



ASSESSOR'S PARCEL NUMBERS:

132-471-01-08

132-472-04, 05

132-480-01-08

132-490-01-08

MAR 1 2 2003

When Recorded Mail To:

The Pointe HOA

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**THIRD AMENDED AND RESTATED CONDOMINIUM DECLARATION  
OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF THE  
POINTE AT THIRD CREEK, INCLINE VILLAGE, NEVADA**

THIS THIRD AMENDED AND RESTATED CONDOMINIUM DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, and RESTRICTIONS of THE POINTE AT THIRD CREEK, INCLINE VILLAGE, NEVADA (hereinafter "the Declaration") is made this 10<sup>th</sup> day of October, 2003, by the members of The Pointe Homeowners Association, hereafter referred to as "Owners".

RECITALS

WHEREAS, the Owners and the Association are the owners of certain real property in the County of Washoe, State of Nevada, known as "The Pointe" described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter "Property").

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for The Pointe at Third Creek was recorded July 12, 1996, as Document No. 2011764, Official Records, Washoe County, Nevada.

WHEREAS, the First Amendment to the Condominium Declaration of The Pointe at Third Creek was recorded October 28, 1997, as Document No. 2148790, Official Records, Washoe County, Nevada.

WHEREAS, the Second Amendment to the Condominium Declaration of The Pointe at Third Creek was recorded July 2, 1998, as Document No. 2227400, Official Records, Washoe County, Nevada.

WHEREAS, in accordance with NRS 116.2117 and Section 8.5 of the Declaration, the Association and the Owners are making this Third Amended and Restated Condominium Declaration of Protective Covenants Conditions and Restrictions of The Pointe at Third Creek, Incline Village, Nevada.

WHEREAS, a Final Map has been recorded on the Property for a Condominium Subdivision, which Map was recorded on the 12<sup>th</sup> day of July, 1996, in the Official Records of the Recorder of Washoe County as Tract No. 3277.

NOW, THEREFORE, the Owners hereby declare the Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the



limitations, covenants, conditions, restrictions for the benefit and protection of the Property and every part and portion thereof and to mutually benefit each of the condominiums located and to be located therein, and to create mutual equitable servitudes upon each of said condominiums and the Property in favor of each and all other condominiums therein, to create reciprocal rights between all persons acquiring or owning an interest in said condominiums, including the undersigned and their grantees, heirs, devisees, successors and assigns and shall be deemed to run with the land or any portion thereof or any interest therein and to be a burden and benefit to all such persons, hereafter acquiring or owning any interest in the Property or any part thereof, however such interest may be acquired.

The terms and provisions of this Third Amended and Restated Condominium Declaration are hereby expressly declared to amend and in all respects supercede, in their entirety, the terms and provisions of the Declaration of Covenants, Conditions, and Restrictions recorded July 12, 1996, in the Office of the County Recorder of Washoe County, Nevada, as Document No. 2011764, of official records, the First Amendment to the Condominium Declaration of The Pointe at Third Creek recorded October 28, 1997 in the Office of the County Recorder of Washoe County, Nevada as Document No. 2148790, and the Second Amendment to the Condominium Declaration of The Pointe at Third Creek recorded in the Office of the County Recorder of Washoe County, Nevada on July 2, 1998 as Document No. 2227400.

## ARTICLE 1

### Definitions

Section 1.1 “Articles” or “Articles of Incorporation” shall mean the Articles of Incorporation of The Pointe Homeowners’ Association as amended from time to time.

Section 1.2 “Assessment” shall mean that portion of the cost of maintaining, improving, operating and managing the Property which is to be paid by each Owner as determined by the Association in accordance with Article 4.

Section 1.3 “Association” shall mean The Pointe Homeowners’ Association, the Members of which shall be the Owners.

Section 1.4 “Board” or “Board of Directors” shall mean the board of directors of the Association.

Section 1.5 “By-laws” shall mean the By-laws of the Association as amended from time to time.

Section 1.6 “Common Area” shall mean the Property, excepting the Units.

Section 1.7 “Common Expenses” shall mean the actual and estimated expenses of operating and maintaining the Common Area and any reasonable reserve for such purposes as determined by the Board and all sums designated as Common Expenses by or pursuant to the



Condominium Documents. Common Expenses shall include the actual and estimated expenses of periodic maintenance and testing of all facilities, structures and equipment within the Common Area.

Section 1.8 “Condominium” shall mean a common interest community, as defined in the Act, in which portions of the real estate are designated for separate ownership (the “Unit”), and the remainder of the property in the Project (the “Common Elements”) is designated for common ownership solely by the owners of the Units.

Section 1.9 “Condominium Building” shall mean the residential structure or structures constructed on the Property, Condominiums containing up to twenty-six (26) total Units.

Section 1.10 “Condominium Documents” shall mean this Declaration as it may be amended from time to time, the exhibits hereto, the Articles, the Bylaws, the Map and the Rules and Regulations for the Members as established from time to time in accordance with this Declaration.

Section 1.11 “Deck or Patio Area” shall mean a portion of the Common Area so designated on the Map or on the architectural plans and specifications. Each Deck or Patio Area shall be set aside for the exclusive use of the Owner or Owners of the Unit to which it is appurtenant.

Section 1.12 “Declaration” shall mean and refer to this Declaration.

Section 1.13 “Institutional Lender” shall mean any bank, savings and loan association, insurance company or other financial institution holding a recorded Mortgage on any Condominium.

Section 1.14 “Map” shall mean that certain condominium subdivision map entitled “The Pointe at Third Creek,” recorded on July 12, 1996 as Document No. 2011762, Tract Map No. 3277, in the Official Records of the County of Washoe, State of Nevada.

Section 1.15 “Member” shall mean a Person entitled to membership in the Association as provided in this Declaration.

Section 1.16 “Mortgage” shall mean a deed of trust or mortgage encumbering a Condominium.

Section 1.17 “Mortgagee” shall mean a mortgagee or beneficiary under or a holder of a Mortgage.

Section 1.18 “Mortgagor” shall mean the mortgagor or trustor under a Mortgage.

Section 1.19 “Owner” shall mean the record holder or holders of fee simple title, to a



Condominium, WHETHER BUILT OR UNBUILT, and shall not include contract sellers or persons or entities having any interest in a Condominium merely as security for the performance of any obligation. Notwithstanding the foregoing, if a Condominium is sold under a recorded installment land contract to a purchaser, such purchaser, rather than the fee owner, shall be deemed the “Owner” with respect to such Condominium.

Section 1.20 “Parking Area” shall mean a portion of the Common Area so designated for the parking of motor vehicles. Each Covered Parking Area shall be set aside for the exclusive use of the Owner or Owners of the Condominium to which it is appurtenant, or, if not appurtenant, which is assigned by the Board.

Section 1.21 “Person” shall mean a natural person, a corporation, a partnership, a trustee or other legal entity.

Section 1.22 “Project” shall mean the entire Property and all structures and improvements erected thereon, including the Condominium Buildings and Common Area Improvements, as described herein.

Section 1.23 “Property” shall mean the Project and all property, real, personal or mixed, intended for or used in connection with the Project.

Section 1.24 “Limited Common Area” shall mean those portions of the Common Area, if any, set aside for exclusive use of an Owner, pursuant to Section 2.2(c). The Limited Common Area shall include the Deck or Patio Areas, Covered Parking Areas and Storage Areas, as shown on the Map or the architectural plans and specifications.

Section 1.25 “Storage Area” shall mean a portion of the Common Area so designated on the Map or on the architectural plans and specifications. Each Storage Area shall be set aside for the exclusive use of the Owner or Owners of the Condominium to which it is appurtenant, or as otherwise assigned by the Board.

Section 1.26 “Unit” shall mean a physical portion of the Project that is designated for separate ownership. The identifying number and boundaries of each Unit are defined on the Map and by this Declaration.

Section 1.27 “Unit Designation” shall mean the number, letter or combination thereof or other official designations for a particular Unit shown on the Map.

Section 1.28 “Act” shall mean Chapter 116 of the Nevada Revised Statutes.

Section 1.29 “Common Elements” shall mean all portions of the Project other than the Units, including easements in favor of Units, and the Common Area shown on the Map.

Section 1.30 “Eligible Mortgage Holder” shall mean a holder of a First Mortgage on a



Unit that has submitted a written request that the Association notify it on any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

Section 1.31 “First Deed of Trust” shall mean a deed of trust or a mortgage having priority over all other deeds of trust encumbering the same portion of the Project.

In interpreting this Declaration, the singular and plural number, and masculine, feminine and neuter gender shall each include the other where the context requires. The terms “shall,” “will” and “agree” as used herein are mandatory, and “may” as used herein is permissive.

## ARTICLE 2

### Description of Property Rights

Section 2.1 Units. Each of the Units, as separately shown, numbered and designated on the Map, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls of the Condominium Buildings, floors, ceilings, windows, window frames, doors and door frames and trim of each Unit. Each Unit includes both the portions of the Condominium Building so described and the air space so encompassed. Each Unit does not include any portion of the Common Area. Windows and fireplaces are included with the Units. Each Unit includes those utility installations and facilities servicing the Unit of which the Owner has exclusive use, including electrical, water, gas and plumbing fixtures or appliances located within the Unit. Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or created in any manner referred to in Section 8.6. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Map or plan, regardless of settling or lateral movement of the Condominium Building and regardless of variance between the boundaries shown on the plan or deed, and those of the Condominium Building.

Section 2.2 Ownership of Unit. Ownership of each Unit within the Project shall include a fee simple interest in a Unit, an allocated interest in the Common Elements, any exclusive or nonexclusive easements appurtenant to such Unit, and a membership in the Association

Section 2.3 Allocated Interests. The undivided interest in the Common Elements is allocated as follows: 1/26 to each Unit. The liability for Common Expenses is allocated as follows: 1/26 to each Unit. The votes in the Association are allocated as follows: one vote to each Unit.

Section 2.4 Limited Common Area. The Limited Common Area shall be designated and allocated as shown on the Map, the architectural plans, and/or this Declaration. The Limited Common Area shall include those portions of the Common Area designated as Deck or Patio Areas, Storage Areas, Covered Parking Areas, together with the Entry Foyers, entrance to



elevators and stairways and exit stairways. Additionally, any other portions of the Common Area may be allocated by an appropriate amendment to this Declaration to create for the benefit of any Unit an exclusive easement appurtenant for use as Limited Common Area as described in the amendment.

Section 2.5 Owner's Non-Exclusive Easement of Enjoyment. Every Owner of a Unit shall have a non-exclusive easement of use and enjoyment in, to, and throughout the Common Elements and for ingress, egress, and support over and through the Common Elements. Such non-exclusive easements shall be subordinate to, and shall not interfere with, exclusive easements for use and enjoyment of any Limited Common Area appurtenant to any Unit. Each such non-exclusive easement shall be appurtenant to and pass with title to each Unit, subject to the following rights and restrictions:

- (a) The right of the Board, to adopt, amend, and enforce the Rules and Regulations;
- (b) The right of the Association to borrow money to improve, repair, or maintain the Common Elements; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or entity for such purposes, and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer, has been executed by Owners having not less than 75% of the voting rights of the Members has been recorded.

Section 2.6 Partition Prohibited. The Common Area shall remain undivided as set forth herein. Except as provided in the Act, no Owner shall bring any action for partition of the Project or any part thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby. However, partition of title to a single Unit is prohibited. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an individual interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

### ARTICLE 3

#### Association-Administration, Membership and Voting Rights

Section 3.1 Formation. The Association is a nonprofit corporation formed or to be formed under Sections 81.410 through 81.540 of the Nevada Revised Statutes. The Association shall be charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration.



Section 3.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of Members as set forth in the Articles, the Bylaws and this Declaration, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with this Declaration or the Bylaws, or their amendments. The Board shall be composed of Members only. Except as otherwise provided in the Articles, the Bylaws or this Declaration, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by vote or written consent as provided in the Bylaws.

Section 3.3 Association to Manage Common Elements. The Association shall manage and operate the Common Elements. The Owners of all of the Condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Bylaws, and the Rules and Regulations of the Association.

Section 3.4 Membership. The Owner of a Condominium shall automatically be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with the By-laws of the Association.

Section 3.5 Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or the Mortgagee, in the case of the encumbrance of such Condominium. A Mortgagee does not have membership rights until he becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his Condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of such Owner shall be null and void.

Section 3.6 Membership and Voting Rights:

(a) Members shall be all Owners Each Condominium-shall be entitled to one (1) vote. When more than one person holds an interest in any Condominium, all such persons shall be Members of the Association. The vote for such Condominium shall be exercised as its Owners among themselves determine, but in no event shall a Condominium be entitled to more than one (1) vote.

(b) Action. Any action by the Association (unless specifically enumerated herein) which must have the approval of the Members before being undertaken shall require the vote or written assent of fifty-one percent (51%) of the membership.



ARTICLE 4

Assessments

Section 4.1 Personal Obligation of Assessment and Lien. Each Owner of any Condominium by acceptance of a deed, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association regular annual Assessments and special Assessments, such Assessments to be established, made and collected as provided in this Declaration.

Each Assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such Assessment, or installment, becomes due and payable. If more than one person is the Owner of a Condominium, the personal obligation to pay such Assessment, or installment, respecting such Condominium shall be both joint and several. In the event of a default in the payment of regular or special Assessments, such Assessments, together with interest, late charges, collection costs and reasonable attorneys' fees, shall become a lien upon the unit against which the Assessment is made, as provided in Section 4.12 hereof. No Owner of a built Condominium may exempt himself from payment of Assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment, or by abandonment, of his condominium.

Section 4.2 Purpose of Assessment. The assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively, to pay the common expenses, including a reserve for the repair and replacement of the major components of the Common Elements.

Section 4.3 Regular Annual Assessment. The Board shall have authority to impose regular annual Assessments, subject to the limitations contained in Section 4.5 hereof.

(a) As part of the regular annual Assessments for maintenance authorized above, the Board shall annually fix the amount to be contributed by each Owner to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements in the Project, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall adopt a proposed budget for the Association which shall incorporate the requirements of this Declaration. Within thirty (30) days of adopting any proposed budget, the Board shall provide a summary of the budget to all Owners and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing the summary. Unless at that meeting a majority of all Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Owners must be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall maintain a separate trust account for those funds. The Board shall





fix the method of payment of such Assessments and shall be empowered to permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited into such reserve trust account.

(b) Unless the Association is exempt from federal or state taxes, all reserves 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 regulation of the Internal Revenue Service that will prevent such funds from being taxed as income to the Association.

(c) Failure of the Board to set Assessments shall not be deemed a waiver of Assessments but, rather, the prior fiscal year's Assessment shall remain in full force and effect until the Board sets new Assessments.

Section 4.4 Special Assessment. If the Board determines that the estimated total amount of funds necessary to defray the Common Expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, operating expenses, costs of construction, reconstruction, unexpected repairs or replacements of capital improvements on the Common Area or for extraordinary expenses incurred by the Association), the Board shall determine the approximate amount necessary to defray such expenses, and, if the amount is approved by a majority vote of the Board, it shall become a special Assessment. The Board may, in its discretion, prorate such special Assessment over the remaining months of the fiscal year or levy the Assessment immediately against each Unit. Unless exempt from federal or state income taxation, all proceeds from any special Assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied, or it otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service in order to avoid, if possible, its taxation as income to the Association.

Section 4.5 Limitation on Board's Authority To Increase and Decrease Assessments. The Board shall levy regular annual and special Assessments sufficient to perform its obligations under this Declaration, the By-laws and the Articles. In so doing, the Board may increase or decrease regular annual Assessments, or levy special Assessments, only in accordance with the following:

(a) The Board may not impose any increase in regular annual Assessments unless it has either (i) distributed a pro forma operating budget in compliance with the requirements of the By-laws and this Declaration or (ii) obtained the approval, by vote or written consent, of a majority of the voting power of the Association residing in Members.

(b) The Board may not, without the approval, by vote or written consent, of a majority of the voting power of the Association:

1. Impose a regular annual Assessment which exceeds the regular annual



Assessment for the Association's preceding fiscal year by more than twenty percent (20%), or

2. Impose special Assessments which, in the aggregate, exceed ten percent (10%) of the budgeted gross expenses of the Association for the current fiscal year.

(c) Subject to the limitations on maximum and minimum amount of Assessments herein provided, the Board may increase or decrease the regular annual Assessment for the next succeeding fiscal year to account for any surplus funds held by the Association at the end of any fiscal year or for any special Assessments levied pursuant to subsection 4.4 above during the then current fiscal year which, in the opinion of the Board, will be a recurring annual expense of the Association.

The foregoing limitations on Assessment increases do not apply in the case of emergency situations, which are any of the following:

1. An extraordinary expense required by court order.

2. An extraordinary expense necessary to repair or maintain the Project, or any part of it for which the Association is responsible, where a threat to the health or safety of persons on the Property is discovered.

3. Repairs to or maintenance of the Project that could not have been reasonably foreseen in preparing the budget. Prior to imposition of the Assessment, the Board shall pass a resolution containing written findings as to the necessity of the expense and why it was not or could not have been reasonably foreseen. A copy of such resolution shall be distributed to the Owners with the notice of Assessment.

4. The Association may not charge or collect fees or Assessments in connection with a transfer of a Unit more than the actual cost to change its records.

Section 4.6 Notice and Quorum for Any Action Authorized Under Section 4.5. Any action authorized under Section 4.5, which requires a vote of the membership, shall be taken at a meeting called for that purpose at which a quorum equal to at least fifty-one percent (51%) of the Members of the Association is present in person or by proxy. Written notice of such meeting shall be sent to all Members not less than fifteen (15) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the course of a special meeting, the nature of the business to be undertaken.

Section 4.7 Allocation of Assessments. Subject to and except as provided in Nevada Revised Statute 116.3115(3), all regular annual and special Assessments shall be equally assessed among the Owners of built units only, with the following exceptions:

(a) That portion of any regular annual or special Assessment attributable to Limited Common Areas shall be charged to and divided among the Condominiums to which such



Limited Common Areas have been assigned by the Board or the Condominium Documents;

(b) A special Assessment that is levied against an Owner as a remedy utilized by the Board to reimburse the Association for costs incurred in bringing such Owner and his Condominium into compliance with provisions of the Condominium Documents, or that is the result of a fine or penalty imposed by the Board, shall be charged solely to such Owner; and

(c) A special Assessment levied against Owners to raise funds for the rebuilding or major repair of the Units or the structural elements of the Common Area, including Limited Common Area, pursuant to Section 8.10(b).

Section 4.8 Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year. Regular assessments shall be payable in equal monthly installments. All special assessments shall be payable as specified by the Board.

Section 4.9 Notice and Assessment Installment Due Dates; Delinquent Assessment. A single thirty (30) day prior written notice of each regular annual Assessment and each special Assessment shall be given to each Owner. Such notice shall specify the due dates for the payments of such Assessments. The due dates for the payment of installments of regular annual Assessments shall be the first day of each month unless some other due date is established by the Board. Each installment of regular annual Assessments and special Assessments shall become delinquent if not paid in thirty (30) days after its due date.

If an Assessment is delinquent, the Association may recover the following:

(a) All reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorneys' fees, whether an action is commenced or not;

(b) A late charge in the amount of \$10.00 per day each day the Assessment remains unpaid;

(c) Interest on all sums imposed in accordance with this section, including the delinquent Assessment, reasonable costs of attorneys' fees, collection, and late charges, at an annual percentage rate not to exceed eighteen percent (18%) per annum, commencing thirty (30) days after the Assessment becomes due. Notwithstanding the foregoing, the Association may not recover interest on such sums at a rate greater than the maximum rate permitted by law.

Section 4.10 Estoppel Certificate. The Board, the manager, or any officer of the Association on not less than fifteen (15) days' prior written request from an Owner, shall execute and deliver to the Owner making such request a true statement in writing indicating whether or not, to the knowledge of the Association, such Owner is in default as to his Condominium under the provisions of this Declaration and further stating the dates to which installments of Assessments, regular annual or special, have been paid as to such Condominium. Such statement



shall set forth the full amount of any unpaid Assessments, and shall also include information regarding late charges, interest and costs of collection which, as of the date of the statement, are or may become a lien on the Owner's Condominium.

Section 4.11 Right to Enforce. The right to collect and enforce Assessments is vested in the Board acting by and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity. Suit to recover a money judgment for unpaid Assessments together with all amounts described in Section 4.1 shall be maintainable without foreclosing or waiving the lien rights.

Section 4.12 Creation of Lien. If there is a delinquency in the payment of any Assessment or installment thereof on a Condominium, as described in Section 4.9, any amounts that are delinquent, together with any late charges, interest and all costs that are incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium from the time the Assessment becomes due. The recordation in the Official Records of the County of Washoe of a notice of delinquent Assessment as provided in Nevada Statutes is an action to enforce the lien. The Assessment lien created by this section shall be prior to all other liens, except for taxes, bonds, Assessments and other levies which by law would be superior thereto and the lien of first mortgage made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges, and interest, a description of the Condominium against which the Assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale.

Fines and penalties levied by the Association to reimburse the Association for costs incurred in the repair of damage to Common Areas and facilities for which the Owner was responsible pursuant to Section 7.17, or in bringing the Owner and his or her Unit into compliance with the Condominium Documents, are Assessments which may become a lien against the Unit Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Nevada Statutes.

Section 4.13 Enforcement of Assessment Lien. The lien created pursuant to Section 4.12 may be enforced in the manner provided in NRS 116.31162 or in any other manner permitted by law.

The Association, acting on behalf of the Owners, shall have the power to bid at any foreclosure sale initiated pursuant to this section, and to acquire and hold, lease, mortgage and convey any Condominium so acquired. Where the purchase of such Condominium at foreclosure will result in five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association. During the period a Condominium is owned by the Association following foreclosure:



- (a) No right to vote shall be exercised on behalf of the Condominium;
- (b) No Assessment shall be assessed or levied on the Condominium; and
- (c) Each other built Condominium shall be charged, in addition to its usual Assessment, its pro rata share of the Assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. Such additional pro rata Assessment charges shall constitute a special Assessment for the then current fiscal year and a regular annual Assessment for each succeeding fiscal year during the period of time the Condominium is owned by the Association. Suit to recover a money judgment for unpaid Common Area expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 4.14 Suspension of Voting and Use Rights. The Board may temporarily suspend *all membership rights, including* the voting rights and right to use recreational facilities within the Common Area of a Member who is in default in payment of any Assessment, after notice and hearing, pursuant to Nevada law, as provided in the By-laws.

Section 4.15 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives to the extent of any liens created pursuant to this Article 4, the benefit of any homestead or exemption laws of the State of Nevada in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed.

Section 4.16 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, such taxes shall be included in the Assessments made under the provisions of Section 4.1, and if necessary, a special Assessment may be levied against the Condominiums in an amount equal to such taxes, to be paid in installments (if such taxes are payable in installments), which shall be due thirty (30) days prior to the date on which such taxes or the applicable installment thereof is delinquent.

## ARTICLE 5

### Duties and Powers of the Association

Section 5.1 Duties. In addition to any other duties enumerated in its By-laws, or elsewhere provided in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

- (a) Maintenance. The Association shall perform the following maintenance:
  - i. Common Area. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. Maintenance shall include, without limitation, painting, maintaining, repairing and replacing all



Common Areas and landscaping, driveway and enclosed parking garage area, including Parking Areas, exterior surfaces of the Deck Areas and the Storage Areas and recreational facilities and all on-site drainage devices, including infiltration trenches, dry wells, yard drains, area drains, trench drains, floatable traps, storm drains, floor drains, roof drains, deck drains, piping, vents and other similar facilities. In the event that an Owner fails to maintain those portions of his Unit and the Limited Common Area for which he is responsible, the Association shall have the right to enter and maintain such areas, at the Owner's expense, as set forth in Section 8.8. Each Owner shall be responsible for damage to the Common Area caused by the willful or negligent act or neglect of such Owner or his tenants, guests or invitees, as set forth in Section 7.17.

The Association shall bear the costs for any portion of the Common Area damaged by the presence of wood-destroying pests or organisms.

ii. Units. As set forth in Section 8.8, the Association shall have the right, but not the obligation, to maintain the interior of an Owner's Unit if the Owner fails to maintain the interior of his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Property.

(b) Insurance. Each Owner appoints the Association or any insurance trustee to be designated by the Association as attorney in fact for the purpose of purchasing and maintaining the Association's insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for Owners and their Mortgagees, as their interests may appear.

The Association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the Association, and all of the real property and improvements of the Project, including the Common Area and all fixtures and building service equipment therein and the Units and any fixtures, equipment or property therein covered by a first Mortgage and protecting the interests of the Association and the Members. The master policy shall be issued in the name of the Association, as trustee, for the use and benefit of the Owners.

All insurance shall contain a "severability of interest provision," "cross liability endorsement" and "waiver of subrogation" as to the Association, officers, directors, members, guests, agents and employees.

It is the responsibility of each Owner to insure his personal property and all improvements and fixtures within his Unit, together with additional living expense coverage and public liability insurance for the interior of his Unit.

Insurance premiums for the master policy shall be a Common Expense to be



included in the monthly Assessments levied by the Association and the portion of such payment necessary for the insurance premiums may, but need not, be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the Property which may have been damaged or destroyed.

To the extent possible the Association shall maintain the following specific policies of insurance.

i. A policy or policies of fire and casualty insurance, with extended coverage endorsement and coverage against vandalism and malicious mischief, for the full current replacement cost of all improvements in the Project, including the Units, payable as provided in Section 8.9, or such other fire and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their Mortgagees, as their respective interests appear. Each policy shall provide that it shall not be cancelled without at least thirty (30) days' prior written notice to the Association. The Board shall review the limits of such insurance at least every year and shall increase or adjust the same, if necessary, to provide such coverage and protection as is customarily carried by prudent owners of similar property in the County of Washoe. Such policy or policies shall provide for a separate loss payable endorsement in favor of any Mortgagee or Mortgagees of each Condominium.

ii. A policy or policies of comprehensive public liability insurance insuring the Association, the Board, Owners and any appointed manager against any liability to the public or to the Owners incident to the ownership and/or use of the Project and to protect against any liability to the public or to any Owner incident to the use of, or resulting from any accident or intentional act occurring in or about, any Unit or the Common Area. The minimum limits on the liability insurance policy shall be one million dollars (\$1,000,000) single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles. In addition, the Association shall obtain and continue in effect additional umbrella coverage of one million dollars (\$1,000,000) or as an alternative may carry two million dollars (\$2,000,000) single limit policy. The Board shall review the limits and coverage of such insurance at least every year and shall increase or adjust the same, if necessary, to provide adequate coverage and protection to the Association, Declarant, the Board, Owners and any appointed manager.

iii. Workers' Compensation Insurance to the extent necessary to comply with all applicable laws of the State of Nevada or the regulations of any governmental body or authority having jurisdiction over the Project.

iv. A fidelity bond in a commercial blanket fidelity bond form, obtained at the discretion of the Board naming such persons as may be designated by the Board as principals, and the Association as obligee, in an amount to be determined by the Board, but in no event less



than a sum equal to three (3) months' aggregate regular annual Assessments on all Condominiums plus reserve funds

v. Directors and officers liability insurance.

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

Nothing in this subsection (b) shall restrict or prohibit the Board from maintaining such additional policies of insurance as it, in its absolute discretion, shall deem reasonable and necessary. Any insurance acquired by the Association may be taken in the name of the Association, as trustee, for the use and benefit of the Association and all Owners.

(c) Discharge of Liens. The Association shall discharge, by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member responsible for the existence of such lien. Such Member(s) shall be given notice and the opportunity to be heard by the Board prior to discharge of the lien.

(d) Assessments. The Association shall fix, levy, collect and enforce Assessments as provided in this Article 4.

(e) Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the Property of the Association.

(f) By-laws. Perform the acts and fulfill the obligations set forth in the By-laws.

(g) Inspection of Condominium Documents and Association Books and Records. Current copies of the Condominium Documents as well as any membership register, accounting records, and minutes of meetings of the Members, the Board, and committees of the Board or the Association, shall be made reasonably available for any Member of the Association, or his duly appointed representative, or any mortgagee, at any reasonable time and for a purpose reasonably related to his interest, at the office of the Association or at such other place as the Board prescribes. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member, representative, or mortgagee desiring to make an inspection, (b) hours and days of the week when an inspection





may be made, and (c) payment of the cost of reproducing copies of documents requested by a Member or by a representative or mortgagee. Every member of the Board shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association *except records of other Owners*. The right of inspection by a member of the Board includes the right to make extracts and copies of documents. Not more than 30 days after any meeting, the secretary or other officer specified in the Bylaws shall cause the minutes or a summary of the minutes of the meeting to be made available to the Owners. A copy of the minutes or a summary of the minutes must be provided to any Owner who pays the Association the cost of providing the copy to him.

Section 5.2 Powers. In addition to the powers enumerated in its Articles of Incorporation and By-laws, or elsewhere provided herein, and without limiting the generality thereof and the powers enumerated in the Act and under Nevada law, the Association shall have the following powers:

(a) Utility Service. The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all water, gas and electric service, cable television service, refuse collection and janitorial or window cleaning service, fireplace cleaning and chimney cleaning service.

(b) Easements. The Association shall have the authority to grant easements, in addition to those shown on the Map, where necessary for utilities, cable television, sewer facilities or other encroachment on or over the Common Area and Limited Common Area to serve the Common Area, Limited Common Area and the Condominiums.

(c) Manager. The Association shall have the authority to employ a manager or other person and to contract with independent contractors or managing agents to perform all or any part of the management duties and responsibilities of the Association, each of whom shall be subject to the direction and control of the Board; provided that any contract with a firm or person appointed as manager or managing agent shall not exceed a one (1) year term and shall permit either party to terminate without cause and without payment of a termination fee on thirty (30) days' written notice. Any delegation of authority to a manger or other person shall be subject to Section 5.2(1) hereof.

Any manager or other person who handles funds for the Association shall be required to maintain a fidelity bond providing coverage equivalent to that required of the Association under Section 5.1(b)(iv).

(d) Adoption of Rules. The Board may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct and use thereof and the conduct of Owners and their tenants, invitees and guests with respect to the Property and other Owners.

(e) Access. For the purpose of performing the maintenance authorized herein, the



Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any Unit or to enter any portion of the Common Area at reasonable hours. Except in the case of any emergency, forty-eight (48) hours' advance notice shall be given to the Owner or occupant prior to any entry of a Unit, and such entry shall be made at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Owners may be required to provide the Association keys to their units to facilitate access.

(f) Assessments, Liens and Fines. The Association shall have the power to levy and collect Assessments in accordance with the provisions of Article 4. The Association may impose fines or take disciplinary action against any Owner for failure to pay Assessments or for violation of any provision of the Condominium Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights and rights to the use of recreational facilities or other appropriate discipline, provided that the accused member is provided with notice and the opportunity to be heard orally or in writing before the Board before a decision to impose discipline is made. All notices required under this section shall be made pursuant to Section 8.14 of this Declaration.

Notwithstanding its authority to temporarily suspend use rights, as set forth above, the Association shall not cause the forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Condominium due to the Owner's failure to comply with the Condominium Documents or Association rules except by judgment of a court of competent jurisdiction, a decision rendered in arbitration or as a result of a foreclosure or sale under a power of sale for failure of an Owner to pay regular annual or special Assessments duly levied by the Association.

(g) Enforcement. The Association shall have the authority to enforce this Declaration as provided in Section 8.1 hereof.

(h) Acquisition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of, real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by sixty-seven percent (67%) of the total voting power of the Association.

(i) Loans. The Association shall have the power to borrow money, only with the consent (by vote or written consent) of sixty-seven percent (67%) of the voting power of the Association to mortgage, to pledge, encumber or hypothecate any or all of its real or personal property as security for moneys borrowed or debts incurred.

(j) Contract. The Association shall have the power to contract for goods and/or services for the Common Area or for the Association, subject to any limitations set forth in the Condominium Documents.

(k) Dedication. The Association shall have the power to dedicate all or any part of



the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication shall be effective unless an instrument has been signed by sixty-seven percent (67%) of the total voting power of the Association agreeing to such dedication.

(l) Delegation. The Association shall have the power to delegate its authority and powers to committees, officers or employees of the Association, or to a manger retained by the Association. The Association may not, however, delegate the following powers:

- i. To levy finds, hold hearings, or impose discipline.
- ii. To file suit, record a claim of lien, or foreclose for failure to pay Assessments.
- iii. To determine the fiscal year of the Association.

(m) Temporary Removal of Occupants. The Association may cause the temporary removal of any occupant of a Unit for such periods and at such times necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of the temporary relocation is to be borne by the Owner of the Unit affected. Not less than fifteen (15) days' nor more than thirty (30) days' notice of the need to temporarily vacate shall be given to occupants and to the Owners. The notice shall state:

- i. The reason for the temporary relocation;
- ii. The date and time of the beginning of the treatment;
- iii. The anticipated date and time of termination of treatment; and
- iv. That such occupants and Owners will be responsible for their own accommodations during the temporary relocation.

Notice is deemed complete if a copy is personally delivered or mailed first class to the occupants and the Owners.

(n) Use of Recreational Facilities. The Association shall have the power to limit the number of an Owner's tenants, invitees or guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons after notice and hearing.

(o) Fiscal Year. The Board shall be authorized to determine the fiscal year of the Association.

(p) Suit, Lien and Foreclosure. Subject to the requirements and limitations contained in this Declaration, the Board shall be authorized, on the Association's behalf, to file suit, record



a claim of lien or foreclose on a Condominium for failure to pay Assessments.

(q) Legal Action. The Association may commence a civil action only upon a vote or written agreement of the Owners to which at least a majority of the votes of the members of the Association are allocated. The provisions of this subsection do not apply to a civil action that is commenced:

- (i) To enforce the payment of an assessment or fine;
- (ii) To enforce the declaration, bylaws or rules of the Association;
- (iii) To proceed with a counterclaim; or

(iv) To protect the health, safety and welfare of the members of the Association. If a civil action is commenced pursuant to this paragraph without the required vote or agreement, the action must be ratified within 90 days after the commencement of the action by a vote or written agreement of the Owners to which at least a majority of votes of the members of the Association are allocated. If the Association, after making a good faith effort, cannot obtain the required vote or agreement to commence or ratify such a civil action, the Association may, but is not required to, thereafter seek to dismiss the action without prejudice for that reason only if a vote or written agreement of the owners of the units to which at least a majority of votes of the members of the Association are allocated was obtained at the time the approval to commence or ratify the action was sought.

## ARTICLE 6

### Utilities

Section 6.1 Owners' Rights and Duties. The rights and duties of the Owners with respect to sanitary sewer, water, electricity, gas, cable or master television antenna lines and telephone lines, security systems and facilities, heating conduits, ducts and flues or other utility connections (collectively "Utility Installations") shall be as follows:

(a) Whenever Utility Installations are installed within the Property, which connections or any portion thereof lie in, upon or adjacent to Units owned by other than the Owner of a Unit served by such Utility Installations, the Board or its authorized representative shall have the right, subject to section 5.2(e), to enter upon the Units or to have the utility company enter upon the Units in or upon which such Utility Installations lie to construct, maintain or repair such Utility Installations; provided, however, that if the Board fails or refuses to take timely action to make such construction or repairs or to perform such maintenance, the Owner of any Unit served by the Utility Installations in question shall, after written notice to the Board and the Owners of the Units containing such Utility Installations, have the right of reasonable access for themselves or for the utility company, to enter upon the Units or to have the utility company enter upon the Units in or upon which such Utility Installations, or any portion



thereof, lie, to repair, replace and maintain such Utility Installations as and when necessary.

(b) Whenever Utility Installations are installed within the Property which serve more than one Unit, the Owner of each Unit served by such Utility Installations shall be entitled to the full use and enjoyment of such portions of such Utility Installations as service his Unit.

(c) In the event of a dispute between Owners with respect to the construction, repair or maintenance of such Utility Installations, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute. Should any such Owner disagree with the decision of the Board, the Owner may submit the matter to arbitration pursuant to the rules of the American Arbitration Association and the decision of the arbitrator shall be final and conclusive on the parties.

Section 6.2 Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair and maintenance of Utility Installations, drainage facilities, walkways and landscaping as shown on the Map, and as may be hereafter required or needed to service the Property are hereby reserved by the Association, together with the right to grant and transfer the same.

Section 6.3 Association's Duties. The Association shall maintain all Utility Installations located in the Common Area except those Utility Installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Common Areas of the Project. As part of its costs and expenses from the maintenance of the Common Area appliances servicing its respective Unit or the Limited Common Area and as part of the assessments, the Association shall pay for the utilities incurred by the Owners within each Condominium Unit except for telephone, gas, electrical, and cable television, which shall be individually metered.

## ARTICLE 7

### Use Restrictions

Section 7.1 Condominium Use. No Condominium shall be occupied and used except for residential purposes by the Owners, their tenants, invitees and guests, and no trade or business shall be conducted therein; provided, however, that nothing herein shall prevent Owners or other occupants of a Condominium from owning and operating off-premise business equipment, such as computers, terminals, fax machines and other similar electronic equipment, so long as such activities do not promote or require clients or customers to visit such Condominium and provided, further, that no external signs or other evidence of any business activity are displayed on the Condominium. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

No Condominium or any portion thereof in the Project shall be leased, subleased,



occupied, rented, let, sublet or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called “vacation license,” “travel club,” “extended vacation” or other membership or time-interval ownership arrangement. The term “time-sharing” as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Condominium or any portions thereof rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Legal title to any unit may not be held by any more than ten (10) unrelated persons at any one time. As used herein, a husband and wife shall be considered one (1) “person”, and “unrelated persons” shall mean persons not related within the third degree of consanguinity. This section shall not be construed to limit the personal use of any Condominium or any portion thereof in the Project by any Owner or his or her tenants, invitees or guests.

Section 7.2 Nuisances. No noxious, illegal or offensive activity shall be transacted or conducted in any Condominium or in any part of the Property, nor shall anything be done thereon which is an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of the Owner of each Condominium, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or cause a refusal to renew the same or which will impair the structural integrity of the Condominium Building or any other improvement included in the Property.

Section 7.3 Vehicle Restrictions. No trailer, camper, mobile home, motor home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile or similar equipment shall be permitted to remain upon any area within the Property, other than temporarily (not to exceed 12 hours), unless placed or maintained within an enclosed garage. As used herein, the term “commercial vehicles” shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Property. No unlicensed motor vehicles shall be operated upon the Property. The covered parking area shall be used to park permitted vehicles and not for storage. Twenty-four (24) hours after notice has been personally delivered to the Owner or placed on the windshield of a vehicle, or seventy-two (72) hours after notice has been mailed to the address of the registered owner of a vehicle parked, stored or maintained on the Property in violation of the provisions of this Declaration, the Owner shall be deemed to have consented to the removal of such vehicle from the Project, and the Association or its agents or employees shall have the authority to tow away and store any such vehicle, whether such vehicle shall belong to an Owner or his tenant, a member of his family, his guest or invitee. Charges for such towing and storage shall be paid by the Owner responsible for the presence of such vehicle.

Section 7.4 Storage. No toxic, noxious, flammable or otherwise harmful materials, liquids or other substances which may be hazardous to any persons or property or which may in any way increase the rate of insurance for the Project or cause any insurance policy to be



canceled or cause a refusal to renew the same shall be stored in the Condominiums, the storage enclosures or other areas of the Project.

Section 7.5 Signs. No signs shall be displayed to the public view on any Condominiums or any portion of the Property except signs as allowed by law or as are approved by the Board

Section 7.6 Animals. No animals, reptiles, insects or birds of any kind shall be raised, bred or kept in any Condominium or any portion of the Property, except that Owners are permitted no more than two (2) usual and ordinary household pets such as a dog, cat, bird, etc., may be kept, provided they are not kept, bred or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Property which are an annoyance or are obnoxious to other Owners. No pets shall be allowed in the Common Area except as may be permitted by the rules and regulations established in accordance with Section 5.2(d). No pet shall enter the Common Area except while on a leash which is held by a person capable of controlling the pet. The Association, the manager, the Board or any Owner may, after making a reasonable attempt to notify the Owner, cause any unleashed pet found in the Common Area to be removed to a pound or animal shelter under the jurisdiction of the County of Washoe. No pet that disturbs other Owners shall be permitted to remain on the Property. Any decision regarding the conduct of a pet shall be made only after notice to the Owner and the opportunity to be heard before the Board. Owners shall prevent their pets from soiling the Common Area and shall promptly clean up any fouling by their pets; provided that visually or otherwise handicapped Owners shall be exempt from the foregoing requirement. Owners shall be fully responsible for any damage caused by their pets.

Section 7.7 Garbage and Refuse Disposal. Each Owner shall regularly remove or cause to be removed from his Condominium to designated areas all rubbish, trash, garbage and other waste. Rubbish, trash, garbage and other waste shall not be kept except in sanitary containers in designated areas. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles or storage piles within units or the Limited Common Areas assigned to respective units shall be kept screened and concealed from view of other Units, streets and Common Areas. The Association shall be responsible for removal of garbage from the designated areas.

Section 7.8 Radio and Television Antennas. Except as allowed by applicable law no alteration to or modification of a central radio antenna or television antenna system or cable television system, as maintained by the Association, shall be permitted, and no Owner may be permitted to construct and/or use and operate his own external radio and/or television antenna outside his Unit without the consent of the Board.

Section 7.9 Right to Lease. Owners shall be entitled to rent or lease their Unit provided that not less than the entire Unit is leased. Any lease of a Unit must be thirty (30) days or more and shall be in writing. A copy of the lease must be provided to the Association prior to the commencement of the lease.



Any lease of a Unit shall be made subject to the covenants, conditions and restrictions, limitations and uses contained in the Condominium Documents, including this Declaration and Rules and Regulations in effect. The failure of any lessee to comply with the terms of the Condominium Documents shall be a default under the lease. In the event of violation by any tenant of the terms and conditions of the Condominium documents, including, without limitation, this Declaration, the Association has the right to evict such tenant, including, without limitation, the right to recover all costs and fees associated with such eviction from the tenant and/or the Owner. The Owner shall be responsible for providing copies of this Declaration and Rules and Regulations to the tenant.

Any Owner leasing or renting its Condominium shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' families occupying such Condominium for a period not less than thirty (30) days and of the address and telephone number where such Owner or Owner's leasing agent can be reached.

If an Owner leases their Unit for a period of time less than thirty (30) days, the Owner shall be assessed an amount equal to the total amount of consideration received by the Owner for such lease. For example, if the Owner leases his or her Unit for a period of seven days for an amount of \$1,000.00, then the Owner shall be assessed \$1,000.00. Such assessment shall be due within ten days of the date of the lease. Any assessment levied under this section shall be deemed a special assessment and shall be enforced in accordance with Article 4 of this Declaration.

No tenant shall be permitted to have any pets of any kind.

Section 7.10 Architectural Control. No building, fence, wall, obstruction, balcony, screen, patio, patio cover, tent, awning, improvement, including interior remodeling and floor covering, of any kind to any built unit shall be commenced, erected, painted or maintained upon the Property nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board or the Architectural Control Committee if appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography and finish grade elevation. Nothing contained herein shall be construed to limit the right of the Owner to paint the interior of his Unit any color desired.

No landscaping of Deck Areas visible from the street or from the Common Area not involving the use of natural plants, grass, trees or shrubs, and which does involve the use of synthetic materials or of concrete, rock or similar materials, shall be undertaken by any Owner of a built unit until plans and specifications showing the nature, kind, shape and location of the materials shall have been submitted to and approved in writing by the Board or by the Architectural Control Committee if appointed by the Board.





Section 7.11 Drapes. All drapes, curtains, window coverings, shutters or blinds visible from the street or Common Area shall be of colors, materials and patterns which are approved by the Board or the Architectural Control Committee.

Section 7.12 Clotheslines. No exterior clotheslines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

Section 7.13 Power Equipment and Car Maintenance. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Property except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

Section 7.14 Parking Areas; Storage Areas. Parking Areas shall be used solely for parking and storage of noncommercial passenger vehicles (the fact that a vehicle has, or does not have, commercial license plates shall not be determinative of whether a vehicle is or is not “noncommercial”). Neither an Owner, nor its family, contract purchasers, lessees, or tenants, nor their guests, invitees, or licensees, shall park a vehicle anywhere upon the Project other than the Parking Area assigned to the Owner’s Unit and those portions of the Project expressly designated and posted by the Association as parking areas available for temporary use by guests, invitees and licensees, and only in conformance with the rules and regulations promulgated by the Association. Each Owner, resident or tenant shall keep its designated Parking Area in a neat and orderly condition.

No Owner may use, store or maintain any substance or thing in his Storage Area which poses a risk of harm to the Common Area or Units or which might increase the premium on any insurance carried by the Association.

Section 7.15 Snow and Ice Removal. Snow and ice shall be removed from the Project without the use of any soluble toxic materials and provisions shall be made for the maintenance of the siltation trenches and skimmer chambers in the drainage system.

Section 7.16 Joining Units. The Owners of any unit shall have the right to make alterations to the unit, including the combining of adjacent units and the relocation of boundaries between adjoining units, in accordance with the procedures and subject to the limitations set forth in Nevada Revised Statutes 116.2111 and 116.2112.

Section 7.17 Liability of Owners for Damage to Common Area. The expense of any maintenance and repair of the Common Area arising out of or caused by the willful or negligent act or neglect of an Owner or his guest, tenants or invitees shall be borne by the Owner responsible therefor. An Owner accused of causing or permitting damage to the Common Area shall be given fifteen (15) days notice and the opportunity for a hearing before the Board. The notice shall set forth the cost of repairs to the Common Area necessitated by the Owner’s acts or omissions, and a description of the acts and omissions of the Owner which produced the damage



to the Common Area. At the hearing, the Owner shall be permitted to controvert the charges against him, and to produce witnesses on his behalf. The Board may, by the vote of a majority of its members, elect to charge the Owner for the cost of such repairs. Such charges may be enforced by a court of competent jurisdiction and may be asserted as a lien against the Owner's Condominium under Sections 4.12 and 4.13 of this Declaration.

## ARTICLE 8

### General Provisions

#### Section 8.1 Enforcement.

(a) By the Association. The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages, or to restrain and enjoin any actual or threatened breach of any provision of this Declaration, the Articles, Bylaws, Rules and Regulations, or any resolutions of the Board, or to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can suspend the voting rights, can suspend use privileges of the Common Elements, or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration, the Articles, Bylaws, Rules and Regulations, or Board resolutions. However, any such suspension of use privileges cannot exceed a period of sixty (60) days for any one violation. Before invoking any such suspension or fine, the Board shall give such violating Owner or other person a hearing upon at least five (5) days' written notice. Each suspended or fined Owner or other person can appeal such action by filing written notice of his intention to appeal with the Board. The action imposing the fine or suspension shall then become ineffective until the fine or suspension is unanimously approved by all Board members at a regular or special meeting of the Board at which all Board members are present; provided, however, if the fined or suspended Owner is a Board member, then such Board member need not be present at such hearing or approve of such sanction. The Owner or other person to be fined or suspended can appear, be represented by counsel, and be heard at the meeting. The Board may impose a special assessment against such Owner's Unit, collect any fine that remains unpaid for a period of 10 days or more. Except as provided in this Section, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Unit if the Owner does not comply with provisions of this Declaration, the Articles, Bylaws, or the Rules and Regulations, except when the loss or forfeiture is the result of a court judgment or arbitration decision or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association.

(b) General Right of Enforcement. Except as otherwise provided herein, the Association, and any Owner shall have the right (but not the duty) to enforce, by arbitration as prescribed by Nevada Revised Statutes 38.300 - 360, or by an proceeding at law or in equity, any or all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or Association or upon any of the Project; provided, however, the County shall



be a third party beneficiary of this Declaration as provided in Section 8.15. Except as otherwise provided, nothing herein shall be construed as creating a third party beneficiary contract in favor of parties who are not Owners of property subject hereto; and there shall be no right of enforcement by any one else who does not own property in the Project.

Section 8.2 Attorneys' Fees. If any suit, action, arbitration or other action of any kind be instituted to enforce or interpret this Declaration, or be brought under its terms, the losing party shall pay the prevailing party reasonable attorneys' fees and other expenses of litigation, arbitration or other action incurred by such prevailing party.

Section 8.3 Invalidity of Any Provision. Should any provision or portion of the Condominium Documents be declared invalid or in conflict with any law of the jurisdiction in which this Project is situated, the validity of all the remaining provisions and portions thereof shall remain unaffected and in full force and effect.

Section 8.4 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date that this Declaration is recorded, after which time, these covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by sixty-seven percent (67%) of the then Owners of the Condominiums (and approved by all first Mortgagees pursuant to Section 8.7) has been recorded within the year preceding the year of each successive period of ten (10) years, agreeing to change such covenants and restrictions in whole or in part or to terminate them.

Section 8.5 Amendments. Subject to the provisions of Section 8.7, this Declaration may be amended only by the affirmative vote, in person or by proxy, or written consent of Members representing a sixty-seven percent (67%) majority of the total voting power of the Association. All such amendments must be recorded and shall become effective upon being recorded in the Official Records of the County of Washoe. No amendment shall adversely affect the rights of the holder of any Mortgage of record prior to the recordation of such amendment.

Section 8.6 Encroachment Easements. Each Condominium within the Property is hereby declared to have an easement over all adjoining Condominiums and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, reconstruction, repair, settling or shifting of the Condominium Building, or any other cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist, and the rights and obligations of the Owners shall not be altered in any way by such encroachment, settlement or shifting. In the event that a structure is partially or totally destroyed and subsequently repaired or rebuilt, the Owners of each Condominium agree that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.



Section 8.7 Mortgage Protection Provisions.

(a) Mortgage Permitted. Any Owner may encumber his Condominium with a Mortgage.

(b) Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates his interest in writing to such lien. The transfer of ownership of a Unit and its appurtenant Share as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first Mortgage shall extinguish the lien of Assessments which were due and payable prior to the transfer of the ownership interest; provided, however, that the lien for assessments for up to six (6) months immediately preceding institution of an action for enforcement of a first Mortgage shall not be subordinated and shall be entitled to be recovered by enforcement of such lien of Assessments on the Condominium. No transfer of an ownership interest as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former Mortgagee of the first Mortgage or another person, from liability for any Assessments thereafter becoming due or from the lien thereof. All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Condominiums and not to the Project as a whole.

(c) Amendment. No amendment to the Condominium Documents shall affect the rights of any Mortgagee under any Mortgage made in good faith and for value and recorded before the recordation of any such amendment unless a Mortgagee either joins in the execution of the amendment or approves it in writing as a part of such amendment.

(d) Restrictions on Certain Charges. Amendments to the Condominium Documents shall require the consent of Eligible Mortgage Holders as follows:

(1) Termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property shall be approved by Eligible Mortgage Holders that represent at least sixty-seven percent (67%) of the Units encumbered by deeds of trust held by Eligible Mortgage Holders. Such an approval may be implied when an Eligible Mortgage Holder fails to submit a response to any written proposal within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested.

(2) Amendments to the Condominium Documents of a material nature must be agreed to by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Units encumbered by deeds of trust held by Eligible Mortgage Holders. Any change to the Condominium Document provisions governing the following is considered as material:



- (i) voting rights;
- (ii) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Area, or rights to their use;
- (vi) redefinition of any Unit boundaries;
- (vii) convertibility of Units into Common Elements or vice versa;
- (viii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (ix) hazard or fidelity insurance requirements;
- (x) imposition of any restrictions on the leasing of Units;
- (xi) imposition of any restrictions on Owner's right to sell or transfer his or her Unit;
- (xii) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Declaration;
- (xiii) any provisions that expressly benefit mortgage holders, insurers, or guarantors; or
- (xiv) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(e) Right To Examine Books and Records. First Mortgagees may examine the books and records of the Association and may require the submission of financial data concerning the Association, including annual audit reports and operating statements as furnished to the Owners. The holder, insurer, or guarantor of any First Deed of Trust shall be entitled to have an annual audited financial statement for the Project prepared at its own expense.

(f) Distribution of Insurance and Condemnation Proceeds. No Owner or any other party shall have priority over any right of first Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Area. Any provision to the contrary in this Declaration



or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees, as their interests may appear.

(g) Notice of Action. Upon written request to the Association, identifying the name and address of the eligible Mortgagee or eligible insurer or guarantor, and the Condominium Designation or address, such eligible Mortgagee or eligible insurer or guarantor will be entitled to timely written notice of: (1) condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such eligible Mortgagee or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the Condominium Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such eligible Mortgagee or eligible insurer or guarantor which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders. The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties at the address given on the current request for notice, in the manner prescribed by Section 8.14.

(h) Effect of Breach. No breach of any provision of this Declaration nor the enforcement of any lien provisions herein shall invalidate the lien of any first Mortgage made in good faith and for value, but all covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

(i) Foreclosure. If any Condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for Assessments, or installments of Assessments, shall not operate to affect or impair the lien of the first Mortgage. On foreclosure of the first Mortgage, the lien of Assessments, or installments, that have accrued up to the time of foreclosure shall be subordinate to the lien of the first Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for Assessments, or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall only be obligated to pay Assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently levied Assessments or other charges may include previously unpaid Assessments provided all Owners, including the foreclosure-purchaser and his successors and assigns, are required to pay their proportionate share as provided in this section.

(j) Appearance at Meetings. Because of its financial interest in the Project, any Mortgagee may appear at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made subject to remedial proceedings or Assessments.



(k) Right to Furnish Any Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

(l) Inapplicability of Right of First Refusal to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee who acquires title to or ownership of the Condominium pursuant to the remedies provided in its mortgage or by reason of foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure. In addition, said right of first refusal shall not impair the rights of a first Mortgagee to sell or lease a Unit acquired by the Mortgagee.

Section 8.8 Owner's Right and Obligations to Maintain and Repair. Except for those portions of the Project that the Association is required to maintain and repair, each Owner shall, at his sole cost and expense, maintain and repair his Unit and all portions of the Limited Common Area which have been assigned to his Unit clean and neat. Each Owner shall bear the cost of maintenance, repair and replacement of the following items within, serving or appurtenant to such Owner's Unit or assigned Limited Common Area: interior surfaces of the Deck Areas and of the Storage Areas, and interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, and any and all other appliances of any nature whatsoever; solar, gas, electrical, plumbing and heating and ventilating utilities and equipment servicing such Unit; interior and exterior doors, including all hardware thereon; window panes and light bulbs, plumbing and other fixtures of any nature whatsoever, "built-in" features; and decorative features, fireplaces and any furniture and furnishings. All water for the Project and gas and electric utilities serving the Common Area shall be a Common Expense of the Association. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish or decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding his Unit, subject to the prior written approval of the Board or the Architectural Control Committee. In the event that an Owner fails to maintain the interior of his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Property, and to comply with noise transmittal specifications and rules between neighboring units, the Board may notify the Owner of the work required and request that it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within the sixty (60) day period, the Board may give notice and hold a hearing and cause such work to be done and may specially assess the cost thereof to such Owner and, if necessary, place a lien on his Condominium for the amount thereof.

When there are any Units in the Project owned by The Association, then The Association or Owner of any such unsold Unit shall enjoy the same rights and assume the same duties relating to such Unit as any other Owner of a Unit in the Project.



Section 8.9 Destruction of Condominium Building or Buildings. If all or a portion of the Project is damaged by fire or other casualty which is covered by insurance and the damage is limited to a single Unit, the insurance proceeds shall be paid to the Owner of such Unit or the Mortgagee thereof, as their respective interests appear, and such Owner or Mortgagee shall enter into a contract to repair and rebuild the damaged portions of the Unit, and use such insurance proceeds to restore the Unit. In the event the proceeds are insufficient to complete such work, the Owner shall pay such additional sums as may be necessary to complete such rebuilding and repair.

If such damage extends to two (2) or more Units or extends to any part of the Common Area, the following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(a) Minor Casualty. If the available insurance proceeds initially offered or paid by the insurer do not exceed the sum of twenty thousand dollars (\$20,000), and the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five thousand dollars (\$5,000), such insurance proceeds shall be paid to the designated Insurance Trustee (as hereinafter defined). The Board shall thereupon contract to repair and rebuild the damaged portions of all Units and the Common Area, in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of the Units affected shall pay for the portion of the insufficiency attributed to their Unit by the Board and the Board shall levy a special Assessment on all Owners to make up any deficiency attributed to the Common Area. The special Assessment shall be subject to the provisions of this Declaration governing membership approval of special Assessments and shall be levied according to the Owner's share.

(b) Major Casualty. If subparagraph (a) is inapplicable, then,

i. All insurance proceeds shall be paid to a bank or trust company designated by the Board ("the Insurance Trustee") to be held for the benefit of the Owners and their Mortgagees, as their respective interests may appear. The Board, on behalf of the Association and of the Owners, hereby is authorized to enter into an insurance trust agreement, consistent with this Declaration, with such Insurance Trustee, relating to its powers, duties and compensation.

ii. The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the Project in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and shall as soon as reasonably possible thereafter, call a special meeting of the Owners to consider such bids. The Board may also obtain an estimate from the insurance carrier of the work it will perform for the amount





of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain such contractors' bids or insurance estimate and call and conduct such meeting as provided herein. Failure to call such a meeting, or to repair such casualty damage within twelve (12) months from the date such damage occurred, shall be deemed, for all purposes, a decision not to rebuild the damaged or destroyed improvements. At such meeting, the Owners may elect to reject all such bids or estimates and thus not to rebuild. A vote in excess of sixty-seven percent (67%) of the total voting power of the Association shall be required to reject all bids or estimates; provided, however, that a vote in excess of fifty percent (50%) shall be sufficient to reject any bid or estimate requiring more than fifteen thousand dollars (\$15,000) over and above insurance proceeds for such reconstruction, repair or rebuilding. Failure to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special Assessment, such acceptance shall only be granted following membership approval of such special Assessment as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected.

In the event the Owners elect not to rebuild, or elect not to approve a special Assessment to provide funds for rebuilding, the provisions of Nevada law, regarding partition and sale, shall be deemed satisfied, and the insurance proceeds payable on account of such damage or destruction shall be disbursed as follows:

First, to the Mortgagees in order of their priority to the extent of moneys owed such Mortgagees;

Second, to the cost of removing any remaining or destroyed portions of the Project and complying with all other applicable requirements of governmental agencies;

Third, to the Owners in proportion to the respective fair market values of their Condominiums and their Shares at the time of the destruction as determined by the Association; provided, however, that if any Owner or Mortgagee protests the proposed distribution based upon said fair market values as so determined, a licensed independent appraiser acceptable to the Association and to the protesting Members or Mortgagees shall be appointed by the Association to make the determination of the respective fair market values of the Condominiums at the time of the destruction. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the Presiding Judge of the Superior Court of the State of Nevada for the County of Washoe.

iii. If a bid or estimate is accepted, the Board shall levy a special Assessment



to make up any deficiency between the total insurance proceeds or insurance work and the cost for such repairs or rebuilding, and such Assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the insurance trustee to be used for such rebuilding. Any special Assessment shall be levied according to the Owner's Share, as set forth in Section 2.2(b) hereof. Insurance proceeds and the special Assessment shall be used to restore or reconstruct the damaged Units and Common Area substantially in accordance with the original as-built plans and specifications, modified as required by applicable building codes and regulations in force at the time of such repair or reconstruction, or as may be approved by the Association and not less than fifty-one percent (51%) of the eligible first Mortgagees. All funds shall be disbursed in accordance with normal construction loan practices.

iv. Notwithstanding any provision in this section to the contrary, if the insurance carrier offers the full amount required to repair and restore all of the damage, then the Board shall contract to repair and rebuild the damaged portions of all Units and the Common Area in the manner provided in subparagraph (a) for a minor casualty.

Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances.

Section 8.10 Condemnation. In the event of a taking by eminent domain of all or any portion of the Project, the Association shall represent the Owners in the negotiations with the condemning authorities, and the condemnation award or proceeds of settlement shall be payable as follows:

- i. If only Common Area is taken, to the Association for the use and benefit of the Owners and Mortgagees, as their interests may appear;
- ii. If one or more Condominiums are taken, to the affected Owners as apportioned by court judgment or by agreement between the condemning authority and each of the affected Owners; or
- iii. If one or more Condominiums are taken, and the award is not distributed among the affected Owners by court judgment or agreement, then as follows: The Board shall appoint two (2) independent appraisers to determine the relative values of the Condominiums affected by the condemnation. The two appraisers shall appoint a third independent appraiser. If the two (2) appraisers are unable to agree on a third, then the third shall be appointed by the Presiding Judge of the District Court of the State of Nevada for the County of Washoe. The value of the respective interests shall be the average of the three values submitted by each of the appraisers. In the event any Owner disagrees with the proposed allocation, he may have the matter submitted to arbitration under rules of the American Arbitration Association.



After condemnation proceedings, the remaining Owners shall decide, by majority vote, whether to rebuild or repair the Project or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust the Shares of the remaining Owners.

Mortgagees shall be given timely written notice of eminent domain proceedings against the Project or any portion thereof.

Section 8.11 Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Condominium Documents and decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time. The failure of any Owner to comply with such Condominium Documents, provisions, decisions or resolutions shall subject such Owner to the remedies set forth in the Condominium Documents or otherwise permitted at law or in equity.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the By-laws shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

Section 8.12 Notices. Any notice permitted or required by this Declaration or the By-laws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to each Person to be notified at the current address given by such Person to the Secretary of the Board or addressed to the Unit of such Person if no such address has been given to the Secretary.

Section 8.13 Fair Housing. No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging or occupancy of his Condominium to any person of a specified race, sex, marital status, color, religion, ancestry, physical handicap or national origin.

Section 8.14 Washoe County Requirements. The following terms and conditions are required by the approval of the Map by the Washoe County Commissioners which shall be the obligation of the Association, the Board and the Members. The County of Washoe, State of Nevada, is hereby expressly made a third party beneficiary of the provisions of this Section 8.14 and shall be entitled to commence an action in law or equity to enforce such provisions. Notwithstanding any other provision in this Declaration the provisions of this Section 8.14 may not be modified or amended without the prior approval of the Washoe County Board of Commissioners:

(a) The provisions of Article 4 are intended to establish perpetual funding for the maintenance of the Common Areas and the specific obligations of the Association imposed by this Section 8.14.



(b) The Common Area expenses, as part of the obligation for the operation and maintenance by the Association of the Common Areas, shall include storm water management system, floatable traps to keep non-point pollutants from the asphalt, fuel modification areas, fire break areas and driveway access, including, without limitation, snow removal. The costs and expenses of such obligations shall be included within the annual assessments as established by the Association.

(c) Any and all signs for the Project as allowed by these CC&Rs shall be the responsibility of the Association for maintenance and improvement.

(d) No vehicle parking will be permitted within street and driveway access areas.

(e) The Association is responsible for the ownership, operation, care and maintenance of the water and sewer mains to the tap and control manholes at the Incline Village General Improvement District mains with the exception of the water meters which shall remain the property of the Incline Village General Improvement District if requested or required.

(f) The County of Washoe is not responsible for the maintenance of private streets within the Project, and Washoe County will not accept any such streets for dedication unless the streets meet Washoe County standards in effect at the time of the offer of any such dedication.

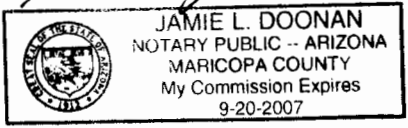
(g) It shall be the obligation of the Association to insure that the heated driveway system within the Project are properly maintained and operational when temperatures fall below 32 degrees Fahrenheit.

IN WITNESS WHEREOF, The Pointe Homeowners Association, a Nevada non-profit corporation, has caused this Third Amended and Restated Condominium Declaration of Covenants, Conditions and Restrictions of The Pointe at Third Creek, Incline Village, be executed by its duly authorized officers this 21 day of October, 2003.

THE POINTE HOMEOWNERS ASSOCIATION

By: *Joseph J. Camporeale*  
President

Notary Seal:



State of Arizona County of Maricopa  
Signed or attested before me on Oct. 21 2003  
personally appeared 9-20-07

*Jamie L. Doonan*  
Notary Signature

By: *Ann J. Imhoff*  
Secretary

Notary Seal:

State of NV County of Washoe  
Signed or attested before me on 10/27/03  
personally appeared Ann J. Imhoff

*J. Varantini*  
Notary Signature

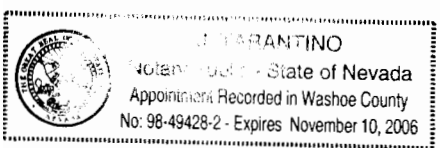




EXHIBIT "A"

All that real property situate in the County of Washoe, State of Nevada, described as follows:

Parcel "A" as shown on the map of BOUNDARY PLAT THIRD CREEK CONDOMINIUMS SHEET 2 of 29 SHEETS filed in the office of the County Recorder of Washoe County, Nevada on July 28, 1980, File No. 684825, as Tract Map No. 1946, together with units 1 through 190, inclusive, as set forth thereon.