason, the Association shall have the right to enter said Unit or Limited Common Element, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the

property of any Owner by the Association shall be effected in accordance with Section 3 07(d), above

(b) Levy of Special Individual Assessment and Payment Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this Section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

#### Section 4 05 Assessments to Address Emergency Situations

(a) Authority of Board to Impose Emergency Assessments The requirement of a membership vote to approve Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments necessary to address emergency situations ("**Emergency Assessments**") For purposes of this Section, an emergency situation is any of the following:

- (i) An extraordinary expense required by an order of a court,
- (ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities where a threat to personal safety is discovered, or
- (iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4 02(a), above, provided, however, that prior to the imposition or collection of an Assessment under this subparagraph (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(b) Payment of Emergency Assessments When levied by the Board the Emergency Assessment shall be divided among, assessed against and charged to each Owner and his or her Unit (including Declarant as to any unsold or retained Condominium Units) in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 4 02(e), above. The Emergency Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. An Emergency Assessment shall be due as a separate debt of the Owner and shall be payable in full to the Association within thirty (30) days after the mailing of the notice of the Emergency Assessment or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Emergency Assessment. If an Emergency Assessment is not paid on or before the due date, the Assessment may be enforced in the manner provided in Section 4 09, below.

Section 4 06 Purpose and Reasonableness of Assessments Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Project, (b) to promote the enjoyment and use of the Project and the Property by the Owners and their families, tenants, invitees, licensees, guests and employees, (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities, and (d) for the payment of amounts due to the Club Owner pursuant to the Beach Club License Agreement. Furthermore, that portion of the Association's Regular Assessments that are collected for payment of Club Charges shall be applied exclusively to that purpose.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby, except as limited by subparagraph (c) above) of the Owner of the Condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4 07 Exemption of Certain Portions of the Project From Assessments The following real property subject to this Declaration shall, unless devoted to the use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Project or the Property that is dedicated and accepted by a local public agency or authority,
- (b) The Common Area and Common Facilities, and
- (c) Any Condominium that is owned by the Association and not rented or leased for residential occupancy.

Section 4 08 Maintenance of Assessment Funds

(a) Establishment and Maintenance of Association Bank Accounts All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking, savings or money market accounts in a bank or savings and loan association selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in FDIC insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by NRS §116 31153 and Section 12 02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in subparagraph (c), below.

(b) Expenditure of Assessment Funds Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus may, in the Board's discretion, be (i) returned proportionately to the contributors thereof, (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded, or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations. Except for temporary transfers of monies from reserve funds, the Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Project that the Association is obligated to repair, restore, replace or maintain and for which the reserve fund was established.

(c) Separate Accounts, Commingling of Funds To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by the Association in payment of each Assessment and of all disbursements made therefrom, provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(1), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

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

(d) Reserve Funds

(i) Required Study of Reserve Account Requirements As more particularly provided in Section 12.07 of the Association Bylaws, at least once every five (5) years, the Association Board is required by NRS §116.3115(1)(a) to cause to be conducted a study of the reserves required to repair, replace and restore the major components of the Common Elements and any other portion of the Tahoe Beach Club Condominium Project that the Association is obligated to maintain, repair, replace or restore. This five (5) year rolling study must also be reviewed annually by the Board and adjusted as appropriate. As used herein, the phrase "major components of the Project" include those elements of the Project that are maintained by the Association which have a remaining useful life of less than thirty (30) years. Reference is made to Section 12.07 of the Bylaws for additional information regarding the minimum contents of the Association's Reserve Study and the Reserve Funding Plan.



(e) Limitations on Association's Authority to Assign or Pledge Assessment Obligations The Association may not voluntarily assign or pledge its right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (e) shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection.

Section 4 09 Collection of Assessments, Enforcement of Liens Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. Special Assessments, Special Individual Assessments and Emergency Assessments shall be delinquent if not paid within the times prescribed in Sections 4 03(c), 4 04(b) and 4 05(b), respectively. When an Assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at a rate equal to the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date that the Assessment becomes past due, plus two percent (2%). The interest rate must be adjusted accordingly on each January 1 and July 1 thereafter until the balance is satisfied. NRS §1163115(3). Once an Assessment becomes delinquent, the Association may elect to apply one or both of the remedies described in subparagraphs (a) and (b), below.

The Board of Directors shall, at the same time and in the same manner that the Board makes the Association's budget available to the Owners pursuant to NRS §116 31151, make available to each Owner the Association's policy concerning the collection of any Assessments or other costs of collection (as defined in subparagraph (a), below) imposed against an Owner pursuant to Chapter 116 of the Nevada Revised Statutes (the "**Assessment Collection Policy**") The Assessment Collection Policy must include, without limitation (i) the responsibility of the Owner to pay any such Assessments and other costs of collection in a timely manner, and (ii) the Association's rights concerning the collection of Assessments and other costs of collection when an Owner fails to pay such obligations in a timely manner. NRS § 116 31151(4)

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the Assessment and in such action the Association shall be entitled to recover the delinquent Assessment or Assessments together with reasonable costs of collection, consistent with the limitation on fees that an association may charge as established by the Nevada Commission for Common Interest Communities and Condominium Hotels. A judgment or decree in any action brought under this subparagraph (a) must include costs and reasonable attorney's fees for the prevailing party. As used herein, the term "**costs of collection**" shall include any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, Recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that the Association charges an Owner for the investigation, enforcement or collection of a past due Assessment or other obligation (such as a fine, construction penalty, fee, charge or interest levied or imposed against an Owner pursuant to NRS Chapter 116 or the Governing Documents). The term does not include any costs incurred by The Association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court (NRS §116 310313(3)).

(b) Imposition and Enforcement of the Association's Assessment Lien and Limitations Thereon

(i) Right to Initiate Foreclosure, Generally Except as otherwise provided below, this Association may enforce its lien for delinquent Assessments in accordance with NRS §116 31162 and this Section 4 09(b)

(ii) Commencing the Foreclosure Process The process for commencing foreclosure of the Association's lien begins by the Association sending the delinquent Owner a Notice of Delinquent Assessment by certified or registered mail, return receipt requested, to the delinquent Owner or his or her successor in interest, at his or her address, if known, and at the address of the Unit. The Notice of Delinquent Assessment must set forth the amount of the Assessments and other sums which are due in accordance with NRS §116 3116(1), a description of the Condominium against which the lien is imposed and the name of the Owner of the Condominium. However, before this Notice of Delinquent Assessment can be sent and before any further action is taken to collect a past due obligation, the Association must provide the delinquent Owner or his or her successor in interest at the Owner's address on file, not earlier than sixty (60) days after the obligation becomes past due (A) a schedule of the fees that may be charged if the Owner fails to pay the past due obligation, (B) a proposed repayment plan, and (C) a notice of the right of the Owner to contest the past due obligation at a hearing before the Board of Directors and the procedures for requesting such a hearing.

Not less than thirty (30) days after mailing the Notice of Delinquent Assessment pursuant to subparagraph (ii), above, the Association or other person conducting the sale has executed and caused to be Recorded a *Notice of Default and Election to Sell* the Condominium to satisfy the lien which must contain the same information as the notice of delinquent Assessment and which must also comply with the following:

- (A) A reasonably detailed description of the deficiency in payment,
- (B) An identification of the name and address of the person authorized by the Association to enforce the lien by sale, and
- (C) A warning in 14-point bold type that reads as follows:

**WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!**

The Notice of Default and Election to Sell must be signed by the person designated in the Declaration or by the Association for that purpose or, if no one is designated, by the president of the Association.

(iii) Conduct of the Foreclosure Sale Once the Association has provided the notices that are required by NRS §§116 31162 through 116 31168, the foreclosure sale shall be conducted in accordance with NRS §116 31164.

Section 4 10 Transfer of Condominium by Sale or Foreclosure The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Condominium

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Condominium shall not affect any Assessment lien which has been duly Recorded against the Condominium prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Condominium pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure) A "prior encumbrance" means any First Mortgage or other Mortgage or lien Recorded against the Condominium at any time prior to Recordation of the Association's Assessment lien (*see Section 4 11*, below)

(c) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Condominium (whether it be the former beneficiary of the First Mortgage or other prior encumbrance or a third party acquiring an interest in the Condominium) from liability for any Assessments which thereafter become due with respect to the Condominium or from the lien thereof

(d) Any Assessments, late charges, interest and associated costs of collection which are lost as a result of a sale or transfer of a Condominium covered by subparagraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Condominiums, including the person who acquires the Condominium and his or her successors and assigns

(e) No sale or transfer of a Condominium as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer

Section 4 11 Priority of Association Assessment Liens In accordance with NRS §116 3116(2), the Association's Assessment lien is prior to all other liens and encumbrances on an Owner's Condominium except for (i) liens and encumbrances Recorded before the Recordation of this Declaration, and (ii) a holder of a First Mortgage (as defined in Section 1 44, above) on the Condominium Recorded before the date on which the Assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the Condominium The Association's lien is also prior to all First Mortgage interests Recorded on the Condominium prior to the date when the Assessment becomes delinquent to the extent of any Assessments for Common Expenses based on the periodic budget adopted by the Association pursuant to NRS §116 3115 which would have become due in the absence of acceleration during the nine (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 If

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, the period during which the lien is prior to all security interests described in subparagraph (11), above, must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the six (6) months immediately preceding institution of an action to enforce the lien. This Section 4 11 does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other Assessments made by the Association.

Section 4 12 Unallocated Taxes In the event that any taxes are assessed against the Common Area, or the personal property which is owned by the Association, rather than being assessed to the individual Condominiums, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4 02, above, and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

## **ARTICLE V ARCHITECTURAL CONTROL**

Section 5 01 Requirement That Improvement Projects Be Approved Except as otherwise expressly permitted in this Declaration, no Improvements (as defined in Section 1 37, above) shall be commenced, installed, erected, painted, repainted, remodeled, or maintained within any Unit within the Project, nor shall any alteration of any Improvement of any kind be made, until the same has been approved in writing by the Board of Directors of the Association. Without limiting the generality of the foregoing, no Owner of a Unit may install or erect any Improvement, mechanical system or fixture that either (1) protrudes beyond the boundaries of the Owner's Unit, or (11) is located wholly outside of the Owner's Unit (even if it is located within the Owner's Limited Common Element(s) appurtenant to the Unit), without the express prior written approval of the Board (if the Improvement project is completely within the Project Building) or the Board and the Architectural Committee (if the Improvement project will be visible from the exterior of any Project Building). The Board may delegate its responsibilities hereunder to a duly authorized committee comprised of the Owners of Condominiums in the Project.

Section 5 02 Improvements Restricted Solely to Units Owners may improve or alter any Improvements that are located entirely within the interior boundaries of the Owner's Unit so long as such Improvements and alterations do not impair the structural or acoustical integrity of the Building in which the Owner's Unit is located, any utilities or other systems servicing any portion of the Common Area, the Unit or any other Unit. In a condominium project, many Improvement projects within a Unit will necessitate intrusions into adjacent portions of the Project Building that constitute Building Common Area and any such work in the Building Common Area shall be at the Owner's sole expense and must be clearly shown on the Improvement plans and approved in advance and in writing by the Board. The Board may impose additional requirements and restrictions on work involving any portion of the Building Common Area in order to maintain the structural integrity of the Project Building and to ensure that the work does not create a nuisance or an unreasonable annoyance or inconvenience to persons in other Units in the Project Building. In order to ensure compliance with the limitations imposed by this Section 5 02, all Unit Improvement plans and projects must first be submitted to and approved by the Association's



Board of Directors, even if the Owner believes that the project is one that is authorized by this Section. The Association's Board of Directors shall be authorized and empowered to impose reasonable restrictions on the manner in which an Owner may proceed with Improvement projects within the Owner's Unit so as to protect and preserve the quiet enjoyment of occupants of other Units and to avoid damage to, or disruption of, the Building Common Area, including, without limitation, loading areas, lobbies, elevators, and common hallways.

Section 5.03 Alterations or Improvements Associated With Disabilities A physically impaired Owner may make modifications to the Owner's Unit upon approval of the Board of Directors, in accordance with the terms, conditions and restrictions set forth in the Fair Housing Act (42 USC §3604(f)(3)(B), 24 CFR §100.204(a)), as amended from time to time.

Section 5.04 Declarant Exemption No consents or approvals of the Board of Directors of the Association shall be required in connection with any construction or improvement projects undertaken by Declarant within any portion of the Project.

Section 5.05 Basis for Approval of Improvements When a proposed Improvement is submitted to the Board of Directors for review, the Board shall grant the requested approval only if the Board, in its sole discretion, exercised in good faith, makes the following findings regarding the proposed project:

- (a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Board,
- (b) The Improvement will be in harmony with the external design of other structures and/or landscaping within the Project,
- (c) The Improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property, and
- (d) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Project and with the overall plan and scheme of development within the Project.

While it is recognized that the Board's determination will, of necessity, be subjective to some degree, the Board shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, the proposed location of the Improvement in relation to the Building Common Area and other existing structures and the impact, if any, that the Improvement will have or may have on the structural integrity of the Unit or adjacent Units. The Board shall also be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed with respect to a particular Unit or Limited Common Element, even if the same or a similar Improvement/component has previously been approved for use at another location if factors such as drainage, topography or visibility from roads, other portions of the Common Area or other Units, noise or prior adverse experience with the product or design militate against erection of the Improvement or use of a particular component of the proposed Improvement at the site involved in the Owner's submittal.



In approving a request for approval of an Improvement, the Board may condition its approval upon the adoption of modifications in the Owner's plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions applicable to the Improvement

Section 5 06 Time Limits for Approval or Rejection

(a) Approval or Disapproval by the Board Within thirty (30) days after submission of plans and specifications satisfying the requirements of the Architectural Rules, the Board shall return one set of such plans to the applicant, with either written notice of approval or disapproval. If the proposed improvement is disapproved, the written decision of the Board shall include both an explanation of why the proposed change was disapproved and a description of the procedure for reconsideration of the Board's decision by the Board. If written suggestions of changes required for approval of the project accompany the returned set of plans, the applicant may implement such changes to the plans and within thirty (30) days resubmit plans incorporating such changes for approval to the Board, which shall not unreasonably withhold its approval so long as the Owner has complied in all material respects with the requested changes. If no written notice of approval or disapproval is received by the applicant within thirty (30) days after the Owner's plans and specifications (or revisions thereto) are submitted to the Board, the plans shall be deemed to have been approved as submitted.

(b) Right to Seek Reconsideration by the Board In the event that the Board of Directors delegates its authority under this Article V to an Architectural Committee and the Committee denies approval of a proposed Improvement project, the applicant shall have the right to seek reconsideration of the committee's decision by the Board of Directors. Unless otherwise requested by the member-applicant, the Board's hearing of the applicant's appeal shall be conducted in open session meeting of the Board.

**ARTICLE VI  
MINIMUM IMPROVEMENT STANDARDS**

When Owners are contemplating a proposal to remodel or to make other Improvements to their Unit(s), the following minimum improvement standards shall apply to certain projects

Section 6 01 Unit Improvement Projects Must Be Approved No Owner shall remodel or modify his or her Unit without first obtaining approval for the project from the Board of Directors in accordance with Article V, above

Section 6 02 Prohibition on Exterior Modifications No Improvement project will be approved which will alter the roof or exterior appearance of the Owner's Unit. All roof and exterior maintenance of the Buildings and garage structures of the Project shall be the responsibility of the Association. Replacement windows and sliding doors must be of equal or greater quality to those being replaced. In addition, to the extent possible, the replacements must dimensionally and visually match other standard, approved windows and doors within the same Building. Replacement glass assemblies or new windows are recommended to be double-glazed and clear in color with little or no reflective coefficient.

Section 6 03 Antennas and Satellite Receiving Equipment No alteration to or modification of a central radio and/or television antenna system or cable television system, whichever is applicable, if developed by Declarant or a cable television franchisee and as maintained by the Association or said franchisee, shall be permitted. No Owner shall construct, install and/or operate a radio and/or television antenna, satellite dish, or other signal reception or transmission device or related equipment in the Common Area of the Project including, without limitation, within any balconies, decks, or courtyard areas without the consent of the board, which the Board shall have the discretion to withhold, subject to applicable legal requirements. In considering whether to approve applications for any such devices to be located within or on any balcony, deck or courtyard, the Board shall consider and give great weight to considerations of aesthetics, safety within the Project, uniformity of appearance, potential structural damage, the potential for water leaks in the Project, interference with the broadcast reception of other neighboring residents, and the requirements of any laws. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices comply with Federal Communications Commission (FCC) regulations. No drilling or boring into walls, windows, slabs, roofs, or other structural areas of the Project shall be permitted. The Board may adopt other Rules for installation and operation of any satellite dish or other signal reception or transmission devices that comply with the FCC Regulations so long as any Owner desiring to install his or her own satellite receiving equipment places the equipment on the roof of the Building in which the Owner's Unit is located. The location and installation of any Owner satellite reception equipment on the Building roof must be approved, in advance of installation by the Association in accordance with Article V, above.

Section 6 04 Window Coverings Windows shall be covered by drapes, shades or interior shutters and shall be of a material, design and color which, in the opinion of the Board, compatible with the exterior design and coloration of adjacent portions of the Project.

Section 6 05 Sports Fixtures No basketball standards or fixed sports apparatus shall be attached to any Unit or garage unless the location of the standard or other sports fixture is has been approved by the Association pursuant to Article V, above. It is the intent that this restriction also apply to portable basketball standards. When such portable standards are not in use, they shall either be stored out of view or, if located in the rear yard, retracted so as not to be visible over the rear yard fence.

Section 6 06 Sound Transmission No Unit shall be altered in any manner that would increase sound transmissions or reverberations to any adjoining or other Unit, including, but not limited to, the replacement, modification, or penetration of any flooring or floor covering, ceiling, or wall of a Unit that increases sound transmissions or reverberations to any other Unit in the Building. Any reconstruction of interior demising walls between Units shall maintain an STC acoustic rating equal to or better than the then current acoustical standards for new construction. Sound insulation blankets, resilient clips, acoustic sealants, or other attenuation materials are acceptable provided the total assembly meets or exceeds the above criteria.

Section 6 07 Exterior Lighting In accordance with Chapter 36, subparagraph 36 8, of the TRPA Code of Ordinances, the following restrictions on exterior lighting at the Project shall apply.

- (a) Exterior lights shall not blink, flash, or change intensity String Lights, building or roofline tube lighting, reflective or luminescent wall surfaces are prohibited
- (b) Exterior lighting shall not be attached to trees except for the Christmas season
- (c) Parking lot, walkway, and Building lights shall be directed downward
- (d) Fixture mounting height shall be appropriate to the purpose The height shall not exceed the limitations set forth in Chapter 37 of the TRPA Ordinances (generally, a limit of 26 feet)
- (e) Outdoor lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display Illumination for aesthetic or dramatic purposes of any Building or surrounding landscape utilizing exterior light fixtures projected above the horizontal is prohibited
- (f) The commercial operation of searchlights for advertising or any other purpose is prohibited
- (g) Seasonal lighting displays and lighting for special events that conflict with other provisions of this Section may be permitted on a temporary basis pursuant to Chapter 22 of the TRPA Ordinances (*Temporary Uses, and Activities*)

**ARTICLE VII  
ASSOCIATION AND OWNER MAINTENANCE RESPONSIBILITIES**

Section 7 01 Association Maintenance Responsibilities

(a) Maintenance Within the Project Common Area, Generally Except as otherwise specified in this Article VII, the Association shall be solely responsible for all maintenance, repair, upkeep and replacement of the Common Area and the Common Facilities Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of the Common Area and Common Facilities including, without limitation, exterior doors and landscaping The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or gross negligent act or omission of an Owner, his or her guests, tenants or invitees, or the Owner's pets, except if the repair is covered by the insurance carried by the Association, in which case the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the Association's insurance policy

No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association The Association shall also maintain, repair and replace those Limited Common Elements described in subparagraph (g), below

(b) Snow Removal The Association shall be responsible for the removal of snow within the Project, including roadways, parking areas, and walkways within the Project as well as removal of snow from front entries and Unit balconies in emergencies. The costs incurred by the Association to remove snow from Unit decks or entrances may be charged as a Special Individual Assessment payable solely by the Unit Owners who request the snow removal service or, in the case of an emergency threatening one or more Units resulting from an unreasonably heavy snowfall, when removal of the accumulated snow is required to avoid damage to the Building structure. Except in instances of extreme weather conditions which make it unfeasible to maintain access, the Association shall be obligated pursuant to this subparagraph to use reasonably diligent efforts to maintain vehicular and pedestrian access to all Units in the Project at all times.

(c) Association's Responsibility for Compliance with TRPA Best Management Practices (BMPs)

(i) Maintenance of Wetland Preservation Areas in Accordance with Best Management Practices (BMPs) The Environmental Impact Statement for the Project contains a list of mitigation measures to be implemented as Conditions of Approval for the Project. One of the measures is Stream Environment Zone (SEZ)/wetland restoration. Once the restoration work has been completed by Declarant or its contractors, that work is required to be monitored and maintained by the Association in order to ensure successful establishment. Specifically, Special Condition No. 7 B of the Third TRPA Plan Revision referenced in Section 1.58, above, requires the Association to submit an annual monitoring report detailing vegetation success to the TRPA. The report shall be due on October 30 of each year for a minimum period of five (5) years. Any revegetation falling below an eighty-five percent (85%) survival rate shall be replaced by the Association. Mitigation and monitoring of replacement revegetation shall continue until it satisfies the criteria for successful establishment. Criteria for successful establishment shall include survivorship for a period of at least five (5) years.

(ii) Compliance With Other TRPA BMPs In addition to the Wetland Preservation responsibilities described in subparagraph (i), above, the Association shall be responsible for contracting and paying for any site work and/or reports to the Tahoe Regional Planning Agency that are necessary or appropriate to implement the Best Management Practices and the BMP Plan that is required by Paragraph 3 C of the TRPA Special Conditions that are more particularly referenced in Section 1.58, above. The TRPA defines BMPs to mean and refer to measures taken to minimize soil erosion and capture polluted water before it enters Lake Tahoe. This helps improve water quality and reduce the decline of Lake Tahoe's clarity.

(d) Maintenance of Building Structures The Association shall provide the following exterior maintenance and repairs to the Building Common Area elements of all Buildings containing Units:

(i) Paint, stain, repair, replace and care for the exterior building surfaces of all Building structures containing Units, other than those Limited Common Elements specifically described in Section 7.02(b), below, including roofs, gutters, fences, downspouts and exterior walls,



(ii) The Association shall have the Building Common Areas periodically inspected for wood-destroying pests and organisms and shall take appropriate corrective measures therefor. The Association Board shall have the authority to require the temporary removal of occupants of a Unit or Units as may be necessary in connection with the treatment of wood-destroying pests or organisms. The costs of any temporary relocation shall be borne by each Owner of a Condominium who is required to temporarily relocate.

(iii) Unless otherwise maintained or repaired by a governmental entity or a public or private utility company, the Association shall maintain in good condition and repair all utilities and water supply facilities as well as all sanitary sewer and storm drainage facilities situated within the Common Area and serving either the Common Area or the Units, including, but not limited to, meters, distribution lines, catch basins, storage tanks, wires, ducts, flues, pumps, boilers, and pipes, but excluding any utility equipment, water lines, and fixtures located within a Unit or partially within a Building Common Area and within a Unit, such as electrical outlets.

(e) Landscape Maintenance Obligations All landscaping to be maintained by the Association shall be maintained in a healthy and weed-free condition. Maintenance shall include regular fertilization, mowing, irrigation, pruning and other prudent landscaping practices. The Association immediately shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering. All lawns shall be kept neatly mown and trees neatly trimmed and pruned at all times. The use of drought tolerant landscaping is encouraged in accordance with NRS §116.330.

(f) Association Maintenance to Reduce the Possibility of Mold Contamination In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens within the Common Area of the Project (collectively, "Mold"), the Association shall perform each of the following steps: (i) inspect the Building Common Area improvements (both exterior and interior) not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements and for the presence of Mold, (ii) if any water leaks and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or remove the Mold, (iii) maintain proper ventilation within enclosed areas (other than within Units) and humidity levels to reduce the risk of Mold growth, (iv) periodically inspect any water-retaining equipment in the Building Common Areas for the presence of Mold, (v) periodically inspect the irrigation system to ensure proper water and to correct any leaks and/or misdirected or excessive watering, (vi) periodically inspect the ground surface around the foundation of Buildings and Common Facilities to ensure that no water is pooling around or from the foundations, (vii) maintain rain gutters in a clean and proper operating condition at all times, and (viii) take such other prudent steps as may be appropriate to prevent Mold growth or eliminate any existing Mold in those areas of the Project that the Association is responsible to maintain and repair.

(g) Association Maintenance and Repair Obligations With Respect to Limited Common Elements The Association shall paint, maintain, repair, and when necessary replace any structural components of any balconies or decks, except that each Owner shall perform routine maintenance on the interior surface areas of any balcony. In the event that the necessity for repair, maintenance or replacement of balcony structures is the result of Owner negligence or the activities



or Improvements maintained by an Owner on or within his or her balcony or courtyard, the Association shall have the rights stated in Section 7 03, below, to perform the necessary work and to recover the expense thereof from the Owner of the appurtenant Unit as a Special Individual Assessment

(h) Association Maintenance Manual In the event that Declarant prepares and provides the Association with an Association Maintenance Manual applicable to the repair and maintenance of Common Area and Common Facilities, the Association shall be obligated to comply with all of the maintenance obligations, recommendations and schedules set forth in the Manual. However, the Board of Directors shall be authorized, from time to time, to make appropriate revisions to the Association's Maintenance Manual based on the Board's review thereof in order to update the Association Maintenance Manual to reflect current industry maintenance practices and recommendations, so long as such changes do not reduce the useful life or functionality items to which the Maintenance Manual pertains. So long as Declarant owns any Units in the Project, Declarant shall also be entitled to make recommendations to the Board of Directors for the revision or supplementation of the Association Maintenance Manual in order to reflect actual experience, new technology, or new or changed industry standards regarding sound maintenance and repair practices.

#### Section 7 02 Owner Maintenance Responsibilities

(a) Maintenance and Repair of Units Each Owner must maintain, repair, replace all portions of his or her Unit, and all Improvements therein, in good condition and repair at all times, including, but not limited to, interior doors and walls (including exterior surfaces of bearing walls located within the Owner's Unit), floors, cabinets, appliances, and all electrical, heating, plumbing, water heaters and other utility fixtures situated within the Unit or partially within the Unit and partially within the Building Common Area in which the Owner's Unit is located, such as electrical outlets. Each Owner of a Unit, at that Owner's cost, shall periodically clean, maintain and repair any windows, fireplace, chimney, flue, exterior door hardware, and screens and screen doors, and garage door opening equipment that serve the Owner's Unit, including repair or replacement of any window, exterior door hardware, screens or screen doors. To reduce the risk of freezing water causing a breach in water and sewer lines within the Units, in the months of September through May of each year, Owners and tenants shall maintain thermostats within the Units at a minimum of fifty-five degrees (55°) Fahrenheit.

If damage to any of the Unit elements are covered by insurance maintained by the Association, the Association, on request from the Unit Owner, shall submit an appropriate claim if the claim exceeds the deductible and shall remit any available insurance proceeds to the Owner on receipt of satisfactory evidence that the proceeds are or will be used for repair. Any deductible amount shall be borne by the Owner.

(b) Owners' Maintenance Obligations With Respect to Limited Common Elements Each Owner shall also be responsible for the maintenance, repair and replacement of the following Limited Common Elements appurtenant to the Owner's Unit: shutters, awnings, doorsteps, stoops, porches, balconies, exterior doors, door frames, weatherproofing and waterproofing associated with exterior doors and door frames, hardware incidental to doors, mail boxes, windows, air conditioning units, water heaters, furnace/heaters, electrical lines, cable

television service, telephone wiring, utility lines to the extent such components service only the Owner's Unit Replacement of windows and exterior doors must be of the same quality, appearance and style as the windows and doors that were originally installed by Declarant unless otherwise approved by the Association pursuant to Article V, with any permitted departures from the original style and appearance being based primarily on improvements in technology

(c) Owner Maintenance to Reduce the Possibility of Mold Contamination In order to reduce the presence of Mold, Owners shall perform each of the following steps (i) inspect the Unit (both exterior and interior) not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the Unit and for the presence of Mold, (ii) if any water leaks and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or remove the Mold, (iii) maintain proper ventilation (particularly in bathrooms) and humidity levels in the Unit to reduce the risk of Mold growth, (iv) periodically inspect refrigerator condensation pans, air conditioners (if applicable), and any other water-retaining appliances for the presence of Mold, (v) avoid carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth, (vi) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the appliance manufacturer, and (vii) take such other prudent steps as may be appropriate to prevent Mold growth or eliminate any existing Mold in the Owner's Unit Without limiting the foregoing obligation, but in addition thereto, in the event that a Unit Owner discovers any condition in his or her Unit that could cause significant water damage to the Unit or adjacent Units, or present a clear risk of Mold contamination, the Owner shall notify the Association manager within twenty-four (24) hours so that prompt remedial action can be taken, if necessary to protect the health or property of other Owners

(d) Owner Maintenance Manuals The Association shall maintain, at its principal offices, and provide to each Owner upon request, a Maintenance Manual prepared by Declarant that pertains to the maintenance and repair obligations of Owners under the Governing Documents with respect to their Units The Association shall have the right to charge the requesting Owner a fee for the Maintenance Manual equal to the actual cost to the Association of providing a copy to the Owner By accepting a deed to any Condominium in the Tahoe Beach Club Condominium project, each Owner acknowledges and agrees that the Owner is required to comply with all of the recommended maintenance obligations and schedules set forth in the Maintenance Manual and each Owner is further obligated to provide a copy of the Maintenance Manual to any successor purchaser of the Owner's Condominium

#### Section 7.03 Association Recovery of Costs of Certain Repairs and Maintenance

(a) Association Maintenance Necessitated by Owner Negligence If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her Family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above

(b) Owner Defaults in Maintenance Responsibilities If an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give

written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3 07(d), above, to enter the Owner's Unit or Limited Common Element and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 13 07, below.

Section 7 04 Cooperative Maintenance Obligations To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work including, when reasonably required, permitting access by the Association, its agents and contractors, to the Owner's Unit to perform repair and maintenance work for which the Association is responsible hereunder.

## **ARTICLE VIII USE OF PROPERTY AND RESTRICTIONS**

In addition to such restrictions as may be established by law or made a part of the Association Rules (consistent with this Declaration) from time to time promulgated by the Board of Directors, the following restrictions are hereby imposed upon the use and enjoyment of the Project (including, without limitation, the individual Units)

Section 8 01 Single Family Residential Use The use of any Unit within the Project is hereby restricted to Single Family Residential Use, provided, however, that nothing in this Declaration shall prevent an Owner from leasing or renting his or her Condominium, subject to Section 2 04, above. In addition, Units owned by Declarant may be used as models, sales offices and construction offices for the purposes of selling the Units within the Project until all of the Units owned by Declarant are sold.

Section 8 02 Use of the Property and the Condominium Units The use of all Property and the Condominium Units shall be limited to those uses, as strictly interpreted, which are specified in this Declaration. Any change in use of the Property, the Project or the Units, or any part thereof, shall require the vote by written instrument of two-thirds (2/3) of the Voting Power of the Members of the Association and consent of Declarant during the Declarant Control Period.

### Section 8 03 Prohibition of Noxious Activities

(a) No noxious or offensive activities shall be carried on within or conducted upon any portion of the Project nor shall any things be done within any Unit that shall be or become an unreasonable annoyance or nuisance to the neighborhood.

(b) Without limiting any of the foregoing, no Owner shall permit noise of any sort (including, but not limited to, barking dogs, the operation of air conditioners, stereo amplifier systems, television sets, motor vehicles and power tools) to emanate from an Owner's Unit or any portion of the Common Area which would unreasonably disturb other Owner's enjoyment of Owner's Unit or the Common Area. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the Douglas County Code.

adopted pursuant to County of Douglas, State of Nevada Ordinance 227 §1 (1975) and as may be amended, or other applicable governmental regulation dealing with such matters

(c) The Board may, in its sole discretion, prohibit maintenance within the Project of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other Owner(s)

Section 8 04 Household Pets The following restrictions regarding the care and maintenance of pets within the Project shall be observed by each Owner and resident

(a) General Rules and Restrictions Regarding the Maintenance of Household Pets Owners and long-term tenants may maintain no more than two (2) common household pets within a Unit so long as the pets are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised within the Project. While it is recognized that many Units in the Project may be second homes for Owners and that Owners may not be subject to pet restrictions at their primary residence, Owners are encouraged to recognize that the maintenance of several dogs or other permitted pets in the Project may create nuisances or annoyances to neighboring residents that would not exist at the Owner's principal residence

(b) Prohibition on the Maintenance of Pets by Short-Term Tenants Tenants who are leasing a Unit for a term of fourteen (14) days or less may not bring any pets to the leased or rented Unit

(c) Dogs Must be Leashed and Under Control When in the Common Areas Dogs shall only be allowed upon the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners

(d) Prohibition on Chaining or Tethering of Pets No household pet shall be left chained or otherwise tethered in front of a Unit, on a Unit balcony, or in the Common Area. It is common knowledge that unattended dogs are more likely to bark and/or be aggressive

(e) Disposal of Pet Waste Pet owners shall be responsible for the prompt removal and disposal of pet wastes deposited by their pets within the Project. When dogs are being walked within the Common Area of the Project, the person in control of the dog shall carry a waste disposal bag or container which shall be used when needed

(f) Responsibility of Pet Owners for Dependent of Their Pets Each person bringing or keeping a pet at the Tahoe Beach Club Condominiums shall be solely responsible for the conduct of the Owner's pet(s). The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their Family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet

(g) Prohibition of Dogs on the Club Beach Under no circumstances shall dogs be permitted on the beach area of the Club Property



(h) Association's Authority to Adopt Additional Pet Rules and Regulations

The Board of Directors shall have the right to establish and enforce additional rules and regulations defining in a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Project to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Tahoe Beach Club Condominiums by the other Owners and residents

Section 8 05 Sign Restrictions No advertising signs or billboards shall be displayed on the exterior or windows of any Unit or posted within or upon any portion of the Common Areas except that Owners may post in the front window of the Owner's Unit any signs required by legal proceedings and signs relating to political elections or ballot measures subject to strict compliance with the limitations imposed by NRS §116 325 The Board of Directors, in its discretion, shall be entitled to regulate or prevent altogether, the erection and maintenance of Owner's, agents or broker's directional signs along roadways or on any Common Area within the Project

Section 8 06 Business Activities No business or commercial activities of any kind whatsoever shall be conducted in any Unit, provided, however, the foregoing restriction shall not apply to the activities, signs or activities of the Association in the discharge of its responsibilities under the Governing Documents or Declarant's activities in connection with the development, sale and marketing of the Condominium Units in the Project Furthermore, no restrictions contained herein shall be construed in such a manner so as to prohibit any Owner from (a) maintaining his or her library in his or her Unit, (b) keeping his or her business records or accounts therein, (c) handling his or her personal or professional telephone calls or correspondence therefrom, (d) leasing or renting his or her Unit in accordance with Section 2 04, above, or (e) conducting any other activities on the Owner's Unit that are otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Project The uses described in (a) through (e), above, are expressly declared to be customarily incidental to the principal residential use of the Unit and not in violation of this Section 8 06

Section 8 07 Garbage No rubbish, trash, or garbage shall be allowed to accumulate within any Units or the Common Area Any trash that is accumulated by an Owner outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers and facilities located within designated refuse disposal areas within the General Common Areas Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Project to a public dump or trash collection area by the Owner or tenant at his or her expense The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section

Section 8 08 Storage of Personal Property Storage of personal property by Owners or tenants within the Project shall only be permitted entirely within the Owner's/tenant's Unit or in storage areas originally constructed by Declarant as Limited Common Elements appurtenant to the Unit Personal property, including, without limitation, clothing, towels, paddle boards, rafts,



kayaks, life vests and other waterski equipment shall not be stored on decks or left to hang over railings so as to be visible from the Common Area or other Units

Section 8 09 No Exterior Maintenance by Owners No planting or gardening shall be done on any Condominium Unit, and there shall be no exterior painting or maintenance of the exteriors of the Project Buildings by or on behalf of the Owners thereof, or any person holding thereunder, nor repair or replacement of original roofs or utility laterals by said persons, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with latter's maintenance of the Common Area in order to preserve the external harmony and uniform appearance of the Project Nothing herein shall be construed as preventing an Owner from maintaining common household plants located entirely within the Owner's Unit

Section 8 10 Interior Improvements No Owner shall undertake any action or work interior that will impair the structural soundness or integrity of the Owner's Unit or an adjoining Unit or impair any easement or hereditament, or do any act or allow any condition to exist which will adversely affect the other Units or their Owners *See also* Section 5 02, above

Section 8 11 Limitations Regarding Barbecues and Exterior Fires No exterior fires whatsoever shall be allowed in the Project including (i) on the decks located adjacent to the Units, (ii) anywhere else in the Exclusive Use Common Areas, or (iii) anywhere in the Common Areas This prohibition includes barbecues and grills using charcoal, wood, butane, propane or any other portable fuel source, portable fire pits, outdoor fire pits, wood burning stoves, and the like Notwithstanding the foregoing, gas barbecues that are plumbed to a gas source in the Unit are allowed to be used on the decks located adjacent to the Units so long as they comply with all local fire safety ordinances

Section 8 12 Clotheslines No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balconies, patios, porches or other exterior areas in a manner which is visible from any neighboring Unit or the Common Area

Section 8 13 Basketball Standards No basketball standards or fixed sports apparatus shall be attached to any Unit exterior or within any portion of the Common Area *See also* Section 6 05, above

Section 8 14 Machinery and Equipment No power tools, machinery or equipment of any kind shall be placed, operated or maintained within or adjacent to any Unit except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residential Unit located within a condominium project

Section 8 15 Diseases and Pests No Owner shall permit any thing or condition to exist within his or her Unit which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects

Section 8 16 Parking and Vehicle Restrictions

(a) Authorized Vehicles The only vehicles that can be parked in the Project are standard passenger vehicles and trucks not to exceed three-quarter tons in gross carrying capacity

(b) Access by Other Vehicles and Trailered Boats Boats on trailers, motorhomes, and other large vehicles that cannot be parked within a designated space within the Unit garage may only be brought into the Project for purposes of loading and unloading of personal property and individuals for periods not to exceed four (4) hours in duration. These restrictions shall not apply to commercial trucks that are actively engaged in making deliveries or providing services to Owners although such commercial vehicles shall not be parked in a way that obstructs the free flow of traffic within the Project or which blocks any Owner's parking space.

(c) Limitations Regarding On-Street Parking No vehicle shall be parked or left on any street within the Project, except within specified parking areas so designated by the Board, or on Kahle Drive.

(d) Prohibition on Most Vehicle Repairs and Maintenance No motor vehicle shall be constructed, reconstructed or repaired within the Project and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Project, provided, however that the provisions of this Section shall not apply to emergency vehicle repairs.

(e) Association's Authority to Tow Improperly Parked or Prohibited Vehicles As long as applicable ordinances and laws are observed, including without limitation NRS §487 038 (relating to the authority to tow vehicles from private property), the Board shall have the authority to cause the removal of any vehicle that is parked within the Project in violation of this Section 8 16 or any applicable Association Rules.

(f) Association's Authority to Adopt Further Rules Regarding Vehicles and Parking The Board shall have the authority to promulgate such further rules and restrictions regarding parking and vehicles within the Project as may be deemed prudent and appropriate.

Section 8 17 Children Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and any children temporarily residing in or visiting the Owner's/resident's Unit and for any property damage caused by such children.

Section 8 18 Activities Affecting Insurance Nothing shall be done or kept within any Unit or Limited Common Element or Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept within his or her Unit, Limited Common Element or Common Area which would cause any improvements to be uninsurable against loss by fire or casualty or result in the cancellation of insurance on any Unit or any part of the Common Area.

Section 8 19 Variances Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article V, above, for the granting of architectural variances.

Section 8 20 Enforcement of Property Use Restrictions The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the property use restrictions contained herein Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 13 07(f), below, the Owner or tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s) Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her right to be heard on the matter

Section 8 21 Declarant Exemption Notwithstanding anything contained in this Article VIII to the contrary, the restrictions and limitations set forth herein shall not apply to Declarant, nor Units owned by or leased to Declarant

## **ARTICLE IX EASEMENTS**

Section 9 01 Encroachment Easements Each Unit is hereby declared to have an easement over adjoining Units for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, and due to engineering errors, errors in original construction, settlement or shifting of the building, or similar causes There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by said encroachment, settlement or shifting, provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurs due to the willful misconduct of said Owner or Owners In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Unit agree that minor encroachments over adjoining Units shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist

Section 9 02 Roadway Easements Each Owner and the Association shall have and is hereby granted a nonexclusive easement for street, roadway and vehicular traffic purposes over and along the roads and paved parking areas within the Project, subject to termination of such easement and the rights and restrictions set forth in this Declaration

Section 9 03 Beach Access Easement By separate Recorded instrument, the Club Owner has granted to the Association for the benefit of its Members, their tenants, guests, and invitees, a right of access to use and enjoy a certain portion of the Club's private beach area along the shores of Lake Tahoe, subject at all times to the rules and regulations of the Club The rights under this easement are independent from the rights, benefits and privileges extended to Condominium Owners, their tenants, guests and invitees under the Beach Club License Agreement

Section 9 04 Utility Easements Granted by Association Declarant or the Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over or under the Common Area, including streets and other paved surfaces, for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water

drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public Improvements or facilities, subject to prior written approval thereof by the County Each Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights of way and authorizes and appoints the Association as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights-of-way An easement is hereby created and reserved for installation, maintenance and use of horizontal and vertical utility lines, ducts and appurtenances thereto in areas adjoining ceilings, walls, columns and interior spaces between columns, within the Units No removal, repair or modification of these lines is permitted without specific written authorization from the Association

Section 9 05 Maintenance Easements Subjecte to Secion 3 07(d) above, an easement is hereby granted to Declarant and the Association, their officers, agents, employees, and to any management company or contractor selected by Declarant or the Association to enter in or to cross over the Common Area and any Unit to perform the Association's duties of maintenance and repair of the Units, Common Area, or Common Facilities provided for herein

Section 9 06 Rights of Declarant Incident to the Construction of Improvements For so long as Declarant owns a Condominium Unit for sale within the Project or any portion of the Annexable Property, Declarant shall have easements and rights

(a) To build, construct, modify and maintain any signs advertising the Project, and the sale of Condominiums by Declarant on any portion of the Common Area, provided such signs comply with applicable law and do not unreasonably interfere with the use and enjoyment of the Common Area by Owners and residents

(b) For ingress, egress and the installation and maintenance of public utilities over, under and across the Common Area within the Project,

(c) For the purpose of maintaining an office for sales and/or resale of Condominiums in the Project, as provided in Article XVI, below, and for Declarant's marketing activities in connection with such offices, and

(d) For so long as Declarant is subject to a bond for uncompleted Common Facilities or has the right to annex additional properties to the Property and the Project pursuant to Article XV, below, Declarant shall have an easement for ingress to, and egress from, the Common Area for the purpose of completing improvements thereon or for the performance of necessary repair work and for entry on the Property described in Exhibit "C" in connection with the development of additional Phases of the Project

Section 9 07 Easements In Favor of Declarant to Respond to Warranty and Construction Defect Claims An easement and right of reasonable access to the Common Area and Units is hereby reserved to Declarant for so long as Declarant has any continuing warranty obligations or claims exposure pursuant to Section 13 10, below, or otherwise as provided by law, in order to perform warranty maintenance or repair work, or to evaluate, test and, when appropriate, respond to "Claims," as defined in Section 13 10(a), below The exercise of these easement rights by Declarant shall be subject to the notice requirements set forth in Section 3 07(d), above



Section 9 08 Priority of Easements Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects

## **ARTICLE X INSURANCE**

Section 10 01 Types of Insurance Coverage The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent they are available at a reasonable premium cost

(a) Fire and Casualty Insurance The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on all risk, replacement cost basis, on all improvements within the Project and on any Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10 05, below

(b) Public Liability and Property Damage Insurance To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, Association Members, Board of Directors, Association manager, if any, Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000 00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use

(c) Director's and Officer's Liability Insurance The Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000 00)



(d) Additional Insurance and Bonds To the extent such insurance is reasonably obtainable, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation.

Section 10 02 Coverage Not Available In the event any insurance policy, or any endorsement thereof, required by Section 10 01, above, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage. In such an event, an Owner may obtain its own insurance for the unavailable/diminished coverage provided that there is no diminution in insurance proceeds otherwise payable under the Association's modified policies, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance as a Special Individual Assessment pursuant to Section 10 06 herein.

Section 10 03 Copies of Policies Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10 04 Restriction on Cancellation of Insurance All of the policies of insurance maintained by the Association pursuant to Section 10 01, above, shall contain a provision that such policy or policies shall not be cancelled or terminated, or expired by their terms, or not renewed without sixty (60) days prior written notice to the Board, the Owners and their respective first Mortgagees (provided that such Owners or Mortgagees have filed written requests with the carrier for such notice) and every other Person in interest who shall have requested such notice of the insurer.

Section 10 05 Board's Authority to Revise Insurance Coverage Subject to the provisions of Sections 10 04, 10 07 and 10 08 of this Article X and to compliance with the minimum insurance requirements imposed by NRS §116 3113, the Board shall have the power and right to deviate from the insurance requirements contained in this Article X in any manner that the Board, in its discretion, considers to be in the best interests of the Association.

The Board is authorized to negotiate and agree on the value and extent of any loss under any policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Each Owner, by acceptance of a deed to a Condominium, irrevocably appoints the Association or an insurance trustee appointed in accordance with NRS §116 3113(2) as that Owner's attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with any insurance.

policy maintained by the Association and any losses or claims related thereto and agrees to be bound by the actions so taken as if the Owner had personally taken the action

Section 10 06 Condominium Owners' Property Insurance, Limitations No Owner shall separately insure his or her Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance as a Special Individual Assessment. The insurance maintained by the Association does not cover the personal property in any Condominium Unit and does not cover personal liability for damages or injuries occurring in the Units. Each Owner of a Condominium shall maintain property insurance against losses to personal property located within the Owner's Unit and liability insurance against any risk or liability resulting from any injury or damage occurring within the Unit or within any Limited Common Element that is appurtenant solely to the insuring Owner's Unit. Without limiting the generality of the foregoing sentence, the Owners of the Limited Common Elements shall maintain liability insurance that covers potential risks and liabilities that may arise or occur on or within the described Limited Common Elements and such insurance shall name the other Owners as additional insureds.

In addition, any Improvements or upgrades made by an Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". Owners shall not obtain such improvements insurance if the policy referred to in Section 10 01(b), above, will provide coverage for such improvements or upgrades. Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners, the Association, and any first Mortgagee of the Owner's Unit.

Section 10 07 Periodic Insurance Review The Board periodically (and not less than once every three (3) years) shall review the Association's insurance policies and make such adjustments to the policies' terms and conditions as the Board considers to be in the best interests of the Association. If applicable, the review shall include an appraisal by a qualified appraiser of the current replacement costs of all covered property under the Association's property insurance policy unless the Board is satisfied that the current dollar limit of the property insurance policy, coupled with the amount of actual reserves on hand, is equal to or greater than the current replacement costs.

Section 10 08 FNMA and FHLMC Requirements Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed on condominium projects that are similar to the Project by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met. If FNMA and FHLMC do not impose requirements on any policy required under this Declaration, the term, amount and coverage of such policies shall be no less than that which is customary for similar policies on similar projects in the area, as reasonably determined by the Board.

## Section 10 09 Required Notifications to Owners Regarding Insurance

(a) Annual Notice Requirements The Association shall provide its Members with a summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year, that includes all of the following information about each policy (i) the name of the insurer, (ii) the type of insurance, (iii) the policy limits of the insurance, and (iv) the amount of deductibles, if any, to the extent that any of the information required to be included in the annual insurance disclosure is included in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing the page to its Members. The annual insurance summary shall also contain a statement, in at least 10-point bold face type that states as follows

“This summary of the Association's policies of insurance provides only certain information and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or, real property improvements to or around your Unit, or personal injuries or other losses that occur within or around your Unit. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult their individual insurance broker or agent for appropriate additional coverage. Association Members may obtain their own appropriate additional coverage provided that there is no diminution in insurance proceeds otherwise payable under the Association's policies, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such additional coverage will be chargeable to the Association Members who acquired the additional coverage as Special Individual Assessments pursuant to Section 10 06 herein ”

(b) Notice of Cancellation of Insurance The Association shall, as soon as reasonably practicable, notify its Members by first-class mail if any of the policies described in subparagraph (a), above, have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or policy limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy described in subparagraph (a), above, the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

Section 10 10 Limitation on Liability Regarding Insurance Matters The Association and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain the insurance required hereunder because the insurance is no longer available or, in the alternative, can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In such event, the Board

immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed

Section 10 11 Policies Obtained by Declarant It is contemplated that Declarant may contract for the insurance coverage contemplated by this Article prior to or concurrently with obtaining financing for the development of the Property and the Project, and any such obligations or commitments for the payment of premiums or expenses with respect thereto shall become an obligation of the Association, and shall be treated as a Common Expense as provided herein

## **ARTICLE XI DAMAGE OR DESTRUCTION**

Section 11 01 Destruction, Proceeds Exceed Eighty-Five Percent (85%) of the Reconstruction Costs If there is a total or partial destruction of any Improvements in the Project, and if the available proceeds of the insurance maintained pursuant to Article IX, above, are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, seventy-five percent (75%) of the "Eligible Members" (as defined in Section 11 04, below), determine that such repair and reconstruction shall not take place If repair and reconstruction is to take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild

Section 11 02 Destruction, Proceeds Less Than Eighty-Five Percent (85%) of Reconstruction Costs If the proceeds of insurance are less than eighty-five percent (85%) of the cost of repair and reconstruction, repair and reconstruction may nevertheless take place, if, within ninety (90) days from the date of destruction, Eligible Members then holding at least fifty-one percent (51%) of the total Voting Power, determine that such repair and reconstruction shall take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild

Section 11 03 Rebuilding Procedures If the Eligible Members determine to rebuild, pursuant to Section 11 01 or 11 02, above, the Owner of each Unit located within a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing his or her Unit, over and above the available insurance proceeds Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Unit bears to the total square footage of the floor area of all affected Units If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Unit of such Owner which may be enforced under the lien provisions contained in Article IV, above, or in any other manner provided in this Declaration

If any Owner disputes the amount of his or her proportionate liability under this Section, such Owner may contest the amount of his or her liability by submitting to the Board within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a



hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by fifty-one percent (51%) of the total Voting Power of the Eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 11 04 Definition of "Eligible Members" Entitled to Vote For purposes of any vote pursuant to this article, the Members eligible to vote shall be (a) the requisite percentage of the total Voting Power of the membership in the case of any damage or destruction of Common Facilities, other than Building structures pertaining to Units, and (b) in the case of the damage or destruction of any Building(s) containing Units, the requisite percentage shall be of those members whose Units are located in the damaged or destroyed Building(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4 07 of the Bylaws.

Section 11 05 Rebuilding Contract If the Eligible Members determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Property and the Project substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 11 06 Rebuilding Not Authorized If the Eligible Members voting on the matter determine not to rebuild, then any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each affected Condominium and his or her institutional Mortgages, as their interests may appear, in proportion to the respective fair market values of the affected Condominiums at the time of destruction as determined by an independent appraisal conducted in accordance with the provisions of Section 11 09, below. The Board shall have the duty, within one hundred twenty (120) days from the date of such destruction, to Record a certificate declaring the intention of the Members not to rebuild.

Section 11 07 Minor Repair and Reconstruction In any case, the Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year when aggregated with any other Special Assessments for the same fiscal year. Any amounts paid by the Board hereunder shall be assessed to the Owners' of the affected Condominiums upon the basis of the ratio of the square footage of the floor area of the Owner's Unit to the total square footage of the floor area of all affected Units.



Section 11 08 Revival of Right to Partition Upon Recordation of a certificate described in Section 11 06, above, the right of any Owner to partition through legal action, as described in Section 12 03(b), below, shall revive immediately *See also* NRS §§116 2118 and 116 2124

Section 11 09 Appraiser Wherever in this Article or in Article XI, below, reference is made to a determination of the value or fair market value of one or more Condominiums by an appraisal, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## **ARTICLE XII CONDEMNATION**

Section 12 01 Sale by Unanimous Consent or Taking If an action for condemnation of all or a portion of the Property and the Project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Property, the Project, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. However, an Owner in a condemnation proceeding is not precluded from obtaining private counsel to represent his or her interest. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Property and/or the Project, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

### Section 12 02 Distribution and Sale Proceeds of Condemnation Award

(a) Total Sale or Taking In the event of a total sale or taking of the Property and the Project, meaning a sale or taking (i) that renders more than fifty percent (50%) of the Units in the Project uninhabitable (such determination to be made by the Board of Directors in the case of a sale and by the court in the case of a taking) or (ii) that renders the Property and the Project, as a whole, uneconomical as determined by the vote or written consent of sixty-seven percent (67%) of those Owners and fifty-one percent (51%) of their respective institutional Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in this Article XII shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. Accordingly, upon such determination, the legal status of the Property as a Condominium project shall be terminated. The proceeds of any such total sale or taking of the Property and the Project, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums on the Property. The fair market value of each Condominium shall be determined in the condemnation action, if such be instituted, or by a state certified appraiser.

(b) Partial Sale or Taking In the event of a partial sale or taking of the Property and the Project, meaning a sale or taking that is not a total taking as determined in Section 12 02(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms

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

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums within the Project whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an appraiser selected by the Board meeting the qualifications described in Section 11 09, above, less such Owner's share of expenses paid pursuant to subparagraph (b)(1) (which share shall be based upon the ratio of the square footage of the floor area of his or her Unit to the total square footage of the floor area of the other sold or taken Units) After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan (if necessary) and this Declaration to eliminate from the Project the Condominiums so sold or taken, then

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

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

### Section 12 03 Limitation on Rights of Partition

(a) General Prohibition on Judicial Partition Except as provided in subparagraph (b), below, and in Section 11 08, above, the Common Area of the Project shall remain undivided and there shall be no judicial partition thereof Nothing in this subparagraph (a) shall be deemed to prohibit partition of a co-tenancy in a Condominium

(b) Revival of Right of Partition The Owner of a Condominium in the Project may maintain a partition action as to the entire Project as if the Owners of all of the Condominiums in the Project were tenants-in-common in the entire project in the same proportion as their interests in the Common Area The court shall order partition under this subparagraph (b) only by sale of the entire Project and only upon a showing of one of the following

(i) More than three (3) years before the filing of the action, the Project was damaged or destroyed, so that a material part of the Project was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction,

(ii) Three-fourths or more of the Project is destroyed or substantially damaged and Owners of Condominiums holding in the aggregate more than a fifty percent (50%) interest in the Common Area oppose repair or restoration of the Project,

(iii) The Project has been in existence for more than fifty (50) years, is obsolete and uneconomic, and Owners of Condominiums holding in the aggregate a more than fifty percent (50%) interest in the Common Area oppose repair or restoration of the Project, or

(iv) Any conditions set forth in this Declaration for sale under the circumstances described in this subparagraph (b) have been met

(c) Distribution of Proceeds Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear as follows the Board shall select an independent SREA appraiser in accordance with Section 11 09, above, who shall determine the relative fair market values of the Condominiums in accordance with SREA standards The proceeds or property shall then be apportioned among the Owners and their respective Mortgagees, according to such relative values Such relative values shall be determined as of a date immediately prior to any sale, taking or destruction of the Property and the Project

(d) Grant of Power of Attorney Each Owner grants the Association an irrevocable power of attorney to sell the Property for the benefit of the Owners when partition can be had pursuant to NRS §116 2118 Exercise of the power is subject to the approval of fifty-one percent (51%) of the Voting Power of the Members and their first Mortgagees

### **ARTICLE XIII ASSOCIATION ENFORCEMENT RIGHTS AND DISPUTE RESOLUTION**

#### Section 13 01 Association Standing and Enforcement Rights, Generally

(a) Association Standing to Represent the Owners/Members The Association has standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without necessity of joining the Members in matters pertaining to

(i) Enforcement of the Governing Documents,

(ii) Damage to the Common Area or Common Facilities, and

(iii) Damage to any portion of a Unit or Limited Common Element that the Association is obligated to maintain or repair, if any

(b) Remedy at Law Inadequate Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Condominium or any portion of the Common Area or Common Facilities, to comply with any provision of this Declaration or any rule, regulation, decision or resolution of the Board of Directors, Bylaws, or Articles of the Association, all as may be amended from time to time, may be enjoined by appropriate legal proceedings instituted by Declarant, any Owner, the Association, its officers or Board of Directors, or by their respective successors-in-interest

Section 13 02 Nuisance Without limiting the generality of the foregoing Section 13 01, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission

Section 13 03 Attorneys' Fees Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents Such enforcement procedures include an action brought in any court of competent jurisdiction as well as any internal dispute resolution (IDR) and/or alternative dispute resolution (ADR) procedures implemented pursuant to the Governing Documents In any enforcement procedure, such as mediation in which there is no agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute

Section 13 04 Cumulative Remedies The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration

Section 13 05 Exercise of Discretion Regarding Enforcement

(a) Board Enforcement Actions The Board of Directors may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commence an action for a violation of the Governing Documents, including whether to compromise any claim for unpaid Assessments or other claim made by or against it The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented

(i) The Association's legal position does not justify taking any or further enforcement action,

(ii) The covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with current law,

(iii) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources, or

(iv) It is not in the Association's best interests to pursue an enforcement action

The Board's decision not to pursue enforcement under one set of circumstances does not prevent the Board from taking enforcement action under another set of circumstances, but the Board may not be arbitrary or capricious in taking enforcement action NRS §116 3102(3)

(b) Owners' Rights of Enforcement The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized committee, consistent with the Board's duty to act in in good faith and in the honest belief that their actions are in the best interest of the Association (NRS §116 3103(1)) If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as are provided by law

Section 13 06 Failure Not a Waiver The failure of Declarant, any Owner, the Association or its Board of Directors, officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon Declarant, the Association or the Board, or any of its officers or agents

Section 13 07 Rights and Remedies of the Association (Governing Document Enforcement)

(a) Rights Generally In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her Family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey the Association Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including, but not limited to, the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to access, use and enjoy any recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association, provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement Board If the Association declines to take action in any instance, any Owner shall have such rights of enforcement



(b) Schedule of Fines The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles) In accordance with NRS §1116 31031(b)(3) upon adoption of a fine schedule and later at any time the schedule is revised, the Association shall distribute a copy of the schedule to its Members by hand delivery or by prepaid United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner of a particular Unit Prior to imposition of a fine, the Board shall comply with the procedures for providing written notice to the Member (by personal delivery or first-class mail) and an opportunity for a hearing before the Board in accordance subparagraph (d), below Once imposed, a fine or penalty may be collected as a Special Individual Assessment

(c) Definition of "Violation" A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues Similar violations on different days shall justify cumulative imposition of disciplinary measures The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Areas at the cost of the responsible Owner

(d) Limitations On the Exercise of Disciplinary Rights

(i) Limitations on Right of Forfeiture The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Condominium due to the failure by the Owner (or his or her Family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association (other than rights of access to the Owner's Unit) or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraph (ii), below

(ii) Monetary Penalties Imposed by the Association The Board of Directors may not impose a fine pursuant subparagraph (b), above, unless

(A) Not less than thirty (30) days before the alleged violation, the Owner and, if different, the person against whom the fine will be imposed had been provided with written notice of the applicable provisions of the Governing Documents that form the basis of the alleged violation, and

(B) Within a reasonable time after the discovery of the alleged violation, the Owner and, if different, the person against whom the fine will be imposed has been provided with a written notice (addressed to the Unit or the mailing address given to the Association by the Owner) specifying in detail the alleged violation, the proposed action to cure

the alleged violation, the amount of the fine, and the date, time and location for a hearing on the alleged violation, and the Owner or, if different, the person against whom the fine will be imposed has been provided with a clear and detailed photograph of the alleged violation, if the alleged violation relates to the physical condition of the Unit or the grounds of the Unit or an act or a failure to act of which it is possible to obtain a photograph, and the targeted person who may be subject to the fine has been given a reasonable opportunity to cure the alleged violation or to contest the alleged violation at the hearing

(11) Due Process Requirements The Board of Directors must schedule the date, time and location for the hearing on the alleged violation so that the Owner and, if different, the person against whom the fine will be imposed is provided with a reasonable opportunity to prepare for the hearing and to be present at the hearing. The Board of Directors must hold a hearing before it may impose the fine, unless the fine is paid before the hearing or unless the Owner and, if different, the person against whom the fine will be imposed (i) executes a written waiver of the right to the hearing, or (ii) fails to appear at the hearing after being provided with proper notice of the hearing

(e) Definition of "Continuing Violation" If a fine is imposed pursuant to this Section 13 07 and the violation is not cured within fourteen (14) days, or within any longer period that may be established by the Board of Directors, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for each seven (7)-day period or portion thereof that the violation is not cured. Any additional fine may be imposed without providing the opportunity to cure the violation and without the notice and an opportunity to be heard that is otherwise required above

(f) Suspension of Hearing Process When There Is an Imminent Threat to the Residents or the Project If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of Units within the Project, the hearing process may be suspended and the amount of the fine must be commensurate with the severity of the violation and must be determined by the Board of Directors in the reasonable exercise of its discretion. If the violation does not pose an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the Owners or residents of the Project, the amount of the fine must be commensurate with the severity of the violation and must be determined by the Board of Directors, but the amount of the fine must not exceed \$100 for each violation or a total amount of \$1,000, whichever is less. The limitations on the amount of the fine do not apply to any charges or costs that may be collected by the Association pursuant to this Section 13 07 if the fine becomes past due

(g) Inapplicability of Section 13 07 Procedures to Assessment Collection Actions The notice and hearing procedures set forth in this Section 13 07 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent Assessments. Assessment collections shall be subject to the prior notification and other procedural requirements set forth in Section 4 09, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association Assessment collection actions

(h) Notices Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by personal delivery or by any method of notice constituting Individual Notice. "**Individual Notice**" means a document must be delivered to the Members by one of the following methods: (a) First-class mail, postage prepaid, registered or certified mail, express mail, or overnight delivery by an express service carrier (addressed to the Member at his or her address appearing on the Association's records), (b) E-mail, facsimile or other electronic means so long as the recipient has consented to receiving notice in that fashion. That consent may be revoked in writing, (c) If a Member has identified a secondary address for delivery of documents included in the Annual Budget Report or notices pertaining to Assessment or Assessment collections, the Association must deliver an additional copy of those notices to the secondary address that is identified.

(i) Rules Regarding Disciplinary Proceedings The Board, or an appropriate committee appointed by the Board to conduct and administer disciplinary hearings and related proceedings, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association.

(j) Appointment of a Covenants Committee Acting pursuant to Section 10 01 of the Bylaws, the Board of Directors may, but shall not be obligated to, establish a committee to hear and decide cases involving alleged violations of the Governing Documents (a "**Covenants Committee**") with not less than three Members, to conduct hearings on alleged violations and to impose fines pursuant to this Section 13 07. The determinations of any such Committee shall be appealable to the Board.

Section 13 08 Court Actions Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board.

#### Section 13 09 Owner and Association Obligations

(a) Obligation to Follow Maintenance Recommendations and Schedules All Owners and the Association shall be obligated to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with such Owner's Unit or the Common Area, or any improvements thereon, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations").

(b) Obligation to Retain Documents and Provide Copies to Successors On or before the close of escrow in the initial sale of any Condominium by Declarant, the initial Owners of the Condominium shall receive from Declarant copies of certain documents in conjunction with the purchase of the Condominium, including copies of this Declaration, the Association's Maintenance Manual, maintenance recommendations from products manufacturers for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the procedures for resolving disputes between Owners and Declarant regarding alleged defects in the construction of Condominiums. By this provision, all

Owners shall be obligated to retain these documents and provide copies of such documents to their successors in interest upon the sale or transfer of such Owner's Unit

Section 13 10 Disputes Involving Declarant

(a) AGREEMENT TO ARBITRATE IT IS AGREED THAT ANY DISPUTES BETWEEN THE ASSOCIATION OR ANY OWNERS, AND DECLARANT, ANY DIRECTOR, OFFICER, PARTNER, EMPLOYEE, CONTRACTOR (AS DEFINED IN NRS 40 615), SUBCONTRACTOR, DESIGN PROFESSIONAL OR AGENT OF DECLARANT (COLLECTIVELY "DECLARANT PARTIES") ARISING UNDER THE GOVERNING DOCUMENTS OR RELATING TO THE DEVELOPMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR BREACH OF CONTRACT, EXPRESS OR IMPLIED, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, NUISANCE, STATUTORY VIOLATION, MISREPRESENTATION, FRAUD, (INCLUDING CLAIMS IN ANY MANNER RELATING TO OR ARISING OUT OF A CONSTRUCTIONAL DEFECT AS DEFINED IN NRS 40 615 WHICH HAVE NOT BEEN RESOLVED AS PROVIDED IN NRS 40 680(2) (MEDIATION)), SHALL BE RESOLVED BY BINDING ARBITRATION PURSUANT TO NRS CHAPTER 38 THE OWNER AND THE ASSOCIATION HEREBY WAIVE ANY RIGHT THAT THE OWNER OR THE ASSOCIATION MAY HAVE TO BRING AN ACTION IN COURT, INCLUDING, BUT NOT LIMITED TO, ANY SUCH RIGHT OF OWNER OR ASSOCIATION UNDER NRS 40 680, AND ANY RIGHT OWNER OR ASSOCIATION MAY HAVE TO BECOME A PARTY TO A CLASS ACTION CLAIM

IN ACCORDANCE WITH NRS § 116 3102 1(d) THE ASSOCIATION MAY ONLY INSTITUTE, DEFEND OR INTERVENE IN LITIGATION OR IN ARBITRATION, MEDIATION OR ADMINISTRATIVE PROCEEDINGS IN ITS OWN NAME ON BEHALF OF ITSELF OR ON BEHALF OF TWO OR MORE CONDOMINIUM OWNERS ON MATTERS AFFECTING THE COMMON-INTEREST COMMUNITY HOWEVER THE ASSOCIATION MAY NOT INSTITUTE, DEFEND OR INTERVENE IN LITIGATION OR IN ARBITRATION, MEDIATION OR ADMINISTRATIVE PROCEEDINGS IN ITS OWN NAME ON BEHALF OF ITSELF OR THE CONDOMINIUM OWNERS WITH RESPECT TO AN ACTION FOR A CONSTRUCTION DEFECT PURSUANT TO NRS 40 600 TO 40 695, INCLUSIVE, UNLESS THE ACTION PERTAINS EXCLUSIVELY TO COMMON ELEMENTS OF THE PROJECT

(b) RIGHT TO REPAIR NOTHING SET FORTH IN THIS SECTION 13 10 IS INTENDED TO AFFECT THE RIGHTS OF DECLARANT, CONTRACTORS OR SUBCONTRACTORS UNDER NRS CHAPTER 40 TO REPAIR ANY CONSTRUCTION DEFECT

(c) RULES FOR THE ARBITRATION PROCEEDING DISPUTES SHALL BE RESOLVED IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), THE AAA'S SUPPLEMENTARY PROCEDURES FOR CONSUMER/ RESIDENTIAL CONSTRUCTION DISPUTES (COLLECTIVELY, THE "CONSTRUCTION INDUSTRY RULES") AND THE TERMS OF THIS AGREEMENT IN THE EVENT THE PROVISIONS OF THIS AGREEMENT ARE INCONSISTENT WITH THE CONSTRUCTION INDUSTRY



RULES, THE CONSTRUCTION INDUSTRY RULES SHALL CONTROL IF THE MATTER PROCEEDS TO ARBITRATION, DISCOVERY SHALL BE ALLOWED PURSUANT TO THE NEVADA RULES OF CIVIL PROCEDURE ("NRCP") IN THE EVENT ANY PROVISION OF NRCP PERTAINING TO DISCOVERY IS INCONSISTENT WITH THE CONSTRUCTION INDUSTRY RULES, SUCH PROVISIONS OF NRCP SHALL PREVAIL ARBITRATION OF ANY MATTER PURSUANT TO THIS CLAUSE SHALL NOT BE DEEMED A WAIVER OF THE ATTORNEY/CLIENT OR ATTORNEY/WORK PRODUCT PRIVILEGE IN ANY MANNER

(i) ARBITRATOR THE DISPUTE CONSTITUTING A CLAIM SHALL BE HEARD AND DETERMINED BY A SINGLE NEUTRAL ARBITRATOR WHO HAS EXPERTISE IN THE AREA OF THE DISPUTE THE ARBITRATOR SHALL BE APPOINTED WITHIN A PERIOD OF TIME, WHICH IN NO EVENT SHALL BE MORE THAN SIXTY (60) DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE IN SELECTING THE ARBITRATOR, THE PROVISIONS OF THE CONSTRUCTION INDUSTRY RULES SHALL APPLY

(ii) JOINER OF PARTIES THE PARTIES MAY JOIN OTHER PARTIES AS PROVIDED IN THE CONSTRUCTION INDUSTRY RULES FOR EXAMPLE, DECLARANT MAY INCLUDE ITS CONTRACTOR AND ANY AND ALL SUBCONTRACTORS AND SUPPLIERS OR OTHER PARTIES IN THE ARBITRATION

(iii) LOCATION OF ARBITRATION THE VENUE OF THE ARBITRATION SHALL BE IN A LOCATION IN THE COUNTY WHERE THE PROPERTY IS LOCATED UNLESS THE PARTIES AGREE OTHERWISE, THE ARBITRATION SHALL COMMENCE, BE CONDUCTED, AND CONCLUDE PROMPTLY IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY RULES

(iv) AWARD THE ARBITRATOR IS AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR IN EQUITY FOR THE CLAIMS THE AWARD OF THE ARBITRATOR SHALL BE ACCOMPANIED BY DETAILED WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW ANY AWARD RENDERED BY THE ARBITRATOR MAY BE CONFIRMED, ENTERED AND ENFORCED IN ANY COURT HAVING JURISDICTION OVER THE MATTER

(v) STRICT CONFIDENTIALITY EXCEPT AS MAY BE REQUIRED BY LAW OR FOR CONFIRMATION OF THE AWARD, NEITHER OF THE PARTIES NOR THE ARBITRATOR MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF THE ARBITRATION HEARING WITHOUT THE PRIOR WRITTEN CONSENT OF BOTH PARTIES AND SUCH CONTENT AND RESULTS ARE STRICTLY CONFIDENTIAL

(vi) ARBITRATION COSTS AND ATTORNEYS FEES ANY COSTS TO INITIATE ARBITRATION SHALL BE ADVANCED BY THE PARTY INITIATING THE ARBITRATION, BUT THE COSTS OF ARBITRATION SHALL ULTIMATELY BE BORNE BY THE LOSING PARTY AND, IF THERE IS MORE THAN ONE LOSING PARTY, IN SUCH



PROPORTIONS AS THE ARBITRATOR MAY DETERMINE THE PREVAILING PARTY OR PARTIES IN SUCH ARBITRATION SHALL BE ENTITLED TO RECOVER REASONABLE ATTORNEYS' FEES FROM THE LOSING PARTY OR PARTIES IN SUCH AMOUNTS AS THE ARBITRATOR SHALL DETERMINE

(vii) STATUTES OF LIMITATION THE ARBITRATION MUST BE FILED WITHIN THE STATUTE OF LIMITATIONS APPLICABLE TO THE CLAIM

(d) WAIVER OF JURY TRIAL OWNER AND ASSOCIATION ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION 13 10 DECIDED BY ARBITRATION AS PROVIDED BY NEVADA LAW AND OWNER AND ASSOCIATION ARE GIVING UP ANY RIGHTS OWNER AND ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT, INCLUDING A JURY TRIAL

#### **ARTICLE XIV PROTECTION OF MORTGAGEES**

Section 14 01 Amendment of This Declaration Except where an amendment has been approved in accordance with Section 14 11, below, no amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recordation thereof is given to the Association prior to the Recording of such amendment

Section 14 02 Breach, Obligation After Foreclosure No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Condominium or the Owner's interest therein, but all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes shall remain provided for or against any person who acquires title to or any beneficial interest in any Condominium through foreclosure, trustee's sale or otherwise

Section 14 03 Exchange of Information The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of

(a) Any condemnation or casualty loss that affects either a material portion of the Property, the Project, or the Condominium(s) securing the Mortgage,

(b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Condominium(s) securing the Mortgage,

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and

(d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (*see* Section 14 11(a), below, for definition of "Eligible Mortgagee")

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Condominium(s) securing the Mortgage. Any Mortgagee of any Condominium is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments on such indebtedness.

Section 14 04 Certain Restrictions Affecting the Association Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven percent (67%) of the Owners or sixty-seven percent (67%) of the first Mortgagees, such percentage to be based upon the total number of Condominiums so mortgaged with each such Mortgage entitled to one vote for each Condominium, the Association shall not

(a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or any Improvements thereon (except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Property and the Project, shall not be deemed a "transfer" as that term is used in this subparagraph (a)),

(b) Change the method provided in this Declaration for determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards,

(c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Project, or the enforcement thereof, as provided in this Declaration,

(d) Fail to maintain fire and extended coverage insurance on the Common Facilities in the amount and against the risks provided in Section 10 01, above, and

(e) Use any insurance proceeds received as a result of the occurrence of loss or damage to the Common Facilities for any purpose other than the repair, replacement or reconstruction of such Common Facilities

Section 14 05 Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor The holders of first Mortgages on the Condominiums shall have the right (but not the obligation), jointly or singly, (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities, (b) to pay overdue premiums on casualty insurance policies for the Common Facilities, and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided in Section 10 01, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument signed by the president or any vice president and the secretary or any assistant secretary, evidence its agreement to the provisions of this Section as the same affects the Mortgage held by such Mortgagee.

Section 14 06 Right to Examine Books and Records of the Association All Mortgagees, insurers and guarantors of any Mortgages on any Condominium shall have the right, upon written request to the Association, to

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours,

(b) Require the Association to provide an audited statement for the preceding fiscal year (i) at no expense to the requesting entity when the Project consists of fifty (50) or more Condominiums, and (ii) at the requesting entity's expense when the Project consists of fewer than fifty (50) Condominiums and no audited statement is available, and

(c) Receive written notice of all membership meetings and designate a representative to attend such meetings

Section 14 07 Notices to First Mortgagees The Association shall furnish to the holder of any first Mortgage on any Condominium, upon written request by the first Mortgagee, thirty (30) days prior written notice of (a) abandonment or termination of the Association, (b) the effective date of any proposed material amendment to the Declaration, (c) any decision by the Association to terminate professional management, if any, and assume self-management of the Project, (d) any condemnation or eminent domain proceeding, and (e) any extensive damage to or destruction of any improvements located on the Common Area

Section 14 08 Superiority of Mortgage to Condemnation Proceeds If any Condominium, or portion thereof, or the Common Area, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Condominiums or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement

Section 14 09 Superiority of Mortgage to Insurance Proceeds In the event of any substantial damage to or destruction of the Improvements constituting the building structure of any Condominium, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of said Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction

Section 14 10 Declaration to Conform With Mortgagee Requirements It is the intent of this Article that this Declaration, the Articles of Incorporation, the Bylaws and the Property and the Project, in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Condominium or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Condominium by the FHLMC, the FNMA, or the Veterans' Administration (VA) As such, the Declaration, the Articles of Incorporation and/or the Bylaws may be amended to comply with the requirements of the FHLMC, the FMNA or the VA with the approval of the Board or Declarant, as applicable

Section 14 11 Approval of Material Amendments or Termination

(a) Material Amendments In addition to the approvals required by Section 20 01 and Section 20 02, below, Eligible Mortgagees who represent at least fifty-one (51%)

percent of the votes of Condominiums that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights,
- (ii) Assessments, assessment liens or the priority of assessment liens,
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Areas,
- (iv) reallocation of interests in the general Common Area or the Limited Common Elements, or rights to their use,
- (v) redefinition of any Unit boundaries,
- (vi) convertibility of Units into Common Area and vice versa,
- (vii) annexation or deannexation of property to or from the Project,
- (viii) insurance or fidelity bonds,
- (ix) leasing of Condominiums,
- (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium,
- (xi) a decision by the Association to establish self-management for the Project when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee,
- (xii) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents,
- (xiii) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs, or
- (xiv) any provisions that expressly benefit Mortgagees, insurers or guarantors

(b) Termination In addition to the approvals required by Section 20 01 and Section 20 02, below, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Units that are subject to Mortgages held by Eligible Mortgagees must approve any

proposed termination of the legal status of the project for reasons other than substantial destruction or condemnation of the Property and the Project

(c) Implied Approval Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a “return receipt” requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within sixty (60) days of receiving the notice

## ARTICLE XV ANNEXATION OF ADDITIONAL PROPERTY TO THE PROJECT

Section 15 01 Annexation of Additional Property Additional property may be annexed to and become subject to this Declaration and the Project regime by any of the following methods set forth in this Article XV Upon annexation, the additional property shall become a portion of the Project, and be subjected to this Declaration without the necessity of amending any of its individual Sections, unless such amendments are specifically authorized pursuant to a Recorded Declaration of Annexation or Supplemental Declaration executed and acknowledged in accordance with Section 15 04(a), below

(a) Annexation Pursuant to Plan of Phased Project Declarant shall have the right, pursuant to NRS §§116 039 and 116 211 (“**Project Rights**”), to annex from time to time all or any portions of the Annexable Property (*i e*, the lands more particularly described in Exhibit “C”), so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Condominiums within the annexed Phase Such annexation shall not require the approval of either the Association or its Board or Members

The right of unilateral annexation provided for in this subparagraph (a) constitutes a covenant running with the land, and, as such, the right is exercisable by any successor or assignee of Declarant who acquires any part of the Annexation Property, and who assumes the role of Declarant as provided in Section 1 29, above

Section 15 02 Annexation Pursuant to Member Approval Property other than that described in Exhibit “C” may be annexed to the Project upon approval in writing of the Association, pursuant to vote or written consent of a two-thirds (2/3) majority of the Voting Power of its Members, excluding Declarant, and the approval of Eligible Mortgagees (pursuant to Section 14 11(a), above) Upon such approval, the Owner of such property may file of Record a Declaration of Annexation in accordance with Section 15 03, below Upon the Recording of such Declaration of Annexation, the annexed property shall be subject to the jurisdiction of the Association

### Section 15 03 Recordation of a Declaration of Annexation

(a) Effect of Recordation of a Declaration of Annexation Any annexation of portions of the Project to this Project authorized by this Declaration shall be made by Recording a Declaration of Annexation, or other similar instrument, with respect to the additional real property which shall be executed by Declarant and shall extend this Declaration to such real property The



Recordation of a Declaration of Annexation shall constitute and effectuate the annexation of the additional real property described therein and the Units, General Common Area, Building Common Areas and Limited Common Elements depicted in the Condominium Plan applicable to the Phase, and thereupon the annexed real property shall become and constitute a part of this Project, become subject to this Declaration and encompassed within the general plan and scheme of the covenants, conditions and restrictions contained herein, and become subject to Assessment by the Association and to the functions, powers and jurisdiction of the Association, and the Owners of Condominiums in the Annexable Property shall automatically become Members of the Association. Any authorized annexation shall be effected by the Recordation of a Declaration of Annexation.

(b) Contents of Declaration of Annexation The Declaration of Annexation shall include the following:

(i) Legal Description of the Annexed Property A legal description of the Annexable Property, separately identifying the Units and Common Area located within the annexed Phase, as shown and depicted on the Condominium Plan applicable to the Phase.

(ii) Statement Regarding Commencement of Assessments The Declaration of Annexation shall provide for a specified date on which Assessments shall commence for Condominiums in the annexed Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Condominium in the annexed Phase is conveyed to an Owner other than Declarant.

(iii) Application of Equitable Servitudes A statement that all of the covenants, conditions and restrictions of this Declaration shall apply to property within the annexed Phase in the same manner as if the Annexable Property was originally covered by this Declaration, provided, however, that additional or revised covenants, conditions and restrictions applicable to the Annexable Property (collectively, "supplemental restrictions"), may be imposed when, in the sole discretion of Declarant, it is deemed necessary or appropriate and to impose supplemental restrictions in order to reflect differences in the nature, design or use of the Improvements to be constructed in the annexed Phase.

(iv) Effect of Annexation Upon Recordation of the Declaration of Annexation for a Phase, the Common Area and Condominiums within the Phase shall become subject to this Declaration (as amended or supplemented by the Declaration of Annexation) and to the Condominium regime established and set forth in the Condominium Plan. Assessments collected from Owners may be expended by the Association without regard to the particular Phase from which Assessments came. All Owners shall have ingress and egress to all portions of the Common Area throughout the Project, subject to the provisions of this Declaration, the Bylaws of the Association and to the Association Rules in effect from time to time.

(v) Effect of Failure to Annex If any portion of the Annexable Property is not annexed as provided above and the unannexed portions of the Annexable Property require ingress and egress access over private streets located within the Project and access to and use of common utilities, easements shall exist for reasonable vehicular and pedestrian traffic and reasonable use of the common utilities for residential developments within the unannexed portions.

of the Annexable Property of comparable size and density, provided, however, that the Project (and the owners of condominium units within the un-annexed property) shall be obligated to pay their equitable share of the cost of maintenance and repair of the private streets and utilities within the Project

(c) Reservation of Easements in Connection With the Annexation of Phases

Upon annexation of Phases pursuant to this Article XV, such Phases shall be made subject to the terms of this Declaration and thereby become subject to the jurisdiction of the Association. Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Condominiums in subsequently annexed Phases, non-exclusive easements for ingress and egress and construction activities over the Common Area of previously annexed Phases, non-exclusive easements for ingress and egress and construction activities over the Common Area within previously annexed Phases. Declarant further covenants and agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the Owners of Condominiums in previously annexed Phases, non-exclusive easements for ingress and egress over the Common Area of subsequently annexed Phases.

Section 15 04 Supplemental Declarations

(a) Authority to Record Supplemental Declarations During the course of developing the Project, it may become necessary or appropriate for Declarant to Record a Supplemental Declaration. Recordation of Supplemental Declarations by Declarant is hereby approved.

(b) Content of Supplemental Declarations Any Supplemental Declaration shall describe the portion of the Annexable Property to which it is to apply, recite that the Supplemental Declaration is being Recorded pursuant to the authority conferred by this Section and may include, without limitation:

(i) Description of Common Areas and Common Facilities A description of any Common Areas (including all Limited Common Elements) and Common Facilities within the annexed Phase,

(ii) Specification of Property Use Restrictions Applicable to the Annexed Property Property use restrictions and design and building standards which shall apply solely to the Condominiums (and any improvements constructed thereon) within the annexed Phase, and

(iii) Designation of Special Benefit Expenses A Supplemental Declaration may identify Special Benefit Expenses within the annexed Phase by including the information described in Section 4 02(e)(iv), above.

Section 15 05 Annexation and Amendment/Rescission of Declaration of Annexation

Declarant has the right, at its sole option, to (i) amend a Declaration of Annexation, or (ii) remove from this Project any property described in a Recorded Declaration of Annexation by executing and Recording a rescission of the Declaration of Annexation, so long as all of the following conditions are satisfied at the time of the execution of the amendment or rescission: (A) no

Condominium in the annexed property has been conveyed to an Owner, and (B) Assessments have not commenced for any Condominium or in the annexed property

Section 15 06 Taxes and Assessments All taxes and other assessments relating to property to be annexed pursuant to this Article XV covering any period prior to the annexation of such Annexable Property, shall be paid or otherwise satisfactorily provided for by the annexing party prior to annexation

Section 15 07 Effect of Annexation The Recordation of a Declaration of Annexation shall constitute and effectuate the annexation of the Annexable Property described therein, and thereupon the Annexable Property shall become and constitute a part of the Property and the Project, and be subject to, and encompassed within, the general plan and scheme of this Declaration Condominiums within the Annexable Property shall thereupon become subject to Assessment by the Association and to the functions, powers and jurisdiction of the Association and the Owners of Condominiums within the annexed Phase shall automatically become Members of the Association Declarant hereby reserves to itself, its successors and assigns, the right to, and agrees that it will, grant to the Owners of Condominiums in subsequently annexed Phases, non-exclusive easements for ingress and egress and construction activities over the Common Area of previously annexed Phases Declarant further covenants and agrees that it will reserve to itself, its successors and assigns, the right to grant, and covenants and agrees that it will grant, to the Owners of Condominiums in previously annexed Phases, non-exclusive easements for ingress and egress over the Common Area of subsequently annexed Phases

Section 15 08 Deannexation of Real Estate from the Project Portions of the Property comprising this Project may be deleted from the coverage of this Declaration and from the jurisdiction of the Association so long as (i) no Condominium has been sold in the deannexed Phase, and (ii) a Notice of Deletion of Property is Recorded

## ARTICLE XVI SPECIAL DECLARANT RIGHTS

Section 16 01 Special Declarant Rights, Generally The rights and powers set forth in this Article XVI, together with all other rights and powers reserved specifically to Declarant elsewhere in this Declaration and by NRS §116 089, are collectively called “*Special Declarant Rights*” Nevada Revised Statutes §116 089 enumerates the following Special Declarant Rights which are reserved for the benefit of a declarant to

- (a) Complete improvements indicated on plats or in the Declaration,
- (b) Exercise any developmental right,
- (c) Maintain sales offices, management offices, signs advertising the Project and/or Condominium sales, and the maintenance of Unit models,
- (d) Use any easements through the Common Area for the purpose of making improvements within Project or within real estate which may be added to the Project as a later Phase, or

(e) Appoint or remove any officer of the Association or any member of the Board of Directors during the Declarant Control Period

Section 16 02. Declarant's Project Rights In accordance with NRS §§116 039 and 116 211 Declarant hereby reserves for itself, its successors and assigns, including, but not limited to Successor Declarants

- (a) the right to add real estate to the Project in accordance with Article XV, above,
- (b) the right to subdivide any Unit owned by Declarant,
- (c) the right to combine any Units owned by Declarant,
- (d) the right to convert any Unit owned by Declarant into Common Area, and
- (e) the right to withdraw (de-annex) real property from the Project in accordance with Section 15 08, above

Section 16 03 Limitation of Restrictions on the Declarant Declarant is undertaking the construction of the Project and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of Condominiums is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and said Project be established as a fully occupied residential community as rapidly as possible, for a period of three (3) years following sale of the first Condominium within the Project or until Declarant no longer owns any Condominiums within the Project, whichever occurs first, nothing in this Declaration shall be interpreted or construed to prevent Declarant, its contractors, subcontractors or representatives from

- (a) doing on the Condominium Project or any Condominium, whatever is reasonably necessary or advisable in connection with the completion of the Condominium Project,
- (b) erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing the Project, and of establishing a plan of ownership and of disposing of the Property and the Project by sale, lease, or otherwise,
- (c) conducting on any part of the Property or the Project its business of completing the Project, and of establishing a plan of ownership, and of disposing of the Property by sale, lease or otherwise, or
- (d) maintaining such sign or signs on any of the Project as may be necessary for the completion and sale, lease or disposition of the entire Project, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his or her Condominium or the Common Area



Section 16 04 Sales Offices and Model Units Declarant hereby reserves for itself and its Successor Declarants the right, power, and privilege to maintain sales offices, management offices and models within any Unit owned or leased by Declarant

Section 16 05 Completion of Construction Activities Nothing in this Declaration or the other Association Documents shall limit the right of Declarant to complete construction of improvements to the Common Area or to Condominiums owned by Declarant, or to alter the same or to construct additional improvements on the Property as Declarant deems appropriate before the completion and sale of the entire Project

Section 16 06 Interference With Special Declarant Rights Neither the Association nor any Owner may, without Declarant's prior written consent, take any action or adopt any provision in the Association Rules that interferes with or diminishes any Special Declarant Right Any action taken in violation of this Article shall be null and void and have no force or effect

Section 16 07 Right to Transfer Special Declarant Rights Declarant may transfer any or all of the Special Declarant Rights to any person or entity who is designated as a Successor Declarant in accordance with Section 1 29, above

Section 16 08 Termination of Any Responsibility of Declarant Except as otherwise provided in the Act, in the event Declarant shall convey all of its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant shall thereafter be obligated to perform all such duties and obligations of Declarant The obligations of Declarant to the County contained in the entitlements for the Project that are intended to be on-going after Declarant has sold its interest in the Project, shall become the obligations of the Association, and the Association shall indemnify Declarant against any liability arising out of the performance or nonperformance of those obligations after Declarant has sold its interest in the Project and/or turned over the maintenance and management of the Project to the Association

## **ARTICLE XVII THE CLUB REAL PROPERTY AND THE CLUB FACILITIES**

Section 17 01 No Right of Entry of the Club Real Property Except as provided in Section 2 05, above, neither the Association nor any Owner shall have any right of entry on to any portion of the Club Real Property, or any Club Facility without the prior written consent of the Club Owner or the manager of the Club Facilities Neither the Association nor any Owner may permit any irrigation water to overspray or drain from the Common Area onto any portion of the Club Real Property, except through storm drainage improvements constructed by Declarant

Section 17 02 No Representations or Warranties Ownership or operation of the Club Real Property and the Club Facilities may change at any time The consent of the Association or any Owner is not required to effect any change in the ownership or operation of the Club Real Property or the Club Facilities All Owners are hereby advised that no representations or warranties have been made or are made by Declarant or the Club Owner regarding the continuing existence, ownership or operation of any Club Facilities

Section 17 03 The Beach Club License Neither being an Owner of a Condominium within the Project or being a Member of the Association confers any vested or prescriptive ownership interest in or right to access and use any Club Facilities or improvements on the Club Real Property However, the Association and the Club Owner have entered into the Beach Club License Agreement pursuant to which the Association has acquired a non-exclusive revocable license to use the Club Facilities in accordance with the terms and conditions of the Beach Club License Agreement, as the same may be amended from time to time Through that License Agreement Association Members and the members of their Immediate Families have derivative non-exclusive rights to use certain Club Facilities as set forth in the Club Membership Plan Pursuant to the Beach Club License Agreement and the Club Membership Plan the Club Owner has reserved broad rights, in its absolute discretion, to change the Club Facilities as well as the terms and conditions of the Beach Club License

Section 17 04 Amendment After the expiration of the Declarant Control Period (as defined in the Bylaws), the provisions of this Article XVII may not be amended without the written consent of the Club Owner and the written consent of Declarant

### **ARTICLE XVIII NOTICES**

Section 18 01 Mailing Addresses Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows

If to Declarant	Beach Club Development, LLC a Nevada limited liability company, P O Box 5536, Stateline, NV 89449, (or to such other address as Declarant may from time to time designate in writing to the Association)
If to any Owner	To the street address of his or her Unit, or to such other address as the Owner may from time to time designate in writing to the Association
If to the Association	Tahoe Beach Club Owners Association, at the principal office of the Association, as identified or designated pursuant to Article II of the Bylaws or to such other address as the Association may from time to time designate in writing to the Owners

Nothing in this Section 18 01 is intended to preclude the use of any other means of delivering notices to Members or Owners (other than by personal service or mail) if other methods of delivery are authorized by this Declaration or by Chapter 116 of the Nevada Revised Statutes

Section 18 02 Personal Service Upon Co-Owners and Others Personal service of a notice or demand to one of the co-owners of any Condominium, to any general partner of a partnership which is an Owner of any Condominium, or to any officer or agent for service of process of a corporation which is the Owner of any Condominium, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be

Section 18 03 General Rules Regarding Delivery of Notices The following general rules shall apply to the provision of notices

(a) If a document is delivered by mail, delivery is deemed to be complete on deposit into the United States mail

(b) If a document is delivered by electronic means, delivery is complete at the time of transmission

(c) If the Association or a Member has consented to receive information by electronic delivery, and a provision of Chapter 116 of the Nevada Revised Statutes requires that the information be in writing, that requirement is satisfied if the information is provided in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record

**ARTICLE XIX  
NO PUBLIC RIGHTS IN THE PROPERTY OR THE PROJECT**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Property or the Project to the general public or for any public use or purpose whatsoever

**ARTICLE XX  
AMENDMENT OF DECLARATION**

Section 20 01 Amendment Before Close of First Sale Before the close of escrow for the first sale of a Condominium in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record by an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded

Section 20 02 Amendment After Close of First Sale After the close of escrow for the first sale of a Condominium in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions

(a) Member Approval Requirements Any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of the Members as well as approval of Declarant for so long as Declarant possesses any Special Declarant Rights. Notwithstanding the foregoing, the percentage of the Voting Power

necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause

(b) Other Required Approvals In addition to approval by the Members as provided in subparagraph (a), above, the following entities and governmental agencies have the right to approve any proposed amendment, rescission or modification to certain provisions of this Declaration, as identified in the subparagraphs below

(i) Provisions that Require Declarant Approval The following provisions of this Declaration can only be amended, rescinded, or modified with the prior approval of Declarant Sections 1 16 through 1 21, 1 29, 1 30, 1 37, 1 38, 1 40, 1 41, 2 06, 3 04(c), 3 07(c)(vi)(D) & (E), 5 04, 7 01, 9 03, 9 06, 9 07, 13 10, Article XV, Article XVI, and this subparagraph (i)

(ii) Provisions that Require Approval of the Club Owner The following provisions of this Declaration (to the extent that they pertain to the private Beach Club or the Club Owner can only be amended, rescinded, or modified with the prior approval of the Club Owner Sections 1 16 through 1 21 2 04(a), (second paragraph), 2 05, 3 07(c)(vi)(D) and (E), 3 07(d)(ii)(D), 4 06, 8 04(g), 9 03, Article XVII, and this subparagraph (ii)

(iii) Provisions that Require Approval of the Tahoe Regional Planning Agency The following provisions of this Declaration can only be amended, rescinded, or modified with the prior approval of the Tahoe Regional Planning Agency Sections 1 58, 6 07, 7 01(c) and this subparagraph (iii)

(iv) Provisions that Require Approval of the Kingsbury General Improvement District The following provision of this Declaration can only be amended, rescinded, or modified with the prior approval of the Kingsbury General Improvement District Section 21 03(a) and this subparagraph (iv)

(v) Provisions that Require Approval of the Oliver Park General Improvement District The following provision of this Declaration can only be amended, rescinded, or modified with the prior approval of the Oliver Park General Improvement District Section 21 03(b) and this subparagraph (v)

(vi) Mortgagee Approval Mortgagee approval of any proposed material amendment shall be required in accordance with Section 14 11, above, and this subparagraph (vi)

Section 20 03 Effective Date of Amendment The amendment shall be effective upon the Recordation of an instrument setting forth the terms thereof duly certified and executed by the President and the Secretary of the Association If the consent or approval of Declarant, any governmental authority, Mortgagee, or other person, firm, agency or entity is required under this Declaration with respect to any amendment or the revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained

Section 20 04 Reliance on Amendments Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith



## ARTICLE XXI GENERAL PROVISIONS

Section 21 01 Term The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Condominiums and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, officers and agents, and their respective successors in interest, for the term of sixty (60) years from the date of Recordation of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial sixty (60)-year term or any such ten (10)-year extension period, a written instrument, approved by Owners entitled to vote and holding at least a majority of the Voting Power of the Association (or such other percentage of the Voting Power as is required by the Act), terminating the effectiveness of this Declaration, is Recorded.

Section 21 02 Termination of Any Responsibility of Declarant Except as otherwise provided in the Act, in the event that Declarant conveys all of its rights, title and interest in and to the Property and the Project to any partnership, individual or individuals, corporation or corporations (including the Association but excluding any affiliate of Declarant), then, and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations shall be obligated to perform all such duties and obligations of Declarant.

Section 21 03 Disclosure of Certain Government Fee Obligations Payable by the Owners of Condominiums

(a) Real Estate Transfer Fee Payable to the Kingsbury General Improvement District Tahoe Shores, LLC, a Nevada limited liability company, and the predecessor in interest to Declarant entered into a District Infrastructure Fee Agreement (Beach Club) (the “*Infrastructure Fee Agreement*”) with the Kingsbury General Improvement District, a general improvement district organized pursuant to NRS Chapter 318 (“*Kingsbury GID*”), to provide a source of financing for the District’s existing water treatment facility from its current location on two acres that is part of the Project area and also part of the adjacent Club Property to a new location that is to the rear of the Property so as to eliminate the potential for conflicting land uses. To contribute funding for this relocation project, the Infrastructure Fee Agreement creates a District Infrastructure Fee that must be paid upon each transfer of a Condominium in the Project following the initial sale of Condominiums by Declarant, subject to exemptions for transfers from a parent to a child or from a spouse to a spouse, and other transfers that are otherwise exempt from real estate transfer taxes pursuant to NRS §375.090. The fee obligation has a term of forty (40) years and the amount of the Infrastructure Fee is Two Thousand Seven Hundred and Fifty Dollars (\$2,750.00) for each covered transfer (with a Consumer Price Index adjustment annually on that base fee amount). The fee must be paid on each covered transfer on or before the close of escrow or the effective date of the transfer, through the escrow for the transaction. The foregoing is only a summary of the principal terms of the Infrastructure Fee Agreement and potential purchasers of Condominiums are urged to read the entire Agreement carefully and to seek the advice of a competent advisor if desired.

(b) Fee for Snow Removal Along Kahle Drive Payable to the Oliver Park General Improvement District The Oliver Park General Improvement District, a general improvement district organized pursuant to NRS Chapter 318 (“Oliver Park GID”), is responsible for snow removal along Kahle Drive, the single roadway providing vehicular access to the Project. Oliver Park GID bills the owners of properties served by Kahle Drive a pro-rata share of the cost of snow removal activities, and will bill the Association accordingly. The Association’s annual budget will include an estimate of the Project’s pro-rata share of the annual cost of snow removal which will become a part of the Regular Assessment.

Section 21.04 Disclosure of Local 4-H Club Activities on Adjacent Parcel The Common Area and Units are adjacent to the University of Nevada at Reno’s (UNR) real property located along the southern boundary of the Tahoe Beach Club Condominiums. UNR operates a 4-H Camp upon this adjacent property primarily as a summer camp, including typical summer camp activities such as arts, crafts, beach recreation and band practice.

Section 21.05 Construction

(a) Restrictions Construed Together All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property and the Project as set forth in the Recitals of this Declaration. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

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

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

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

(f) References to Nevada State Statutes Any references in this Declaration to Nevada state statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

**[SIGNATURE PAGE TO FOLLOW]**

Dated September 5, 2018

**DECLARANT:**

**BEACH CLUB DEVELOPMENT, LLC**  
A Nevada limited liability company

By [Signature]  
Patrick Rhamey, Chief Executive Officer

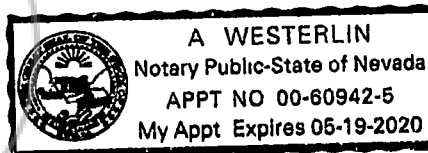
By [Signature]  
Charles Bergin, Chief Financial Officer

**ACKNOWLEDGMENT**

State of Nevada  
County of Douglas

This instrument was acknowledged before me on September 5, 2018 [date] by Patrick Rhamey [name(s)] of Chief Executive Officer [type of authority, e.g., president, trustee, etc.] of Beach Club Development, LLC [name of party on behalf of whom instrument was executed]

WITNESS my hand and official seal  
Signature [Signature] (Seal)

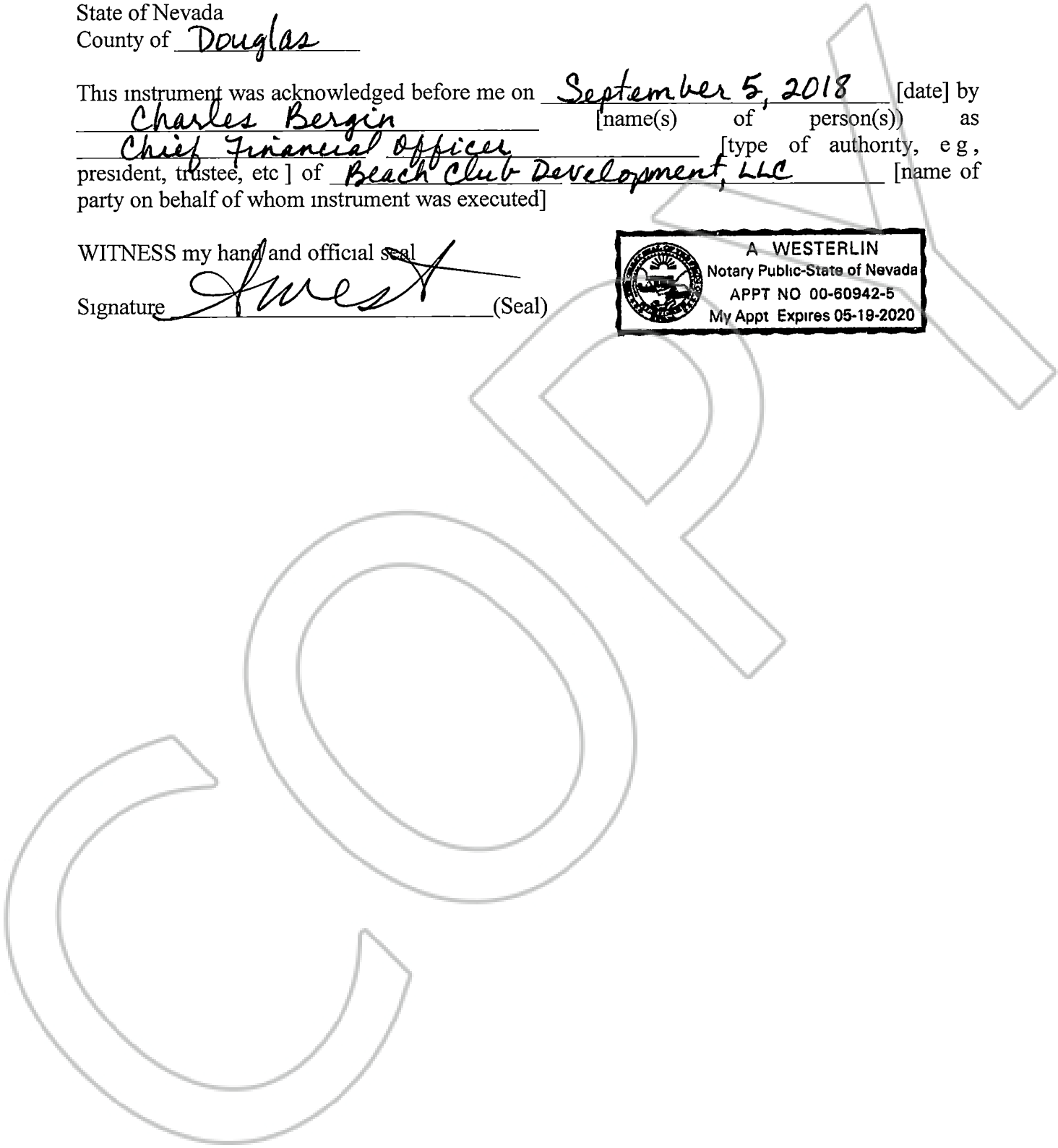
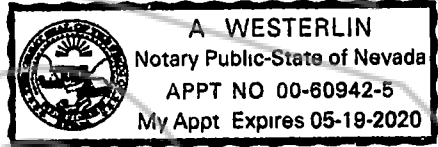


ACKNOWLEDGMENT

State of Nevada  
County of Douglas

This instrument was acknowledged before me on September 5, 2018 [date] by  
Charles Bergin [name(s)] of [person(s)] as  
Chief Financial Officer [type of authority, e.g.,  
president, trustee, etc ] of Beach Club Development, LLC [name of  
party on behalf of whom instrument was executed]

WITNESS my hand and official seal  
Signature [Signature] (Seal)





## EXHIBIT 'A'

### Beach Club Development, LLC Legal Description PROPERTY

**REAL PROPERTY** in the County of Douglas, State of Nevada, being a portion of Lot 3 within the North 1/2 of the Southwest 1/4 of Section 22 and the Northwest 1/4 of the Southeast 1/4 of Section 22, Township 13 North, Range 18 East, M D B & M described as follows

Beginning at the Southeast corner of Parcel 1 as described in that certain Document #2015-870076, recorded September 24, 2015 Official Records of Douglas County, Nevada, thence along the southerly boundary of said Parcel 1 North 59°58'16" West a distance of 75 00 feet, being the **TRUE POINT OF BEGINNING**,

Thence the following ten (10) courses

- 1 North 59°58'16" West a distance of 1669 33 feet,
- 2 North 80°29'31" West a distance of 399 40 feet,
- 3 North 00°42'39" East a distance of 217 00 feet,
- 4 North 87°37'50" East a distance of 561 96 feet,
- 5 South 60°28'34" East a distance of 1747 00 feet,
- 6 South 29°31'26" West a distance of 113 41 feet,
- 7 South 60° 28' 34" East for a distance of 30 00 feet,
- 8 North 29° 31' 26" East for a distance of 75 00 feet,
- 9 South 60° 28' 34" East for a distance of 45 00 feet,
- 10 North 29° 31' 26" East for a distance of 176 64 feet,

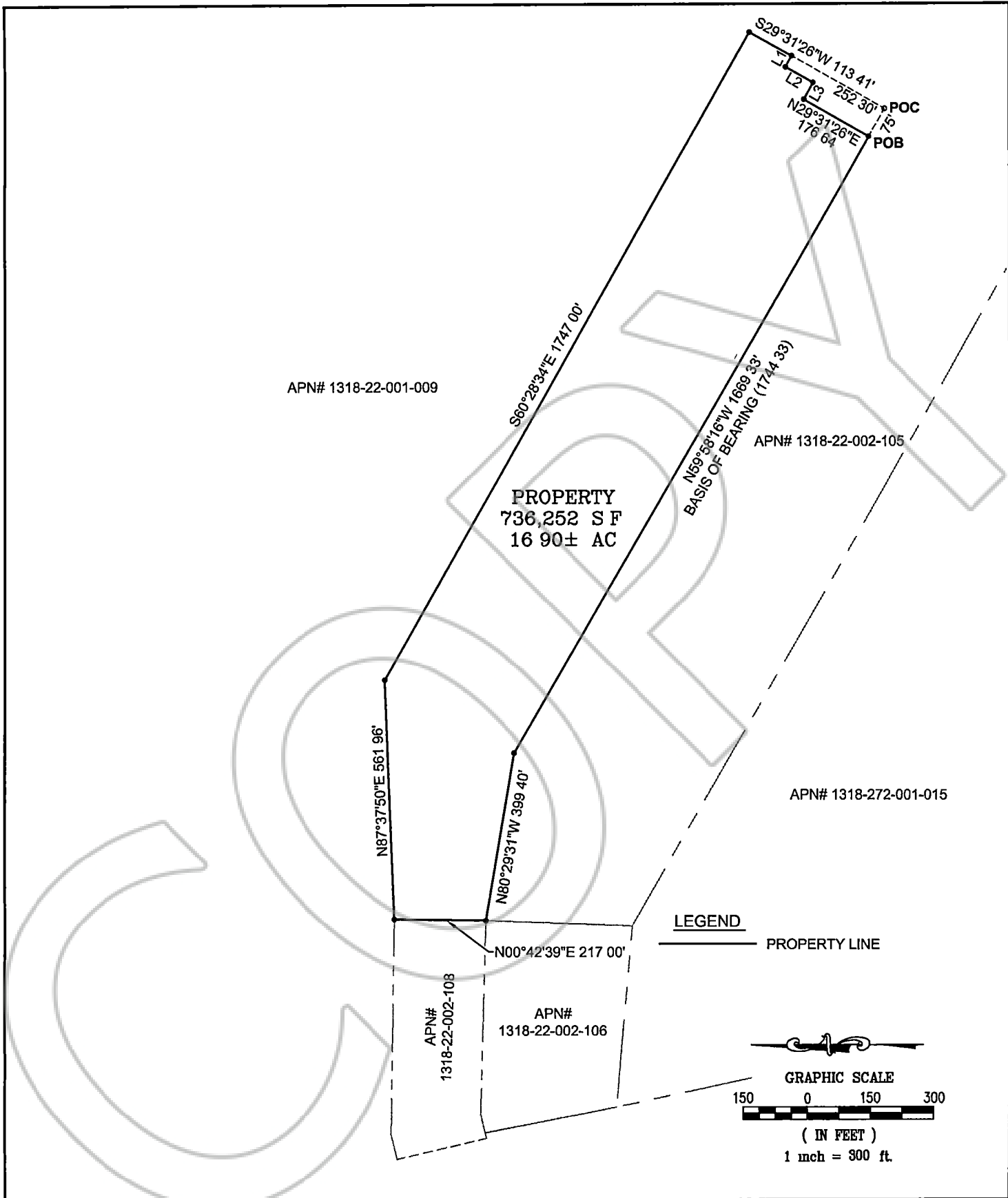
To the Point of Beginning, AND CONTAINING an area of 736,252 square feet (16 90 acres), more or less

#### Description Basis of Bearing

The basis of bearings for this description is the southern property line of said Parcel 1 beginning at the Southeastern corner being North 59°58'16" West a distance of 1744 33 feet (North 60°46'32" West a distance of 1744 35 feet, Document #2015-870076, recorded September 24, 2015 Official Records of Douglas County, Nevada) The basis of bearing was established from found monuments on the California - Nevada State Line (NAD83), one being a granite column with a General Land Office (GLO) brass cap, as shown on Parcel Map #361489, Official Records of Douglas County, Nevada, from which a GLO brass cap monument stamped "1946" bears North 47°51'50" West a distance of 1751 52 feet

End of This Description

Prepared by Welsh Hagen Associates  
250 S Rock Blvd , Suite 118  
Reno, NV 89502  
(775) 853-7776

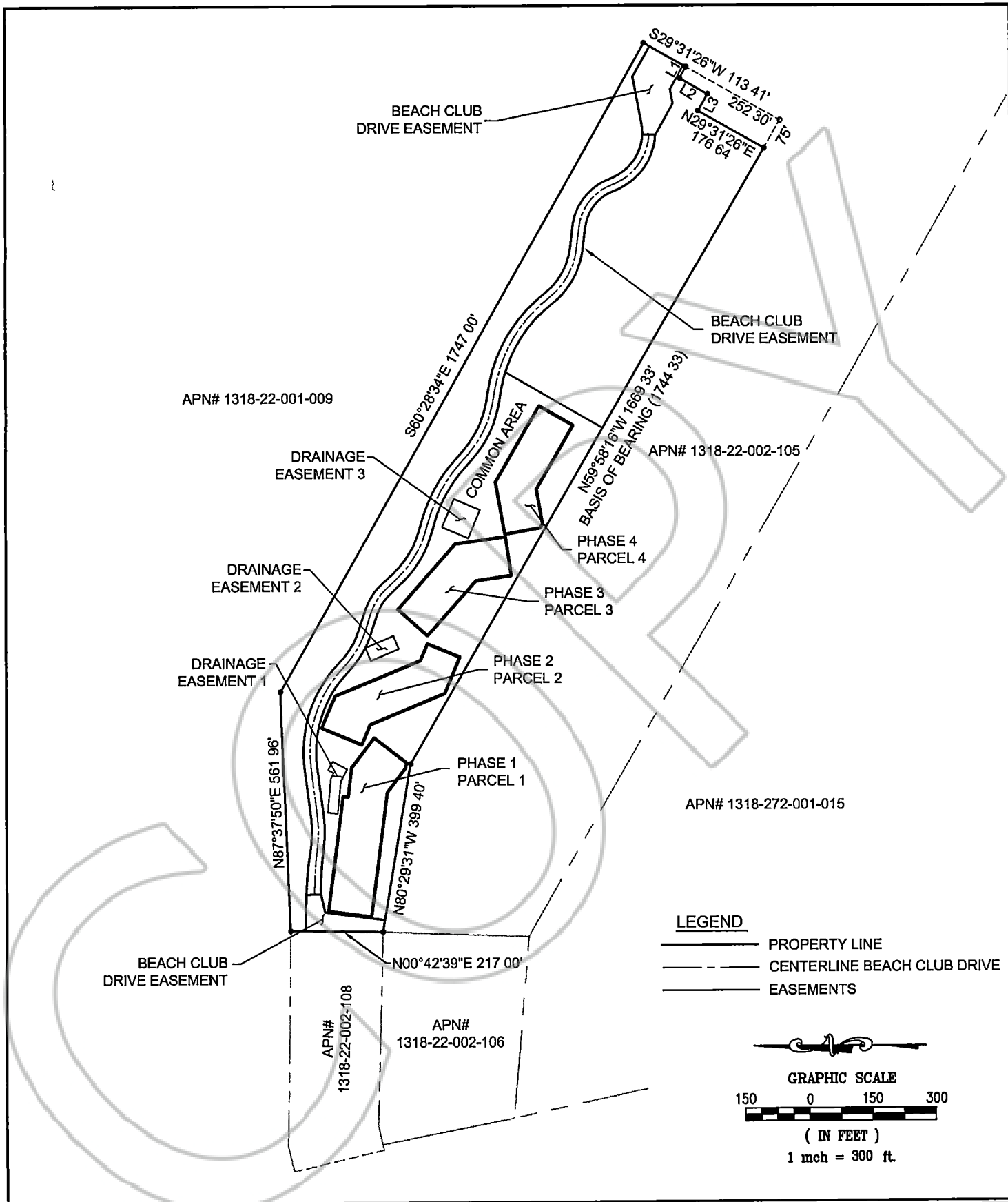


REAL PROPERTY IN THE COUNTY OF DOUGLAS,  
STATE OF NEVADA, BEING A PORTION OF LOT 3  
AND THE NORTHWEST 1/4 OF THE SOUTHEAST  
1/4 OF SECTION 22, TOWNSHIP 13 NORTH,  
RANGE 18 EAST, M D B & M

**EXHIBIT "A"**  
**BEACH CLUB DEVELOPMENT, LLC**  
**PROPERTY**

**DOUGLAS COUNTY**

**NEVADA**



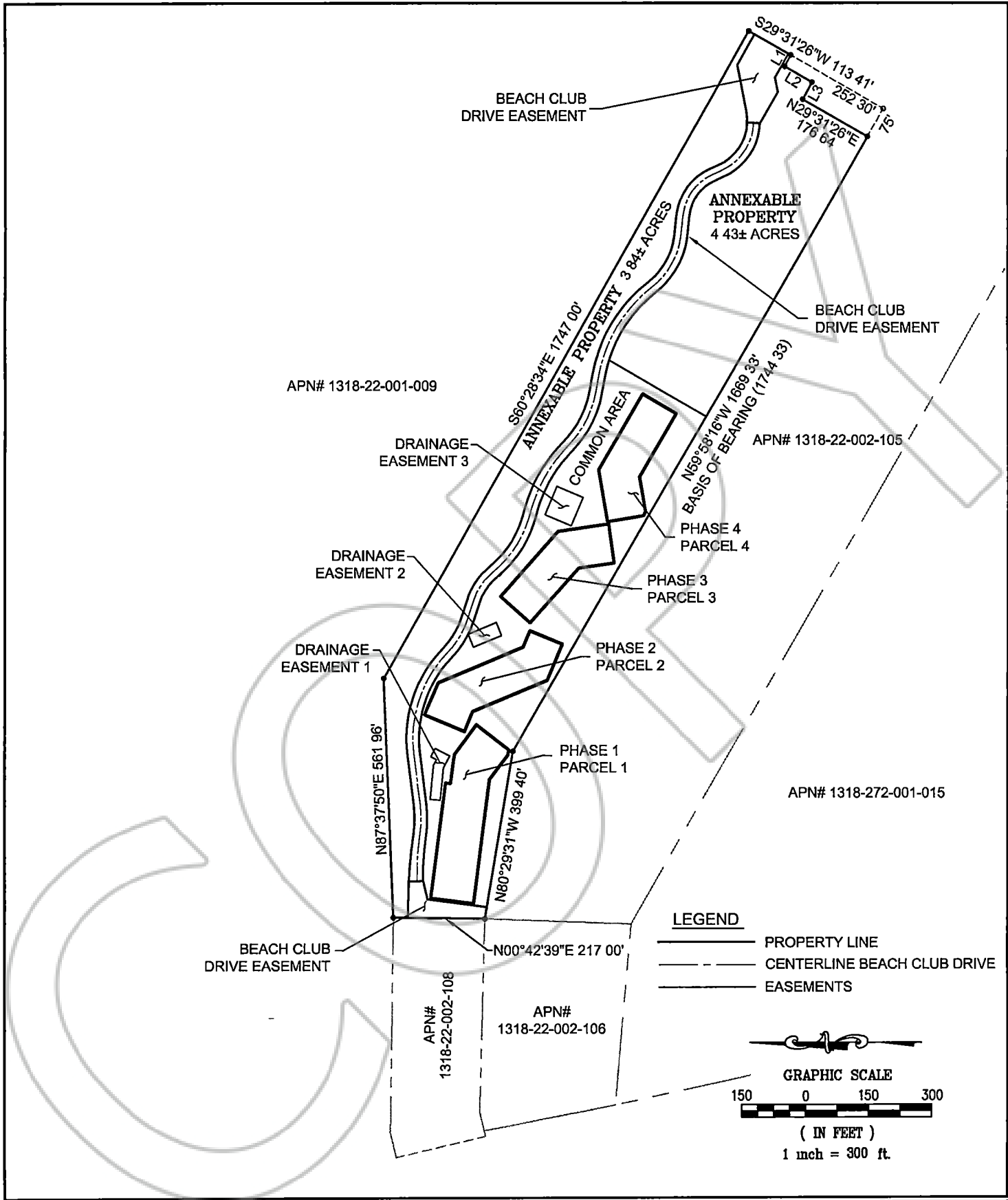
REAL PROPERTY IN THE COUNTY OF DOUGLAS,  
 STATE OF NEVADA, BEING A PORTION OF LOT 3  
 AND THE NORTHWEST 1/4 OF THE SOUTHEAST  
 1/4 OF SECTION 22, TOWNSHIP 13 NORTH,  
 RANGE 18 EAST, M D B & M

**DOUGLAS COUNTY**

**EXHIBIT "B"**

**BEACH CLUB DEVELOPMENT, LLC  
 INITIAL COVERED PROPERTY**

**NEVADA**



REAL PROPERTY IN THE COUNTY OF DOUGLAS,  
 STATE OF NEVADA, BEING A PORTION OF LOT 3  
 AND THE NORTHWEST 1/4 OF THE SOUTHEAST  
 1/4 OF SECTION 22, TOWNSHIP 13 NORTH,  
 RANGE 18 EAST, M D B & M

DOUGLAS COUNTY

**EXHIBIT "C"**

**BEACH CLUB DEVELOPMENT, LLC  
 ANNEXABLE PROPERTY**

NEVADA