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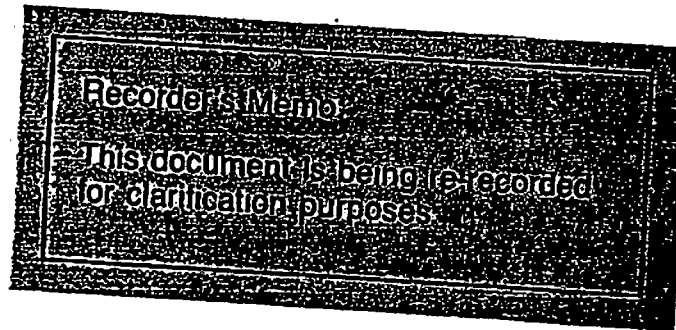
CLARIFICATION

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
VISTAÑA CONDOMINIUMS

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## EXHIBITS

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- EXHIBIT "B" - ANNEXABLE PROPERTY - LEGAL DESCRIPTION
- EXHIBIT "C" - COMMON ELEMENTS - LEGAL DESCRIPTION
- EXHIBIT "D" - TABLE OF ALLOCATED INTERESTS

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
VISTAÑA CONDOMINIUMS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made as of this 25<sup>th</sup> day of November, 1998, by Rhodes Ranch Limited Partnership, a Nevada limited partnership with an office at 4630 South Arville, Suite B, Las Vegas, Nevada 89103 ("Declarant") for the purpose of submitting that certain real property located in the County of Clark, State of Nevada described in Exhibit "A" (the "Property") to the provisions of the Uniform Common Interest Ownership Act, Chapter 116 of the Nevada Revised Statutes (the "Act"), for the purpose of creating a condominium common interest community.

R E C I T A L S:

A. Declarant intends to develop the Property, together with any improvements, modifications, additions, or amendments as may hereinafter be brought within the terms of this Declaration (the "Project"), as a condominium common interest community to be known as Vistaña Condominiums. Declarant intends to develop the Project in eighteen (18) or more phases under the provisions of the Act providing for separate title to living units appurtenant to which will be an undivided fractional interest in the Project other than living units and pursuant to a general plan for the maintenance, care, use and management of the Project. Therefore, Declarant intends to convey the real property within the Project subject to certain protective covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the real property as hereinafter set forth.

B. The Project shall initially contain a total of 72 Units (defined below in Section 1.46), together with Common Elements and Limited Common Elements. Declarant anticipates that the Project will be further developed in at least seventeen (17) additional phases to include all or part of the real property described on Exhibit "B". There is no guarantee that all phases will be completed, or that the contemplated number of Units or the recreational facilities will be developed as described above. The Project will be consistent with any overall development plan of the Project submitted to the U.S. Department of Veterans Affairs and Federal Housing Administration.

C. Each Unit shall have appurtenant to it a membership in the Vistaña Condominium Owners Association, Inc., a Nevada nonprofit corporation ("Association"), which will be the management body for the overall Project.

D. Before selling or conveying any interest in the Property, Declarant desires to subject the Property in accordance with a common plan to certain covenants, conditions, and restrictions for the benefit of Declarant and any and all present and future owners of the Property.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and



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be binding on all parties having any right, title, or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I DEFINITIONS

Section 1.1 Act: "Act" shall mean the Uniform Common Interest Ownership Act, NRS Chapter 116, as it may be amended from time to time.

Section 1.2 Allocated Interests: "Allocated Interests" shall mean the undivided interest in the Common Elements and Limited Common Elements, the Liability for Common Expenses, and the votes in the Association which are allocated to Units in the Project. The Allocated Interests are described in Article VIII of this Declaration.

Section 1.3 Annexable Property: "Annexable Property" shall mean the real property described in Exhibit "B" which may hereafter be brought within the terms of this Declaration as part of the Project pursuant to Article VII.

Section 1.4 Architectural Committee: "Architectural Committee" shall mean the architectural committee created pursuant to Section 12.1 hereof.

Section 1.5 Architectural Rules: "Architectural Rules" shall mean the rules adopted by the Architectural Committee pursuant to Section 12.3 hereof.

Section 1.6 Articles: "Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as they may from time to time be amended.

Section 1.7 Assessment, Capital Improvement: "Assessment, Capital Improvement" shall mean a charge against each Owner and his Unit representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Common Elements which the Association may from time to time authorize, pursuant to the provisions of this Declaration.

Section 1.8 Assessment, Common or Common Expense: "Assessment, Common or Common Expense" shall mean the annual charge against each Owner and his Unit representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Common Elements or other Common Expenses, which are to be paid by each Owner to the Association, as provided herein.

Section 1.9 Assessment, Reconstruction: "Assessment, Reconstruction" shall mean a charge against each Owner and his Unit, representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Common Elements, pursuant to the provisions of this Declaration.

Section 1.10 Assessment, Special: "Assessment, Special" shall mean a charge against a particular Owner and his Unit, directly attributable to or reimbursable by the Owner, equal to the

cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration (including, if applicable, the amount of any deductible payable in connection with an insured loss), or levied by the Board as a reasonable fine or penalty for non-compliance with the Restrictions, plus interest and other charges on such Special Assessment as provided for in this Declaration.

**Section 1.11 Association:** "Association" shall mean Vistaña Condominium Owners Association, Inc., a nonprofit corporation organized under NRS Chapter 82 organized as the Association of Owners pursuant to the Act (NRS 116.3101).

**Section 1.12 Board of Directors:** "Board of Directors" shall mean the board of directors of the Association.

**Section 1.13 Bylaws:** "Bylaws" shall mean the Bylaws of the Association, as they may be amended from time to time.

**Section 1.14 Common Elements:** "Common Elements" shall mean all of the Project, except Units and shall initially include the real property described in Exhibit "C" attached hereto, including without limitation, the following components:

(a) The buildings (including, but not by way of limitation, the foundation, columns, girders, beams, supports, perimeter and supporting walls, chimneys, chimney chases, roofs, stairs, patios, balconies, entrances and exits, and the mechanical installations of a building consisting of the equipment and materials making up any central services such as power, light, gas, hot and cold water, sewer, and heating and central air conditioning which exist for use by one or more of the Owners, including the pipes, vents, ducts, flues, cable conduits, wires, telephone wire, and other similar utility installations used in connection therewith), except for the Units; and

(b) The sidewalks, walkways, paths, grass, shrubbery, trees, driveways, roadways, landscaping, parking areas and any structures constructed by Declarant to cover individual parking spaces, traffic access gates, and related facilities upon the Property; and

(c) The pumps, tanks, motors, fans, storm drainage structures, compressors, ducts, and, in general, all apparatus, installations, and equipment of the building existing for the use of one or more of the Owners; and

(d) In general, all other parts of the Project designated by Declarant as Common Elements or Limited Common Elements and existing for the use of one or more of the Owners.

The Common Elements shall be owned by the Owners of the Units, each Owner of a Unit having an undivided interest in the Common Elements as provided below.

**Section 1.15 Common Expenses:** "Common Expenses" shall mean the expenses or financial liabilities for the operation of the Project together with any allocations to reserves and shall include but are not limited to:

- (a) Expenses of administration, insurance, operation, maintenance, repair or replacement of the Common Elements except to the extent such repairs and replacements are the responsibility of an Owner pursuant to the terms of this Declaration;
- (b) Expenses declared to be Common Expenses under the Documents or the Act;
- (c) Sums lawfully assessed against the Units by the Board of Directors;
- (d) Expenses agreed upon as Common Expenses by the Members of the Association (including without limitation the painting and maintenance of the exterior or the perimeter walls);
- (e) Reserves established by the Association for repair, replacement or addition to the Common Elements as required in Section 18.13 of this Declaration; and
- (f) Expenses, fees, and other charges imposed upon the Association by any governmental entity because the Project is a community interest community pursuant to the Act.

**Section 1.16 Declarant:** "Declarant" shall mean Rhodes Ranch Limited Partnership, a Nevada limited partnership, or its successor as defined in the Act (NRS 116.110335).

**Section 1.17 Declarant Control Period:** "Declarant Control Period" shall mean the period to time during which the Declarant is entitled to appoint a majority of the members of the Board of Directors pursuant to Section 7.9.

**Section 1.18 Declaration:** "Declaration" shall mean this document, including any amendments.

**Section 1.19 Development Rights:** "Development Rights" shall mean the rights reserved by the Declarant under Article VII of this Declaration to create Units, Common Elements and Limited Common Elements within the Project as well as other rights provided for herein.

**Section 1.20 Direct Access Garage:** "Direct Access Garage" shall have the meaning set forth in Section 5.2(a).

**Section 1.21 Director:** "Director" shall mean a member of the Board of Directors.

**Section 1.22 Documents:** "Documents" shall mean the Declaration, the Articles, the Plat and Plans, the Bylaws and the Rules as they be amended from time to time. Any exhibit, schedule or certification accompanying a Document shall be deemed to be a part of that Document.

**Section 1.23 Eligible Insurer:** "Eligible Insurer" shall mean an insurer or guarantor of a first Security Interest in a Unit. An Eligible Insurer shall notify the Association in writing of its name and address and inform the Association that it has insured or guaranteed a first Security Interest in a Unit and must provide the Association with the Unit number and address of the Unit on

which it is the insurer or guarantor of a Security Interest. Such notice shall be deemed to include a request that the Eligible Insurer be given the notices and other rights described in Article XVII.

**Section 1.24 Eligible Mortgagee:** "Eligible Mortgagee" shall mean the holder of a first Security Interest in a Unit, when the holder has notified the Association, in writing, of its name and address and that it holds a first Security Interest in a Unit. The notice must include the Unit number and address of the Unit on which it has a security interest. This notice shall be deemed to include a request that the Eligible Mortgagee be given the notices and other rights described in Article XVII.

**Section 1.25 HUD:** "HUD" shall mean the U.S. Department of Housing and Urban Development.

**Section 1.26 Improvements:** "Improvements" shall mean any construction, structure, fixture or facilities existing or to be constructed on the real property which is included in the Project, including, but not limited to: buildings, private streets, recreational facilities, pool, utility wires, pipes, light poles, walls, and trees and shrubbery planted by the Declarant or the Association.

**Section 1.27 Liability for Common Expenses:** "Liability for Common Expenses" shall mean the liability for common expenses allocated to each Unit pursuant to Article VIII.

**Section 1.28 Limited Common Elements:** "Limited Common Elements" shall mean the portion of the Common Elements allocated for the exclusive use of fewer than all Owners under the Declaration, the Plat and Plans, or the Act and are described in Article V of this Declaration.

**Section 1.29 Majority of Owners or Majority of Members:** "Majority of Owners" or "Majority of Members" shall mean the Owners of more than 50% of the total number of Units contained in the Project.

**Section 1.30 Member:** "Member" shall mean a person entitled to membership in the Association as provided in the Documents.

**Section 1.31 Member in Good Standing:** "Member in Good Standing" shall mean a Member whose voting rights have not been suspended in accordance with Section 13.2 of the Bylaws.

**Section 1.32 Manager:** "Manager" shall mean a person, firm or corporation possessing all licenses and certifications required by the Act, employed or engaged to perform management services for the Project and the Association.

**Section 1.33 Non-Direct Access Garage:** "Non-Direct Access Garage" shall have the meaning set forth in Section 5.2(b).

**Section 1.34 Notice and Comment:** "Notice and Comment" shall mean the right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon, the procedure for which is set forth in Section 23.1 of this Declaration.

**Section 1.35 Notice and Hearing:** "Notice and Hearing" shall mean the right of an Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to be heard thereon, the procedure for which is set forth in Section 23.2 of this Declaration.

**Section 1.36 NRS:** "NRS" shall mean the Nevada Revised Statutes.

**Section 1.37 Owner:** "Owner" shall mean the Declarant or other Person who owns a Unit however, Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

**Section 1.38 Person:** "Person" shall mean an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency or other legal or commercial entity.

**Section 1.39 Phase 1:** "Phase 1" shall mean the Property initially subject to this Declaration as described in Exhibit "A" together with the Common Elements and all Improvements constructed thereon.

**Section 1.40 Plat and Plans:** "Plat and Plans" means the Final Map of Vistaña Condominiums - Unit 1, recorded October 8, 1998, on file in Book 86 of Plats, page 50, in the Office of the County Recorder, Clark County, Nevada, as amended by that Certificate of Amendment recorded November 8, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada, together with such other diagrammatic plans and information regarding the Project as may be required by the Act or other applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the Office of the County Recorder, Clark County, Nevada.

**Section 1.41 Project:** "Project" shall mean the Property together with the Common Elements and all Improvements constructed thereon.

**Section 1.42 Property:** "Property" shall mean the real property described in Exhibit "A" and all Improvements, easements, rights, appurtenances and additional property which have been or are hereafter submitted to the provisions of the Act by this Declaration.

**Section 1.43 Public Offering Statement:** "Public Offering Statement" shall mean the current document pertaining to the Project prepared pursuant to the Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a binding purchase agreement.

**Section 1.44 Rules:** "Rules" shall mean the regulations for the use of Common Elements and the conduct of persons in connection therewith within the Project as adopted by the Board of Directors pursuant to this Declaration.

**Section 1.45 Security Interest:** "Security Interest" shall mean the interest in real estate or personal property, created by contract or conveyance, which secures payment or performance of an

obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.46 Special Declarant Rights: "Special Declarant Rights" shall mean those rights reserved for the benefit of Declarant to (1) complete improvements indicated on the Plat and Plans; (2) exercise any Development Right; (3) maintain sales offices, management offices, signs advertising the Project and models; (4) use easements through the Common Elements for the purpose of making improvements within the Project or within real estate that may be added to the Project; or (5) appoint or remove an officer of the Association or a master association or any Board of Directors member during the Declarant Control Period.

Section 1.47 Subsidy Agreement: "Subsidy Agreement" shall mean an agreement between Declarant and the Association of the type described in Section 18.14 of this Declaration.

Section 1.48 Trustee: "Trustee" shall mean the entity which may be designated by the Board of Directors as the Trustee for the receipt, administration and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses and other sources as defined in the Bylaws. If no Trustee has been designated, the Trustee shall be the Board of Directors acting by majority vote, as executed by the president and attested by the secretary.

Section 1.49 Unit: "Unit" shall mean the fee simple interest in and to a single unit depicted on the Plat and Plans designated for separate ownership and occupancy the boundaries of which are described in Section 4.2 of this Declaration, together with the Limited Common Elements appurtenant to the Unit as specified in Article V and the undivided interest in the Common Elements appurtenant to the Unit as specified in Exhibit "D".

Section 1.50 VA: "VA" shall mean and refer to the U.S. Department of Veterans Affairs.

## ARTICLE II PROJECT AND ASSOCIATION

Section 2.1 Project: The name of the Project is Vistaña Condominiums. Vistaña Condominiums is a condominium common interest community under the Act.

Section 2.2 Association: The name of the Association is Vistaña Condominium Owners Association, Inc. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. If there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be consistent with the provisions of this Declaration.

ARTICLE III  
DESCRIPTION OF PROPERTY AND DESCRIPTION OF PROPERTY RIGHTS

Section 3.1 Description of Property: The Property is situated in Clark County, Nevada, and is more particularly described on Exhibit "A" attached hereto.

Section 3.2 Description of Property Rights: Ownership of each Unit within the Project shall include a fee interest in a Unit, an undivided fractional interests as a tenant in common in the Common Elements, an exclusive right to use that portion of the Common Elements designated as Limited Common Element which is appurtenant to such Unit, and a membership in the Association.

ARTICLE IV  
UNIT AND BOUNDARY DESCRIPTIONS

Section 4.1 Maximum Number of Units: When created, the Project shall contain 72 Units. Declarant reserves the right to create up to a total of 744 Units pursuant to Article VII.

Section 4.2 Boundaries: The Boundaries of each Unit created by the Declaration are the unit lines shown on the Plat and Plans as numbered units, along with their identifying number, and are described as follows:

(a) Upper Boundary: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams and rafters, extended to an intersection with the vertical perimeter boundaries.

(b) Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors, extended to an intersection with the vertical perimeter boundaries and open horizontal unfinished surfaces of trim, sills and structural components.

(c) Vertical Perimeter Boundaries: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of poured concrete walls; the unfinished surfaces of the interior trim, and thresholds along perimeter walls and floors; the unfinished (inner/outer) surfaces of closed windows and closed perimeter doors (including door knobs and locks); and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions and partition walls between separate Units.

(d) Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in (a), (b) and (c) above, and will also include the spaces and the Improvements within those spaces containing any space heating, water heating and air conditioning apparatus, all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, electrical receptacles and light fixtures and boxes serving that Unit exclusively. The surface of the foregoing items will be the boundaries of that Unit, whether or not those items are contiguous to the unit.

(e) Exclusions: Except when specifically included by other provisions of this Section, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in (a), (b) and (c) above; and all chutes, pipes, flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and/or and Common Elements.

(f) Noncontiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures and storage portions situated in buildings or structures that are detached or semi-detached from the buildings containing the principal occupied portion of the Units. This special equipment and storage portions are a part of the Unit, even though they are not contiguous with the residential portions.

(g) Inconsistency with Plat and Plans: If this definition is inconsistent with the information contained in the Plat and Plans, then the Plat and Plans definition will control.

## ARTICLE V LIMITED COMMON ELEMENTS

Section 5.1 Assigned Limited Common Elements: The following portions of the Common Elements are Limited Common Elements assigned to the Units as stated:

(a) If a chute, flue, pipe (plumbing and sewer), duct, wire, conduit, bearing wall, bearing column or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit and any portion serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

(b) Any shutters, awnings, window boxes, doorsteps, storage areas, entry areas, stoops, porches, balconies, patios and exterior doors and windows or other fixtures designed to serve a single Unit and identified on the Plat and Plans as Limited Common Areas, located outside the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

(c) Entry areas, stairs, stoops, steps, handrails and walls above door openings at the entrances to each building which provide access to less than all Units, the use of which is limited to the Units to which they provide access.

(d) Exterior surfaces, trim, siding, doors and windows will be Limited Common Elements allocated to the Units sheltered.

(e) Mailboxes, name plates and exterior lighting affixed to the building will be Limited Common Elements allocated to the Units served.

Section 5.2 Garage Units as Limited Common Elements.



(a) Assigned Garage Limited Common Elements. That portion of the Property designated on the Plat and Plans as garages which have direct access to a Unit (each, a "Direct Access Garage") are hereby assigned as Limited Common Elements as follows:

Phase 1, Building 16 Garage Unit 102G is assigned to Phase 1, Building 16 Unit 102  
Phase 1, Building 16 Garage Unit 113G is assigned to Phase 1, Building 16 Unit 113  
Phase 1, Building 16 Garage Unit 201G is assigned to Phase 1, Building 16 Unit 201  
Phase 1, Building 16 Garage Unit 203G is assigned to Phase 1, Building 16 Unit 203  
Phase 1, Building 16 Garage Unit 212G is assigned to Phase 1, Building 16 Unit 212  
Phase 1, Building 16 Garage Unit 214G is assigned to Phase 1, Building 16 Unit 214

Phase 3, Building 18, Garage Unit 102G is assigned to Phase 3, Building 18 Unit 102  
Phase 3, Building 18, Garage Unit 113G is assigned to Phase 3, Building 18 Unit 113  
Phase 3, Building 18, Garage Unit 201G is assigned to Phase 3, Building 18 Unit 201  
Phase 3, Building 18, Garage Unit 203G is assigned to Phase 3, Building 18 Unit 203  
Phase 3, Building 18, Garage Unit 212G is assigned to Phase 3, Building 18 Unit 212  
Phase 3, Building 18, Garage Unit 214G is assigned to Phase 3, Building 18 Unit 214

Each garage described in this Section 5.2(a) shall be a Limited Common Element appurtenant to the assigned Unit, shall not be severable from such Unit, and shall pass automatically as an appurtenant Limited Common Element upon a conveyance of such Unit.

(b) Future Assigned Garage Limited Common Elements. That portion of the Property designated on the Plat and Plans as garages which do not have direct access to a Unit (each a "Non-Direct Access Garage") are hereby assigned as Limited Common Elements, but as yet are not allocated specifically to any particular Unit:

Phase 1, Building 16 Garage Units A through F and H through K, inclusive  
Phase 3, Building 18, Garage Units A through F and H through K, inclusive

Each Non-Direct Access Garage described in this Section 5.2(b) will be sold by Declarant to those individuals purchasing Units in the same building who desire to also purchase a garage as a Limited Common Element appurtenant to such Unit. The initial conveyancing instrument from Declarant to an Owner purchasing a Unit with a garage shall describe such garage as a Limited Common Element appurtenant to such Unit; and thereafter such garage shall be deemed an appurtenance of such Unit, shall not be severable from such Unit, and shall pass automatically as an appurtenant Limited Common Element upon a conveyance of such Unit.

(c) Limitation on Assignment of Garages. In no event shall more than one garage be assigned as a Limited Common Element to any Unit.

Section 5.3 Subsequently Allocated Limited Common Elements: Those portions of the Common Elements shown as unnumbered or unassigned parking spaces on the Plat and Plans may be allocated as Limited Common Elements in accordance with Section 7.1(b) and Article XI of this Declaration, or may be assigned to Owners by the Board of Directors through the Rules, or may be

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limited by the Board of Directors through the Rules to visitor parking only. The Board of Directors is further empowered to enforce any Rules regarding parking to the extent permitted by this Declaration, the Bylaws and the Act.

## ARTICLE VI MAINTENANCE

**Section 6.1 Common Elements:** The Association shall maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration or the Act to be maintained, repaired or replaced by an Owner.

**Section 6.2 Units:** Each Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit owned by such Owner, except the portions of the Unit by this Declaration or the Act to be maintained, repaired or replaced by the Association.

**Section 6.3 Limited Common Elements:** Any Common Expense associated with the maintenance, repair or replacement of heat exchanger, heater outlet, enclosures and mechanical attachments will be assessed against the Units to which the Limited Common Element is assigned.

(a) Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of yards, patios, balconies, exterior surfaces, trim, siding, doors, and windows will be assessed against the Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Board of Directors in accordance with Article XII. In the event any additional component or element becomes deteriorated or unsightly, or is inconsistent with conditions of installation, it may be removed or repaired at the Owner's expense as a Common Expense assessment under this section, after Notice and Hearing.

(b) If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which it is assigned.

(c) Common Expenses associated with the cleaning, maintenance, repair or replacement of any Limited Common Elements will be assessed against all Units in accordance with the Allocated Interests in the Common Expenses.

(d) Each Owner shall be responsible for removing snow, leaves and debris from all patios and balconies which are Limited Common Elements appurtenant to the Unit. If any such Limited Common Element is appurtenant to two or more Units, the owners of those Units will be jointly responsible for such removal.

**Section 6.4 Right of Access:** Any person authorized by the Board of Directors shall have the right of access to all portions of the Project for the purpose of performing emergency repairs or to do other work reasonably necessary for the proper maintenance of the Project, for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing and

replacing utility meters and related pipes, valves, wires and equipment, provided that requests for entry are made in advance and that any entry is at a time reasonably convenient to the affected Owner. In case of an emergency, no request or notice is required and the right of entry shall be immediate, and with as much force as is reasonably necessary to gain entrance, whether or not the Owner is present at the time.

**Section 6.5 Repairs Resulting From Negligence:** Each Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit or to those Limited Common Elements for which such Owner is responsible under this Declaration. The Association will be responsible for damage to Units which is caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such damage is caused by misconduct, it will be assessed following Notice and Hearing.

## ARTICLE VII

### DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

**Section 7.1 Reservation of Development Rights:** Declarant reserves the following Development Rights:

(a) The right, but not the obligation, by amendment to expand the Project to include all or part of the Annexable Property. Declarant shall have the unilateral right to transfer to any other person the right to expand which is herein reserved. Declarant shall pay all taxes and other governmental assessments relating to the Annexable Property owned by Declarant until expansion.

Such expansion may be accomplished by recording a supplemental declaration or annexation amendment in the records of the County Recorder of Clark County, Nevada, describing the real property to be annexed, submitting it to the covenants, conditions, and restrictions contained herein, and providing for the readjustment of voting rights and assessment allocations provided for herein on the basis of formulas provided herein. Such supplemental declaration or annexation amendment shall not require the consent of the Owners. Any such expansion shall be effective upon the filing for record of such supplemental declaration or annexation amendment except as provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion. Upon the recordation of any such supplemental declaration or annexation amendment, the definitions used in this Declaration shall be expanded automatically to encompass and refer to the Property as expanded. Such supplemental declaration or annexation amendment may add, delete, or modify provisions of this Declaration as it applies to all or any portion of the Annexable Property then being subjected to the Declaration, provided, however, that this Declaration may not be modified with respect to the Property previously subject to the Declaration except as provided herein for amendment.

(b) The right, but not the obligation, by amendment to create Units, Common Elements and Limited Common Elements upon all or part of the Annexable Property.

(c) The right, but not the obligation, by amendment to subdivide Units located on the Property or convert Units into Common Elements or Limited Common Elements.

(d) The right, but not the obligation, to construct underground utility lines, pipes, wires, ducts, conduits and other facilities upon the real property in the Project, for the purpose of furnishing utility and other services to buildings and Improvements to be constructed in the Project. Declarant also reserves the right to withdraw and grant easements to public utility companies and to convey Improvements within those easements anywhere in the Project not occupied by buildings, for the purposes mentioned above. If Declarant grants any such easements, the Plat and Plans will be amended to include reference to the recorded easement.

(e) The right, but not the obligation, to withdraw any Unit from this Declaration at any time prior to the sale or conveyance of that Unit by Declarant. Such withdrawal shall be accomplished by recording a declaration of withdrawal in the records of the Recorder of Clark County, Nevada, describing the real property to be withdrawn, and providing for the readjustment of voting rights and assessment allocations provided for herein. Such declaration of withdrawal shall not require the consent of the Owners. Any such withdrawal shall be effective upon the filing for record of such declaration of withdrawal except as provided therein. The withdrawal may be accomplished in stages by successive declarations or in one declaration of withdrawal.

(f) The right, but not the obligation, to unilaterally amend this Declaration at any time prior to the close of the first sale of a Unit.

(g) The right, but not the obligation, to create subassociations and supplemental declarations for the operation thereof.

**Section 7.2 Limitations on Development Rights:** The Development Rights reserved in Section 7.1 are limited as follows:

(a) The Development Rights may be exercised at any time within five years after the recording of the initial Declaration;

(b) Not more than 672 additional Units may be created under the Development Rights;

(c) The construction of any buildings and improvements to be built and annexed into the Project shall be consistent with the quality of those buildings and improvements constructed in Phase 1 (this limitation shall not prevent Declarant from having the right to substitute materials of like durability and strength);

(d) All Units and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units and Common Elements created under this Declaration as initially recorded; and

(e) All taxes, assessments, mechanic's liens and other charges affecting the Project arising in connection with Declarant's ownership of, and construction of improvements upon, the

Annexable Property which may adversely affect the rights of existing Owners, or the priority of any Eligible Mortgage on Units in the Project, are to be paid or otherwise satisfactorily provided for by Declarant.

**Section 7.3 Phasing of Development Rights:** No assurances are made by Declarant as to the Annexable Property, as to whether Declarant will exercise its Development Rights or the order in which such portions, or all of the areas, will be developed. The exercise of Development Rights as to some portions will not obligate Declarant to exercise its Development Rights as to other portions.

**Section 7.4 Special Declarant Rights:** Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Project:

- (a) To complete any Improvements indicated on Plat and Plans;
- (b) To exercise any Development Right reserved in this Declaration;
- (c) To maintain sales offices, management offices, signs advertising the Project and models which are reasonably necessary to market the Units;
- (d) To use easements through the Common Elements for the purpose of making Improvements within the Project or within real estate which may be added to the Project;
- (e) To make the Project subject to a master association;
- (f) To merge or consolidate the Project with another common interest community of the same form of ownership; and
- (g) To appoint or remove any officer of the Association or an Board of Directors member during the Declarant Control Period.

**Section 7.5 Models, Sales Offices and Management Offices:** For so long as Declarant is an Owner, Declarant, its duly authorized agents, representatives and employees reserves the right to use a portion of any recreation building constructed in the Project for sales offices and/or management offices. Declarant further reserves the right to maintain any Unit owned by Declarant or any portion of the Common Elements as a model Unit, sales office or management office.

**Section 7.6 Construction; Declarant's Easement:** Declarant reserves the right to perform warranty work, repairs and construction work in Units and Common Elements, to store materials in secure areas, and to control and have the right of access to work and repairs until completion. All work may be performed by Declarant without the consent or approval of the Board of Directors. Declarant has an easement through the Common Elements (including but not limited to that portion of the Common Elements consisting of the private streets and traffic access gates) as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special

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Declarant Rights, whether arising under the Act or reserved in this Declaration. This easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State, riparian owners or upland owners to fulfill the plan of development.

Section 7.7 Signs and Marketing: Declarant reserves the right to post signs and displays in the Common Elements in order to promote sales of Units. Declarant also reserves the right to conduct general sales activities in a manner which will not unreasonably disturb the rights of Owners.

Section 7.8 Declarant's Personal Property: Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project that has not been represented as property of the Association. Declarant reserves the right to remove from the Project (promptly after the sale and close of escrow of the last Unit) any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 7.9 Declarant Control of the Association:

(a) Subject to Subsection 7.9(b), there shall be a Declarant Control Period during which the Declarant, or persons designated by Declarant, may appoint and remove the officers and members of the Board of Directors. The Declarant Control Period terminates no later than the earlier of:

(i) 60 days after conveyance of 75% of the Units that may be created to Owners other than a Declarant; or

(ii) 5 years after Declarant has ceased to offer Units for sale in the ordinary course of business; or

(iii) 5 years after any right to add new Units was last exercised.

Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before the termination of the Declarant Control Period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

(b) Not later than 60 days after conveyance of 25% of the Units that may be created to Owners other than a Declarant, at least one member and not less than 25% of the members of the Board of Directors shall be elected by Owners other than Declarant. Not later than 60 days after conveyance of 50% of the Units that may be created to Owners other than a Declarant, not less than 33-1/3% of the members of the Board of Directors must be elected by Owners other than Declarant.

(c) Not later than the termination of the Declarant Control Period, each member of the Board of Directors must have been elected by the Owners as provided in the Bylaws.

(d) Notwithstanding any provision of this Declaration to the contrary, the termination of the Declarant Control Period shall not affect Declarant's rights as an Owner to exercise the vote allocated to Units which Declarant owns.

**Section 7.10 Limitations on Special Declarant Rights:** Unless terminated earlier by an amendment to this Declaration executed by Declarant, any Special Declarant Right may be exercised by Declarant until the later of the following: as long as Declarant (a) is obligated under any warranty or obligation, (b) holds a Development Right to create additional Units or Common Elements, (c) owns any Unit; (d) owns any Security Interest in any Units; or (e) fifteen years have elapsed after recording of this Declaration. Earlier termination of certain rights may occur by statute.

**Section 7.11 Interference with Special Declarant Rights:** Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of Declarant.

**Section 7.12 Lender Protection:** During the Declarant Control Period, the following actions will require the prior approval of the VA and HUD, to the extent necessary to meet any VA and/or HUD requirements which are applicable to the Project: annexation or de-annexation of any additional properties, any merger or consolidation of the Association, any special assessment, mortgaging of the Common Elements, dedication of the Common Elements, any amendment of the Declaration, any amendment to the Bylaws, and the removal of any portion of the Common Elements. Additional limitations on the right of Declarant to exercise Development Rights may be found in Article XVII of this Declaration.

**Section 7.13 Declarant's Rights to Complete Development:** No provision of this Declaration shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, sale and leasing of properties within the boundaries of the area comprised of the Property and the Annexable Property; to construct or alter Improvements on any property owned by Declarant within such boundaries; to maintain model homes, offices for construction, sales or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association within such boundaries; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within such boundaries. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any Improvements on any part of the Property or any property owned by Declarant; (b) use any structure on any part of the Property or any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within such boundaries; or (c) require Declarant to seek or obtain the approval of the Board of Directors, the Architectural Committee or the Association for any such activity or Improvement to property by Declarant on any part of the Property or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provide in this Declaration.

**Section 7.14 Priority of Declarant's Rights and Reservations:** Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration with respect to the

Association and the Project. The rights and reservations of Declarant set forth in this Declaration shall be deemed excepted and reserved in each recorded supplemental declaration or annexation amendment, in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property encumbered hereby is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including any amendment of this Section. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

**Section 7.15 Assignment of Declarant's Rights and Duties:** Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person, corporation or association which will assume any or all of the duties of Declarant hereunder, and upon any such person, corporation or association's evidencing its consent in writing to accept such assignment, said assignee shall, to the extent of such assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder.

## ARTICLE VIII ALLOCATED INTERESTS

**Section 8.1 Allocation of Interests:** The table showing Unit numbers and the Allocated Interest attributable to each Unit is attached hereto as Exhibit "D". Such Allocated Interests have been allocated and calculated in accordance with the formulas set forth in this Article. The same formulas are to be used in reallocating interests if Units are added to the Project pursuant to Section 7.1 of this Declaration.

**Section 8.2 Formulas for the Allocation of Interests:** The interests allocated to each Unit have been calculated by the following formulas:

(a) **Undivided Interest in the Common Elements.** The undivided interest in the Common Elements allocated to each Unit is based the square footage of each Unit as shown on the Plat and Plans as compared with the square footage of all Units in the Project as show on the Plat and Plans (excluding any balcony and storage areas). The maximum possible undivided interest in the Common Elements allocable to a Unit in Phase 1 is equal to the fractions listed on Exhibit "D" attached hereto. The minimum possible undivided interest in the Common Elements allocable to a Unit is equal to the square footage of the Unit divided by the total square footage of all Units anticipated in Project (estimated to be 668,530).

(b) **Liability for Common Expenses.** The Liability for Common Expenses allocated to each Unit is based on the square footage of each Unit as shown on the Plat and Plans as compared with the square footage of all Units in the Project as shown on the Plat and Plans (excluding any balcony and storage areas). The maximum possible Liability for Common Expenses allocatable to a Unit in Phase 1 is equal to the fractions listed on Exhibit "D" attached hereto. The minimum



possible Liability for Common Expenses allocatable to a Unit is equal to the square footage of the Unit divided by the total square footage of all Units anticipated in Project (estimated to be 668,530). Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under this Declaration.

(c) Votes. Each Unit in the Project shall have one equal vote. Any specified percentage, portion or fraction of Owners, unless otherwise stated in the Documents, means the specified percentage, portion or fraction of all of the votes as allocated in Exhibit "D".

Section 8.3 Assignment of Allocated Interests Pursuant to Exercise of Development Rights: The effective date for assigning Allocated Interests to Units created pursuant to Section 7.1 of this Declaration shall be the date on which the amendment creating the Units is recorded in the Recorder's Office for Clark County, Nevada.

## ARTICLE IX RESTRICTION ON USE, ALIENATION AND OCCUPANCY

Section 9.1 Use Restrictions: Subject to the Special Declarant Rights reserved under Article VII, the following use restrictions apply to all Units and to the Common Elements:

(a) The use of each Unit is restricted to that of a single-family residence and accessory uses as permitted herein. Except for those activities conducted as a part of the marketing and development program of Declarant, no industry, business, trade or commercial activities shall be conducted, maintained or permitted in any part of a Unit, nor shall any Unit be used or rented for transient, hotel or motel purposes. The provisions of this Section shall not preclude a professional or administrative occupation, provided that there is no external evidence of any such occupation, for so long as such occupations are conducted in conformance with all applicable governmental ordinances and are merely incidental to the use of the Unit as a residential home.

(b) No immoral, improper, offensive or unlawful use may be made of the Property; Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Nevada and all applicable county or city ordinances, rules and regulations. The violating Owner shall hold harmless the Association and other Owners from all fines, penalties, costs and prosecutions for any violation or noncompliance.

(c) Each garage may be used only for the storage of vehicles and no garage may be used for any purpose which prevents automotive storage. Garage doors shall be kept closed, except for those periods reasonably necessary for entry and exit of vehicles, cleaning, removing trash or other similar residential household purposes or purposes similar thereto. Any Owner who is unable to store an automotive vehicle in a garage which is assigned to such Owner's Unit as a Limited Common Element, because of the Owner's use of the garage for storage or for any other use, may lose his/her right to park vehicles in any parking area designated for Owner use and/or is subject to towing of the vehicle at the Owner(s) expense and/or is subject to being fined and/or any combination of these enforcement procedures. The Board of Directors shall establish policies and procedures in the Rules to implement this Section.

**Section 9.2 Occupancy Restrictions:** Subject to the Special Declarant Rights reserved under Article VII, the following occupancy restrictions apply to all Units, Limited Common Elements and to the Common Elements:

(a) The standard circuits in the Units and Limited Common Elements may not be modified in any way. No electrical device creating overloading of standard circuits may be used without permission from the Board of Directors. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Owner who caused such damage. Total electrical usage in any Unit or Limited Common Element shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(b) All Owners shall maintain their Units, including any garage that is assigned to such Unit as a Limited Common Element, in a clean and well maintained condition. No storage of trash will be permitted in or outside any Unit in a manner which may permit the spread of fire, odors, seepage or encouragement of vermin. No bicycles, barbecues, boxes, refuse or debris or other items which may be deemed storage items may be placed on balconies or patio areas where they can be seen and laundry may not be placed to dry on balcony or patio areas.

(c) Any parking spaces are which are designated as visitor parking by the Board of Directors are for the sole use of visitors and guests only and may not be used by Owners. Any parking spaces designated by the Board of Directors for the use of Owners under the Rules pursuant to Section 5.3 hereof for the use of Owners may be used only for vehicles, specifically excluding trucks, commercial vehicles and campers.

(d) No noxious, offensive, dangerous or unsafe activity shall be conducted in any Unit nor shall anything be done, either willfully or negligently, which may be or become an annoyance or nuisance to the other Owners or occupants of Units. No Owner or occupant of a Unit shall make or permit any disturbing noises nor do or permit anything to be done by others that will interfere with the rights, comforts or convenience of other Owners or Unit occupants.

(e) No animals, birds or reptiles of any kind shall be kept in a Unit, except for a maximum of two household pets (exclusive of aquarium fish) not exceeding an adult weight of twenty-five (25) pounds each and not exceeding an adult shoulder height of fourteen (14) inches, without the prior written consent of the Board of Directors; provided, however, that no pit bull dogs will be allowed. Pets may not be allowed on other portions of the Common Elements except as may be permitted by the Rules. Pets may not be kept for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Project upon three days' written notice following Notice and Hearing from the Board of Directors. Each Owner shall hold the Association harmless from any claim resulting from any action of their pets. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity.

(f) No signs, window displays or advertising visible from outside a Unit (except as may be permitted under the Rules or approved in writing by the Board) shall be maintained or permitted

in any part of a Unit. All window coverings which can be seen from the outside of the Unit must have a white or off-white backing.

(g) There will be no changes made to the appearance of any Unit without permission of the Association under Article XII.

(h) The Common Elements shall be improved and used only for the following purposes:

1. Affording vehicular passage and pedestrian movement within the Project, including access to the Units;

2. Recreation use by the Owners and occupants of Units in the Project and their guests, subject to rules established by the Board of Directors;

3. Beautification of the Common Elements and providing privacy to the residents of the Project through landscaping and such other means as the Board of Directors shall deem appropriate;

4. Parking of automotive passenger vehicles in areas provided therefor upon such terms and conditions as may from time to time be determined by the Board of Directors;

5. The following uses are hereby expressly prohibited:

(i) No garbage or refuse may be placed or left in the Common Elements except in receptacles provided for that use.

(ii) No planting may be done in the Common Elements by any Owner, except at the direction of the Board of Directors.

6. No part of the Common Elements shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Elements be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Elements or in storage areas designated by the Board of Directors), nor in any manner which shall increase the rate at which insurance against loss by fire, or the perils of the extended coverage endorsement to the Fire Policy Form, or bodily injury or property damage liability insurance covering the Common Elements and the improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

(i) No barbeques shall be operated in any Unit, Limited Common Element, patio or balcony within the Project. Barbeques shall only be operated in areas designed by the Board of Directors.

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(j) No waterbeds shall be permitted in any Unit located on the second or third floors of any building. In addition, the Owner of any first floor Unit which contains a waterbed must obtain insurance at such Owner's expense for damages resulting from the waterbed.

(k) No ceramic tile flooring may be installed in any Unit which is located on the second or third floor of any building; except that ceramic tile flooring may be used in the entry way, kitchen and bathrooms of any Unit.

**Section 9.3     Laws and Insurance Requirements** Nothing shall be done to or kept on any Unit or improvement thereon that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or any improvement thereon that violates any of the restrictions contained in this Declaration or any law, ordinance, statute, rule, or regulation of any local, county, state or federal body, including, without limitation, local ordinances relating to zoning and building codes.

**Section 9.4     Restrictions on Alienation: Occupancy Standards:**

(a) **No Time Share.** A Unit may not be conveyed pursuant to a time-sharing plan.

(b) **Lease of Unit.** A Unit may not be leased or rented for a term of less than 60 days. All leases and rental agreements shall be in writing and subject to the requirements of the Documents and the Association. A copy of each lease and rental agreement for a Unit shall be furnished to the Association within 10 days after execution thereof together with a completed tenant registration form as may be required by the Board of Directors. All leases of a Unit shall include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce and a reasonable opportunity to cure the violation directly, prior to the commencement of an enforcement action.

(c) **No Lease of Limited Common Element Garage Without Unit to Which Garage is Assigned.** No Limited Common Element garage may be leased or transferred independently of the Unit to which the Limited Common Element garage is assigned. Any attempt to lease, sell or otherwise transfer a Limited Common Element garage in violation of this Section 9.4(c) shall be void.

(d) **Occupancy Standards.** To ensure the protection of the residents of the Project from unsafe and unhealthy conditions, to prevent overcrowding and to preserve the value and amenities and the marketability of title to the real property within Project, no more than 2 persons per bedroom shall reside in any Unit.

**Section 9.5     Declarant's Rights:** As long as Declarant is an Owner, Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by Declarant or any portion of the Common Elements, as model units or sales offices. Declarant may also maintain management offices and signs and displays advertising the Project.

**ARTICLE X**  
**EASEMENTS AND LICENSES**

**Section 10.1**    **Easements of Record**: All easements or licenses to which the Project is presently subject are shown on the Plat and Plans or otherwise contained herein. In addition, the Project may be subject to other easements or licenses granted by Declarant pursuant to its powers under Article VII of this Declaration, liens created under Article XVIII of this Declaration, and easements granted by the Association pursuant to its powers under Article XXIV of this Declaration.

**Section 10.2**    **Encroachment Easement**: In the Property, and all portions thereof, shall be subject to an easement of up to 1 foot from the Unit or Common Elements boundaries for the actual extent of encroachments created by construction as designed or constructed by Declarant and for settling, shifting, and movement of any portion of the Property, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner, a tenant, the Association, or any other person or entity. A valid easement for said encroachments and for the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances upon any part of the Project. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of improvements constructed on any Unit, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of any improvements on the Property.

**ARTICLE XI**  
**ALLOCATION OF LIMITED COMMON ELEMENTS**

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to the provisions of this Article. All allocations will be made by amendments to the Declaration specifying to which Unit or Units the Limited Common Element is allocated.

Declarant has reserved the right, under Section 7.1(b) of this Declaration, to create Limited Common Elements as shown on the Plat and Plans in the Annexable Property. If created, such Limited Common Elements shall be assigned to particular Units by amendment to this Declaration. Any Limited Common Elements which are not allocated by Declarant pursuant to the Development Rights reserved hereunder, may be so allocated by the Association by amendment to this Declaration.

All amendments shall specify to which Unit or Units the Limited Common Element is allocated. Such amendment shall require the approval of all holders of Security Interests in the affected Units. The person executing the amendment shall provide an executed copy of the amendment to the Association, which shall record it, provided that the amendment complies with the provisions of this Declaration and the Act. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Project.

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The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

## ARTICLE XII ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 12.1     Requisite Approvals and Procedures for Owner Alteration No Owner may make or commence any structural addition, alteration or Improvement in the Project, including without limitation, the alteration or construction of a building, fence, wall or structure or the placement, erection or alteration of any Limited Common Element without the prior written consent of the Board of Directors or an architectural committee appointed by the Board of Directors composed of from one to three members.

(a) Any request for approval of anything prohibited under Section 12.1 or Section 12.1(b)(i) or (ii) must be submitted in writing to the Board of Directors or the Architectural Committee, as applicable. The Board of Directors or the Architectural Committee shall answer any written request for approval within 60 days after the request. Failure to answer the request within this time shall not constitute a consent or approval by the Board of Directors or the Architectural Committee to the proposed action. Any such request shall be reviewed in accordance with any Architectural Committee Rules then in effect.

(b) Subject to this Section 12.1, an Owner:

(i) May make any improvements or alterations to the interior of their Units that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Project.

(ii) May not change the appearance of the Common Elements, the exterior appearance of a Unit or any other portion of the Project, without permission of the Board of Directors or the Architectural Committee.

(c) Prior to making any application to any department or governmental authority for a permit to make any addition, alteration, improvement in or to any Unit, an Owner shall first submit an architectural request and obtain architectural approval from the Board of Directors or any architectural committee appointed by the Board of Directors. Any applications to any department or governmental authority for a permit to make any addition, alteration or improvement in or to any Unit shall be executed by the Association only. This execution will not, however, create any liability on the part of the Association or any of its members to any contractor, subcontractor or materialman on account of the addition, alteration or improvement or to any person because of any claim for injury to person or damage to property arising from the permit.

(d) Any member or authorized consultant of the Board of Directors or the Architectural Committee, or any authorized officer, employee or agent of the Association may enter upon any Unit at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order

to inspect any structural addition, alteration or Improvement constructed or under construction in the Unit to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Board of Directors or the Architectural Committee.

(e) All additions, alterations and improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Units other than those affected by such change.

Section 12.2 Limitation on Liability of Architectural Committee: Provided that the Architectural Committee or a particular member of the Architectural Committee has acted in good faith on the basis of the information as may be possessed by the Architectural Committee or the member, as the case may be, then neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner, or any other person for any damage, loss, or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property subject to this Declaration. Without limiting the generality of the foregoing, the Architectural Committee and any member thereof may, but it is not required to, consult with knowledgeable outsiders with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

Section 12.3 Architectural Committee Rules: The Architectural Committee shall, upon request of the Board of Directors and subject to the approval of the Board of Directors, prepare and promulgate Architectural Committee Rules containing guidelines and review procedures on behalf of the Association. The Architectural Committee Rules shall be those of the Association, and the Architectural Committee shall have the authority to prepare and to amend the Architectural Committee Rules, provided the Architectural Committee Rules are otherwise in compliance with the Act, the Articles, the Bylaws and this Declaration, and provided further that such Architectural Committee Rules are approved by the Board of Directors. The Architectural Committee shall make Architectural Committee Rules available to Owners.

Section 12.4 Board of Directors and Architectural Committee Discretion: Except as may be expressly provided in this Declaration, any consent or approval of the Board of Directors, Architectural Committee, or Association that is required under the provisions hereof may be granted or withheld in the sole and absolute discretion of the Board of Directors, Architectural Committee, or Association, as applicable. In that regard, the granting or withholding of such consent or approval shall not be subject to any objective standards of "reasonableness" or otherwise. Further, the approval of or consent to any matter shall not be deemed to be a waiver of the right to disapprove the same or similar matters in subsequent requests for consents or approvals from the same or other parties.

Section 12.5 No Applicability to Construction by Declarant: The provisions of this Article XII shall not apply to the initial construction by Declarant in the Project, and neither the

Board of Directors nor any Architectural Committee appointed by the Board of Directors shall have any authority or right to approve or disapprove the initial construction by Declarant in the Project.

Section 12.6 No Applicability to Board of Directors: Subject to the limitations of Sections 13.1 and 13.2 of this Declaration, the Board of Directors may make any additions, alterations or improvements to the Common Elements which, in its judgment, it deems necessary.

### **ARTICLE XIII** **BOUNDARIES**

The boundaries between any Units and/or Limited Common Elements may not be relocated.

### **ARTICLE XIV** **AMENDMENTS TO DECLARATION**

Section 14.1 In General: Except in cases of amendments that may be executed (i) by Declarant under Section 28.8 and otherwise in the exercise of its Development Rights, (ii) by the Association under Article X of this Declaration and NRS 116.1107, or (iii) by certain Owners under Section 28.9 of this Declaration, and NRS 116.2118, and except as limited by Section 14.4 and Article XVII of this Declaration, this Declaration, including the Plat and Plans, may be amended only by vote or agreement of a Majority of Owners. The procedure for amendment must follow the procedures set forth in NRS 116.2117.

Section 14.2 Limitation of Challenges: An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 14.3 Recordation of Amendments: Each amendment to this Declaration must be recorded in the Clark County Recorder's Office, and the amendment is effective only upon recording.

Section 14.4 Unanimous Consent: Except to the extent expressly permitted or required by other provisions of this Declaration or the Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of any Unit, change the Allocated Interests of a Unit or change the uses to which any Unit is restricted, except by unanimous consent of the Owners affected and the consent of a Majority of Owners.

Section 14.5 Execution of Amendments: An amendment to this Declaration required by the Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 14.6 Special Declarant Rights: Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of Declarant.



Section 14.7 Consent of Holders of Security Interests and VA/HUD: Amendments are subject to the consent requirements of Article XVII.

Section 14.8 Amendments To Create Units: To exercise any Development Right reserved under Section 7.1 of this Declaration, Declarant shall prepare, execute and record an amendment to this Declaration. Declarant shall also record new Plat and Plans to the extent as necessary to conform to the requirements of NRS 116.2109(1), (2) and (4).

The amendment to this Declaration shall assign an identifying number to each new Unit created and reallocate the Allocated Interests among all Units. The amendment shall describe any Common Elements and any Limited Common Elements created and designate the Unit to which each Limited Common Element is allocated to the extent required by NRS 116.2108(a).

## ARTICLE XV AMENDMENTS TO BYLAWS

The Bylaws may be amended or repealed by the vote or written consent of a Majority of the Owners and in accordance with Article 12 of the Bylaws. Furthermore, any amendment of the Bylaws during the Declarant Control Period shall require the prior approval of the VA and HUD to the extent necessary to meet any VA and/or HUD requirements applicable to the Project.

## ARTICLE XVI TERMINATION

Termination of the Project may be accomplished only upon the approval of the Owners of 100% of the total number of Units within the Project, and then in accordance with the provisions of the Act.

## ARTICLE XVII MORTGAGEE PROTECTION

Section 17.1 Introduction: This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security Interests. This Article is supplemental to, not a substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

Section 17.2 Percentage of Eligible Mortgagees: Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them that specified percentage of votes as compared to the total votes allocated to all Units in the Association then subject to Security Interests held by all Eligible Mortgagees.

Section 17.3 Notice of Actions: The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit in which there is a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

(b) Any delinquency in the payment of Common Expense Assessments owed by an Owner which remains uncured for a period of 60 days and whose Unit is subject to a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 17.4 of the Declaration; and

(e) Any judgment rendered against the Association.

Section 17.4     Consent and Notice Required.

(a) Document Changes Notwithstanding any requirement permitted by this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Owners described in this Section may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 17.3 above, without the vote of at least a 67% of the Owners (or any greater Owner vote required in this Declaration or the Act) and without approval by at least 51% of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. A change to any of the following would be considered material:

(i) Any provision of this Declaration pertaining to voting rights which would change the allocation and/or the specified percentage of votes;

(ii) Any provision of this Declaration pertaining to assessments, assessment liens or priority of assessment liens;

(iii) Any provision of this Declaration pertaining to reserves for maintenance, repair and replacement of Common Elements;

(iv) Any provision of this Declaration pertaining to responsibility for maintenance and repairs;

(v) Any provision of this Declaration pertaining to expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;

(vi) Any provision of this Declaration pertaining to insurance or fidelity bonds;

(vii) Any provision of this Declaration pertaining to leasing of Units;

(viii) Any provision of this Declaration pertaining to imposition of any restrictions on Owners' right to sell or transfer their Units; or

(ix) Any provision of this Declaration that expressly benefits holders, insurers or guarantors of Security Interests.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to Declarant as Special Declarant Rights, without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section 17.3 above, and approval of at least 51% (or the indicated percentage, if higher) of the Eligible Mortgagees:

(i) Reallocation of interests in the Common Elements or Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners, only those Owners and only the Eligible Mortgagees holding Security Interests in those Units need approve the action;

(ii) Redefinitions of boundaries of Units, except that when boundaries of only adjoining Units are involved, or a Unit is being subdivided, then only those Owners and the Eligible Mortgagees holding Security Interests in the Unit or Units need approve the action;

(iii) Convertibility of Units into Common Elements or Common Elements into Units;

(iv) A decision by the Association to establish self-management when professional management had been required previously by the Documents or any Eligible Mortgagee;

(v) Termination of the Project after occurrence of substantial destruction or condemnation;

(vi) Convey or encumber the Common Elements or any portion of the Common Elements, for which approval of at least 67% of the Eligible Mortgagees is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Project will not be deemed a transfer within the meaning of this clause);

(vii) The termination of the Project for reasons other than substantial destruction or condemnation, for which approval of at least 67% of Eligible Mortgagees is required;

(viii) The granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Project and also excluding any leases, licenses or concessions lasting for no more than one year);

(ix) The restoration or repair of the Project after hazard damage or a partial condemnation in a manner other than specified in the Documents;

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(x) The merger of the Project with any other common interest community, for which the prior written approval of the VA must also be obtained to the extent necessary to meet any VA requirements which are applicable to the Project;

(xi) The assignment of the future income of the Association, including its right to receive Common Expense Assessments; or

(xii) Any action taken not to repair or replace the Project in the event of substantial destruction of any part of a Unit or the Common Elements.

(c) Limitations. The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly collection without the consent of all Eligible Mortgagees.

(d) VA/HUD Approval. The prior approval of the VA and HUD shall be required during the Declarant Control Period for those Association actions set forth in Section 7.12 to the extent necessary to meet any VA and HUD requirements which are applicable to the Project.

(e) Implied Approval. The failure of an Eligible Mortgagee or Insurer to respond within 30 days to any written request for approval of an addition or amendment to the Document wherever Eligible Mortgagee or Insurer approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute an implied approval of the addition or amendment.

Section 17.5 Development Rights: No Development Rights may be exercised, voluntarily abandoned or terminated by Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

Section 17.6 Inspection of Books: The Association must maintain current copies of the Declaration, Bylaws, Rules, the Articles of Incorporation, books, records and financial statements of the Association. The Association shall permit any Eligible Mortgagee or Eligible Insurer, or other first mortgagee of Units, to inspect the books and records of the Association during normal business hours.

Section 17.7 Financial Statements: The Association shall provide any Eligible Mortgagee or Eligible Insurer who submits a written request with a copy of an annual financial statement. It shall be provided within 120 days following the end of each fiscal year of the Association. This financial statement shall be audited by an independent certified public accountant if:

(a) The Project contains 50 or more Units, in which case the cost of the audit shall be a Common Expense; or

(b) Any Eligible Mortgagee or Eligible Insurer requests it, in which case the Eligible Mortgagee or Eligible Insurer shall bear the cost of the audit.

**Section 17.8 Enforcement:** The provisions of this Article are for the benefit of Eligible Mortgagees and Eligible Insurers and their successors and may be enforced by any of them by any available means, at law or in equity.

**Section 17.9 Attendance at Meetings:** Any representative of an Eligible Mortgagee or Eligible Insurer may attend and address any meeting which an Owner may attend.

**Section 17.10 Appointment of Trustee:** In the event of damage or destruction under Article XXII or condemnation of all or a portion of the Project, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to this Declaration. This Trustee may be required to be a corporate trustee licensed by the State of Nevada. Proceeds will then be distributed pursuant to Article XXII or pursuant to a condemnation award. Unless otherwise required, the members of the Board of Directors, acting by majority vote through the president, may act as Trustee.

## **ARTICLE XVIII**

### **ASSESSMENT AND COLLECTION OF COMMON EXPENSES**

**Section 18.1 Apportionment of Common Expenses:** Except as provided in Section 18.2, all Common Expenses shall be assessed at a uniform rate for all Units in accordance with the percentage of Liability for Common Expenses as set forth in Article VIII of this Declaration.

**Section 18.2 Common Expenses Attributable to Fewer than all Units; Exempt Property:**

(a) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of yards, patios, balconies, entries, exterior surfaces, trim, siding, doors, and windows shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

(b) Any Common Expense or portion thereof benefiting fewer than all of the Units shall be assessed exclusively against the Units benefited.

(c) The costs of insurance shall be assessed in proportion to risk.

(d) The cost of utilities shall be assessed in proportion to usage, except that if a utility is in separately metered to a Unit, the cost of such utility shall be assessed in accordance with the liability for Common Expenses. Provided, however, that each Unit to which a Non-Direct Access Garage is assigned as a Limited Common Element pursuant to Section 5.2(b) hereof, shall be assessed with an electricity fee. The electricity fee shall initially be \$5.00 per month and such fee may be adjusted by the Board of Directors from time to time.

(e) An assessment to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to the respective Liability for Common Expense.

(f) If a Common Expense is caused by the misconduct of an Owner, the Association may assess that expense exclusively against that Owner's Unit.

(g) If the Liability for Common Expenses are reallocated, Common Expenses Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated liabilities.

(h) Fees, charges, late charges, fines, collection costs and interest charged against an Owner pursuant to the Documents and the Act are enforceable as Common Expense Assessments against that Owner's Unit.

Section 18.3     Lien:

(a) The Association has a lien on a Unit for an assessment levied against the Unit, or fines imposed against its Owner from the time the assessment or fine becomes due. Fees, charges, late charges, fines and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section; provided, however, that unless otherwise permitted by law, the Association may not foreclose upon a lien for unpaid assessments which is comprised solely of fines levied against an Owner for violation of the Documents unless the violation is of a type that threatens the health and welfare of the residents of the Project. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(b) Except to the extent permitted under the Act (NRS 116.3116(2)), a lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) liens and encumbrances recorded before the recordation of this Declaration; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection to the extent that the Common Expense assessments are based on the periodic budget adopted by the Association pursuant to Section 18.4 and 18.5 of this Article and would have become due in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the Association's lien. This Subsection does not affect the priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association.

(c) Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required.

(d) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due, except that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United

States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(e) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(f) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(g) The Association's lien must be foreclosed by the same procedure set forth in NRS 116.31162 and NRS 116.31164.

(h) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver for the Owner to collect all sums alleged to be due to that Owner from third parties prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense Assessments, based on a periodic budget adopted by the Association pursuant to Section 18.4 of this Declaration.

(i) If a holder of a first Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale, other than the assessments which are prior to that Security Interest under Subsection (b) of this section of this Declaration. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Owners, including the purchaser.

(j) A Request for Notice of Default and Sale recorded in accordance with NRS 107.090 shall apply to the foreclosure of an Association lien. The Request must identify the lien by stating the names of the Owner and the Project.

(k) In the case of foreclosure under NRS 116.31162 and NRS 116.31164, the Association shall give reasonable notice of its intent to foreclose to each lien holder of the affected Unit known to the Association.

(l) Any payments received by the Association in the discharge of an Owner's obligation may be applied to the oldest balance due; provided, however, that the Association may not apply any assessment, fee or other charge that is paid by an Owner toward a fine imposed against the Owner by the Association unless otherwise directed by the Owner or as permitted by law.

**Section 18.4 Budget Adoption and Ratification:** Each year the Board of Directors shall adopt a proposed budget of the Common Expenses of the Project, which shall include reserves as set forth in Section 18.13 of this Declaration. Within 30 days after adoption of a proposed budget for the Project, the Board of Directors shall provide a summary of the budget to each Owner and shall set a date for a meeting of the Owners to consider ratification of the budget. The meeting shall

be not less than 14 or more than 30 days after mailing of the summary. Unless at that meeting a Majority of 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 continues until the Owners ratify a subsequent budget proposed by the Board of Directors.

Section 18.5 Ratification of Nonbudgeted Common Expense Assessments: If the Board of Directors votes to levy a Capital Improvement Assessment the Board of Directors shall submit the assessment to the Owners for ratification in the same manner as budget under Section 18.4. A Capital Improvement Assessment levied pursuant to this Section 18.5 shall include (i) an assessment not included in the current budget, other than one enumerated in Section 18.2 of this Declaration, in an amount greater than 15% of the current annual operating budget, or (ii) an assessment for the cost of construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements.

Section 18.6 Certificate of Payment of Common Expense Assessments: The Association, upon written request, shall furnish an Owner with a statement, in recordable form, setting out the amount of unpaid assessments against the Unit. The statement must be furnished within 10 business days after receipt of the request and is binding on the Association, the Board of Directors and each Owner.

Section 18.7 Monthly Payment of Common Expenses: All Common Expenses assessed under Sections 18.1 and 18.2 of this Declaration shall be due and payable monthly, at 1/12th of the annual total (in cases where an annual total is applicable).

Section 18.8 Limitations on Maximum Annual Assessment: From and after January 1st of the year immediately following the first conveyance of a Unit to an Owner other than Declarant, the maximum annual Common Expense Assessment may not be increased by more than 15% of the annual budget for the previous year unless approved by the vote or written assent of a Majority of Owners.

Section 18.9 Commencement of Common Expense Assessments: The Common Expense Assessments provided for herein shall begin as to all Units in each phase of the Project (other than unsold Units owned by Declarant if a Subsidy Agreement is in effect) on the first day of the month following the first conveyance of a Unit to an Owner other than Declarant in that phase. The first assessment shall be adjusted according to the number of months remaining in the calendar year. If a Subsidy Agreement is in effect, regular assessments as to all unsold Units owned by Declarant shall commence upon termination or expiration of the Subsidy Agreement.

Section 18.10 No Waiver of Liability for Common Expenses: No Owner may become exempt from liability for payment of the Common Expense Assessments by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 18.11 Personal Liability of Owners: The Owner of a Unit, at the time a Common Expense Assessment or portion of the assessment is due and payable, is personally liable for the



assessment. Additionally, the Owner of a Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Association (1) annual Common Expense Assessments, (2) Capital Improvement Assessments, (3) Special Assessments, and (4) Reconstruction Assessments; such assessments to be established and collected as herein provided. All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Unit against which such assessment is made.

(a) No Owner may exempt himself from the personal liability for assessments levied by the Association, nor release the Unit owned by him from the liens and charges thereof by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his/her Unit.

(b) Except to the extent provided by operation of Section 18.3(b) or the Act, personal liability for the assessment shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation. In any event, the successor in title shall be personally liable for any Common Expense Assessments thereafter due.

**Section 18.12 Capitalization of Association:** A working capital fund is to be established in the amount of 2 months' regularly budgeted initial Common Expense Assessments, measured as of the date of the first assessment on the first phase, for all Units as they are created in proportion to their respective Allocated Interests in Common Expenses. Any amounts paid into this fund shall not be considered as advance payment of assessments. The working capital fund may be collected and then contributed to the Association by Declarant at the time the sale of each Unit is closed or at the termination of the Declarant Control Period, if earlier. Until paid to the Association, the contribution to the working capital shall be considered an unpaid Common Expense Assessment, with a lien on Declarant's unsold Units pursuant to the Act. Until termination of Declarant control of the Board of Directors, the working capital shall be deposited without interest in a segregated fund. While Declarant is in control of the Board of Directors, Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions or construction costs or to make up budget deficits.

**Section 18.13 Reserves.** The annual budget of the Association shall include reasonable reserves for the repair, replacement or addition to major components of the Common Elements. Not less than every five (5) years, the Association shall obtain a study of the reserves by a specialized company that provides such studies, to determine the adequacy of the reserves. The reserves of the Association may not, except as otherwise permitted by law, be used for the daily maintenance expenses of the Project.

**Section 18.14 Subsidy Agreements:** The Association may enter into a subsidy agreement or other similar agreement with the Declarant whereby assessments otherwise payable by the Declarant on Units owned by the Declarant are suspended in exchange for the payment by the Declarant of shortfalls in the Association's operating expenses or the provision of maintenance of the Common Elements and/or the performance of certain other services which are Common Expenses of the Association. Any such agreement shall provide that it may be terminated upon the vote of the Owners of 67% of the total number of Units in the Project, other than those Units owned

by Declarant, in which event, after the date of such termination, all Owners, including Declarant shall be liable for the full amount of the regular assessments which would otherwise be payable in accordance with this Article XVIII.

## ARTICLE XIX RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense Assessments, only upon the approval of a Majority of Owners, at a meeting called for that purpose, and with the Eligible Mortgagee consent described in Article XVII.

## ARTICLE XX PERSONS AND UNITS SUBJECT TO DOCUMENTS

Section 20.1 Membership in the Association: Every Owner of a Unit shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale of a Unit to which it is appurtenant, and then only to the purchaser of such Unit. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his or her name to the purchaser of his or her Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

Section 20.2 Compliance with Documents: All Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by that Owner, tenant, mortgagee or occupant. All provisions of the Documents recorded in the Clark County Recorder's Office are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Unit.

Section 20.3 Adoption of Rules: The Board of Directors may adopt Rules regarding the use and occupancy of Units as it affects the Common Elements, the Limited Common Elements and the activities of occupants, subject to Notice and Comment.

## ARTICLE XXI INSURANCE

Section 21.1 Coverage: To the extent reasonably available, the Board of Directors shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Board of Directors determines that any insurance described in this Article will not be maintained, the Board of Directors shall promptly cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Owners and Eligible Mortgagees at their respective last known addresses.

Section 21.2     Property Insurance Coverage:

(a) Coverage. Property insurance will cover:

(i) The facilities of the Project including all buildings on the Property, for example, the Units all fixtures, equipment and any improvements and betterments whether part of a Unit or a Common Element, and such personal property of Owners as is normally insured under building coverage, but excluding land, excavations, portions of foundations below the undersurface of the lowest basement floors, underground pilings, piers, pipes, flues and drains and other items normally excluded from property policies; and

(ii) All personal property owned by the Association.

(b) Amounts. The insurance will be for an amount (after application of any deductions) equal to 100% of the replacement value of the covered items at the time the insurance is purchased and at each renewal date.

The Board of Directors is authorized to obtain appraisals periodically for the purpose of establishing replacement cost of the insured items, and the cost of such appraisals shall be a Common Expense.

(c) Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured.

(d) Other Provisions. Insurance policies required by this Section shall provide that:

(i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association.

(ii) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.

(iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition of recovery under the policy.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner which covers the same risk covered by the policy, the Association's policy provides primary insurance.

(v) Losses must be adjusted with the Association.

(vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in any case, it is to be held in trust for each Owner and the Owner's mortgagee.

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(vii) The insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, to each Owner and to each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(viii) The name of the insured shall be substantially as follows:

Vistaña Condominium Owners Association, Inc., for the use and benefit of the individual Owners.

**Section 21.3 Liability Insurance:** Liability insurance, including medical payments insurance, will be maintained as determined by the Board of Directors. This insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association.

Insurance policies carried pursuant to this Section shall provide that:

(i) Each Owner is an insured person under the policy with respect to liability arising out of the Owner's interest in the Common Elements or membership in the Association;

(ii) The insurer waives the right to subrogation under the policy against an Owner or member of the household of an Owner.

(iii) An act or omission by an Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) Losses must be adjusted with the Association.

(vi) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and otherwise to the Association, but, in any case, it is to be held in trust for each Owner and the Owner's mortgagee.

(vii) The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, each Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

**Section 21.4 Fidelity Bonds:** A blanket fidelity bond shall be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not

they receive compensation for their services. The bond shall name the Association as obligee and shall cover the maximum funds that will be in the custody of the Association or the manager at any time while the bond is in force. In no event shall the bond be for an amount less than the sum of three months' assessments plus reserve funds. The bond shall include a provision that calls for 10 days' written notice to the Association, each holder of a Security Interest in a Unit, each servicer that services a FNMA-owned or FALMC-owned mortgage on a Unit and the insurance trustee, if any, before the bond can be canceled or substantially modified for any reason. The bond shall be in an amount equal to the maximum amount of funds in the custody and control of the Association when the bond is in effect. When either: (a) separate bank accounts for working funds and reserves are maintained and monthly checks are sent directly to the Association, (b) a management company maintains separate records and bank accounts for each reserve account of the Association, or (c) two Directors must sign any check written on the reserve account, then the fidelity bond may be in an amount equal to three months Common Expense Assessments on all Units.

Section 21.5 Owner Policies: An insurance policy issued to the Association does not preclude Owners from obtaining insurance for their own benefit.

Section 21.6 Workers' Compensation Insurance: The Board of Directors shall obtain and maintain Workers' Compensation Insurance to meet the requirements of the laws of the State of Nevada.

Section 21.7 Directors' and Officers' Liability Insurance: The Board of Directors shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the directors and officers (including without limitation the members of the Architectural Committee) of the Association. This insurance will have limits determined by the Board of Directors.

Section 21.8 Other Insurance: The Association may carry other insurance which the Board of Directors considers appropriate to protect the Association and/or the Owners.

Section 21.9 Premiums: Insurance premiums for insurance carried or to be carried by the Association shall be a Common Expense.

Section 21.10 Payment of Deductible: Each Owner shall pay any insurance deductible due in connection with any claim relating to the Unit owned by such Owner; provided, however, that the Association shall be responsible for the payment of any insurance deductible in connection with claims relating to the Common Elements or Limited Common Elements.

## ARTICLE XXII DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 22.1 Duty to Restore: Any portion of the Project for which insurance is required under the Act (NRS 116.31135) that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- (a) The Project is terminated; or

(b) Repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; or

(c) The Owners of 80% of the total number of Units in the Project, including each Owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 22.2 Cost: The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 22.3 Plans: The Property must be repaired and restored in accordance with either the original plans and specifications or other plans and specifications which have been approved by the Board of Directors, a Majority of Owners and 51% of Eligible Mortgagees.

Section 22.4 Replacement of Less Than Entire Property:

(a) The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Project.

(b) Except to the extent that other persons will be distributees:

(i) The insurance proceeds attributable to a Unit and Limited Common Elements that are not rebuilt must be distributed to the Owner of the Unit and the Owner of the Unit to which the Limited Common Elements were allocated, or to lien holders, as their interests may appear; and

(ii) The remainder of the proceeds must be distributed to each Owner or lien holder, as their interests may appear, in proportion to the Common Element interests of all the Units.

(c) If the Owners vote not to rebuild a Unit, the Allocated Interests shall be automatically reallocated upon the vote as if the Unit had been condemned under the Act (NRS 116.1107(1)), and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocation of the Allocated Interests.

Section 22.5 Insurance Proceeds: The Trustee, or if there is no Trustee, then the Board of Directors of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Owners and lien holders as their interests may appear. Subject to the provisions of Subsection 22.1(a) through Subsection 22.1(c) of this Declaration, the proceeds shall be disbursed first for the repair or restoration of the damaged Property. The Association, Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus after the Property has been completely repaired or restored, or unless the Project is terminated.

Section 22.6 Certificates By Board of Directors: The Trustee, if any, may rely on the following certifications in writing made by the Board of Directors:

(a) Whether or not damaged or destroyed Property is to be repaired or restored; and

(b) The amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

Section 22.7     Certificates by Title Insurance Companies: If payments are to be made to Owners or mortgagees, then the Board of Directors and the Trustee, if any, shall obtain and may rely on a title insurance company's certificate or a title insurance policy based on a search of the Records in the Clark County Recorder's Office from the date of the recording of the original Declaration, stating the names of the Owners and the mortgagees.

### ARTICLE XXIII NOTICE AND HEARING

Section 23.1     Right to Notice and Comment: Before the Board of Directors amends the Bylaws or the Rules, whenever the Documents require that an action be taken after "Notice and Comment," and at any other time the Board of Directors determines, the Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action either shall be given to each Owner in writing, delivered personally or by mail to all Owners at such address as appears in the records of the Association, or it shall be published in a newsletter or similar publication which is routinely circulated to all Owners. The notice shall be given not less than five days before the proposed action is to be taken. It shall invite comment to the Board of Directors orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle an Owner to be heard at a formally constituted meeting.

Section 23.2     Right to Notice and Hearing: Whenever the Documents require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board of Directors, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

Section 23.3     Appeals: Any person having a right to Notice and Hearing shall have the right to appeal to the Board of Directors from a decision of persons other than the Board of Directors by filing a written notice of appeal with the Board of Directors within 10 days after being notified of the decision. The Board of Directors shall conduct a hearing within 30 days, giving the same notice and observing the same procedures as were required for the original meeting.

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## ARTICLE XXIV BOARD OF DIRECTORS

Section 24.1 Association Records and Minutes of Board of Directors Meetings: The Board of Directors shall permit any Owner, or holder, insurer or guarantor of a first mortgage secured by a Unit, to inspect the records of the Association and the minutes or a summary of the minutes of Board of Directors and committee meetings during normal business hours. The right to inspect records under this Section 24.1 does not include minutes from any executive sessions of the Board of Directors to the extent provided under the Act. Any reasonable costs incurred by the Association to retrieve records from storage, research any information, photocopy records or utilize staff time from the Manager shall be paid by the person requesting the records, information or copies.

Section 24.2 Board of Directors Limitations: The Board of Directors may not act on behalf of the Association to amend this Declaration, to terminate the Project or to elect members of the Board of Directors or determine the qualifications, powers and duties or terms of office of Board of Directors members, but the Board of Directors may fill vacancies in the Board of Directors by appointment for the unexpired portion of any term.

## ARTICLE XXV OPEN MEETINGS

Section 25.1 Access: All meetings of the Board of Directors will be open to the Owners, except as hereinafter provided.

Section 25.2 Executive Sessions: Meetings of the Board of Directors may be held in executive session, without giving notice and without the requirement that they be open to Owners, only if the action taken at the executive session involves (i) consultation with the Association's attorney regarding proposed or pending litigation which consultation involves privileged attorney-client information; (ii) personal matters; (iii) alleged violations of the Documents committed by an Owner; or (iv) any other matter permitted by law to be discussed in an executive session.

## ARTICLE XXVI CONDEMNATION

If part or all of the Project is taken by any person or entity having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with the Act (NRS 116.1107).

## ARTICLE XXVII ALLEGED DEFECTS

Section 27.1 Intention: It is Declarant's intent that all Improvements of every type and kind which may be installed by Declarant as part of the Project, including, but not limited to, buildings, balconies, patios, stairs, residences, sidewalks, driveways, streets, fences, walls,



landscaping, signs, utility pipes, lines or wires, sewer and drainage systems and grading on all of the Units and Common Elements within the Project (collectively, the "Declarant Improvements") be of a quality that is consistent with construction and development practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding Alleged Defects (as defined below) amicably, and without the necessity of time consuming and costly litigation. Accordingly, all Owners and the Association, the Board of Directors, the Architectural Committee shall be bound by the claim resolution procedure set forth in this Article XXVII.

Section 27.2 Declarant's Right to Cure: If the Association, the Board of Directors, the Architectural Committee or any Owner or Owners (collectively, "Claimant") claim, contend, or allege that any portion of a Unit and/or any Declarant Improvements are defective or incomplete, or that Declarant or its agents, consultants, contractors or subcontractors (collectively, "Declarant's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively, an "Alleged Defect"), Declarant hereby reserves the right to inspect, cure, repair and/or replace such Alleged Defect as set forth herein.

Section 27.3 Notice to Declarant: If a Claimant discovers an Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at 4630 South Arville, Suite B, Las Vegas, Nevada 89103, or such other address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

Section 27.4 Right to Enter, Inspect, Cure and/or Replace: Immediately after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of an Alleged Defect by Declarant or any governmental agency, and for a reasonable time thereafter, as part of Declarant's reservation of right, Declarant shall have the right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, any Unit or the Common Elements, and/or any Declarant Improvements for the purposes of inspecting and, if deemed necessary by Declarant, curing, repairing and/or replacing the Alleged Defect. In conducting such inspection, cure, repairs and/or replacement, Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

Section 27.5 Legal Actions: No Claimant shall initiate any legal action, cause of action, proceeding or arbitration against Declarant alleging damages (a) for the costs of curing, repairing, or replacing any Alleged Defect, (b) for the diminution in value of any real or personal property resulting from such Alleged Defect or (c) for any consequential damages resulting from such Alleged Defect, unless and until Claimant has (i) delivered to Declarant a Notice of Alleged Defect and (ii) Declarant has, within 120 days after its receipt of the Notice of Alleged Defect, either (1) failed to cure, repair or replace the Alleged Defect or (2) if the Alleged Defect cannot reasonably be cured, repaired or replaced within such 120 day period, failed to commence such cure, repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such cure, repair or replacement to completion. During any such period while Declarant is diligently pursuing to completion the cure, repair, or replacement of the Alleged Defect, Claimant shall not stop, restrict, hinder, interrupt or otherwise interfere with any reasonable action or activity taken by Declarant, its employees, agents,

or independent contractors, to inspect, cure, repair or replace the Alleged Defect, whether or not such action or activity is taken, or is proposed to be taken, on property owned by Claimant.

**Section 27.6** **No Additional Obligations: Irrevocability and Waiver of Rights:** Nothing set forth in this Article shall be construed to impose any obligation on Declarant to inspect, cure, repair or replace any item or Alleged Defect for which Declarant is not otherwise obligated to do under applicable law or any limited warranty provided by Declarant in connection with the sale of the Units and/or the Declarant Improvements constructed thereon, nor shall anything set forth in this Article constitute an express or implied representation, warranty or guarantee by Declarant concerning any Declarant Improvements, the Property, any Annexable Property or the Project. The right of Declarant to enter, inspect, cure, repair and/or replace reserved hereby shall be irrevocable and may not be waived and/or terminated except by a writing, in recordable form, executed and recorded by Declarant in the Official Records of the Clark County, Nevada Recorder.

**Section 27.7** **Statutory Remedies:** The terms, conditions and procedures set forth in this Article XXVII are in addition to the terms, conditions and procedures set forth in NRS Chapter 40, and shall, to the maximum extent permitted by law, be exercised by any Claimant prior to instituting a claim and/or commencing an action under Chapter 40 for "constructional defects"; provided, however, the procedures set forth in this Article XXVII shall not abrogate any of the requirements of Claimant under Chapter 40, inclusive of the requirement that Claimant, at the end of the foregoing 120 day period, notify Declarant in writing of any alleged constructional defects which Declarant failed to cure during that 120 day period at least 60 days prior to bringing an action under Chapter 40. Further, to the extent any provisions of this Article XXVII are inconsistent with the provision of Chapter 40, the provisions of this Article XXVII shall apply to the maximum extent permitted by law and shall extend all the time periods set forth in NRS 40.645 until expiration of the 120 day period set forth in this Article XXVII. It is the express intent of Declarant to provide, by this Article XXVII, an initial 120 day period for Declarant to investigate and cure any constructional defects alleged by Claimant before the provisions of Chapter 40 are implemented and initiated by Claimant including, without limitation, the notice of claim, inspection, offer of settlement, and repair provisions of Chapter 40. Each Owner, by accepting title to any portion of the Property, as evidenced by Recordation of a deed to Owner describing that land, agrees to be bound by all of the provisions of this Article XXVII.

## ARTICLE XXVIII MISCELLANEOUS PROVISIONS

### **Section 28.1** **Enforcement:**

(a) The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, each covenant, condition, restriction and reservation now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of the Documents. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation contained herein shall not be deemed a waiver or the right to do so thereafter.

(b) In the event the Association, Declarant, or any Owner shall commence litigation to enforce any of the covenants, conditions, restrictions or reservations herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

**Section 28.2**     **Captions:** The captions contained in the Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Documents or the intent of any provision thereof.

**Section 28.3**     **Gender:** The use of the masculine gender refers to the feminine gender, and vice versa, and the use of the singular includes the plural, and vice versa, whenever the context of the Documents so require.

**Section 28.4**     **Waiver:** No provision contained in the Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 28.5**     **Invalidity:** The invalidity of any provision of the Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and if a provision is invalid, all of the other provisions of the Documents shall continue in full force and effect.

**Section 28.6**     **Conflict:** The Documents are intended to comply with the requirements of the Act applicable to common interest communities and the Documents shall be interpreted, if at all possible, so as to be consistent with the Act. If there is any conflict between the Documents and the provisions of the foregoing statutes, the provisions of the applicable statutes shall control. In the event of any conflict between this Declaration and any other Document, this Declaration shall control.

**Section 28.7**     **Changes in the Act:** Certain provisions of the Declaration and the Bylaws repeat exactly or substantially the same rule or outcome in a particular instance as that required by the Act on the date the Declaration was recorded, or repeat the same rule which the Act would impose as a default rule if the Declaration or Bylaws were silent on that subject.

The Declarant anticipates the possibility that the Act will be amended from time to time to reflect contemporary thinking and experience regarding the structure and governance of common interest communities. The Declarant believes it is in the best interest of the Owners that the Property might always be governed in accordance with the most current provisions of the Act, subject to the right in any particular case of the Owners and the Board to vary that outcome by adopting a rule or amendment to the Declaration in the manner provided for such amendments.

Accordingly, this Section directs that, in the future and from time to time, in all instances where the Declaration or the Bylaws contain language that precisely or substantially tracks the Act on the date that the Declaration is recorded, the Declaration and the Bylaws shall be automatically amended in accordance with the amended cognate language of the Act which may be adopted by the

legislature of the State of Nevada, unless the particular language of the Declaration or Bylaws, either as initially adopted or as amended at any subsequent time by the Association, is substantially at variance with the amended text of the Act.

**Section 28.8** Notices: Any notice permitted or required to be given under the provisions of this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or a legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person to the Association for the purpose of service of notices, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing given by such person to the Association.

**Section 28.9** Unilateral Amendment By Declarant: Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Units; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit or Garage unless the Owner shall consent thereto in writing. So long as Declarant still owns property described in Exhibit "A" or Exhibit "B" for development as part of the Project, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon right of any Owner.

**Section 28.10** Term: This Declaration, including all of the covenants, conditions and restrictions hereof, shall run with and bind the Property for a term of 50 years from the date this Declaration is recorded. After such time, the covenants, conditions and restrictions contained herein, shall be automatically extended for successive periods of 10 years, unless an instrument is signed by the Owners of at least 2/3 of the total number of Units in the Project and recorded in the Clark County, Nevada Recorder's Office within six (6) months prior to the commencement of an extension period, agreeing to change the terms of this Declaration, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified herein.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed  
as of the date set forth above.

**"DECLARANT"**

Rhodes Ranch Limited Partnership, a  
Nevada limited partnership

By: Rhodes Design and Development  
Corporation, a Nevada corporation

Its: General Partner

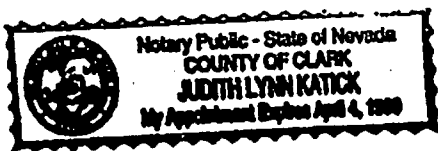
By: *James M. Rhodes*  
James M. Rhodes, President

STATE OF NEVADA

ss.

COUNTY OF CLARK

This instrument was acknowledged before me on NOV. 25, '98 by James M. Rhodes  
as President of the General Partner of Rhodes Ranch Limited Partnership, a Nevada  
limited partnership.



*Judith Lynn Katick*

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981214.01056

**EXHIBIT "A"**  
**THE PROPERTY**  
**LEGAL DESCRIPTION**

All that real property described as Phase 2, consisting of Phase 2 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada;

All that real property described as Phase 1, consisting of Building 16, Units 102, 104 through 111, 113, 201 through 214, and 302 through 313, inclusive, Garage Units 102G, 113G, 201G, 203G, 212G, 214G, A through F and H through K, inclusive, and Phase 1 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada; and

All that real property described as Phase 3, consisting of Building 18, Units 102, 104 through 111, 113, 201 through 214, and 302 through 313, inclusive, Garage Units 102G, 113G, 201G, 203G, 212G, 214G, A through F and H through K, inclusive, and Phase 3 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

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EXHIBIT "B"

ANNEXABLE PROPERTY

LEGAL DESCRIPTION

Phase 4:

All that real property described as Phase 4, consisting of Building 2, Units 103, 104, 106 through 113, 115, 116, 201 through 218, and 304 through 315, inclusive, Garage Units 103G, 104G, 115G, 116G, 201G, 202G, 203G, 205G, 214G, 216G, 217G, 218G, A through F, and H through K, inclusive, and Phase 4 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

Phase 5:

All that real property described as Phase 5, consisting of Building 1, Units 102, 103, 105 through 110, 112, 113, 201 through 214, and 307 through 312, inclusive, Garage Units 102G, 103G, 112G, 113G, 201G, 202G, 204G, 211G, 213G, 214G, A through F, and H through K, inclusive, and Phase 5 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

Phase 6:

All that real property described as Phase 6, consisting of Building 19, Units 102, 103, 105 through 110, 112, 113, 201 through 214, and 307 through 312, inclusive, Garage Units 102G, 103G, 112G, 113G, 201G, 202G, 204G, 211G, 213G, 214G, A through F, and H through K, inclusive, and Phase 6 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

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Phase 7:

All that real property described as Phase 7, consisting of Building 20, Units 102, 104 through 111, 113, 201 through 214, and 302 through 313, inclusive, Garage Units 102G, 113G, 201G, 203G, 212G, 214G, A through F and H through K, inclusive, and Phase 7 Common Element, as shown on the Final Map of Vistaña Condominiums- Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

Phases 8 - 20:

THAT PORTION OF THE SOUTHEAST QUARTER (SE¼) OF THE SOUTHEAST QUARTER (SE¼) OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER (SE¼) OF THE SOUTHEAST QUARTER (SE¼) OF SAID SECTION 5, SAID POINT BEING THE CENTERLINE INTERSECTION OF ARBY AVENUE AND DURANGO DRIVE; THENCE SOUTHERLY ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER (SE¼) AND THE CENTERLINE OF DURANGO DRIVE, SOUTH 01°02'50" EAST, 54.59 FEET; THENCE DEPARTING SAID LINES, SOUTH 88°57'10" WEST, 50.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF DURANGO DRIVE AND THE POINT OF BEGINNING.

THENCE FROM SAID POINT OF BEGINNING, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 01°02'50" EAST, 2.71 FEET; THENCE ALONG A TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 45.00 FEET AND A CENTRAL ANGLE OF 09°31'49", FOR AN ARC LENGTH OF 7.48 FEET; THENCE SOUTH 08°40'58" WEST, 62.49 FEET; THENCE ALONG A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 55.00 FEET AND A CENTRAL ANGLE OF 09°43'47", FOR AN ARC LENGTH OF 9.34 FEET; THENCE SOUTH 01°02'50" EAST, 91.92 FEET; THENCE SOUTH 06°33'24" EAST, 119.22 FEET; THENCE ALONG A NON-TANGENT CURVE, CONCAVE WESTERLY, HAVING A RADIAL BEARING AT THIS POINT OF NORTH 77°56'03" EAST, A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 11°01'07", FOR AN ARC LENGTH OF 5.77; THENCE SOUTH 01°02'50" EAST, 322.24 FEET; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE, SOUTH 89°06'00" WEST, 281.91 FEET; THENCE SOUTH 01°07'58" EAST, 337.65 FEET; THENCE SOUTH 89°01'02" WEST, 331.40 FEET; THENCE SOUTH 01°13'06" EAST, 278.13 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF WARM SPRINGS ROAD; THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, SOUTH 88°56'03" WEST, 330.99 FEET; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY LINE, NORTH 01°18'13" WEST, 617.22 FEET; THENCE SOUTH 89°06'00" WEST, 301.91 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF RILEY STREET; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, NORTH 01°23'19" WEST, 632.92



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FEET; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE, ALONG A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 15.00 FEET AND A CENTRAL ANGLE OF  $90^{\circ}39'11''$ , FOR AN ARC LENGTH OF 23.73 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF ARBY AVENUE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, NORTH  $89^{\circ}15'53''$  EAST, 1211.46 FEET; THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, ALONG A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF  $89^{\circ}41'18''$ , FOR AN ARC LENGTH OF 39.13 FEET TO THE POINT OF BEGINNING.

THE LAND DESCRIBED HEREIN IS SHOWN ON THE "EXHIBIT TO ACCOMPANY LEGAL DESCRIPTION" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS OF THIS DESCRIPTION IS THE NORTH LINE OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ ) OF THE SOUTHEAST QUARTER (SE $\frac{1}{4}$ ) OF SECTION 5, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA, AS SHOWN ON THE MAP IN BOOK 86 OF PLATS, PAGE 50, OFFICIAL RECORDS OF CLARK COUNTY, NEVADA, WHICH BEARS: NORTH  $89^{\circ}15'53''$  EAST.

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**EXHIBIT "C"**

**COMMON ELEMENTS**

**LEGAL DESCRIPTION**

All that real property described as Phase 2, consisting of Phase 2 Common Element, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada;

All that real property described as Phase 1 Common Element together with Garage Units 102G, 113G, 201G, 203G, 212G, 214G, A through F and H through K, inclusive, in Building 16, BUT EXCLUDING Units 102, 104 through 111, 113, 201 through 214, and 302 through 313, inclusive, in Building 16, as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada; and

All that real property described as Phase 3 Common Element together with Garage Units 102G, 113G, 201G, 203G, 212G, 214G, A through F and H through K, inclusive, in Building 18, BUT EXCLUDING Units 102, 104 through 111, 113, 201 through 214, and 302 through 313, inclusive, in Building 18, and as shown on the Final Map of Vistaña Condominiums - Unit 1 recorded on October 8, 1998, in Book 86, Page 50 of Plats, in the Office of the County Recorder of Clark County, Nevada, as amended by that Certificate of Amendment recorded November 18, 1998 in Book 981118 as Instrument 02152 in the Office of the County Recorder, Clark County, Nevada.

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EXHIBIT "D"

TABLE OF ALLOCATED INTERESTS

Unit Identification (Bldg/Unit)	Undivided Interest in Common Elements	Liability for Common Expenses	Vote in Affairs of Association
16/102	723/65102	723/65102	1
16/104	847/65102	847/65102	1
16/105	900/65102	900/65102	1
16/106	954/65102	954/65102	1
16/107	923/65102	923/65102	1
16/108	923/65102	923/65102	1
16/109	954/65102	954/65102	1
16/110	885/65102	885/65102	1
16/111	847/65102	847/65102	1
16/113	723/65102	723/65102	1
16/201	796/65102	796/65102	1
16/202	723/65102	723/65102	1
16/203	1263/65102	1263/65102	1
16/204	847/65102	847/65102	1
16/205	900/65102	900/65102	1
16/206	954/65102	954/65102	1
16/207	923/65102	923/65102	1
16/208	923/65102	923/65102	1
16/209	954/65102	954/65102	1
16/210	900/65102	900/65102	1
16/211	847/65102	847/65102	1
16/212	1263/65102	1263/65102	1
16/213	723/65102	723/65102	1

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Unit Identification (Bldg/Unit)	Undivided Interest in Common Elements	Liability for Common Expenses	Vote in Affairs of Association
16/214	796/65102	796/65102	1
16/302	723/65102	723/65102	1
16/303	1413/65102	1413/65102	1
16/304	847/65102	847/65102	1
16/305	670/65102	670/65102	1
16/306	954/65102	954/65102	1
16/307	923/65102	923/65102	1
16/308	923/65102	923/65102	1
16/309	954/65102	954/65102	1
16/310	670/65102	670/65102	1
16/311	847/65102	847/65102	1
16/312	1413/65102	1413/65102	1
16/313	723/65102	723/65102	1
18/102	723/65102	723/65102	1
18/104	847/65102	847/65102	1
18/105	885/65102	885/65102	1
18/106	954/65102	954/65102	1
18/107	923/65102	923/65102	1
18/108	923/65102	923/65102	1
18/109	954/65102	954/65102	1
18/110	900/65102	900/65102	1
18/111	847/65102	847/65102	1
18/113	723/65102	723/65102	1
18/201	796/65102	796/65102	1
18/202	723/65102	723/65102	1
18/203	1263/65102	1263/65102	1

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Unit Identification (Bldg/Unit)	Undivided Interest in Common Elements	Liability for Common Expenses	Vote in Affairs of Association
18/204	847/65102	847/65102	1
18/205	900/65102	900/65102	1
18/206	954/65102	954/65102	1
18/207	923/65102	923/65102	1
18/208	923/65102	923/65102	1
18/209	954/65102	954/65102	1
18/210	900/65102	900/65102	1
18/211	847/65102	847/65102	1
18/212	1263/65102	1263/65102	1
18/213	723/65102	723/65102	1
18/214	796/65102	796/65102	1
18/302	723/65102	723/65102	1
18/303	1413/65102	1413/65102	1
18/304	847/65102	847/65102	1
18/305	670/65102	670/65102	1
18/306	954/65102	954/65102	1
18/307	923/65102	923/65102	1
18/308	923/65102	923/65102	1
18/309	954/65102	954/65102	1
18/310	670/65102	670/65102	1
18/311	847/65102	847/65102	1
18/312	1413/65102	1413/65102	1
18/313	723/65102	723/65102	1

CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:

UNITED TITLE OF NEVADA

12-03-98 15:21 NEL

62

BOOK: 981203 INST: 01505

H: USERS\RRR\RHODES\VISTANA\CC&amp;R.4 11/23/98

FEE: 68.00 RPTT:

.00

D-3

**CLARIFICATION**

**CLARK COUNTY, NEVADA  
JUDITH A. VANDEVER, RECORDER  
RECORDED AT REQUEST OF:**

**RECORDER CLARK COUNTY**

**12-14-98 14:36 ISJ**

**64**

**OFFICIAL RECORDS**

**BOOK: 981214 INST: 01056**

**FEE: .00 RPTT: .00**

CLARIFICATION

901214-01056

RILEY STREET

N 0°25'18" W 1356.36'

676.18'

118

S 89°06'00" W 331.91'

NOT TO SCALE

N 01°18'13" W 817.22'

66.00'

WARM SPRINGS ROAD

ARBY AVENUE

(BASIS OF BEARINGS)

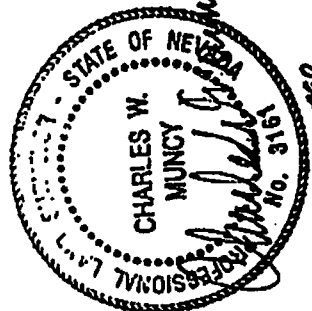
N 00°15'53" E 1331.08'

1211.46'

30.00'

# VISTAÑA CONDOMINIUMS

BEING A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 8, TOWNSHIP 22 SOUTH, RANGE 60 EAST, M.D.M., CLARK COUNTY, NEVADA.  
AREA = 25.75 ACRES



Nov. 13, 1998

POINT OF BEGINNING

POINT OF COMMENCEMENT

SEE DETAIL N.T.S.

## LEGEND

- (R) RADIAL BEARING
- LI COURSE NUMBER
- CI CURVE NUMBER
- PROPERTY LINE
- - - CENTER/SECTIONAL LINE

## NUMBERED COURSES

COURSE	DIRECTION	DISTANCE
L1	S 89°06'00" W	331.91'
L2	S 01°18'13" W	817.22'
L3	S 01°15'53" E	1331.08'
L4	S 00°15'53" E	1211.46'
L5	S 01°18'13" W	817.22'
L6	S 01°15'53" E	1331.08'
L7	S 01°18'13" W	817.22'
L8	S 01°15'53" E	1331.08'
L9	S 01°18'13" W	817.22'

## CURVE DATA

CURVE	RADIUS	LENGTH	TANGENT	DELTA
C1	33.00'	38.13'	24.85'	80°41'38"
C2	33.00'	37.77'	24.85'	77°51'00"
C3	33.00'	37.77'	24.85'	77°51'00"
C4	33.00'	37.77'	24.85'	77°51'00"

EXHIBIT TO ACCOMPANY

LEGAL DESCRIPTION

077-2

**HUNSAKER & ASSOCIATES**

PLANNING  
ENGINEERING  
SURVEYING



Las Vegas  
San Bernardino  
San Diego  
Tucson  
Phoenix  
Albuquerque  
Denver  
Dallas  
Houston  
Los Angeles  
Miami  
Minneapolis  
New York  
Portland  
Seattle  
Washington, D.C.

**AMENDED BYLAWS**

**OF**

**VISTANA CONDOMINIUM OWNERS  
ASSOCIATION**

**ORIGINALLY ADOPTED  
NOVEMBER 25, 1998**

**Revised August 23, 2001**



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# AMENDED BYLAWS OF VISTANA CONDOMINIUM OWNERS ASSOCIATION

THESE AMENDED AND RESTATED BYLAWS OF VISTANA CONDOMINIUM OWNERS ASSOCIATION are made by the Vistana Condominium Owners Association, a Nevada non-profit corporation (the "Association").

## RECITALS

WHEREAS the original Declaration of Covenants, Conditions and Restrictions for Vistana Condominiums was recorded in the office of the Clark County Recorder on December 1, 1999 in Book No. 12, 1201 as instrument No. 01505, thereby creating the common interest community known as Vistana;

WHEREAS the original Bylaws of Vistana Condominium Owners Association were originally adopted on November 1, 1999 and amended by the Association;

WHEREAS the 1999 Nevada Legislature adopted Senate Bill 576, which amended the Nevada Uniform Common Interest Ownership Act, NRS Chapter 116, effective January 1, 2000;

WHEREAS the Nevada State Board of Real Estate has adopted rules and regulations that amend the Nevada Uniform Common Interest Ownership Act, NRS Chapter 116, effective January 1, 2000; and WHEREAS the Association desires to comply with the Nevada Uniform Common Interest Ownership Act, NRS Chapter 116, and the rules and regulations of the Nevada State Board of Real Estate, it is hereby amended and restated as follows:

WHEREAS the Association desires to comply with the Nevada Uniform Common Interest Ownership Act, NRS Chapter 116, and the rules and regulations of the Nevada State Board of Real Estate, it is hereby amended and restated as follows:

## ARTICLE 1 NAME AND LOCATION

The name of the corporation is VISTANA CONDOMINIUM OWNERS ASSOCIATION, a Nevada non-profit corporation formed under NRS Chapter 82. The principal office of the corporation shall be located in the County of Clark, State of Nevada. The Association may have such other offices as the Board of Directors may determine or as the officers of the Association may require.

## ARTICLE 2 DEFINITIONS

The definitions in the Declaration of Covenants, Conditions and Restrictions for Vistana Condominiums, as amended, supplemented or restated from time to time and recorded in the office of the Recorder of Clark County, Nevada (collectively, the "Declaration"), will apply to these Bylaws, and all capitalized terms used in these Bylaws without definition will have the same meanings as the defined terms used in the Declaration, unless the context of these Bylaws clearly indicate otherwise. Unless otherwise provided, references to "Articles" or "Sections" mean Articles or Sections of these Bylaws.

### ARTICLE 3 MEMBERS

#### 3.1 Qualifications.

(a) Each Owner of a Unit (including Declarant if, and so long as, Declarant is the Owner of one or more Units), by virtue of being such an Owner and for so long as he or she is such an Owner, shall become a Member of the Association.

(b) No person shall exercise the rights or privileges of membership in the Association until satisfactory proof of ownership has been furnished to the Board of Directors. Proof of ownership of a Unit may consist of a copy of a duly executed and acknowledged grant, bargain, sale deed, or a title insurance policy showing that person to be the Owner of a Unit, or such documentary or other proof as the Board of Directors, in its discretion, shall deem to be satisfactory. The decision of the Board of Directors as to qualification for membership shall be final and conclusive for all purposes.

3.2 Voting. This Association shall have 1 class of voting membership as set forth in the Articles and in the Declaration.

### ARTICLE 4 MEETINGS OF MEMBERS

4.1 Annual Meetings. The first annual meeting of Members shall be held within 9 months after the close of escrow for the sale of the first Unit by Declarant, or within 45 days after close of escrow for the sale by Declarant of 51% of the Units, whichever shall first occur. Subsequent annual meetings of Members shall be held annually thereafter in the month of October on a date and time specified by the Board of Directors. Should any annual meeting day fall upon a legal holiday, then the annual meeting of Members shall be held at the same time and place on the next day thereafter ensuing which is not a legal holiday. The purpose of each Annual Meeting is the election of Directors, the approval of the budget for the next fiscal year, any other matter included within the notice for such annual meeting.

4.2 Special Meetings. Special meetings of Members for any purpose or purposes may be called by the President, a majority of the Board of Directors or upon receipt of a written request for a special meeting signed by Members representing at least 10% of the total voting power of the Association.

4.3 Notices. For each meeting of the Members, written notice of annual, regular and special meetings of the Association shall be given to the Members and, upon written request therefor, to all Eligible Mortgagees either personally or by sending a copy of the notice through the mail or by telecopy to the address of such Member or Eligible Mortgagee appearing on the books of the Association or supplied in writing by such Member or Eligible Mortgagee to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given if mailed to the address of the Unit owned by a Member and any Eligible Mortgagee. Except as otherwise provided below, notices shall be given not less than 10 days and not more than 60 days before each meeting. Such notices shall specify the place, the date, the hour of the meeting, the purpose or purposes for which the meeting is called, including an agenda for the meeting that complies with the Act, Notwithstanding the foregoing, notice of a meeting at which an assessment for a capital improvement or the commencement of a civil action requiring, under the Act, approval of the Members shall be given at least 21 days before the meeting.

4.4 Quorum. The presence in person or by proxy in accordance with the Documents of 10% of the voting power entitled to vote at any meeting shall constitute a quorum for the transaction of

business. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting power to leave less than a quorum. In the event any meeting of Members cannot be held because a quorum is not present, the Members present, either in person or by proxy in accordance with the Documents, may adjourn the meeting to a time not less than 5 days nor more than 30 days from the time of the original meeting date, at which meeting the quorum requirement shall be at least 5% of the voting power of the membership of the Association; provided, however, that the only matters which may be voted upon at any adjourned meeting actually attended, in person or by proxy in accordance with the Documents, by less than 10% of the voting power of the membership of the Association, are matters of which notice was duly given as required by the Act and these Bylaws.

**4.5 Adjourned Meetings and Notice Thereof.** Any membership meeting, annual or special, whether or not a quorum is present may be adjourned from time to time by the vote of a majority of the voting power present in person ~~or by proxy~~ in accordance with the Documents, but in the absence of a quorum no other business may be transacted at any such meeting.

Unless a meeting is adjourned for more than 30 days, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken of the time and place of the adjourned meeting. When any membership meeting, either annual, regular or special, is adjourned for more than 30 days, notice of the adjourned meeting shall be given as in the case of an original meeting. If a time and place for the adjourned meeting is not announced at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of, or new date for, the adjourned meeting shall be given to Members in the manner prescribed in Section 4.3 hereof.

**4.6 Record Date for Notice.** Only those Members and Eligible Mortgagees appearing in the official records of the Association on the date 45 days prior to the scheduled date of any meeting of the Members required or permitted to be held under these Bylaws or the Declaration, as record Owners or Eligible Mortgagees, respectively, shall be entitled to notice of any such meeting.

**4.7 Proxies.** Every Member entitled to attend, vote at or exercise consents with respect to any meeting of the Members may do so either in person, or by a representative, known as a proxy, duly authorized by an instrument in writing, filed with the Secretary of the Association prior to the meeting to which it is applicable, provided, however, that if the proxy is a Member, the proxy must be a Member in Good Standing. A Member may give a proxy only to a Member of his/her immediate family, his/her tenant who resides at the community or another Member who resides in the community. A proxy terminates immediately after the conclusion of the meeting for which it was executed. A vote may not be cast by proxy for the election of any Board Member. Any proxy may be revoked at any time by actual notice to the Board of Directors or by attendance in person by such Member at the meeting for which such proxy was given. A proxy is void if it is not dated; purports to be revocable without notice; it does not designate the votes that must be cast on behalf of the Member who executed the proxy; or the holder of the proxy does not disclose at the beginning of the meeting for which the proxy is executed the number of proxies pursuant to which he will be casting votes and the voting instructions received for each proxy. Such powers of designation and revocation may be exercised by the guardian of a Member's estate or by his or her conservator, or in the case of a minor having no guardian, by the parent entitled to his or her custody, or during the administration of a Member's estate, by his or her executor or administrator where the latter's interest in such property is subject to administration in his or her estate. Any form of proxy or written ballot shall afford an opportunity therein to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot or proxy is distributed, to be acted upon at the meeting for which the proxy or written ballot is solicited, and shall provide, subject to reasonable specified conditions,

that where the person solicited specifies a choice with respect to any such matter, the vote shall be cast in accordance with such specification.

**4.8 Members in Good Standing.** Notwithstanding any other provision contained in the Documents, only those Members in Good Standing shall be entitled to vote, whether in person, by proxy or ballot.

**4.9 Place of Meetings.** Meetings of the Members shall be held within Clark County, Nevada, as the meeting place reasonably convenient to the Owners.

**4.10 Membership Approval.** Except as otherwise provided in these Bylaws or the Declaration, if there are any provisions in these Bylaws or the Declaration calling for membership approval of action to be taken by the Association then such approval shall be by the prescribed percentages of the voting power of the membership.

**4.11 Eligible Mortgagee and Eligible Insurer Representation.** Each Eligible Mortgagee and Eligible Insurer shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board of Directors.

**4.12 Waiver of Notice.** The transactions of any meeting of Members, whether annual, regular or special, however called and noticed, shall be as valid as though transacted at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

**4.13 Method of Voting and Actions without Meeting.** The amending of governing documents or questions (including advisory questions) to be submitted to all or any part of the membership of the Association may be decided at a meeting (by voice or by ballot), by mail or at polling places designated by the Board of Directors. At least thirty (30) days before the ballot is prepared for the election of the Board, notice shall be given to all Members of their eligibility to serve as a Director. Any Member who is qualified and wants to serve on the Board shall have their name place on the ballot. Other than the election of a Director, votes may be cast in person, by secret ballot or by proxy for any other issue. Votes cast for election of a Member of the Board must be counted in public. The election of any Member of the Board must be conducted by secret written ballot. The association shall send a secret ballot and a return envelope to each Member. The Board of Directors shall determine the method of voting by resolution and give notice thereof as provided in Section 4.3 of these Bylaws. Without limiting the foregoing, except as limited by the laws of the State of Nevada (as now or hereafter in effect), any action which may be taken by the vote of Members at an annual, regular or special meeting, may be taken without a meeting.

**4.14 Vote Appurtenant to Unit.** The right to vote may not be severed or separated from the ownership of the Unit to which it is appurtenant, except that any Member may give a revocable proxy in the manner described above, or may assign his or her right to vote to a lessee or tenant actually occupying his Unit or Eligible Mortgagee of the Unit concerned, for the term of the lease or Security Interest, and any sale, transfer or conveyance of such Unit to a new Owner or Owners shall operate automatically to transfer the appurtenant vote to the new Owner, subject to any assignment of the right to vote to a lessee or Eligible Mortgagee as provided herein.

## ARTICLE 5

### BOARD OF DIRECTORS: SELECTION AND TERM OF OFFICE

**5.1 Number, Qualification and Initial Board .** The affairs of the Association will be managed by a Board of not less than 3 and no more than 5 Directors. Except as provided below

regarding Directors appointed by Declarant during the Declarant Control Period, each Director must be a Member. The number of Members of the Board of Directors will be three until such time as the number is increased as provided in Section 5.3(a) or the number of Directors is changed by amendment to these Bylaws. Each Director must be familiar with the Governing Documents and the provisions of the Act.

**5.2 Directors During Declarant Control .** During the Declarant Control Period the Board of Directors will be selected by Declarant and will serve at the sole discretion of Declarant, subject, however, to the provisions of Section 5.3 and NRS 116.31032 of the Act (providing for gradual transition of control of the Board as Units are sold). The Directors selected by Declarant need not be Members of the Association.

**5.3 Election of Directors as Unit Sales Close .** From time to time as sales of Units in the Project proceed, Declarant will yield control of one or more seats on the Board of Directors as necessary to comply with NRS 116.31032. Each time that Declarant is required to transfer control of a Director's position, a special meeting of the Members will be called for the purpose of electing a new Director to take the place of the Director designated by Declarant as resigning. Pursuant to the foregoing:

(a) **After Sales of 25% of Units.** Not later than 60 days after conveyance of 25% of the Units to Members other than Declarant, or whenever the Declarant earlier determines, the Board of Directors shall be increased to 5 Directors and Members other than Declarant shall elect 1 Director. The remaining 4 Directors shall be appointees of the Declarant. The new Director elected by the Members pursuant to this Section 5.3(a) shall not be subject to removal by the Declarant acting alone and shall be elected for a term of 2 years from the next occurring annual meeting. If the term of a Director elected pursuant to this provision expires prior to the expiration of the Declarant Control Period, a successor shall be elected by Members other than Declarant for a 2 year term.

(b) **After Sales of 50% of Units.** Not later than 60 days after conveyance of 33a% of the Units to Members other than Declarant, or whenever Declarant earlier determines, Members other than Declarant shall elect 1 new additional Director. The remaining Directors shall consist of (i) the 1 Director elected pursuant to Section 5.3(a), and (ii) the 3 Directors appointed by the Declarant. The 1 new Director elected by the Members pursuant to this Section 5.3(b) shall not be subject to removal by Declarant acting alone and shall be elected for a term of 2 years from the next occurring annual meeting. If the term of the Director elected pursuant to this provision expires prior to the expiration of the Declarant Control Period, a successor shall be elected by Members other than Declarant for a 2 year term.

(c) **Election of Directors after Declarant Control Period.** Within 60 days after termination of the Declarant Control Period, the Association shall call a special meeting at which the Members shall elect 3 additional Directors who shall take the positions of the Directors appointed by the Declarant. The 3 Directors elected by the Members pursuant to this Section 5.3(c) shall not be subject to removal by the Declarant acting alone and shall serve for initial terms to be established by the Board of Directors so as to provide for the future election of Directors at annual meetings on alternating years (that is, 2 Directors to be elected every 2 years with the remaining 3 Directors to be elected on alternating years).

**5.4 Term of Office of Directors After Declarant Control Period .** At the expiration of the initial terms of office of each Member of the Board of Directors provided in Section 5.3, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two years. The Directors elected by the Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms. A Director may be elected to succeed him/herself.

**5.5 No Cumulative Voting .** No Member shall have the right to cumulate his or her votes.



**5.6 Voting Procedures Generally.** At the election of Director by vote of the Members, the Members may cast as many votes as they are entitled to exercise under the provisions of Section 5.5 above.

**5.7 Nomination of Directors .** Ninety (90) days prior to the annual meeting, the Board of Directors shall send Director candidate applications to all Members. Any Member in Good Standing who completes the candidate application form and submits it to the designated return address within thirty (30) days after the notice has been sent, shall be placed on the written ballot which shall be mailed to all Members, listing all of the candidates. In addition, each Member shall receive a summary of each candidates qualifications as submitted on their candidate application form. Write-in votes shall be considered void. ~~Nominations will not be accepted from the floor.~~

**5.8 Compensation .** No Director will receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties as a Director.

~~5.9 Director Certification . Within thirty (30) days after the appointment or election of a Board member, such Board member shall, in their own signature, by the Association, in writing, affirm and state that they are a natural and legal resident of the governing jurisdiction, and shall retain the best of such person's ability.~~

## **ARTICLE 6**

### **BOARD OF DIRECTORS: REMOVAL AND VACANCIES**

**6.1 Removal of Directors .** Any Director other than one appointed by Declarant may be removed, with or without cause, at any regular or special meeting of the Members by 67% of the votes of the Members entitled to vote for election of that Director. A successor to any Director removed may be elected at such meeting to fill the vacancy created by removal of the Director. A Director whose removal is proposed by the Members will be given notice of the proposed removal at least 10 days prior to the date of such meeting and will be given an opportunity to be heard at such meeting. Any Director elected by the Members who has three consecutive unexcused absences from Board meetings or who is not a Member in Good Standing may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present.

#### **6.2 Vacancies .**

(a) **During Declarant Control Period.** During the Declarant Control Period, if a Director appointed by Declarant dies, becomes disabled or resigns, Declarant will appoint a new Director to serve the balance of the term of the resigning, disabled or deceased Director; and if a Director elected by the Members dies, becomes disabled or resigns, the remaining Directors will within 60 days of the vacancy appoint a new Director from among the Members other than Declarant to serve the remainder of the term of the resigning, disabled or deceased Director representing Members other than Declarant.

(b) **Following Period of Declarant's Control.** After the expiration or termination of the Declarant Control Period, any vacancy occurring on the Board will be filled within 60 days of the vacancy by the affirmative vote of a majority of the remaining Directors, though less than a quorum of the Board of Directors. The term of the Director so elected will be coincident with the term of the replaced Director. If the Board fails to appoint a new Director within 60 days of the vacancy, the President or acting President shall call for a special meeting of the Members for the purpose of electing a new Director to fill the vacancy.

## ARTICLE 7 MEETINGS OF DIRECTORS

### 7.1 Regular Meetings.

(a) An annual meeting of the Board of Directors shall be held immediately following the adjournment of the annual meeting of the Members. The purpose of each annual meeting of the Board is the organization, election of officers, the transaction of any other matter included within the notice for such annual meeting and any emergency matter as permitted under the Act. At each annual organizational meeting, the Board of Directors shall adopt a schedule of regular meetings, at such time and place as may be fixed from time to time by resolution of the Board of Directors, but such meetings will be held no less frequently than once every ninety (90) days.

(b) The purpose of each regular meeting of the Board is the transaction of any matter included in the notice of such meeting and any emergency matters permitted by the Act. The Board shall review the current reconciliation of the operating and reserve accounts, the actual income and expenses for the operating and reserve accounts and compare them to the current yearly budget, the latest account statements prepared by the financial institutions (bank accounts, etc.) on at least a quarterly basis, the current status of any civil action or claim submitted to arbitration or mediation in which the Association is involved, and any other matters permitted by the Act.

7.2 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President or, by a majority of the Board of Directors after not less than ten (10) days written notice to each Director. Such a special meeting may be called in the event of an emergency.

7.3 Notice. Notice of Board meetings shall be given at least ten (10) days in advance of the meeting except in the case of an emergency. The notice is to be sent by first class mail to each Member or be may published in the newsletter or other publication that is sent to each Member. The notice shall comply with the Act requirements and shall specify the place, date and time of the meeting, the agenda, and a copy of the agenda shall be provided to each Member. The notice shall also specify the right of each Member to request a copy of the minutes and special agenda. In an emergency, the notice can be hand-delivered to each unit within the community or be posted in prominent place or places within the community. The word, "emergency" means any occurrence or combination of occurrences that could not have been reasonably foreseen, or affects the health, welfare and safety of the Members of the association or requires the immediate attention of and possible action by the Board and or makes it impossible to comply with the standard ten (10) day notice requirement for a meeting. Emergency items can be discussed first on the Board's agenda.

7.4. Quorum. A majority of the authorized number of Directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present will be regarded as the act of the Board of Directors. Proxies are not valid at any Board meeting.

7.5 Adjournment. A quorum of the Directors may adjourn any Directors' meeting to meet again at a stated time and hour; provided, however, that in the absence of a quorum, a majority of Directors present at the Directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors.

7.6 Meeting Place. All regular and special meetings of the Board of Directors shall be held within Clark County, Nevada in a location established by the Board of Directors.

7.7 Waiver of Notice. Attendance of a Director or, if applicable, a Member at any meeting will constitute a waiver of notice of such meeting, except when a Director or, if applicable a Member, attends a meeting for the express purpose of objecting to the transaction of any business because the

meeting is not lawfully called or convened. Before, at, or after any meeting of the Board of Directors, any Director or, if applicable, any Member, may waive in writing notice of such meeting, and such waiver will be deemed equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the waiver of notice of such meeting.

**7.8 Action Without Meeting.** ~~To the fullest extent permitted by the Act,~~ the Directors will have the right to take any action which they could take at a meeting in the absence of a meeting by obtaining the written consent of a majority of the Directors. If the vote of a different proportion of the Directors is required for an action, then the different proportion of written consents is required. The written consent must be filed with the minutes of the proceedings of the Board of Directors. Any action so approved will have the same effect as though taken at a meeting of the Directors. This Section does not apply to any regular meeting of the Board of Directors required by the Act.

**7.9 Open Meetings; Executive Sessions.**

(a) Subject to the provisions of Section 7.7 above and Section 7.9(b) below, all meetings of the Board of Directors shall be open to all Members ~~and a person of the time and place of the meeting shall be open to all Members at the beginning of each Board meeting and the Board shall maintain a list of all Members at the time and place of the meeting.~~ If a Member raises an issue that is not on the agenda, no action can be taken on that issue unless it qualifies as an emergency. If the Board wishes to act on the issue, it must be placed on the agenda for the next scheduled Board meeting.

(b) Any meeting of the Board of Directors may be adjourned, and the Board of Directors may reconvene in executive session, ~~and to the fullest extent permitted by the Act, shall~~ Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, alleged violations of the Governing Documents, etc. The Board may meet in executive session to discuss the failure of a Member to pay his/her assessments. In addition, a Member may request in writing to have his hearing be held of an alleged violation at an open meeting. At that time, the Member may attend the hearing and testify concerning the alleged violation. The Board has the right to exclude the Member from any other portions of the executive session, including, without limitation the deliberations of the Executive Board. Any matters discussed in executive session shall be confidential and must be generally noted in the minutes of the meeting of the Board of Directors. No Director may verbally disclose any of the actions taken against any Member in executive session; provided, however, that each Member against whom action is taken by the Board of Directors in executive session must be given written notice of such action. In addition, the Board of Directors shall maintain minutes of any decision in executive session of violations of the Documents alleged to have been committed by a Member and, upon the request of the Member who was the subject of the decision, provide a copy of those minutes which specifically pertain to them and only them to such Member or to such Member's designated representative.

**7.10 Telephonic Meetings.** Unless otherwise restricted by the Documents or the Act, Directors or Members of any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or committee by means of a conference telephone network or a similar communications method by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 7.10 constitutes presence in person at such meeting. Each person participating in the meeting shall sign the minutes thereof. The minutes may be signed in counterparts.

## ARTICLE 8 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

**8.1 Powers.** The Board of Directors may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Act. The Board of Directors shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Association, which include but are not limited to the following powers and duties:

- (a) Adopt and amend the Rules;
- (b) Recommend amendments to these Bylaws and the Declaration for approval by the Members;
- (c) ~~Recommend~~ budgets for revenues, expenditures and reserves;
- (d) Collect assessments for Common Expenses from Owners;
- (e) Hire and discharge Managers;
- (f) Hire and discharge employees, independent contractors and agents;
- (g) Institute, defend or intervene in litigation or administrative proceedings in the Association's name, on behalf of the Association or two or more Owners on matters affecting the Property;
- (h) Make contracts and incur liabilities so long as all contracts be for a period of time not more than 1 year, or otherwise provide for the Association's right to terminate not less than every 30 days;
- (i) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (j) Cause additional improvements to be made as a part of the Common Elements;
- (k) Acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property, but Common Elements may be conveyed or subjected to a security interest only pursuant to NRS 116.3112;
- (l) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions through or over the Common Elements;
- (m) Impose and receive a payment, fee or charge for services provided to Owners and for the use, rental or operation of the Common Elements;
- (n) Impose a reasonable charge for late payment of assessments and, subject to Section 8.4, levy a reasonable fine for a violation of the Declaration, Bylaws and Rules of the Association;
- (o) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, resale certificates required by NRS 116.4109 and statements of unpaid assessments;
- (p) Provide for the indemnification of the Association's officers and Board of Directors and maintain Directors' and officers' liability insurance;
- (q) Assign the Association's right to future income, including the right to receive Common Expense assessments;
- (r) Exercise any other powers conferred by the Declaration or Bylaws;
- (s) Exercise any other power that may be exercised in the State of Nevada by legal entities of the same type as the Association;
- (t) Exercise any other power necessary and proper for the governance and operation of the Association;
- (u) Direct the removal of vehicles improperly parked within the Project, pursuant to NRS 487.038;

(v) Enter into subsidy agreements or other similar agreements with the Declarant whereby regular assessments otherwise payable by the Declarant on Units owned by the Declarant are suspended in exchange for the payment by the Declarant of shortfalls in the Association's operating expenses, the provision of maintenance of the Common Elements and/or the performance of other services which are Common Expenses of the Association;

(w) By resolution, establish committees of Directors, permanent and standing, to make recommendations to the Board of Directors in connection with any of the above functions; and

(x) By resolution, delegate the functions listed above in (d) to a Manager under specifically delegated administrative standards as designated in such resolution.

## 8.2 Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept ~~and maintained~~ a complete record of all its acts and corporate affairs, the records to include but not be limited to ~~signed copies of the Governing Documents~~ a membership register, books of account and minutes of meetings of the Members, and of the Board of Directors ~~and all other books and records of the Association, including but not limited to financial statements, budgets and reserve studies;~~

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Unit;

(2) send written notice of each assessment to every Owner subject thereto;

and

(3) foreclose the lien against a Unit for which assessments are not paid or bring an action at law against the Owner personally obligated to pay the same.

(d) furnish or cause an appropriate officer or officers to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance;

(e) procure and maintain the liability and other insurance required by the Declaration with respect to property owned by the Association or otherwise subject to the Declaration;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Elements to be maintained as provided in the Declaration;

~~The Board of Directors shall also have the duty to cause the Association to prepare and distribute to the Members a copy of the annual budget and financial statement of the Association for the year ending on the 31st day of December of each year. The budget and financial statement shall be prepared by the Board of Directors and shall be subject to the approval of the Members at the annual meeting of the Association. The Board of Directors shall also have the duty to cause the Association to prepare and distribute to the Members a copy of the annual report of the Association for the year ending on the 31st day of December of each year. The annual report shall be prepared by the Board of Directors and shall be subject to the approval of the Members at the annual meeting of the Association. The Board of Directors shall also have the duty to cause the Association to prepare and distribute to the Members a copy of the annual report of the Association for the year ending on the 31st day of December of each year. The annual report shall be prepared by the Board of Directors and shall be subject to the approval of the Members at the annual meeting of the Association.~~

~~The Board of Directors shall also have the duty to cause the Association to prepare and distribute to the Members a copy of the annual report of the Association for the year ending on the 31st day of December of each year. The annual report shall be prepared by the Board of Directors and shall be subject to the approval of the Members at the annual meeting of the Association. The Board of Directors shall also have the duty to cause the Association to prepare and distribute to the Members a copy of the annual report of the Association for the year ending on the 31st day of December of each year. The annual report shall be prepared by the Board of Directors and shall be subject to the approval of the Members at the annual meeting of the Association.~~

the major components of the Common Elements and the current amount of accumulated cash that are set aside for the repair, replacement and restoration of the major components of the Common Elements, in a statement as to whether the Board of Directors has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component of the Common Elements or to provide adequate reserves for that purpose, and by a general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to item (iv) of this Section 8.2(h)(2), including, without limitation, the qualifications of the person responsible for the preparation of the reserve study conducted pursuant to Section 8.2(h)(2)(i) and the [REDACTED]

(3) File projected monthly assessment for Common expenses for each Unit [REDACTED]

(4) Such other information as may be required by the [REDACTED]

(5) Establish and maintain a separate reserve account for the repair, replacement and restoration of the major components of the Common Elements based upon the [REDACTED] the quantity and replacement cost of the major components of the Common Elements in accordance with the provisions of the Declaration, these Bylaws, and the Act provided, however, that the reserves of the Association may not be used for the daily maintenance expenses of the [REDACTED]

(6) Cause to be conducted the [REDACTED] a study of the reserves required for the repair, replacement and restoration of the major components of the Common Elements. Such reserve study shall be prepared in compliance with the Act and shall be reviewed at least annually during the preparation of the Association budget to determine if the reserves are sufficient and, if not, an adjustment as may be necessary to maintain adequate reserves [REDACTED]

(7) Cause to be prepared a [REDACTED] the agenda for review at meetings of the Board of Directors and [REDACTED] by the [REDACTED]

(8) Cause more contribution to the operating account of the Association [REDACTED]

(9) Cause the designation of [REDACTED] the account of the Association [REDACTED]

(10) Cause the annual income and expenses of the Association to be compared to the budget for that year and the [REDACTED]

(11) Cause the latest account statements prepared by the financial institutions in which the accounts of the Association are maintained [REDACTED]

(12) Cause income and expense statements prepared on a [REDACTED] quarterly basis for the operation and reserve accounts of the Association [REDACTED]

(13) Cause the current status of any civil action or claim submitted to arbitration by the Association, in which the Association is a party, and [REDACTED]

(14) Such information as may be required under the Act [REDACTED]

(15) Within ninety (90) days after any meeting of the Members of the Board of Directors, cause to be prepared the minutes of such meeting and submit the same to the [REDACTED] any changes to the minutes. Eligible Mortgagee and Eligible Insurer, which the [REDACTED] may, however, that the Association may change or reasonably [REDACTED] change to [REDACTED] or [REDACTED] [REDACTED]

(16) Cause the Secretary or the Officer or the Manager of the Association to prepare a report of any change made to the Declaration, the Bylaws, the Rules, the Articles, the Bylaws, the Rules and all other books, records and financial statements of the Association. The right to inspect records does not include minutes from any executive sessions of the Board of Directors to the [REDACTED]

(n) Make available to any prospective purchaser of a Unit, any Owner of a Unit, any Eligible Mortgagee, and the Eligible Insurer, current copies of the Declaration, the Articles, these Bylaws, the Rules and all other books, records and financial statements of the Association. The right to inspect records does not include minutes from any executive sessions of the Board of Directors to the [REDACTED]



extent provided under the Act. "Available" as used in the paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances. Any reasonable costs incurred by the Association to retrieve records from storage, research any information, photocopy records or utilize staff time from the Manager shall be paid by the person requesting the records, information or copies.

### 8.3 Restrictions on Powers of Board of Directors.

(a) In addition to any restrictions contained in the Declaration, the Association shall be prohibited from taking any of the following actions without the vote or written assent of a Majority of the Members:

(1) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board of Directors may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(2) Filling a vacancy on the Board of Directors created by the removal of a Director.

(3) Incurring aggregate expenditures payable by the Association for capital improvements to the Common Elements in any fiscal year in excess of 10% of the budgeted gross expenses of the Association for that fiscal year.

(4) Selling any property of the Association.

(b) The Association shall be prohibited from taking any of the following actions without the vote or written assent of 2/3 of the total voting power of the Members of the Association:

~~Selling any real property owned by the Association.~~  
~~2. Hypothecating any or all of the real or personal property owned by the Association as security for money borrowed or debts incurred.~~

(c) If a civil action is commenced pursuant to the health, safety and welfare exception without the required vote or agreement, the action must be ratified within ninety (90) days after the commencement of the action by a vote or written agreement of the majority of Members. If the Board after making a good faith effort can not obtain the required vote or agreement to commence or ratify the civil action, the Board may thereafter seek to dismiss the action without prejudice for that reason only.

(1) At least ten (10) days before the Association commences or seeks to ratify the commencement of a civil action, the Board shall provide a written statement to all Members that includes a reasonable estimate of the costs of the civil action, including reasonable attorney's fees; an explanation of the potential benefits of the civil action and the potential adverse consequences if the Board does not commence the action or if the outcome of the action is not favorable to the association; and to provide all disclosures that are required to be made upon the sale of the property.

(2) No person other than a Member may request the dismissal of a civil action commenced by the association on the grounds that the association failed to comply with the vote requirement. This only applies to those civil actions which involve health, safety and welfare.

Notwithstanding the foregoing, for so long as there is any Unit for which this Association is obligated to provide management, maintenance, preservation or control, then, without the approval of 100% of the Members, this Association or any person acting on its behalf shall not transfer all or substantially all of its assets or file a certificate of dissolution.

8.4 Hearing Procedure. The Board of Directors shall not impose a fine, suspend voting, or infringe upon any other rights of a Member or other occupant for violations of the Documents unless and until the following procedure is followed:

(a) Rules. In the case of an alleged violation of the Rules, the Person alleged to have violated the Rules must have been given written notice of the applicable Rule at least 30 days prior to

the date of the alleged violation. Notice will be deemed to have been given 3 days after deposit of the Rules in the mail, postage prepaid, addressed to the Unit. The Owner of a Unit is responsible for providing notice of the Rules to that Owner's tenants, guests and contractors, and, for purposes of this Section, notice to an Owner shall be deemed to be notice to that Owner's tenants, guests or contractors.

(b) **Demand.** Written demand to cease and desist from an alleged violation must be served upon the alleged violator specifying:

- (1) the alleged violation;
- (2) the action required to abate the violation; and
- (3) the time period, not less than 10 days, during which the violation may be

abated without further sanction if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(c) **Notice.** At any time within 12 months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board of Directors or its authorized representative shall serve the violator with written notice of a hearing to be held by the Board of Directors or an authorized committee thereof in executive session. The notice shall contain:

- (1) the nature of the alleged violation;
- (2) the time and place of the hearing, which time shall not be less than 10 days from the giving of the notice;
- (3) an invitation to attend the hearing and produce any statement, evidence, and witness on behalf of the Member or other Person alleged to have violated the Documents; and
- (4) the proposed sanction to be imposed.

(d) **Hearing.** The hearing shall be held in executive session pursuant to this notice affording the Member or other alleged violator a reasonable opportunity to be heard; ~~provided, however, that such Member or other alleged violator shall have the right to demand that the hearing be conducted at an open meeting of the Board of Directors by written notice given prior to the date of the hearing.~~

Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard has been complied with shall be placed in the minutes of the meeting. Proof of notice shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

~~(e) Appeal. Any hearing or appeal by a committee of the Board of Directors of the Association shall have the right to appeal the decision to the Board of Directors at a meeting held within 30 days of the date of the hearing. The appeal shall be heard by the Board of Directors or a committee thereof. The appeal shall be heard by the Board of Directors or a committee thereof. The appeal shall be heard by the Board of Directors or a committee thereof.~~

**8.5 Certain Exemptions.** The procedures set forth in Section 8.4 will not be necessary in order to impose any sanction or penalty for nonpayment of a delinquent assessment.

**8.6 Fines.** The amount of any fine imposed for a violation of the Documents and the remedies for failure to pay such a fine shall be subject to any limitations imposed by the Act.

**8.7 General.** Committees to perform such tasks and to serve for such periods as may be designated by the Board of Directors are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**8.8 Reserves.** As a part of the adoption of the regular budget pursuant to Section 18.4 of the Declaration, the Board of Directors shall include an amount which, in its reasonable business



judgment. will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the Project's age, remaining life and the quantity and replacement cost of major Common Element improvements. Once every five (5) years a professional reserve study must be performed by a specialized company that provides this service.

## ARTICLE 9 OFFICERS AND THEIR DUTIES

**9.1 Enumeration of Offices.** The officers of the Association shall be a President and a Vice President who shall at all times be Directors, a Secretary, and a Treasurer and such other officers as the Board of Directors may from time to time by resolution create.

**9.2 Election of Officers.** The election of officers shall take place at the first organizational meeting of the Board of Directors and thereafter at the regular meeting of the Board of Directors which follows each annual meeting of the Members.

**9.3 Term.** The officers of the Association shall be elected annually by the Board of Directors and each shall hold office for 1 year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

**9.4 Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

**9.5 Removal and Resignation.** Any officer may be removed either with or without cause, by a majority of the Directors at the time in office, at any regular or special meeting of the Board of Directors.

Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**9.6 Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

**9.7 Multiple Offices.** The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 9.4 hereof.

**9.8 Duties.** The duties of the officers are as follows:

(a) **President.** The President shall be the chief executive officer of the Association, and, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of all of the Members and at all meetings of the Board of Directors. He shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Board of Directors or by these Bylaws. The President shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes of the Association (subject to Section 17.2 hereof). The President shall see that orders and resolutions of the Board of Directors are carried out.

(b) **Vice-President.** The Vice-President shall act in the place of the President in the event of his absence and shall exercise and discharge such other duties as may be required of him by the Board of Directors.

(c) **Secretary.** The Secretary shall be responsible for recording the votes and keeping the minutes of all meetings and proceedings of the Board of Directors and of the Members; keeping the corporate seal of the Association and affixing it on all papers requiring the seal; serving notice of meetings of the Board of Directors and of the Members; keeping appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as may be required by the Board of Directors.

(d) **Treasurer.** The Treasurer shall be the chief financial officer of the Association and shall be responsible for the following duties: receiving and depositing in appropriate bank accounts all monies of the Association and disbursing such funds as directed by resolution of the Board of Directors; signing all checks and promissory notes of the Association (subject to Section 17.2 hereof); keeping proper books of account; causing an annual financial review of the Association books to be made by a certified public accountant at the completion of each fiscal year; and preparing the annual budget and a statement of income and expenditures required by these Bylaws.

## ARTICLE 10 BOOKS AND RECORDS

**10.1 Inspection.** ~~Current copies of the Constitution, the Articles, the Bylaws, the rules, and all other books and records of the Association, including but not limited to~~ the membership register, books of account, to include the financial statements, budgets, the reserve studies, and minutes of meetings of the Members, the Board of Directors and of committees of the Board of Directors, shall be kept at the office of the Association, the office of the Manager, or at such other place within the Property as the Board of Directors shall prescribe and shall be made available for inspection and copying by any Member of the Association, or by his duly-appointed representative and by all Eligible Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or as a Eligible Mortgagee, whatever the case may be. The Board of Directors shall establish reasonable rules with respect to:

(a) notice to be given to the custodian of the records by the Member desiring to make the inspection;

(b) hours and days of the week during regular working hours of the Association when such an inspection may be made;

(c) payment of the cost of reproducing copies of documents requested by a Member;

(d) the Board is not required to produce the personnel records of Association employees or records relating to another Member; and

(e) if the Board refuses to allow a Member to review the records, the Ombudsman may review the records on behalf of the Member upon written request. The Board shall provide a copy of any records according to these sections of the law to a Member or the Ombudsman within fourteen (14) days after receiving a written request for them. The Board may charge a fee not to exceed twenty-five (25) cents per page. If the Board refuses to allow the Ombudsman access, the Ombudsman may request the issuance of a subpoena.

**10.2 Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director shall include the right, at his expense, to make extracts and copies of documents.

Declaration and subject to the Rules adopted by the Board of Directors, each Member, his immediate family, guests and tenants shall have the right to use and enjoy the Common Elements.

**13.2 Suspension of Member Rights.** The membership rights and privileges, together with the voting rights of any Member may be suspended by the Board of Directors, in accordance with the procedures described in Section 8.4 hereof:

(a) **Infractions.** For a period not to exceed thirty (30) days for any infraction of the provisions of the Declaration or the Rules.

(b) **Failure to Pay Assessments.** For any period of time during which the assessment on that Member's Unit remains unpaid, provided that neither the membership rights and privileges nor the voting rights of the Declarant may be suspended during the period in which the Declarant is not paying assessments, but is exercising its rights under the Declaration to control the Association or to improve, maintain, operate and repair the Common Elements.

(c) **Limitation.** Notwithstanding the foregoing, no such suspension shall affect the rights of that Member to access to his or her Unit.

**13.3 Penalties.** Reasonable monetary penalties may be adopted by the Association provided the adoption of such penalties is approved by the Board of Directors subject to any applicable limitations contained in ~~the Rules~~.

## **ARTICLE 14 RESIDENT AGENT**

The Association shall have a Resident Agent, who shall be chosen by the Board of Directors to hold office until his or her successor is chosen and qualifies. The resident agent may be either an individual or a corporation, located in the State of Nevada, in charge of the Association's principal office. The resident agent shall, within ten (10) days after acceptance of an appointment as such file a certificate thereof in the office of the Secretary of State.

James M. Rhodes, having an office address of 4630 S. Arville, Suite B, Las Vegas, Nevada 89103, is hereby appointed the initial Resident Agent for the Association.

## **ARTICLE 15 INDEMNIFICATION**

To the extent permitted by law and consistent with the Articles, the Association will indemnify every Member of the Board of Directors, and every officer, committee member, employee and agent of the Association and every person who serves at the request of the Association as a director, officer, committee member, employee, fiduciary or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust or other enterprise or employee benefit plan against liability asserted against or incurred by such person in such capacity or arising out of that person's capacity as such. The indemnification permitted under this Article will not extend, however, to any act or omission occurring prior to the date of incorporation of the Association.

In the event of a settlement, indemnification will be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified has not been guilty of such actions or omissions in the performance of such person's duties for the Association. The foregoing rights will not be exclusive of other rights to which such member of the Board of Directors or officer or other person may be entitled. All liability, loss, damage, cost and expense arising out of or in connection with the foregoing indemnification provisions will be treated and handled by the Association as a Common Expense.

## ARTICLE 16 NONPROFIT CORPORATION

The Association is not organized for profit. Subject to the provisions of the Documents permitting business dealings between the Declarant and the Association, no Member of the Association, Member of the Board of Directors, or Person from whom the Association may receive any property or funds will receive or will be lawfully entitled to receive any pecuniary profit from the operations of the Association, and in no event will any part of the funds or assets of the Association be paid as a dividend or be distributed to, or inure to the benefit of, any Member of the Board of Directors.

Notwithstanding the foregoing, (i) reasonable compensation may be paid to any Member or Director acting as an agent or employee of the Association for services rendered in effecting one or more of the purposes of the Association, (ii) any Member or Director may, from time to time, be reimbursed for his or her actual and reasonable expenses incurred in connection with the administration of the affairs of the Association, and any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

## ARTICLE 17 MISCELLANEOUS

**17.1 Fiscal Year.** The fiscal year of the Association will begin on the first day of January and end on the 31st day of December every year, except that the first fiscal year will begin on the date of incorporation.

**17.2. Checks, Draft, etc.**

All checks, drafts, promissory orders, for payment of money, and other evidence of indebtedness issued in the name of or payable to the Association shall require the signature of one of the following: the President, Vice President, Treasurer, and the Secretary. The Secretary, Treasurer, and the Board of Directors shall require the signature of one (1) member of the Board of Directors of the Association, or one (1) member of the Board of Directors, and one (1) officer of the Association.

**17.3 Amendments to Declaration, Contracts, Etc., How Executed.** Amendments to the Declaration must be prepared, executed, certified and recorded on behalf of the Association by the President of the Association or any other officer of the Association designated for such purpose by the Board. Furthermore, the Board by majority vote may, except as otherwise provided in these Bylaws, authorize any officer or officers or agent or agents to enter into any contract or execute any other instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; provided, however, that unless so authorized by the Board, no officer, agent or employee shall have the authority to pledge the Association's credit or to render the Association liable for any purpose or to any amount.

**17.4 Construction.** Unless the context otherwise requires, the masculine gender includes the feminine and neuter, the singular number includes the plural and the plural includes the singular. The captions herein are for purposes of reference only.

**17.5 Conflicts of Documents.** In the case of any conflict between the Articles and these Bylaws, the Articles will control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration will control. The general provisions of the Declaration regarding the interpretation of that document shall, to the extent not inconsistent with these Bylaws, govern the interpretation of these Bylaws. Without limiting the foregoing, these Bylaws are intended to comply with the provisions of the Act and NRS Chapter 82, and to the extent any provision of this instrument does not so comply, such provision shall be ineffective, without however, affecting the remaining provisions of these Bylaws. References to particular provisions of the Act or NRS Chapter 82 refer to

such sections as now or hereafter in effect. The provisions of the Act and NRS Chapter 82 shall be construed, as far as possible as being consistent with each other; if there is a conflict, however, between any provision of the Act applicable to the Association or the Governing Documents and a provision of NRS Chapter 82, the Act shall be deemed to prevail.

**17.6 Procedural Rules.** The procedural rules applicable to meetings of the Members or the Board of Directors shall be *Robert's Rules of Order*.

**17.7 Notices to Declarant.** For ten (10) years from the recordation of the deed transferring title of the last Unit owned by Declarant in the Project, a copy of all written notices required to be given to any Member or Director, including but not limited to notices of all annual, regular and special meetings of the membership or Board of Directors, shall be given to Declarant either personally or by sending a copy of the notice through the mail or by telecopy to the address of Declarant appearing on the books of the Association or supplied in writing by Declarant to the Association for the purpose of notice. Such notice shall be given in the same manner and be of the same content as required to be given to Members in accordance with the requirements contained in the Documents and as required by the Act. Any representative of Declarant may attend any meeting at which a Member may attend. Any amendment of this Section 17.7 shall require the prior written consent of Declarant.

### CERTIFICATION

I, the undersigned, do hereby certify:

1. THAT I am the duly elected and acting President of Vistana Condominium Owners Association, a Nevada nonprofit mutual benefit corporation; and
2. THAT the foregoing Bylaws, comprising 23 pages, constitutes a change to the original Bylaws of said corporation duly adopted by written consent of the Board of Directors.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said Corporation this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

WHEN RECORDED MAIL TO:

VISTANA H.O.A.  
c/o H&L REALTY & MANAGEMENT  
P.O. BOX 7440  
LAS VEGAS, NV 89125

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

NOV 10 1998

No.

DEAN MELLER, SECRETARY OF STATE

ARTICLES OF INCORPORATION  
OF

VISTAÑA CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I  
NAME

The name of this nonprofit corporation (hereinafter called the "Association") is VISTAÑA CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE II  
ORGANIZATIONAL AUTHORITY

This Association is organized pursuant to NRS Chapter 82 of the State of Nevada as a nonprofit corporation and pursuant to NRS Chapter 116, the Nevada Uniform Common Interest Ownership Act (as now or hereafter in effect, the "Act"), as an association.

ARTICLE III  
RESIDENT AGENT

The initial Resident Agent of the Association is James M. Rhodes, whose address is 4630 S. Arville, Suite B, Las Vegas, Nevada 89103.

ARTICLE IV  
PURPOSES

The purpose for which this Association is formed is to provide for the management, administration, maintenance, preservation, and architectural control of Vistaña Condominiums, a "common interest community" (as defined in the Act) located in the County of Clark, State of Nevada that is or will be subject to that certain Declaration of Covenants, Conditions and Restrictions for Vistaña Condominiums recorded in the Official Records of the Clark County, Nevada Recorder (now or hereafter in effect, the "Declaration"). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Declaration.

The Association shall have the powers, rights and privileges which a corporation organized under NRS Chapter 82 of the State of Nevada may now or hereafter exercise by law, and the specific powers enumerated in NRS 116.3102, in addition to any other power necessary and proper for the governance and operation of the Association.

ARTICLE V  
MEMBERSHIP

Every person or entity who is a record owner of a fee or undivided fee interest in any Unit which is subject by covenants of record to assessment by the Association, including contract buyers, shall be a Member of the Association. The foregoing is not intended to include persons

or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit.

#### ARTICLE VI VOTING RIGHTS

The Association shall have 1 class of voting membership. Each Member will be entitled to cast 1 vote for each Unit owned by the Member. When more than one person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. No Member shall be permitted to cumulate votes.

The Board of Directors shall have the power to establish qualifications, limitations or restrictions on the voting rights of the Members pursuant to resolution. Without limiting the foregoing the bylaws may provide that membership rights and privileges, including the voting rights of any Member, may be suspended by the Board of Directors for any period of time during which a Member's assessments are unpaid and/or for a period of not more than 60 days during which a Member in violation of the Declaration, the Bylaws or the Rules. Neither the Membership rights and privileges of the Declarant (as defined in the Declaration), nor the voting rights and privileges of the Declarant, however, may be suspended during a period in which the Declarant is not paying some or all of its assessments because of an agreement with the Association pursuant to which the Declarant maintains some or all of the Association's common elements or pays some or all of the Association's expenses in lieu of the payment of assessments.

Notwithstanding anything to the contrary contained herein, during the Declarant Control Period (as defined in the Declaration) the Declarant shall have the right to appoint and remove the officers of the Association and the members of the Board of Directors, as permitted by the Act and as further set forth in the Declaration.

#### ARTICLE VII BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of Directors, which shall consist of not less than 3 nor more than 7 persons, as required by the bylaws. With the exception of Directors appointed by the Declarant during the Declarant Control Period, each Director shall be a Member.

The initial Board of Directors shall be 3, and the names and residences of those selected for the first year or until their successors have been elected and accepted office as members of the Board of Directors of the Association and their addresses are:

James M. Rhodes  
4630 S. Arville, Suite B  
Las Vegas, Nevada 89103

Robert M. Beville  
4630 S. Arville, Suite B  
Las Vegas, Nevada 89103

Robert W. Sweeny  
4630 S. Arville, Suite B  
Las Vegas, Nevada 89103

ARTICLE VIII  
DISSOLUTION OR TRANSFER OF ASSETS

So long as there is any Unit for which the Association is obligated to provide management, maintenance, preservation or control, then, without the approval of 100% of the Members, the Association or any person acting on its behalf shall not transfer all or substantially all of its assets or file a certificate of dissolution.

Upon dissolution of the Association, other than incident to a merger or consolidation, the net assets of the Association shall be distributed in accordance with the Declaration and the Act.

ARTICLE IX  
AMENDMENTS

Amendments to these Articles of Incorporation shall require the consent (by vote or written consent) of Members representing 67% or more of the voting power of the Members.

Notwithstanding the above or any other section of these Articles of Incorporation, the percentage of the voting power of the Association necessary to amend a specific clause or provision herein shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

Annexation of real property in addition to the Annexable Property, mergers and consolidations, mortgaging of Common Elements, dissolution and amendment of the Articles, requires prior written approval of the VA and HUD during the Declarant Control Period to the extent necessary to meet any VA or HUD requirements applicable to the Project.

ARTICLE X  
DIRECTORS AND OFFICERS LIABILITY  
AND  
INDEMNIFICATION

No Director or officer shall have personal liability to the Association or its Members for damages for breach of fiduciary duty as a Director or officer, except for acts or omissions which involve intentional misconduct, fraud or a knowing violation of law. Any repeal or modification of this Article shall be prospective only and shall not affect the limitation of liability provided for acts or omissions prior to repeal or modification.



Each Director and officer of the Association shall be entitled to indemnification for losses or claims arising from service as a Director or officer, and the Association shall undertake all costs of defense of any action to the full extent permitted by law and unless it is proven that the Director's or officer's conduct involved willful or wanton misfeasance or gross negligence.

ARTICLE XI  
DEFINITIONS

All terms used herein that are defined in the Declaration shall have the same meanings in these Articles of Incorporation as set out in the definitions of the Declaration.

ARTICLE XII  
INCORPORATOR

The name and address of the Incorporator of the Association is as follows:

Renee R. Reuther, Esq.  
Jones Vargas  
3773 Howard Hughes Parkway  
Third Floor South  
Las Vegas, Nevada 89109

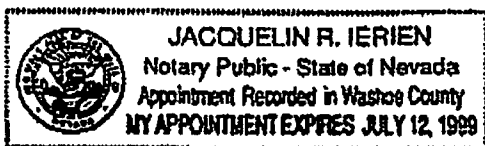
IN WITNESS WHEREOF, for the purpose of forming the Association under the laws of the State of Nevada, the undersigned consents to the incorporation of the Association and has executed the Articles of Incorporation as of the 10th day of November, 1998.

  
Renee R. Reuther, Esq.

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on November 10, 1998, by Renee R. Reuther.



  
Notary Public

My commission expires: July 12, 1999

# COMMON INTEREST COMMUNITIES

## VISTANA CONDOMINIUM OWNERS



RENEWAL DT
11/30/2004

# OF UNITS
645

CLARK

26334-1998