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RECORDING REQUEST BY AND
WHEN RECORDED MAIL TO:

c/o Fifield Realty Corp.
550 West Adams Street, Suite 200
Chicago, Illinois 60661
Attn: Alan Schachtman

Debbie Conway
Clark County Recorder

**DECLARATION OF CONDOMINIUM
FOR
ALLURE CONDOMINIUMS**

SP SAHARA DEVELOPMENT, LLC, a Delaware limited liability company, hereby declares:

1. Introduction and Submission.
 - 1.1 The Land. The Developer owns the fee title to certain land located in the City of Las Vegas, Clark County, Nevada, as more particularly described on the plat map (as same may be amended from time to time, the "Condominium Plat"), recorded in Book 138 at Page 0016 of Plats, Official Records of Clark County, Nevada (the "Land"). The Land and Condominium Plat are more particularly described on **Exhibit "1"** attached to this Declaration.
 - 1.2 Submission Statement. Except as set forth in this Section 1.2, the Developer hereby submits the Land and all improvements erected or to be erected thereon, and all other property, real, personal or mixed, now or hereafter situated on or within the Land - but excluding all public or private (e.g. cable television, satellite, fiber optic and/or other receiving or transmitting lines, antennae or equipment) utility installations therein or thereon and all leased property therein or thereon - to the condominium form of ownership and use in the manner provided for in the Nevada Uniform Common-Interest Ownership Act as it exists on the date hereof and as it may be hereafter renumbered or amended. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Nevada Uniform Common-Interest Ownership Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.
 - 1.3 Name. The name by which this condominium is to be identified is **ALLURE CONDOMINIUMS** (hereinafter called the "Condominium").
2. Definitions. The following terms when used in this Declaration and in its exhibits, and as it and they may hereafter be amended, shall have the respective meanings ascribed to them in this Section, except where, if anywhere, the context clearly indicates a different meaning:

- 2.1 "Act" means the Uniform Common-Interest Ownership Act (Chapter 116 of the Nevada Revised Statutes) as it exists on the date hereof and as it may be hereafter renumbered or amended.
- 2.2 "Allocated Interest" shall have the meaning ascribed to it in Section 3.1 below and further delineated in Section 5 below.
- 2.3 "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as amended from time to time.
- 2.4 "Assessment" means a share or portion of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owner and any and all other charges made by the Association against a Unit Owner as provided herein.
- 2.5 "Association" or "Condominium Association" means **ALLURE HOMEOWNERS' ASSOCIATION, INC., a Nevada nonprofit corporation**, the sole entity responsible for the operation of the Condominium.
- 2.6 "Association Property" means that property, real (if any) and personal, which is owned or leased by, or is dedicated by a recorded plat to, the Association for the use and benefit of its members and which is not a part of the Common Elements.
- 2.7 "Board" or "Board of Directors" means the board of directors, from time to time, of the Association.
- 2.8 "Building" means the structure(s) in which the Units and the Common Elements are located, regardless of the number of such structures, which are located on the Condominium Property.
- 2.9 "By-Laws" mean the By-Laws of the Association, as amended from time to time.
- 2.10 "Cabana" means each of the cabanas identified as such on the Condominium Plat, which are assigned by Developer as Limited Common Elements, and more particularly described in Section 3.3 below. Cabanas specifically exclude any Common Cabana.
- 2.11 "City" means the City of Las Vegas, Clark County, State of Nevada.
- 2.12 "Commercial Units" or individually a "Commercial Unit" shall mean those Unit(s) located on the first floor of the Building and identified as such on the Condominium Plat, which shall be owned by Declarant, or its successors or assigns, and are intended for commercial uses in compliance with applicable law, including County and City zoning codes and land use ordinances, together with any Limited Common Element reserved for the exclusive use of the Commercial Unit. This Declaration only applies in a limited manner to Commercial Units, as more fully provided in Section 24 of this Declaration. In no circumstance, except as specifically provided herein, are the Commercial Units deemed part of the Units or subject to any provision of the Act.
- 2.13 "Commercial Occupant" shall mean any person who is physically occupying a Commercial Unit as a matter of right, under agreement, license, lease or otherwise, for so long as such person is so occupying the Commercial Unit, and the term "Commercial Occupant" shall include, but is not limited to, as the context requires, a Commercial Owner and any tenant or licensee of a Commercial Owner. For purposes of any use restrictions contained in this Declaration applicable to Commercial Units, any restrictions on a "Commercial Owner" shall also include any "Commercial Occupant."

- 2.14 "Commercial Owner" shall mean individually or collectively, as the context requires, the record owner, whether one or more persons or entities, including Developer, of a Commercial Unit, but specifically excludes a person having merely an interest under a Mortgage (as hereinafter defined) with respect to the Commercial Unit, or as a secured party with respect to a pledge of any fixtures or personal property, or any party other than those described, holding an interest merely as security for repayment of a debt.
- 2.15 "Committee" means a group of Board Members, Unit Owners or Board Members and Unit Owners appointed by the Board or a member of the Board to make recommendations to the Board regarding the matters to which it is assigned by the Board.
- 2.16 "Common Cabana" mean each of the cabanas shown as such on the Condominium Plat and which have not been assigned by Developer as a Limited Common Element pursuant to Section 3.3 of this Declaration. Each Common Cabana is a Common Element and will be operated, leased, maintained and otherwise under the control of the Association. If Developer assigns all of such cabanas as Limited Common Elements, then there shall be no Common Cabanas and all references to Common Cabanas in this Declaration and any other document governing the Condominium shall be deemed deleted.
- 2.17 "Common Elements" mean and include:
- (a) The portions of the Condominium Property which are not included within either the Units and/or the Association Property.
 - (b) All structural columns and bearing walls regardless of where located.
 - (c) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units, the Common Elements and/or the Association Property.
 - (d) An easement of support in every portion of a Unit which contributes to the support of the Building.
 - (e) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements and/or to the Association Property.
 - (f) Any and all portions of the Life Safety Systems (as defined below), regardless of where located within the Condominium Property.
 - (g) Each Common Cabana.
 - (h) Any other parts of the Condominium Property designated as Common Elements in this Declaration.
- 2.18 "Common Expenses" mean all expenses incurred by the Association for the operation, maintenance, management, repair, replacement or protection of the Common Elements and Association Property, the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a "Common Expense" by the Act, the Declaration, the Articles or the Bylaws. For all purposes of this Declaration, "Common Expenses" shall also include, without limitation: (b) all reserves required by the Act or otherwise established by the Association, regardless of when reserve funds are expended; (c) the cost of all insurance that must be maintained by the Association; (d) to the extent owned and/or operated by the Association, the cost of a master antenna television system, fiber optic network, satellite

television or duly franchised cable television service obtained pursuant to a bulk contract, if any; (e) to the extent owned and/or operated by the Association, the cost of any bulk contract for broadband, fiber optic, telecommunications, satellite and/or interest services, if any; (f) to the extent owned and/or operated by the Association, any and all costs, charges and other expenses relating to the provision of electronic gateway services to the Condominium, (g) if applicable, costs relating to reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, management, administrative, professional and consulting fees and expenses, and in-house and/or interactive communications and surveillance systems; (h) the real property taxes, Assessments and other maintenance expenses attributable to any Units acquired by the Association or any Association Property; (i) any unpaid share of Common Expenses or Assessments extinguished by foreclosure of a superior lien or by deed in lieu of foreclosure; (j) the cost of providing utility services to the individual Units (which charges shall be separately billed to each Unit Owner based on actual consumption, rather than in proportion to each Unit Owner's Allocated Interest, as provided herein); (k) any lease or maintenance agreement payments required under leases or maintenance agreements for mechanical or other equipment, including without limitation, leases for trash compacting and/or recycling equipment, if same is leased by the Association rather than being owned by it; (l) all expenses related to the installation, repair, maintenance, operation, alteration and/or replacement of Life Safety Systems, including any applicable reserves related to the Life Safety Systems; (m) costs of water and sewer, electricity, gas and other utilities which are not consumed by and metered to individual Units; (n) costs resulting from damage to the Condominium Property which are necessary to satisfy any deductible and/or to effect necessary repairs which are in excess of insurance proceeds received as a result of such damage; and (o) any and all costs and expenses imposed upon the Condominium Property pursuant to the ECR and/or costs, liabilities and expenses incurred by the Association in performing under, and complying with, the terms and conditions of the ECR. Common Expenses shall not include any purely or totally separate obligations of individual Unit Owners.

- 2.19 "Common Surplus" means the excess of all receipts of the Association collected on behalf of the Association, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements, over the amount of Common Expenses.
- 2.20 "Condominium" has the meaning given to it in Section 1.3 above.
- 2.21 "Condominium Parcel" means a Unit together with the Limited Common Elements appurtenant to it and the undivided share in the Common Elements which is appurtenant to the Unit; and when the context permits, the term includes all other appurtenances to the Unit.
- 2.22 "Condominium Plat" shall have the meaning ascribed to it in Section 1.1 above.
- 2.23 "Condominium Property" means the Land, Improvements and other property described in Section 1.2 hereof, subject to the limitations thereof and exclusions therefrom.
- 2.24 "County" means the County of Clark, State of Nevada.
- 2.25 "Declaration" or "Declaration of Condominium" means this instrument and all exhibits attached hereto, as same may be amended from time to time.
- 2.26 "Developer" means **SP SAHARA DEVELOPMENT, LLC, a Delaware limited liability company**, its successors, nominees, affiliates and such of its assigns as to which the rights of Developer hereunder are specifically assigned, if any. Developer may assign all or a portion of its rights hereunder, or all or a portion of such rights in connection with

specific portions of the Condominium. In the event of any partial assignment, the assignee shall not be deemed the Developer, but may exercise such rights of Developer as are specifically assigned to it. Any such assignment may be made on a nonexclusive basis. Notwithstanding any assignment of the Developer's rights hereunder (whether partially or in full), the assignee shall not be deemed to have assumed any of the obligations of the Developer unless, and only to the extent that, it expressly agrees to do so in writing. The rights of Developer under this Declaration are independent of the Developer's rights to control the Board of Directors of the Association, and, accordingly, shall not be deemed waived, transferred, modified, amended or assigned to the Unit Owners, the Board or the Association upon the transfer of control of the Association to Unit Owners other than the Developer. Notwithstanding anything herein contained to the contrary, in any instance where the Developer's consent is required, the Developer may grant or withhold its consent, or if granting (condition such consent), in its sole and absolute discretion.

- 2.27 "Developmental Rights" means those rights reserved by the Developer hereunder and designated as Developmental Rights under the Act, including, but not limited to, Developer's rights to: (a) add real estate to the Condominium; (b) create Units, Common Elements or Limited Common Elements within the Condominium; (c) subdivide Units or convert Units into Common Elements; and (d) withdraw real estate from the Condominium. The Developmental Rights are hereby reserved for a period of ninety nine (99) years following the date of recording of this Declaration.
- 2.28 "Dispute" means, for purposes of subsection 18.1, any disagreement between two or more parties that involves: (a) the authority of the Board, under law or under this Declaration, the Articles or By-Laws to: (i) require any Owner to take any action, or not to take any action, involving that Owners' Unit or the appurtenances thereto; or (ii) alter or add to a Common Element or Limited Common Element; or (b) the failure of the Association, when required by law by or this Declaration, the Articles or By-Laws to: (i) properly conduct elections; (ii) give adequate notices of meetings or other actions; (iii) properly conduct meetings; (iv) allow inspection of books and records. "Dispute" shall not include any disagreement that primarily involves title to any Unit, Common Element or Limited Common Element; the interpretation or enforcement of any warranties; or the levy of a fee or an Assessment or the collection of an Assessment levied against a party.
- 2.29 "ECR" means that certain Easement Agreement and Covenants, Conditions and Restrictions recorded February 12, 2007, with the County Recorder's Office in Book 20070212 as Instrument 0003348, as amended or supplemented from time to time, which generally provides reciprocal access to and from the Condominium, real property generally located West of the Condominium, Sahara Avenue and Cincinnati Avenue and certain other rights and obligations more particularly set forth therein. The ECR is both a burden and benefit to the Condominium.
- 2.30 "Improvements" mean all structures and artificial changes to the natural environment (inclusive of landscaping) located or to be located on the Condominium Property, including, but not limited to, the Building.
- 2.31 "Institutional First Mortgagee" means a bank, savings and loan association, insurance company, mortgage company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Junior Lender or any other lender generally recognized as an institutional lender, or the Developer, holding a first mortgage on a Unit or Units. A "Majority of Institutional First Mortgagees" shall mean and refer to Institutional First Mortgagees of

Units to which at least fifty-one percent (51%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant.

- 2.32 "Insured Property" has the meaning given to it in Section 14.2 below.
- 2.33 "Junior Lender" means SP Allure, LLC, and its successors and assigns, so long as any indebtedness (regardless of the characterization of the indebtedness) is owed to the Junior Lender.
- 2.34 "Land" has the meaning given to it in Section 1.1 above.
- 2.35 "Life Safety Systems" mean and refer to any and all emergency lighting, audio and visual signals, safety systems, sprinklers, emergency generators, smoke detection systems and any equipment and instruments related to any of the foregoing, which are now or hereafter installed in the Building for the benefit and protection of the Building and all of the Units, but specifically excluding any of the foregoing items that are for the exclusive use or protection of a particular Unit. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings. Notwithstanding the breadth of the foregoing definition, nothing herein shall be deemed to suggest or imply that the Building or the Condominium contains all such Life Safety Systems.
- 2.36 "Limited Common Elements" mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided.
- 2.37 "Managing Agent" means the manager or third party management company or firm meeting the requirements of the Act, from time to time, retained by the Board to operate any portion of the Condominium Property.
- 2.38 "Material Amendment" shall have the meaning given to it in Section 6.4 below.
- 2.39 "Primary Institutional First Mortgagee" means the Institutional First Mortgagee which owns, at the relevant time, Unit mortgages securing a greater aggregate indebtedness than is owed to any other Institutional First Mortgagee.
- 2.40 "Special Developer's Rights" means the rights of the Developer to (a) complete improvements as show on the Condominium Plat; (b) exercise any of the Developmental Rights, which rights apply to all of the Land; (c) maintain sales offices, management offices, and signage, and the right to place advertising, billboards and/or other marketing materials upon the Condominium Property until all Units are sold by the Developer; and (d) appoint or remove any officer of the Association or any members of an executive board during the period of the Developer's control, as provided herein.
- 2.41 "Terrace" means any balcony, roof deck, terrace, lanai or patio (and all improvements thereon) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others.
- 2.42 "Unit" means a part of the Condominium Property which is subject to exclusive ownership.

- 2.43 "Unit Owner" or "Owner of a Unit" or "Owner" means a record owner of legal title to a Condominium Parcel.

3. Description of Condominium.

3.1 Identification of Units. The Land has or will have constructed thereon one tower rising above a common pedestal, which contains below, within and above such common pedestal up to approximately four twenty-eight (428) Units and one (1) Commercial Unit. Each such Unit is identified by a separate numerical designation, as set forth on the Condominium Plat. The Condominium Plat, together with this Declaration, is sufficient in detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and dimensions. In addition to any other matters described in this Declaration, there shall pass with a Unit as appurtenances thereto, the following (collectively, the Unit's "Allocated Interest"): (a) an undivided share in the Common Elements and Common Surplus; (b) that Unit's liability for Common Expenses; (c) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, in the manner and for the purpose for which it was intended; (d) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (e) membership in the Association with the full voting rights appurtenant thereto; and (f) other appurtenances as may be provided by this Declaration. A Unit's Allocated Interest is further delineated in Section 5 below.

3.2 Unit Boundaries. Each Unit shall include that part of the Building containing the Unit that lies within the following boundaries:

(a) Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling (which will be deemed to be the ceiling of the upper story if the Unit is a multi-story Unit, provided that in multi-story Units where the lower boundary extends beyond the upper boundary, the upper boundary shall include that portion of the ceiling of the lower floor for which there is no corresponding ceiling on the upper floor directly above such bottom floor ceiling).

(ii) Lower Boundaries. The horizontal plane of the unfinished upper surface of the floor of the Unit (which will be deemed to be the floor of the first story if the Unit is a multi-story Unit, provided that in multi-story Units where the upper boundary extends beyond the lower boundary, the lower boundary shall include that portion of the floor of the upper floor for which there is no corresponding floor on the bottom floor directly below the floor of such top floor).

(iii) Interior Divisions. Except as provided in subsections 3.2(a)(i) and 3.2(a)(ii) above, no part of the floor of the top floor, ceiling of the bottom floor, stairwell adjoining the multi-floors, in all cases of a multi-story Unit, if any, or nonstructural interior walls shall be considered a boundary of the Unit.

- (b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the Unit extended to their planar intersections with each other and with the upper and lower boundaries.
- (c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, doors, bay windows and skylights, such boundaries shall be extended to include the windows, doors and other fixtures located in such apertures, including all frameworks, window casings and weather stripping thereof, together with exterior surfaces made of glass or other transparent materials; provided, however, that the exteriors of doors facing interior Common Element hallways shall not be included in the boundaries of the Unit and shall therefore be Common Elements. Notwithstanding anything herein contained to the contrary, any elevators (including all mechanical equipment serving, and housing for the elevators) solely serving a Unit (to the exclusion of all other Units) shall be deemed part of the Unit. Lastly, notwithstanding anything to the contrary, the structural components of the Building and the Life Safety Systems, regardless of where located, are expressly excluded from the Units and are instead deemed Common Elements. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO POST TENSION CABLES AND/OR RODS CONTAINED IN THE BUILDING SHALL BE CONSIDERED A PART OF A UNIT. AS SUCH WIRING IS ESSENTIAL TO THE STRUCTURE AND SUPPORT OF THE BUILDING, ALL POST TENSION CABLES AND/OR RODS SHALL BE DEEMED COMMON ELEMENTS OF THE CONDOMINIUM AND MAY NOT BE DISTURBED OR ALTERED AND NO DRILLING OR PENETRATIONS INTO COLUMNS OR SLABS, WHEREVER LOCATED, MAY BE CONDUCTED WITHOUT IN EACH INSTANCE THE PRIOR WRITTEN CONSENT OF THE BOARD BASED UPON A WRITTEN REPORT OF A QUALIFIED STRUCTURAL ENGINEER LICENSED IN THE STATE OF NEVADA ACCEPTABLE TO THE BOARD THAT SUCH DISTURBANCE, ALTERATION, DRILLING OR PENETRATION WILL ADVERSELY AFFECT THE CABLES, RODS AND/OR STRUCTURAL SUPPORT OF THE BUILDING.**
- (d) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the description of the Units set forth on the Condominium Plat shall control in determining the boundaries of a Unit, except that the provisions of Section 3.2(c) above shall control unless specifically depicted and labeled otherwise on such Condominium Plat.

3.3 Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

- (a) Terraces. Any Terrace shall be a Limited Common Element of the Unit(s) to which it is directly and exclusively accessible to the exclusion of other Units. The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, except to the extent arising from or necessitated by the negligence, misuse or neglect of a specific Unit Owner, in which case such cost and expense shall be paid solely by such Unit Owner, with the owner of the Unit to which they are appurtenant responsible for the costs of same and, directly, for the general cleaning, plant care and the upkeep of the appearance of the area(s) and for the repair and replacement of any floor coverings placed or installed on any Terrace. A Unit Owner using a Terrace, or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and such Owner's heirs, personal representatives, successors

and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

- (b) Parking Spaces. Developer hereby reserves the exclusive right to assign, with or without consideration, the exclusive right to use any parking space located within the Common Elements of the Condominium to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. All revenue (if any) derived by Developer from the assignment of parking spaces shall belong to Developer, and the Association and Unit Owners shall have no interest therein. Each Unit shall be assigned not less than one (1) parking space as an appurtenance to the Unit. Such assignments shall be made either (i) by the deed conveying a Unit to an Owner or (ii) by way of an amendment to the Declaration recorded by the Association in the Official Records of the County, as provided in Section 116.2108 of the Act. A Unit Owner may assign the Limited Common Element parking space(s) appurtenant to his/her Unit to another Unit by executing an amendment to this Declaration delivered to the Association, which shall record such amendment pursuant to Section 116.2108 of the Act, provided, however, that no Unit may be left without one (1) Limited Common Element parking space. As to any Limited Common Element parking space which was originally assigned by Developer, the Developer reserves the right, at any time provided that the Developer owns a Unit, to reassign such parking space provided that at all times each Unit shall have one (1) Limited Common Element parking space. Further, a Limited Common Element parking space may be relocated at any time, and from time to time, by the Board to comply with applicable federal, state and local laws and regulations regarding or affecting handicap accessibility. The maintenance of any parking space so assigned shall be the responsibility of the Association, except that the Unit Owner shall be responsible to keep such parking space in a neat and orderly condition and remove all debris therefrom.
- (c) Storage Spaces. Developer hereby reserves the exclusive right to assign, with or without consideration, the exclusive right to use any storage space, if any, now or hereafter located within the Common Elements of the Condominium to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. All revenue (if any) derived by Developer from the assignment of storage spaces shall belong to Developer, and the Association and Unit Owners shall have no interest therein. Such assignment shall be made either (i) by the deed conveying a Unit to an Owner or (ii) by way of an amendment to the Declaration recorded by the Association in the Official Records of the County, as provided in Section 116.2108 of the Act. A Unit Owner may assign the Limited Common Element storage space appurtenant to his/her Unit to another Unit by executing an amendment to this Declaration delivered to the Association, which shall record such amendment pursuant to Section 116.2108 of the Act. As to any Limited Common Element storage space which was originally assigned by Developer, the Developer reserves the right, at any time, provided that the Developer owns a Unit, to reassign such storage space. The maintenance of any space so assigned, the screening of such space and the cost of separately metered utilities, as well as the insurance of its contents, shall be the sole responsibility of the Owner of the Unit to which it is assigned.
- (d) Cabanas. Developer hereby reserves the exclusive right to assign, with or without consideration, the exclusive right to use any Cabana located within the Common Elements of the Condominium to a particular Unit, whereupon the

Cabana so assigned shall be deemed a Limited Common Element of the Unit to which it is assigned. Such assignment shall be made by Developer either (i) by the deed conveying a Unit to an Owner or (ii) by way of an amendment to the Declaration recorded by the Association in the Official Records of the County, as provided in Section 116.2108 of the Act. Once assigned by the Developer, a Unit Owner shall not assign the Limited Common Element Cabana appurtenant to his/her Unit to another Unit, and any other purported assignment or lease of a Cabana separate from the sale or lease of an entire Unit shall be void and of no effect. The maintenance of an interior of any Cabana so assigned and the cost of separately metered utilities shall be the responsibility of the Owner of the Unit to which it was assigned. The exterior of all Cabanas shall be maintained by the Association, the cost of which shall be a Common Expense separately allocated solely to Unit Owners to which Cabanas have been assigned as a Limited Common Element.

- (e) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor, other portions of any air conditioning system and/or heater, if any, or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet, ground slab or roof surface) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). Without limiting the foregoing, each air conditioning unit (and all equipment and fixtures constituting an individual air conditioning system) located on the roof of a Building which serves one Unit shall be deemed a Limited Common Element of the Unit it serves. The maintenance (and cost) of any such fixtures and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant.
- (f) Other. If applicable, any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e., any hallway and/or elevator landing serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by that Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made. Notwithstanding the foregoing, the designation of any portion of the Common Elements as a Limited Common Element under this Section 3.3(f) shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude, or in any way interfere with the passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety Systems, windows, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

- 3.4 Reservation of Special Developer's Rights. Developer hereby reserves each and every of the Special Developer's Rights over all portions of the Condominium Property for a period of 99 years following the date of the recordation of this Declaration. No assurance is made as to the order in which the Special Developer's Rights may be exercised. If exercised with respect to a portion of the Condominium, the Special Developer's Rights may be exercised later with respect to any other portion of the Condominium.

3.5 Easements. The following easements are hereby created (in addition to any easements created under the Act and any easements affecting the Condominium Property and recorded in the Official Records of the County):

- (a) Support. Each Unit, the Building and the Improvements shall have an easement of support and of necessity and shall be subject to an easement of support and necessity in favor of all other Units, the Common Elements, and/or the Association Property and any other structure or improvement which abuts any Unit, the Building or any Improvements.
- (b) Utility, Drainage and Other Services. Easements are reserved under, through and over the Condominium Property in favor of Developer and the Association as may be required from time to time for the installation, maintenance and repair of utility, cable television, communications and monitoring systems, Life Safety Systems, fiber optic, digital and/or satellite systems, broadband communications, internet systems and other services and drainage in order to serve the Condominium, the Units and/or members of the Association. A Unit Owner shall do nothing within or outside his/her Unit that interferes with or impairs, or may interfere with or impair, the provision of such utility, cable television, communications monitoring systems, Life Safety Systems, fiber optic, digital and/or satellite systems, broadband communications, internet systems, or other service or drainage facilities or the use of these easements. The Association shall have an irrevocable right of access to each Unit to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility, cable television, Life Safety Systems, fiber optic, digital and/or satellite systems, broadband communications, internet systems, communications and similar systems, hot water systems, service and drainage facilities, and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any Improvements interfering with or impairing such facilities or easements herein reserved; provided such right of access, except in the event of an emergency, shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and except in the event of an emergency, entry shall be made on not less than one (1) days' notice (which notice shall not, however, be required if the Unit Owner is absent when the giving of notice is attempted).
- (c) Encroachments. If (i) any portion of the Common Elements and/or Association Property encroaches upon any Unit (or Limited Common Element appurtenant thereto); (ii) any Unit (or Limited Common Element appurtenant thereto) encroaches upon any other Unit or upon any portion of the Common Elements and/or Association Property; or (iii) any encroachment shall hereafter occur as a result of (A) construction of the Improvements; (B) settling or shifting of the Improvements; (C) any alteration or repair to the Common Elements and/or Association Property made by or with the consent of the Association or Developer, as appropriate, or (D) any repair or restoration of the Improvements (or any portion thereof) or any Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements and/or Association Property, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of same so long as the Improvements shall stand.
- (d) Ingress and Egress. A non-exclusive easement in favor of each Unit Owner and resident, their guests and invitees, and for each member of the Association shall exist for pedestrian traffic over, through and across sidewalks, streets, paths, walks, and other portions of the Common Elements and Association Property as from time to time may be intended and designated for such purpose and use by

the Board; and for vehicular and pedestrian traffic over, through and across, and parking on, such portions of the Common Elements and Association Property as from time to time may be paved or concreted and intended for such purposes. None of the easements specified in this subparagraph 3.5(d) shall be encumbered by any leasehold or lien other than those on the Condominium Parcels. Any such lien encumbering such easements (other than those on Condominium Parcels) automatically shall be subordinate to the rights of Unit Owners and the Association with respect to such easements.

- (e) Maintenance of Building Exterior. The Association shall have the right, in its sole discretion, to enter Units (after reasonable advance notice, except in the event of an emergency) and upon the Limited Common Elements appurtenant thereto in order to provide exterior maintenance (e.g. painting, window washing) of, or to effect repairs, replacements or alterations of, the Building.
- (f) Special Developer's Rights Easements. Developer hereby reserves, as Special Developer's Rights, the following easements for the period specified in Section 3.4 above:
 - (i) Construction; Maintenance. The Developer (including its affiliates and its or their designees, contractors, successors and assigns) shall have the right, in its (and their) sole discretion from time to time, to enter the Condominium Property and take all other action necessary or convenient for the purpose of undertaking and completing the construction thereof, or any part thereof, or any Improvements or Units located or to be located thereon, and/or any improvements located or to be located adjacent thereto and for repair, replacement and maintenance or warranty purposes or where the Developer, in its sole discretion, determines that it is required or desires to do so. In addition, the Association (and its designees, contractors, subcontractors, employees) shall have the right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.
 - (ii) Sales and Leasing Activity. For as long as the Developer retains any ownership interest in any portion of the Condominium Property (including an interest in the reserved Developmental Right to create additional Units), the Developer, its designees, successors and assigns, shall have the right to use any Units owned by Developer (or its affiliates) and all of the Common Elements or Association Property for guest accommodations, model apartments and sales, leasing, management, administration and construction offices, provide financial services, to show model Units and/or apartments and the Common Elements and/or any other portions of the Condominium Property or such neighboring property to prospective purchasers and tenants of Units and/or "units" or "apartments" constructed on any neighboring properties, and to erect on the Condominium Property and Association Property signs, displays and other promotional material to advertise Units or other properties for sale or lease (and an easement is hereby reserved for all such purposes and without the requirement that any consideration be paid by the Developer to the Association or to any Unit Owner).

- (iii) Support of Adjacent Structures. In the event that any structure(s) is constructed so as to be connected in any manner to the Buildings, then there shall be (and there is hereby declared) an easement of support for such structure(s) as well as for the installation, maintenance, repair and replacement of all utility lines and equipment serving the adjacent structure which are necessarily or conveniently located within the Condominium Property or Association Property (provided that the use of this easement shall not unreasonably interfere with the structure, operation or use of the Condominium Property, the Association Property or the Buildings).
- (iv) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for acts or omissions of Developer in the design, development, construction, sale, resale, leasing, financing and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner and without requiring any consideration to be paid by the Developer to the Unit Owners and/or Condominium Association (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. The failure of the Association or any Unit Owner to grant, or to interfere with, such access shall alleviate the Developer from having to fulfill its warranty obligations and the costs, expenses, liabilities or damages arising out of any unfulfilled Developer warranty will be the sole obligation and liability of the person or entity who or which impedes the Developer in any way in Developer's activities described in this subsection. The easements reserved in this subsection 3.4(f) shall expressly survive the transfer of control of the Association to Unit Owners by the Developer and the issuance of any certificates of occupancy for the Condominium Property (or portions thereof). **Nothing herein shall be deemed or construed as the Developer making or offering any warranty, all of which are disclaimed (except to the extent same may not be by law or are expressly set forth herein) as set forth in Section 22 below.**
- (g) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Building, Cabanas and Common Cabanas.
- (h) ECR. The Condominium Property is, and shall be, subject to, and encumbered by the rights, duties and obligations set forth in the ECR, including the easements referenced therein. Each Owner, by acceptance of a deed or other conveyance of a Unit, understands and agrees that, pursuant to the ECR, non-exclusive easements are reserved over, under and upon the Condominium Property. The Condominium Property (including all Units and Common Elements therein) is governed and burdened by, and subject to, all of the terms and conditions of the

ECR. Each Owner (for itself, its tenants, guests, successors and assigns) understands and agrees, by acceptance of a deed or otherwise acquiring title to a Unit, that the rights in and to the Condominium Property are junior and subordinate to the rights therein granted under the ECR. Additionally, pursuant to the ECR, the Association may be obligated for the performance of certain obligations and the payment of certain costs. Any and all such costs shall be deemed part of the Common Expenses.

- (i) Additional Easements. The Association, through its Board, on the Association's behalf and on behalf of all Unit Owners (each of whom hereby appoints the Association as its attorney-in-fact for this purpose), shall have the right to grant such additional general ("blanket") and specific electric, gas or other utility, cable television, Life Safety Systems, fiber optic, digital and/or satellite systems, broadband communications, internet systems, security systems, communications or service easements (and appropriate bills of sale for equipment, conduits, pipes, lines and similar installations pertaining thereto), or modify or relocate any such existing easements or drainage facilities, in any portion of the Condominium and/or Association Property, and to grant access easements or relocate any existing access easements in any portion of the Condominium and/or Association Property, as the Board shall deem necessary or desirable for the proper operation and maintenance of the Improvements, or any portion thereof, or for the general health or welfare of the Unit Owners and/or members of the Association, or for the purpose of carrying out any provisions of this Declaration, provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the reasonable use of the Units for dwelling purposes.

3.6 Intentionally Omitted.

3.7 Intentionally Omitted.

- 4. Restraint Upon Separation and Partition of Common Elements. The undivided share in the Common Elements and Common Surplus which is appurtenant to a Unit, and the exclusive right to use all appropriate appurtenant Limited Common Elements, shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately described. The appurtenant share in the Common Elements and Common Surplus, and the exclusive right to use all Limited Common Elements appurtenant to a Unit, except as elsewhere herein provided to the contrary, cannot be conveyed or encumbered except together with the Unit. The respective shares in the Common Elements appurtenant to Units shall remain undivided, and no action for partition of the Common Elements, the Condominium Property, or any part thereof, shall lie, except as provided herein with respect to termination of the Condominium.

- 5. Ownership of Common Elements and Common Surplus and Share of Common Expenses; Voting Rights

- 5.1 Fractional Ownership and Shares. The undivided fractional interest in the Common Elements and Common Surplus, and the fractional share of the Common Expenses, appurtenant to each Unit, is as set forth on Exhibit "4" attached hereto. This portion of each Unit's Allocated Interest is calculated as a fraction based upon the total square footage of each Unit in uniform relationship to the total square footage of all Units from time to time actually created in the Condominium. Notwithstanding such method of calculating each Unit's Allocated Interest, Unit Owners shall be separately billed for the cost of utility services to their Units based on actual consumption attributed to each Owner's Unit, rather than in proportion to each Unit Owner's Allocated Interest. Upon the

exercise of any Developmental Right, Developer shall re-allocate each Unit's Allocated Interest in accordance with the formula set forth in this Section 5.1.

- 5.2 Voting. In addition to the Allocated Interests described in Section 5.1 above, each Unit shall be entitled to one (1) vote to be cast by its Owner in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association. Each Unit Owner shall be a member of the Association.

6. Amendments. Except as elsewhere provided herein, amendments may be effected as follows:

- 6.1 By The Association. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than one-third (1/3) of the Unit Owners. Except as elsewhere provided, approvals must be by an affirmative vote representing 67% or more of the voting interests of all Unit Owners. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that such approval is delivered to the secretary at or prior to the meeting; provided, however, such approval or disapproval may not be used as a vote for or against the action taken and may not be used for the purpose of creating a quorum.
- 6.2 Mortgagee's Consent. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to mortgagees of Units without the consent of said mortgagees in each instance; nor shall an amendment make any change in the sections hereof entitled "Insurance", "Reconstruction or Repair after Casualty", or "Condemnation" unless the Primary Institutional First Mortgagee shall join in the amendment. Except as specifically provided herein or if required by FNMA or FHLMC, the consent and/or joinder of any lien or mortgage holder on a Unit shall not be required for the adoption of an amendment to this Declaration and, whenever the consent or joinder of a lien or mortgage holder is required, such consent or joinder shall not be unreasonably withheld.
- 6.3 By The Developer. Notwithstanding anything herein contained to the contrary, when Developer exercises any of its Developmental Rights reserved hereunder, Developer may amend this Declaration as provided in Section 116.211, without requiring the consent of any other party (including Unit Owners, Institutional First Mortgagees or any other Mortgagee), to effect changes resulting from such exercise. Further, no amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the written consent of the Developer in each instance. In addition and without limiting the foregoing, Developer may amend this Declaration, without requiring the consent of any other party (including Unit Owners, Institutional First Mortgagees or any other Mortgagee), as permitted by the Act, including, but not limited to, Section 116.2117 of the Act.
- 6.4 Material Amendments. Unless otherwise provided specifically to the contrary in this Declaration, including, but not limited to, amendments by the Developer pursuant to Section 6.3 above and amendments pursuant to the Act, no amendment shall change the boundaries of any Unit, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the

amendment is otherwise approved by in excess of 50% of the voting interests of all other Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment.

- 6.5 Execution and Recording. An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the Declaration is effective when the applicable certificate is properly recorded in the office of the County recorder.

7. Maintenance and Repairs.

- 7.1 Units and Limited Common Elements. All maintenance, repairs and replacements of, in or to any Unit and Limited Common Elements appurtenant thereto, whether structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, inspection, maintenance, repair and replacement of windows, window coverings, interior nonstructural walls, the interior side of any entrance door and all other doors within or affording access to a Unit, and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior surfaces and the entire interior of the Unit lying within the boundaries of the Unit or the Limited Common Elements or other property belonging to the Unit Owner, shall be performed by the Owner of such Unit at the Unit Owner's sole cost and expense, except as otherwise expressly provided to the contrary herein. Notwithstanding the classification of any windows, doors and balconies located in or adjacent to the Units as Common Elements, the maintenance of such windows, doors and terraces (to the extent that same are reasonably accessible from the applicable Unit or appurtenant Terrace) shall be the sole responsibility of the Owner of the Unit in which, or adjacent to which, same are located.
- 7.2 Common Elements and Association Property. Except to the extent (a) expressly provided to the contrary herein, or (b) proceeds of insurance are made available therefor, all maintenance, repairs and replacements in or to the Common Elements (other than those Limited Common Elements to be maintained by the Unit Owners as provided above), Association Property and damage to the exterior windows of Units shall be performed by the Association and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense, except to the extent arising from or necessitated by the negligence, misuse or neglect of a specific Unit Owner, in which case such cost and expense shall be paid solely by such Unit Owner (and not in such instance as an Assessment).
- 7.3 Specific Unit Owner Responsibility. The obligation to maintain and repair any heating and air conditioning equipment, plumbing or electrical feeds, fixtures, screens (whether on windows or doors), screened enclosures and screen doors serving the Unit, or other items of property which service a particular Unit or Units (to the exclusion of other Units) shall be the responsibility of the applicable Unit Owners, individually, and not the Association, without regard to whether such items are included within the boundaries of the Units.
- 7.4 Non-Compliance. In addition to any other remedies of the Association under this Declaration and the By-Laws (including the Rules and Regulations) and if the Association

reasonably determines that a Limited Common Element is not being properly maintained as required by this Section 7, then the Association is hereby granted the right to enter the Limited Common Element and, if necessary, the Unit to perform appropriate maintenance, repairs and replacements of, in or to the Limited Common Element. The cost of maintenance, repairs and replacements shall be the sole responsibility of the Unit Owner to which the Limited Common Element is appurtenant and shall be promptly reimbursed to the Association.

8. Additions, Improvements or Alterations by the Association. Whenever in the judgment of the Board of Directors, the Common Elements, the Association Property, or any part of either, shall require capital additions, alterations or improvements (as distinguished from repairs and replacements) and there are no adequate reserves for such an expense, the Board shall adopt a Special Assessment therefor, which prior to being binding, shall be subject to ratification by the Unit Owners in the manner hereinafter provided. Within thirty (30) days following the adoption of the Special Assessment by the Board, the Association shall provide a summary of the special assessment to all Unit Owners and shall set a date for a meeting of the Unit Owners to consider ratification of the budget. Such meeting shall occur not less than twenty one (21) days following the mailing of the summary. Unless at that meeting 75% or more of all Unit Owners reject the Special Assessment, the Special Assessment shall automatically be deemed ratified, whether or not a quorum is present.

9. Additions, Alterations or Improvements by Unit Owner.

- 9.1 Consent of the Board of Directors. No Unit Owner shall make any addition, alteration or improvement in or to the Common Elements, the Association Property, any structural addition, alteration or improvement in or to his or her Unit, the Common Elements or any Limited Common Element or any change to his or her Unit which is visible from any other Unit, the Common Elements and/or the Association Property, without, in each instance, the prior written consent of the Board of Directors. Without limiting the generality of this Section 9.1, no Unit Owner shall cause or allow improvements or changes to his or her Unit, or to any Limited Common Elements, Common Elements or any property of the Association which does or could in any way affect, directly or indirectly, the structural, electrical, plumbing, Life Safety Systems, or mechanical systems, or any landscaping or drainage, of any portion of the Condominium Property without first obtaining the written consent of the Board. No Unit Owner may make any exterior addition, alteration or improvement to the exterior of any Cabana assigned as a Limited Common Element. In addition, all interior additions, alterations, or improvements to Cabanas shall be subject to the prior written approval of the Board and the other provisions of this Declaration and the By-Laws (including the Rules and Regulations). No spas, hot tubs, whirlpools, infant portable pools or similar types of products will be permitted to be placed or installed on any Terrace, which is appurtenant to any Unit. The Board shall have the obligation to answer, in writing, any written request by a Unit Owner for approval of such an alteration or improvement within thirty (30) days after such written request is received and any and all additional information requested is received, and the failure to do so within the stipulated time shall constitute the Board's consent to the request. The Board may condition the approval in any manner, including, without limitation, retaining approval rights of the contractor to perform the work, restricting the time during which such work may be performed, and requiring that the Owner requiring the change obtain, prior to commencing any work, and maintain, until completion of such work, comprehensive general liability insurance in such amounts as may be required by the Board. The Unit Owner shall be obligated to designate the Developer, the Association, the Board, the Managing Agent and any other person designated by the Board as additional insureds under the policies. The Unit Owner shall be responsible for all costs incurred by the

Board in connection with the Board's review of the Unit Owner's proposed changes to his/her Unit, including, without limitation, all costs of architects, engineers and other professionals which may be retained by the Board to assist in their review. Any such costs not timely paid by the Unit Owner shall be deemed a personal assessment and shall become a lien on the Unit as provided in Section 13 herein. The proposed additions, alterations or improvements by the Unit Owners shall be made in compliance with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction, may only be made once all required permits have been obtained and must be in compliance with any conditions imposed by the Association with respect to design, structural integrity, aesthetic appeal, sound attenuation, water proofing, construction details, lien protection or otherwise. Once approved by the Board of Directors, such approval may not be revoked. A Unit Owner making or causing to be made any such additions, alterations or improvements agrees, and shall be deemed to have agreed, for such Owner, and his/her heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any and all liability or damage to the Condominium and/or Association Property and expenses arising therefrom, and shall be solely responsible for the maintenance, repair and insurance thereof from and after that date of installation or construction thereof as may be required by the Association. The Association shall have the right to stop any work that is not in compliance with the terms contained in this Section 9.1 or any rules of the Association governing improvements by Unit Owners. The Association's rights of review and approval of plans and other submissions under this Declaration are intended solely for the benefit of the Association. Neither the Developer, the Association nor any of its officers, directors, employees, agents, contractors, consultants or attorneys shall be liable to any Owner or any other person by reason of mistake in judgment, failure to point out or correct deficiencies in any plans or other submissions, negligence, or any other misfeasance, malfeasance or nonfeasance arising out of or in connection with the approval or disapproval of any plans or submissions.

Anyone submitting plans hereunder, by the submission of same, and any Owner, by acquiring title to same, agrees not to seek damages or equitable relief from the Developer and/or the Association arising out of the Association's review of any plans hereunder. Without limiting the generality of the foregoing, the Association shall not be responsible for reviewing, nor shall its review of any plans be deemed approval of, any plans from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformity with building or other codes or industry standards, or compliance with governmental requirements. Further, each Owner (including the successors and assigns) agrees to indemnify and hold the Developer and the Association harmless from and against any and all costs, claims (whether rightfully or wrongfully asserted), damages, expenses or liabilities whatsoever (including, without limitation, reasonable attorneys' fees and court costs at all trial and appellate levels), arising out of any review of plans by the Association hereunder.

Without limiting the generality of the foregoing, inasmuch as the Condominium has been constructed with post tensioned cables and/or rods, absolutely no penetration shall be made to any column, floor, roof or ceiling slabs without (a) the prior written consent of the Board of Directors and review of the as-built plans and specifications for the Building to confirm the approximate location of the post tensioned cables and/or rods and (b) the written approval by a structural engineer, licensed in the State of Nevada, with all costs associated with such approvals being borne by the Unit Owner requesting such penetration. The plans and specifications for the Building shall be maintained by the Association as part of its official records. Each Unit Owner, by accepting a deed or otherwise acquiring title to a Unit shall be deemed to: (i) have assumed the risks associated with post tension construction, and (ii) agree that the penetration of any post tensioned cables and/or rods may threaten the structural integrity of the Building. Each

Owner hereby releases Developer, its members, contractors, architects, engineers, and its and their officers, directors, shareholders, employees and agents from and against any and all liability that may result from penetration of any of the post tensioned cables and/or rods.

9.2 Life Safety Systems. No Unit Owner shall make any additions, alterations or improvements to the Life Safety Systems, and/or to any other portion of the Condominium Property which may alter or impair the Life Safety Systems or access to the Life Safety Systems, without first receiving the prior written approval of the Board. In that regard, no lock, chain or other device or combination thereof shall be installed or maintained at any time on or in connection with any door on which panic hardware or fire exit hardware is required. Stairwell identification and emergency signage shall not be altered or removed whatsoever by any Unit Owner. No barrier including, but not limited to personalty, shall impede the free movement of ingress and egress to and from all emergency ingress and egress passageways.

9.3 Improvements, Additions or Alterations by Developer. Anything to the contrary notwithstanding, the foregoing restrictions of this Section 9 shall not apply to Developer-owned Units and improvements made thereto. The Developer shall have the additional right, without the consent or approval of the Association, the Board of Directors or other Unit Owners to (a) make alterations, additions or improvements, structural and non-structural, interior and exterior, ordinary and extraordinary, in, to and upon any Unit owned by it and Limited Common Elements appurtenant thereto (including, without limitation, the removal of walls, windows, doors, glass sliding doors, floors, ceilings and other structural portions of the Improvements and/or the installation of signs) and (b) expand, alter or add to all or any part of the recreational facilities of the Condominium. Any amendment to this Declaration required by a change made by the Developer pursuant to this Section 9.3 shall be adopted in accordance with Section 6 and Section 10 of this Declaration. The rights herein reserved are part of the Developmental Rights reserved by the Developer under the Act.

10. Changes By Developer and in Developer-Owned Units. Without limiting the generality of the provisions of Section 9.3 above, and anything to the contrary notwithstanding, the Developer shall have the right, without the vote or consent of the Association or Unit Owners, to (a) make alterations, additions or improvements in, to and upon Units owned by the Developer, whether structural or non-structural, interior or exterior, ordinary or extraordinary; (b) change the layout or number of rooms in any Developer-owned Units; (c) change the size of Developer-owned Units by combining separate Developer-owned Units into a single Unit, or otherwise; (d) change the size of Developer-owned Units by subdividing a Developer-owned Unit into multiple Units, or otherwise; (e) reapportion among the Developer-owned Units affected by such change in size pursuant to the preceding clause, their appurtenant interests in the Common Elements and share of the Common Surplus and Common Expenses; provided, however, that the percentage interest in the Common Elements and share of the Common Surplus and Common Expenses of any Units (other than the affected Developer-owned Units) shall not be changed by reason thereof unless the Owner(s) of such Unit(s) shall consent thereto in writing and, provided further, that Developer shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction in so doing, and/or (f) to withdraw any portion of the Condominium Property from the Condominium which is not a Unit owned by an individual or entity other than the Developer. In making the alterations, additions and improvements described in either of clauses (a) through (d) above, the Developer may relocate and alter Common Elements adjacent to or near such Units, incorporate portions of the Common Elements into adjacent Units and incorporate Units or portions thereof into adjacent Common Elements, provided that such relocation or alteration does not materially adversely affect the market value or ordinary use of Units owned by Owners other than Developer. In making any change described in clauses (e) or (f) above, Developer shall prepare, execute and record an

amendment to the declaration which assigns an identifying number to any new Units created and reallocates the interests of all Units in the Condominium, and record a new or amended plat or plan sufficient to satisfy the requirements of Section 116.2109(2) of the Act. The Developer shall thereafter be the owner of any Units created. Any amendments to this Declaration required by changes of the Developer made pursuant to this Section 10, shall be effected by the Developer alone pursuant to Section 6.3. The rights herein reserved to the Developer shall be deemed Developmental Rights reserved by Developer under the Act. Without limiting the generality of Section 6.3 hereof, the provisions of this Section may not be added to, amended or deleted without the prior written consent of the Developer.

11. Operation of the Condominium by the Association; Powers and Duties.

- 11.1 Powers and Duties. The Association shall be the entity responsible for the operation of the Condominium, the Association Property and the Common Elements (including the Common Cabanas). The powers and duties of the Association shall include those set forth in the By-Laws and Articles of Incorporation of the Association, as amended from time to time. In addition, the Association shall have all the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including, without limitation:
- (a) The irrevocable right to have access to each Unit and any appurtenant Limited Common Elements from time to time during reasonable hours as may be necessary for pest control or other purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or for investigation of maintenance matters, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.
 - (b) The power and authority to make and collect Assessments and other charges against Unit Owners and to lease, maintain, repair and replace the Common Elements and Association Property.
 - (c) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners or their authorized representatives at reasonable times upon prior written request.
 - (d) The power and authority to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties including, without limitation, performing such functions as reviewing and evaluating the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and regulations and maintenance, repair and replacement of Common Elements with such funds as shall be made available by the Association for such purposes; provided that any manager shall meet the requirements of a "community manager" under the Act. The Association and its officers shall, however, retain at all times the powers and duties granted in the Condominium documents and the Act, including, but not limited to, the making of Assessments, promulgation of rules and regulations and execution of contracts on behalf of the Association.
 - (e) The power and authority to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in property owned by the Association, if any, provided that such actions are approved by a majority of the entire membership of the Board of

Directors and a majority of the Units represented at a meeting at which a quorum (as established by the By-Laws) has been attained, or by such greater percentage of the Board or Unit Owners as may be specified in the By-Laws or state law with respect to certain borrowing.

- (f) The power and authority to adopt and/or amend rules and regulations concerning the details of the operation and use of the Common Elements (including the Common Cabanas) and Association Property.
- (g) The authority to acquire, hold, convey, encumber and lease (with or without consideration) real and personal property, including, without limitation, parking spaces located within the Common Elements and Association Property. Portions of the Common Elements, however, may be conveyed or subjected to a security interest only if the Developer (for so long as it owns any Unit) and not less than a majority of the non-Developer Unit Owners agree to such action. Any such conveyance must be evidenced by the execution of an agreement, or ratifications thereof, with the same formalities as required for the execution of a deed, by the requisite number of Unit Owners. The agreement must specify a date after which the agreement will be void unless recorded by that date. The agreement and all ratifications thereof must be recorded in the County and is effective only upon recordation. The Association may contract to convey portions of the Common Elements, but the contract is not enforceable against the Association unless and until approved by the Unit Owners as described above.
- (h) The power and authority to execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, and each mortgagee of a Unit by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.
- (i) Upon written request of the Developer, but in no event later than the end of the period of Developer's control of the Association, the Association shall assume all of Developer's and/or its affiliates' responsibilities to the City and/or the County, and its governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the City, the County, the State of Nevada and/or the ECR, as same may be amended, modified or interpreted from time to time) and, in either such instance, the Association shall indemnify and hold Developer and its affiliates harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.
- (j) All of the powers which a corporation not for profit in the State of Nevada may exercise pursuant to this Declaration, the Articles of Incorporation, the Bylaws, and Nevada law, in all cases except as expressly limited or restricted in the Act.

In the event of conflict among the powers and duties of the Association or the terms and provisions of this Declaration and the Articles of Incorporation and/or the By-Laws and/or any rules and regulations of the Association, this Declaration shall take precedence over the Articles of Incorporation, By-Laws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the By-Laws and applicable rules and regulations; and the By-Laws shall take precedence over applicable rules and regulations,

all as may be amended from time to time. Notwithstanding the foregoing, no provisions of the Declaration, Articles of Incorporation and/or any rules and regulations of the Association shall take precedence over Section 5.2 of the By-Laws. Notwithstanding anything in this Declaration or the Articles of Incorporation, By-Laws and/or rules and regulations to the contrary, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act.

- 11.2 Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable to Unit Owners for injury or damage, other than for the cost of maintenance and repair, caused by any latent condition of the Condominium Property. Further, the Association shall not be liable for any such injury or damage caused by defects in design or workmanship or any other reason connected with any additions, alterations or improvements or other activities done by or on behalf of any Unit Owners regardless of whether or not same shall have been approved by the Association pursuant to Section 9 hereof. The Association also shall not be liable to any Unit Owner or lessee or to any other person or entity for any property damage, personal injury, death or other liability on the grounds that the Association did not obtain or maintain insurance (or carried insurance with any particular deductible amount) for any particular matter where: (i) such insurance is not required hereby; or (ii) the Association could not obtain such insurance at reasonable costs or upon reasonable terms. Notwithstanding the foregoing, nothing contained herein shall relieve the Association of its duty of ordinary care, as established by the Act, in carrying out the powers and duties set forth herein, nor deprive Unit Owners of their right to sue the Association if it negligently or willfully causes damage to the Unit Owner's property during the performance of its duties hereunder.
- 11.3 Restraint Upon Assignment of Shares in Assets. The share of a Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to his/her Unit.
- 11.4 Approval or Disapproval of Matters. Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, that decision shall be expressed by the same person who would cast the vote for that Unit if at an Association meeting, unless the joinder of all record Owners of the Unit is specifically required by this Declaration, the Act or by other applicable law.
- 11.5 Acts of the Association. Unless the approval or action of Unit Owners, and/or a certain specific percentage of the Board of Directors of the Association, is specifically required in this Declaration, the Articles of Incorporation or By-Laws of the Association, applicable rules and regulations, the Act or other applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board of Directors, without the consent of Unit Owners, and the Board may so approve and act through the proper officers of the Association without a specific resolution. When an approval or action of the Association is permitted to be given or taken hereunder or thereunder, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal. **NOTWITHSTANDING ANYTHING HEREIN CONTAINED, OR IN THE ARTICLES OF INCORPORATION, BY-LAWS OR RULES OF THE ASSOCIATION, TO THE CONTRARY, ANY DETERMINATION TO COMMENCE OR OTHERWISE BRING OR PURSUE LEGAL OR EQUITABLE ACTION AND/OR PROCEEDINGS OF ANY NATURE AGAINST, OR WHICH MAY DIRECTLY OR INDIRECTLY IMPOSE LIABILITY ON, THE DEVELOPER (INCLUDING ITS MEMBERS, AND ITS AND THEIR SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND ATTORNEYS, AND ITS AND THEIR SUCCESSORS AND ASSIGNS), MUST FIRST BE**

APPROVED BY AN AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS OF THE BOARD OF DIRECTORS AND BY AN AFFIRMATIVE VOTE OF NOT LESS THAN 67% OF THE VOTES ALLOCATED TO ALL UNITS IN THE CONDOMINIUM, AND NO SUCH ACTION OR PROCEEDING SHALL BE COMMENCED UNTIL OBTAINING SUCH VOTES.

- 11.6 Effect on Developer. So long as the Developer holds a Unit for sale in the ordinary course of business, the prior written approval of the Developer is required before the Association may take any action that would be detrimental to the sales of Units by the Developer or the assignment of Limited Common Element by the Developer for consideration; provided, however, that an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.
- 11.7 Developer's Control of the Association. Notwithstanding anything to the contrary contained in this Declaration, Section 4 of the By-Laws, the Articles or otherwise, the Board shall consist of three directors during the period that the Developer is entitled to appoint a majority of the Directors, as hereinafter provided. The Developer shall have the right to appoint all of the members of the Board of Directors until Unit Owners other than the Developer own twenty-five percent (25%) or more of the Units that may be created in the Condominium. Sixty (60) days following the time that Unit Owners other than the Developer own twenty five percent (25%) or more of the Units in the Condominium that may be created in the Condominium, the Unit Owners other than the Developer shall be entitled to elect at least one (1) and not less than one-fourth (1/4) of the members of the Board of Directors. Sixty (60) days following the time that Unit Owners other than the Developer own fifty (50%) percent of the Units that may be created in the Condominium, the Unit Owners other than the Developer are entitled to elect not less than one third (1/3) of the members of the Board of Directors. The period of Developer's control of the Association ends no later than the earlier of: (a) sixty (60) days after seventy five percent (75%) of the Units that may be created in the Condominium, have been conveyed to purchasers; (b) five (5) years after Developer has ceased to offer units for sale in the ordinary course of business; or (c) five (5) years after any right to add new units was last exercised.
12. Determination of Common Expenses and Fixing of Assessments Therefor. The Board of Directors shall from time to time, and at least annually, prepare a budget for the Condominium and the Association containing those items as required by the Act, including the reserve required by the Act, determine the amount of Assessments payable by the Unit Owners to meet the Common Expenses of the Condominium and allocate, according to each Unit Owner's Allocated Interest in the Common Elements, and assess such expenses among the Unit Owners in accordance with the provisions of this Declaration and the By-Laws. Within sixty (60) days following the adoption of the budget by the Board, but not less than thirty (30) nor more than sixty (60) days before the beginning of the fiscal year of the Association, the Association shall provide a summary of the adopted budget to all Unit Owners accompanied by a written notice that the budget is available for review at the business office of the Association or other suitable location and that copies of the budgets will be provided upon request and shall set a date for a meeting of the Unit Owners to consider ratification of the budget. Such meeting shall occur not less than fourteen (14), nor more than thirty (30), days following the mailing of the summary. Unless at that meeting 75% or more of all Unit Owners present and voting reject the budget, the budget shall automatically be deemed ratified, whether or not a quorum is present. If the budget is rejected, the last periodic budget to be ratified shall remain in effect until such time at the Unit Owners ratify (or shall be deemed to have ratified) a subsequent budget proposed by the Board.

The Common Expenses shall include, but are not limited to, the expenses of, and reserves for, the operation, maintenance, repair and replacement of the Common Elements and Association Property, costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles or By-Laws of the Association, applicable rules and regulations or by the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget adopted shall be subject to change by the Board to cover actual expenses at any time. Any such change shall be adopted consistent with the provisions of this Declaration and the By-Laws. The Association shall conduct a study of the adequacy of the reserves when required by and in accordance with the requirements of the Act. The cost of conducting reserve studies shall be a Common Expense.

13. Collection of Assessments and New Member Fees.

13.1 Liability for Assessments. A Unit Owner, regardless of how title is acquired, including, but not limited to, purchase at a foreclosure sale, deed in lieu of foreclosure, purchase, assignment or gift, shall be liable for all Assessments coming due while he is the Unit Owner. Additionally, a Unit Owner shall be jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of the conveyance, without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the grantee Owner. The liability for Assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by the abandonment of the Unit for which the Assessments are made or otherwise.

13.2 Special and Capital Improvement Assessments. In addition to Assessments levied by the Association to meet the Common Expenses of the Condominium and the Association, the Board of Directors may, subject to the provisions of Section 8 and Section 12, levy "Special Assessments", "Personal Assessments" and "Capital Improvement Assessments" (all of same being deemed Assessments for purposes of this Declaration) upon the following terms and conditions:

- (a) "Special Assessments" shall mean and refer to a charge against each Owner (in accordance with such Owner's Allocated Interest) and the Owner's Unit, representing a portion of the costs incurred by the Association for specific purposes of a nonrecurring nature which are not in the nature of capital improvements.
- (b) "Personal Assessments" shall mean and refer to a charge against an Owner(s) to the exclusion of other Owners for (i) the repair or replacement of damage to any portion of the Common Elements (including, without limitation, improvements and landscaping thereon) caused by the misuse, negligence or other action or inaction of an Owner or the Owner's guests, tenants and invitees; (ii) any fine, expense or reimbursement provided by the terms of this Declaration; or (iii) any uncured violation of any provision of this Declaration. Any such Personal Assessment shall be subject to all of the applicable provisions of this Section 13, including, without limitation, lien filing and foreclosure procedures and late charges and interest. Any Personal Assessment levied hereunder shall be due within the time specified by the Board of Directors in the action imposing such assessment.
- (c) "Capital Improvement Assessments" shall mean and refer to a charge against each Owner (in accordance with such Owner's Allocated Interest) and the Owner's Unit, representing a portion of the costs incurred by the Association for the acquisition, installation, construction or replacement (as distinguished from

repairs and maintenance) of any capital improvements located or to be located within the Common Elements or Association Property, which are not otherwise contemplated by reserves in the Association's periodic budget.

- (d) Subject to the provisions of Section 8 and Section 12 above, Special Assessments, Personal Assessments and Capital Improvement Assessments may be levied by the Board and shall be payable in lump sums or installments, in the discretion of the Board.

13.3 Default in Payment of Assessments for Common Expenses. Assessments and installments thereof not paid within ten (10) days from the date when they are due shall bear interest at eighteen percent (18%) per annum, but in no event at a rate greater than the highest applicable rate permitted by the Act, from the date due until paid and shall be subject to an administrative late fee in an amount not to exceed the greater of \$25.00 or five percent (5%) of each delinquent installment. The Association has a lien on each Condominium Parcel to secure the payment of Assessments. Except as set forth below, the lien is effective from, and shall relate back to, the date of the recording of this Declaration and any such lien is prior to all other liens and encumbrances on a Unit except (a) liens created before the recordation of the Declaration; (b) a mortgage held by an Institutional First Mortgagee, except that the Association lien shall have priority for six (6) months' annual assessments pursuant to section 116.3116(2) of the Act; and (c) liens for real estate taxes and other governmental assessments or charges against the Unit. Recordation of this Declaration constitutes record notice and perfection of the lien.

As an additional right and remedy of the Association, but without limiting the Association's rights and remedies, upon default in the payment of Assessments as aforesaid, the Association may declare the next twelve (12) months' of Assessment installments to be accelerated and immediately due and payable. In the event that the amount of such installments changes during the twelve (12) month period, the Unit Owner or the Association, as appropriate, shall be obligated to pay or reimburse to the other the amount of increase or decrease within ten (10) days of same taking effect. In addition, upon default in the payment of Assessments as aforesaid, the Association and/or the Developer may deny the defaulting Unit Owner access to certain services which are funded by the Assessments for Common Expenses or use of certain of the Common Elements.

No such lien shall be effective longer than three (3) years after the full amount of assessments comes due unless, within that three (3) year period, an action to enforce the lien is commenced. The three (3) year period shall automatically be extended for any length of time during which the Association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the Owner or any other person claiming an interest in the Unit. The lien shall secure all unpaid Assessments, as well as interest and all reasonable costs and attorneys' fees incurred by the Association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien in recordable form. The Association may bring an action in its name to foreclose a lien for unpaid Assessments in the manner a mortgage of real property is foreclosed and may also bring an action at law to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The Association is entitled to recover its reasonable attorneys' fees incurred either in a lien foreclosure action or an action to recover a money judgment for unpaid Assessments.

Additionally, each Owner of any Unit by acceptance of a deed therefor or other conveyance thereof, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to have assigned all rents, issues and profits (the

"Collateral Assignment of Rents") on each such Unit to the Association, which Collateral Assignment of Rents shall become absolute upon default of such Unit Owner hereunder.

- 13.4 Utilities. Submeters have been or will be installed so that the each Unit Owner may be billed for utility charges based upon actual consumption. Each Unit Owner shall pay for such Unit Owner's own use of any and all utilities, separately metered or billed to such Owner's Unit. Utility facilities and/or services which are not separately metered or billed or which serve the Common Elements shall be treated as part of the Common Expenses and allocated among the Units according to the Allocated Interests. All such charges, whether separately billed based on actual consumption or charged as part of the Common Expenses, shall be deemed part of the Assessments which are secured by the Association's lien on each Unit.
- 13.5 Notice of Intention to Foreclose Lien. The Association may foreclose its lien at any time after: (a) the Association has mailed to the Unit, by certified or registered mail, return receipt requested, written notice of a delinquent assessment which states the amount of the delinquent Assessments and other sums which are due, a description of the Unit against which the lien is imposed and the name of the record Unit Owner; (b) not later than thirty (30) days after mailing the notice of delinquent assessment, the Association has recorded in the Office of the Clark County Recorder, a Notice of Default and Election to Sell the Unit to satisfy the lien, which must contain the same information contained in the notice of delinquent assessments described in section 13.5(a) above as well as a description of the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale and otherwise comply with the applicable provisions of the Act; and (c) the Owner has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for ninety (90) days following the later of the recording of the Notice of Default and Election to Sell or the mailing to the Unit Owner of the notice described in subsection 13.5(a) above and/or otherwise in compliance with the Act. The notice to the Unit Owner must be sent to the Unit Owner's last known address. If after diligent search and inquiry the Association cannot find the Unit Owner or a mailing address at which the Unit Owner will receive the notice, the court may proceed with the foreclosure action and may award attorney's fees and costs as permitted by law. The Notice of Default and Election to Sell must be signed by the person designated in this Declaration or by the Association for that purpose, or, if no person is so designated, by the president of the Association. The provisions of this Section 13 relating to the creation, perfection, enforcement and foreclosure of liens relating to Assessments are intended to comply with and be conducted in accordance with the Act, including, but not limited to, Sections 116.3116-116.31168, inclusive, of the Act, and the creation, perfection, enforcement and foreclosure of such Assessment liens shall governed by those provisions of the Act and this Section 13.
- 13.6 Appointment of Receiver to Collect Rental. If the Unit Owner, with the consent of the Association, remains in possession of the Unit after the foreclosure sale, the Association in its discretion may require the Unit Owner to pay a reasonable use and occupancy fee for the Unit. If the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of such receiver shall be paid by the party which does not prevail in the foreclosure action.
- 13.7 Developer's Liability for Assessments. Until the Association makes an assessment for Common Expenses, the Developer shall pay all Common Expenses and all other Unit Owners shall be relieved of any payment of same. Thereafter, the Developer shall pay the share of Common Expenses and Assessments attributable to Units it then owns and all other Owners shall pay Assessments on their Units in accordance with their respective Allocated Interests, unless the Developer elects, to the full extent permitted by the Act, to

subsidize any shortfall in Assessments and a description of that subsidy (including a description of any services provided by Developer or its affiliates) is included in the public offering statement delivered to Owners prior to the purchase of their Units.

- 13.8 Institutional First Mortgagee. The liability of an Institutional First Mortgagee, or its successor or assignees, who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments (or installments thereof) that became due prior to the Institutional First Mortgagee's acquisition of title is limited to the Unit's unpaid Common Expenses and regular periodic Assessments which accrued or came due during the six (6) months (or greater period if required or permitted by law from time to time) immediately preceding the acquisition of title and for which payment in full has not been received by the Association.

As to a Unit acquired by foreclosure, the limitations set forth in clause (a) above shall not apply unless the Institutional First Mortgagee joined the Association as a defendant in the foreclosure action. Joinder of the Association, however, is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

An Institutional First Mortgagee acquiring title to a Unit as a result of foreclosure or deed in lieu thereof may not, during the period of its ownership of such Unit, whether or not such Unit is unoccupied, be excused from the payment of some or all of the Common Expenses coming due during the period of such ownership.

- 13.9 Estoppel Statement. Within ten (10) days after the Association receives a written request therefor from a purchaser, Unit Owner or mortgagee of a Unit, the Association shall provide a certificate, signed by an officer or agent of the Association, stating any and all Assessments and other moneys owed to the Association by the Unit Owner with respect to his/her Unit. Any person other than the Unit Owner who relies upon such certificate shall be protected thereby. The Association may impose a reasonable fee in connection with any such request to defer administrative and out of pocket expenses associated with such request.

- 13.10 Installments. Regular Assessments shall be collected monthly or quarterly, in advance, at the option of the Association. Unless and until the Board decides otherwise, assessments will be collected monthly.

- 13.11 Application of Payments. To the fullest extent permitted by the Act, any payments received by the Association from a delinquent Unit Owner shall be applied first to any fines or reimbursements to the Association required under this Declaration, then to interest accrued on any delinquent Assessment installment(s) or other sums due as aforesaid, then to any administrative late fees, then to any costs and reasonable attorneys' fees incurred in collection, then to the delinquent and any and all accelerated Assessments. The foregoing shall be applicable notwithstanding any restrictive endorsement, designation or instruction placed on or accompanying a payment.

- 13.12 New Member Fee.

- (a) Authority. As an additional funding source, in addition to any administrative or transfer fee collected by the Association to cover administrative costs of membership transfer, the Association shall collect an additional fee (the "New Member Fee") due upon each transfer of title to a Unit, other than exempt transfers as set forth herein. The New Member Fee shall be charged to the grantor of the Unit, shall be payable by the grantor or grantee as their contract

provides to the Association at the closing of the transfer, and shall be secured by the Association's lien for assessments provided in this Section 13. Each Owner transferring a Unit shall notify the Association's secretary or designee at least seven days prior to the scheduled closing. Such notice shall include the name of the buyer, the date of title transfer, and other information the Association may reasonably require.

- (b) Fee Limit. The fee shall equal 1/3 of one percent of the Gross Selling Price of the Unit, with all improvements, upgrades and premiums included, and shall be due upon the closing of the sale of the Unit. The "Gross Selling Price" shall be the total cost to the purchaser of the Unit, excluding transfer taxes and title fees imposed by the County, if any.
- (c) Purpose. New Member Fees shall be used for purposes which the Board deems beneficial to meet the general operating needs of the Association.
- (d) Exempt Transfers. Notwithstanding the above, no New Member Fee shall be levied upon transfer of title to a Unit:
 - (i) by or to the Developer;
 - (ii) by a co-owner to any person or entity who was a co-owner immediately prior to such transfer;
 - (iii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
 - (iv) to an entity wholly owned by the grantor or to a family trust created by the grantor for the direct benefit of the grantor and his or her spouse and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the New Member Fee shall become due; or
 - (v) to an institutional lender as security for the performance of an obligation pursuant to a Mortgage.

13.13 Construction Fines.

- (a) Board Approval and Schedules. As more fully provided in Section 9.1 of this Declaration, all additions, alterations or improvements to Units and appurtenant Limited Common Elements require the prior written approval of the Board of Directors. In connection with that written approval, a Unit Owner shall adhere to any conditions of such approval imposed by the Board, including any required schedule for:
 - (i) The completion of the design of any alteration, addition or improvement;
 - (ii) The commencement of the construction of any addition, alteration or improvement;
 - (iii) The completion of the addition, alteration or improvement; or
 - (iv) The issuance of any permit necessary for the commencement and completion of any addition, alteration or improvement.

- (b) Amount of Construction Fines. The Association, through the Board, has the authority to impose fines ("Construction Fines") against any Unit Owner that fails to adhere to any conditions of approval, including any schedule. The amount of Construction Fines and the schedules for those Fines shall be from time to time set forth in the rules and regulations adopted by the Association. As such, by acceptance of a deed to a Unit, all Unit Owners are deemed with constructive or inquiry notice of the Construction Fine schedule by reference to the then current rules and regulations of the Association. This provision is intended to comply with the provisions of Section 116.310305(2)(a)(1) of the Act. Alternatively, whether or not so expressed in the written approval of the Board of Directors for any addition, alteration or improvement, such consent shall be deemed to incorporate the relevant construction provisions of the rules and regulations of the Association, including the schedule of fines for Construction Fines set forth therein. The foregoing sentence is intended to create a contract between the Unit Owner and the Association in compliance with Section 116.310305(2)(a)(3) of the Act.
- (c) Enforcement of Construction Fines. If a Unit Owner violates any provision relating to additions, alterations or improvements, then, after notice and an opportunity for a hearing is more fully provided in the Rules and Regulations of the Association, the Association may impose and enforce a Construction Fine in the same manner as enforcing liens for unpaid Assessments.
- (d) Subsequent Purchasers. Each seller of a Unit shall deliver to its purchaser a copy of the then current rules and regulations of the Association, including any construction provisions and schedule of fines. Notwithstanding the failure of the selling Unit Owner to do so, each subsequent Owner of a Unit shall be deemed to have constructive notice of this Section 13.13 after this Declaration is recorded in the Official Records of the County.

14. Insurance. Insurance covering the Condominium Property and the Association Property shall be governed by the following provisions:

14.1 Purchase, Custody and Payment.

- (a) Purchase. All insurance policies described herein covering portions of the Condominium and Association Property shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Nevada and, where reasonably available at a reasonable cost, having a rating of at least "A" or better by Best's Insurance Reports or by a surplus lines carrier offering policies for Nevada properties reasonably acceptable to the Board.
- (b) Approval. Each insurance policy, the agency and company issuing the policy and the Insurance Trustee (if appointed) hereinafter described shall be subject to the approval of the Primary Institutional First Mortgagee in the first instance, if requested thereby.
- (c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Unit Owners and their mortgagees, the Managing Agent, if any, and the Board shall be deemed additional named insureds.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association or to the

Insurance Trustee (if appointed), and all policies and endorsements thereto shall be deposited with the Association or to the Insurance Trustee (if appointed).

- (e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association, upon written request, to each Institutional First Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.
- (f) Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Unit Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit and any appurtenant Limited Common Element (such as, without limitation, Storage Spaces and Cabanas), including, but not limited to, their personal property, and for their personal liability, moving and relocation expenses, lost rent expenses and living expenses and for any and all other risks not otherwise insured in accordance herewith. To the extent that a Unit Owner or other occupant of a Unit desires coverage for such excluded items, it shall be the sole responsibility of the Unit Owner and/or occupant to obtain such coverage. Each Unit Owner shall carry general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Unit Owner's Unit and appurtenant Limited Common Elements (including Storage Spaces and Cabanas), with a combined single limit of liability of not less than \$250,000. The Association shall be named as an additional insured on such policy and shall receive a certificate evidencing such insurance prior to occupancy of a Unit (and prior to each renewal of such policy).

14.2 Coverage. The Association shall maintain insurance covering the following:

- (a) Casualty. The Insured Property (as hereinafter defined) shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding land, foundation and excavation costs (and subject to such reasonable deductibles as discussed below). The policy shall provide primary coverage for the following (the "Insured Property"): (i) all portions of the Condominium Property located outside the Units, (ii) the Condominium Property located inside the Units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time that the Unit was initially conveyed, and (iii) the Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policies), and all Improvements located on the Common Elements and the Association Property from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements or Association Property. Notwithstanding the foregoing, the Insured Property shall not include, and shall specifically exclude, all floor, wall and ceiling coverings, electrical fixtures, appliances, air conditioner and/or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a Unit and serve only one Unit, all air conditioning compressors that service only an individual Unit, if any, whether or not located within the Unit boundaries and all Limited Common Elements assigned to the exclusive use of a

particular Unit. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

- (b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, subject to this Declaration, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$5,000,000 for each accident or occurrence, \$250,000 per person and \$250,000 property damage, and with a cross liability endorsement to cover liabilities of the Unit Owners as a group to any Unit Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees, in such amounts and under such terms and conditions as the Association deems appropriate in its sole and absolute discretion.
- (c) Worker's Compensation. Worker's compensation and other governmentally mandatory insurance, when applicable.
- (d) Fidelity Insurance. If required by the Act or FNMA/FHLMC or if deemed appropriate by the Board, fidelity insurance or fidelity bonding of all persons who control or disburse Association funds which shall include, without limitation, those individuals authorized to sign Association checks and the president, secretary and treasurer of the Association. The insurance policy or fidelity bond shall be in such amount as shall be determined by a majority of the Board, but must be sufficient to cover the maximum funds that will be in the custody of the Association or its Managing Agent at any one time. The premiums on such bonds and/or insurance shall be paid by the Association as a Common Expense.
- (e) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available at a reasonable cost.
- (f) Errors and Omissions. Adequate liability, errors and omission coverage on behalf of each of the officers and directors of the Association.
- (g) Other Insurance. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Unit Owners individually and as a group, (ii) to pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Unit Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Unit Owners that are not under the control of the

Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Every casualty insurance policy obtained by the Association, if required by FNMA/FHLMC, and if generally available, shall have the following endorsements: (i) agreed amount and inflation guard and (ii) steam boiler coverage (providing at least \$50,000 coverage for each accident at each location), if applicable.

- 14.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors may (or if required by FNMA/FHLMC, shall) obtain an appraisal from a fire insurance company, or other competent insurance appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section 14.
- 14.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the costs of fidelity bonding for any management company employee may be paid by such company pursuant to its contract with the Association. Premiums may be financed (and the Association is expressly given the power to so finance) in such manner as the Board of Directors deems appropriate. The Board shall determine the appropriate deductible for each policy of insurance. Each Owner, by acceptance of a deed or other conveyance of a Unit, hereby ratifies and confirms any decisions made by the Association in this regard and recognizes and agrees that funds to cover the deductible must be provided from the general operating funds of the Association before the Association will be entitled to insurance proceeds. The Association may, but shall not be obligated to, establish a reserve to cover any applicable deductible.
- 14.5 Insurance Trustee or Association; Share of Proceeds. If an Insurance Trustee has not been appointed by the Association, then the Association is hereby irrevocably appointed as an agent and attorney-in-fact for each and every Unit Owner, for each Institutional First Mortgagee and/or each Owner of any other, interest in the Condominium Property to adjust and settle any and all claims arising under any insurance policy purchased by the Association and to execute and deliver releases upon the payment of claims, if any. The decision to engage or appoint an Insurance Trustee, or not to do so, lies solely with the Association. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association or to the Insurance Trustee, if one is appointed by the Association, which may be designated by the Board of Directors as provided in Section 14.10 below and in this Section 14.5, and which, if so appointed, shall be a bank or trust company in Nevada with trust powers, with its principal place of business in the State of Nevada. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee of the Association, as applicable, shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Unit Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:
- (a) Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each

Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

- (b) Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.
 - (c) Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.
- 14.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association and/or Insurance Trustee, as applicable, shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:
- (a) Expenses of the Trustee. All expenses of the Insurance Trustee (if any) shall be first paid or provision shall be made therefor.
 - (b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Unit Owners and their mortgagees being payable jointly to them.
 - (c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in Section 14.5 above, and distributed first to all Institutional First Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.
 - (d) Certificate. In making distributions to Unit Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Unit Owners and their mortgagees and their respective shares of the distribution.
- 14.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Condominium Property to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.
- 14.8 Unit Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents

occurring within his/her Unit, nor casualty or theft loss to the contents of an Owner's Unit or any appurtenant Limited Common Element. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

- 14.9 Benefit of Mortgagees. Certain provisions in this Section 14 are for the benefit of mortgagees of Units and may be enforced by such mortgagees.
- 14.10 Appointment of Insurance Trustee. The Board of Directors of the Association shall have the option in its discretion of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Trustee, the Association, pursuant to Section 14.5 above, will perform directly all obligations imposed upon such Trustee by this Declaration. Fees and expenses of any Insurance Trustee are Common Expenses.
- 14.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

15. Reconstruction or Repair After Fire or Other Casualty.

- 15.1 Determination to Reconstruct or Repair. Subject to the immediately following paragraphs, in the event of damage to or destruction of the Insured Property (and/or the Optional Property, if insurance has been obtained by the Association with respect thereto) as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) and the Association and/or Insurance Trustee (if appointed), as applicable, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If 75% or more of the Insured Property (and the Optional Property, if insurance has been obtained by the Association with respect thereto) is substantially damaged or destroyed and if Unit Owners owning 80% of the Allocated Interests in the Common Elements duly and promptly resolve not to proceed with the repair or restoration thereof and a Majority of Institutional First Mortgagees approve such resolution, the Condominium Property will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Condominium Property were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Unit Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Unit Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his/her share of such fund all mortgages and liens on his/her Unit in the order of priority of such mortgages and liens.

Whenever in this Section the words "promptly repair" are used, it shall mean that repairs are to begin not more than sixty (60) days from the date the Association holds, or the Insurance Trustee (if appointed) notifies the Board of Directors and Unit Owners that it holds, proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than ninety (90) days after the Association determines that, or the Insurance Trustee (if appointed) notifies the Board of Directors

and the Unit Owners that, such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

15.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and the then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and the then applicable building and other codes, and, if the damaged property which is to be altered is the Building or the Optional Property, by the Owners of not less than 80% of the Allocated Interests in the Common Elements, as well as the Owners of all Units and other portions of the Optional Property (and their respective mortgagees) the plans for which are to be altered.

15.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Unit Owners, then the Unit Owners shall be fiscally responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Unit Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

(a) Disbursement. The proceeds of insurance collected on account of a casualty, and the sums collected from Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

(i) Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than \$1,000,000, then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee (if appointed) by an Institutional First Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

(ii) Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than \$1,000,000, then the construction fund shall be disbursed in payment of such costs in the manner contemplated by subparagraph 15.3(a)(i) above, but then only upon the further approval of an architect or engineer qualified to practice in Nevada and employed by the Association to supervise the work.

(iii) Unit Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property (if not insured or if under-insured), or may be

distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Unit Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his/her portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Unit Owners and their mortgagees jointly as elsewhere herein contemplated.

- (iv) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.
- (v) Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees nor the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

- 15.4 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Unit Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, the Association shall charge the Owner (but shall not levy an Assessment) in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.
- 15.5 Benefit of Mortgagees. Certain provisions in this Section 15 are for the benefit of mortgagees of Units and may be enforced by any of them.

16. Condemnation.

- 16.1 Deposit of Awards with Insurance Trustee. The taking of portions of the Condominium Property or Association Property by the exercise of the power of eminent domain shall be deemed to be a casualty, and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty and shall be deposited with the Insurance Trustee. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a charge shall be made against a defaulting Unit Owner in the amount of his/her award, or the amount of that award shall be set off against the sums hereafter made payable to that Owner.
- 16.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property, if any, will be reconstructed and repaired after casualty. For this purpose, a taking by eminent domain also shall be deemed to be a casualty.
- 16.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the awards and Special Assessments, if any, will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided with respect to the ownership and distribution of insurance proceeds if the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced and the property damaged by a taking will be made usable in the manner provided below. The proceeds of the awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Insurance Trustee (if appointed) after a casualty, or as elsewhere in this Section 16 specifically provided.
- 16.4 Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable (in the sole opinion of the Association), the award for the taking of a portion of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:
- (a) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be charged to and paid by the Owner of the Unit.
 - (b) Distribution of Surplus. The balance of the award in respect of the Unit, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and such mortgagees.
 - (c) Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements and of the Common Expenses and Common Surplus appurtenant to the Unit shall be reduced by multiplying the percentage of the applicable Unit prior to reduction by a fraction, the numerator of which shall be the area in square feet of the Unit after the taking and the denominator of which shall be the area in square feet of the Unit before the taking. The shares of all Unit Owners in the Common Elements, Common Expenses and Common Surplus shall then be restated as follows:
 - (i) add the total of all percentages of all Units after reduction as provided above (the "Remaining Percentage Balance"); and

- (ii) divide each percentage for each Unit after reduction as provided above by the Remaining Percentage Balance.

The result of such division for each Unit shall be the adjusted percentage for such Unit.

16.5 Unit Made Uninhabitable. If the taking is of the entire Unit or so reduces the size of a Unit that it cannot be made habitable (in the sole opinion of the Association), the award for the taking of the Unit shall be used for the following purposes in the order stated and the following changes shall be made to the Condominium:

- (a) Payment of Award. The awards shall be paid first to the applicable Institutional First Mortgagees in amounts sufficient to pay off their mortgages in connection with each Unit which is not so habitable; second, to the Association for any due and unpaid Assessments; third, jointly to the affected Unit Owners and other mortgagees of their Units. In no event shall the total of such distributions in respect of a specific Unit exceed the market value of such Unit immediately prior to the taking. The balance, if any, shall be applied to repairing and replacing the Common Elements.
- (b) Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in a condition allowing, to the extent possible, for use by all of the Unit Owners in the manner approved by the Board of Directors of the Association; provided that if the cost of the work therefor shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner elsewhere required for capital improvements to the Common Elements.
- (c) Adjustment of Shares. The shares in the Common Elements, Common Expenses and Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the shares in the Common Elements, Common Expenses and Common Surplus among the reduced number of Unit Owners (and among reduced Units). This shall be effected by restating the shares of continuing Unit Owners as follows:
 - (i) add the total of all percentages of all Units of continuing Owners prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof (the "Percentage Balance"); and
 - (ii) divide the percentage of each Unit of a continuing Owner prior to this adjustment, but after any adjustments made necessary by subsection 16.4(c) hereof, by the Percentage Balance.

The result of such division for each Unit shall be the adjusted Allocated Interest for such Unit.

- (d) Assessments. If the balance of the award (after payments to the Unit Owner and such Owner's mortgagees as above provided) for the taking is not sufficient to alter the remaining portion of the Unit for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all of the Unit Owners who will continue as Owners of Units after the changes in the Condominium effected by the taking. The Assessments shall be made in proportion to each Owners' Allocated Interest after all adjustments to such Allocated Interest effected pursuant hereto by reason of the taking.

- (e) Arbitration. If the market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and mortgagees of the Unit and the Association within 30 days after notice of a dispute by any affected party, such value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association ("AAA"), except that the arbitrators shall be two appraisers appointed by the AAA who shall base their determination upon an average of their appraisals of the Unit. If the AAA is unable or unwilling to appoint the necessary appraisers, then any party may apply for the appointment of the necessary appraisers by the Chief Judge of the Eighth Judicial District Court, Clark County, Nevada. A judgment upon the decision rendered by the arbitrators may be entered in any court of competent jurisdiction in accordance with Chapter 38 of Nevada Revised Statutes. The cost of arbitration proceedings shall be assessed against all Unit Owners, including Owners who will not continue after a taking, in proportion to the applicable percentage shares of such Owners as they exist prior to the adjustments to such shares effected pursuant hereto by reason of the taking. Notwithstanding the foregoing, nothing contained in this Declaration shall limit or abridge the remedies of Unit Owners provided in Sections 116.1107 and 116.2118 of the Act.

16.6 Taking of Common Elements. Awards for the taking of Common Elements shall be used to render the remaining portion of the Common Elements usable in the manner approved by the Board of Directors of the Association; provided, that if the cost of such work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner elsewhere required for capital improvements to the Common Elements. The balance of the awards for the taking of Common Elements, if any, shall be distributed to the Unit Owners according to their Allocated Interests after any adjustments to the Allocated Interests effected pursuant hereto by reason of the taking. If there is a mortgage on a Unit, the distribution shall be paid jointly to the Owner and the mortgagees of the Unit.

16.7 Amendment of Declaration. The changes in Units, in the Common Elements and in the Allocated Interests (if any) that are effected by the taking shall be evidenced by an amendment to this Declaration of Condominium that is only required to be approved by, and executed upon the direction of, a majority of all Directors of the Association.

17. Occupancy and Use Restrictions. In order to provide for congenial occupancy of the Condominium and Association Property and for the protection of the values of the Units, the use of the Condominium Property shall be restricted to and shall be in accordance with the following provisions:

17.1 Occupancy. Each Unit shall be used as a residence and/or home office only, except as otherwise herein expressly provided, all in accordance with and only to the extent permitted by, applicable City, County, state and federal statutes, codes, ordinances and regulations. Home office use of a Unit shall only be permitted to the extent permitted by applicable law and to the extent that the office is not staffed by employees, is not used to receive clients and/or customers and does not generate additional visitors or traffic into the Unit or on any part of the Condominium Property. The provisions of this subsection 17.1 shall not be applicable to Units used by the Developer which it has the authority to do so without Unit Owner consent or approval, and without payment of consideration, for model apartments, guest services, sales, re-sales and/or leasing offices and/or for management and/or financial services and/or for repairs, maintenance, development or construction.

17.2 Children. Children shall be permitted to be occupants of Units.

17.3 Pet Restrictions. Subject to any rules and regulations of the Association, no more than two (2) domesticated pets may be maintained in a Unit provided such pets are: (a) permitted to be so kept by applicable laws and regulations, (b) not left unattended on Terraces, (c) carried at all times when on the Common Elements and/or Association Property, (d) not permitted to enter any elevators other than the service elevator; (e) generally, not a nuisance to residents of other Units or of neighboring buildings; and (f) not a barnyard or exotic animal, arachnid, reptile; pit bull or other breed considered to be dangerous by the Board of Directors, provided that neither the Board, the Developer nor the Association and their respective affiliates, directors, members, officers and agents shall be liable for any personal injury, death or property damage resulting from a violation of the foregoing and any occupant of a Unit committing such a violation shall fully indemnify and hold harmless the Board of Directors, the Developer, and the Association and their respective affiliates, directors, members, officers and agents, and each other Unit Owner in such regard. Pets shall not be permitted outside of their owner's Unit, unless attended by an adult. The following provisions shall also govern any pets on the Condominium, Common Elements and/or Association Property:

- (i) All pets must be on a leash not more than six (6) feet long or carried when outside of the Unit.
- (ii) Pets shall only be walked or taken upon those portions of the Condominium, Common Elements and/or Association Property designated by the Association from time to time for such purposes, if any. Under no circumstances shall pets be permitted in the pool area, on the pool deck or in the swimming pool.
- (iii) Unit Owners shall pick up all solid wastes from their pets and dispose of same appropriately in accordance with any rules and regulations of the Association.
- (iv) Each Owner shall be responsible for all damage caused by his/her pet.
- (v) The maintenance, keeping, boarding and/or raising of pot belly pigs, reptiles, rodents (i.e., mice, gerbils, hamsters), exotic animals, livestock, or poultry of any kind, regardless of number, is expressly prohibited.
- (vi) Upon request of any Owner or resident, each Owner shall be deemed to agree to leave any elevator with its pet or wait for another elevator.
- (vii) Pets may not play or exercise in the corridors, stairwells, roof, laundry rooms or other portions of the Condominium, Common Elements or Association Property, other than the Owner's Unit and those areas in the Common Elements designated for such purpose by the Association.
- (viii) Each Owner agrees to underwrite the cost of necessary extermination in the Owner's Unit or other Units if Owner's pet is responsible for the infestation of the building or portions thereof.
- (ix) Each Owner agrees to restrain its pet in an appropriate manner should it be requested either for cause or the result of a justifiable request from the Association (i.e., muzzled when going through public areas).
- (x) Breeding and boarding of any permitted pets is strictly prohibited.

Any landscaping damage or other damage to the Common Elements caused by a Unit Owner's pet must be promptly repaired by the Unit Owner. The Association retains the

right to effect such repairs and charge the Unit Owner therefor. Without limiting the generality of Section 18 hereof, a violation of the provisions of this paragraph shall entitle the Association to all of its rights and remedies, including, but not limited to, the right to fine Unit Owners (as provided in the By-Laws and any applicable rules and regulations) and/or to require any pet to be permanently removed from the Condominium Property. No pets shall be maintained in any Limited Common Element parking garage, parking area, storage space, Cabana or Common Cabana.

- 17.4 Alterations. Without limiting the generality of Section 9.1 hereof, but subject to Section 11 hereof, no Unit Owner shall cause or allow improvements or physical or structural changes to any Unit, Limited Common Elements appurtenant thereto, Common Elements or Association Property, including, but not limited to, painting or other decorating of any nature, installing or altering any electrical wiring, or plumbing systems, installing electronic devices, transmitting and/or receiving equipment, machinery, or air-conditioning units, which in any manner change the appearance of any portion of the Building or the exterior of the Unit, without obtaining the prior written consent of the Association (in the manner specified in section 9.1 hereof). Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face the exterior windows or glass doors of Units (and Cabanas) shall be white or off-white in color and shall be subject to disapproval by the Association, in which case they shall be removed and replaced by the Unit Owner with items acceptable to the Association.

Without limiting the generality of the foregoing paragraph and to the maximum extent permitted by applicable law, no antenna, satellite dishes or other television and radio reception items will be permitted by the Association to be placed outside any Unit, including any appurtenant Limited Common Element if (a) the installation, operation or use of such items impairs or adversely affects the audio or visual system installed in the Condominium by Developer, or (b) the Unit Owner can obtain substantially similar audio and visual services through the audio and visual network system installed in the Condominium by Developer. Nevertheless, if, but only if, required by applicable law, installation of any satellite dishes, antenna or other reception equipment shall be restricted in accordance with the following: (a) installation shall be limited solely to the Unit or any Limited Common Elements appurtenant thereto, and may not be on the Common Elements; (b) the dish may be no greater than one meter in diameter, and (c) to the extent that same may be accomplished without (i) impairing reception of an acceptable quality signal, (ii) unreasonably preventing or delaying installation, maintenance or use of an antenna, or (iii) unreasonably increasing the cost of installing, maintaining or using an antenna, the dish shall be placed in a location which minimizes its visibility from the Common Elements or Limited Common Elements.

- 17.5 Smoking in Common Elements. Smoking shall not be permitted in any of the interior Common Elements (including any Common Cabana), except only in such areas as may be designated from time to time for smoking by the Board, if any. Smoking shall be permitted on the exterior Common Elements, but any person smoking thereon shall pick up all waste generated thereby and dispose of same in an appropriate manner.
- 17.6 Use of Common Elements and Association Property. The Common Elements and Association Property shall be used only for furnishing of the services and facilities for which they are reasonably suited and which are incident to the use and occupancy of Units. In that regard, each Unit Owner, by acceptance of a deed for a Unit, thereby covenants and agrees that it is the intention of the Developer that the stairwells of the Building are intended for ingress and egress in the event of emergency only, and as such are constructed and left unfinished solely as to be functional for that purpose, without regard to the aesthetic appearance of the stairwells. Similarly, the parking structure and utility pipes serving the Condominium are intended solely for functional purposes, and as

such will be left unfinished without regard to the aesthetic appearance of same. The foregoing is not intended to prohibit the use of the stairwells, parking facility, and utility pipes for any other proper purpose. In order to enhance the ambience of the main lobby, all Unit Owners, guests, residents and invitees are prohibited from entering the lobby, or any area visible from the lobby, in bathing attire, or without shoes, shirt or other appropriate attire.

- 17.7 Nuisances. No nuisances (as defined by the Association) shall be allowed on the Condominium or Association Property, nor shall any use or practice be allowed which is a source of annoyance to occupants of Units or which interferes with the peaceful possession or proper use of the Condominium and/or Association Property by its residents, occupants or members. No activity specifically permitted by this Declaration shall be deemed a nuisance.
- 17.8 No Improper Uses. No improper, offensive, hazardous or unlawful use shall be made of the Condominium or Association Property or any part thereof, including, but not limited to, uses that would terminate or increase the cost of procuring insurance required to be maintained by the Association under this Declaration or the Act, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any portion of the Condominium and/or Association Property, shall be corrected by, and at the sole expense of, the party obligated to maintain or repair such portion of the Condominium Property, as elsewhere herein set forth. Notwithstanding the foregoing and any provisions of this Declaration, the Articles of Incorporation or By-Laws, the Association shall not be liable to any person(s) for its failure to enforce the provisions of this Section 17.8. No activity specifically permitted by this Declaration shall be deemed to be a violation of this Section 17.8.
- 17.9 Leases. Leasing (and any renewals of leases) Units shall require prior written approval of the Association, which approval shall not be unreasonably withheld. Every lease shall be in writing and shall specifically provide (or, if it does not, shall be automatically deemed to provide) that a material condition of the lease shall be the tenant's full compliance with the covenants, terms, conditions and restrictions of this Declaration, the Articles, By-Laws, the ECR, and any rules and regulations of the Association (now or hereafter adopted by the Association). If a Unit Owner owns more than one Unit, the Unit Owner may lease all Units owned by him/her, but the leasing of less than an entire Unit is prohibited. The Unit Owner will be jointly and severally liable with the tenant to the Association for any amount which is required by the Association to repair any damage to the Common Elements resulting from acts or omissions of tenants (as determined in the sole discretion of the Association) and to pay any claim for injury or damage to property caused by the negligence of the tenant and Special Assessments may be levied against the Unit therefor. All leases are hereby made subordinate to any lien filed by the Condominium Association, whether prior or subsequent to such lease. The Association may charge a fee in connection with the approval of any lease, sublease, or other transfer of a Unit requiring approval, provided, however, that such fee may not exceed \$100 per applicant other than husband/wife or parent/dependent child, which are considered one applicant, and provided further, that if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. If so required by the Association, a tenant wishing to lease a Unit shall be required to place in escrow with the Association a reasonable sum, not to exceed the equivalent of one months' rental, which may be used by the Association to repair any damage to the Common Elements and/or Association Property resulting from acts or omissions of tenants (as determined in the sole discretion of the Association). Unless required by the Act or other applicable law,

no interest shall be paid on the deposit. No lease of a Unit shall be for a period of less than one (1) year. **Month-to-month leases are strictly prohibited.**

When a Unit is leased, a tenant shall have all use rights in Association Property and those Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the leased Unit shall not have such rights, except as a guest, unless such rights are waived in writing by the tenant. Nothing herein shall interfere with the access rights of the Unit Owner as a landlord pursuant to applicable law, including, but not limited to, NRS ch. 118A and NRS ch. 40. The Association shall have the right to adopt further rules to prohibit dual usage by a Unit Owner and a tenant of Association Property and Common Elements otherwise readily available for use generally by Owners. The Association may also impose and collect a reasonable administrative fee (from time to time established by the Board) in connection with each lease (and each renewal of a lease) of a Unit.

- 17.10 Weight, Sound and other Restrictions on Units. Unless installed or approved by the Developer or meeting the sound insulation specifications established from time to time by the Board, hard, heavy or any other surface floor and wall coverings, such as tile, marble, wood, and the like will not be permitted in Units. Without limiting the Board's approval, as required by the preceding sentence, all floor and wall coverings installed by Unit Owners must provide code-compliant sound control properties for both airborne and impact sound insulation, and must satisfy the following ratings: (a) in the case of flooring, (i) impact sound insulation must be Field Impact Insulation Class (FIIC) 50 or higher and (ii) airborne sound isolation must be Noise Isolation Class (NIC) 50 or higher and (b) in the case of walls, airborne sound isolation must meet a Noise Insulation Class (NIC) 50 or higher. Even once approved by the Board, the installation of insulation materials shall be performed in a manner that provides proper mechanical isolation of the flooring materials from any rigid part of the building structure, whether of the concrete subfloor (vertical transmission) or adjacent walls and fittings (horizontal transmission) and the same must be installed prior to the Unit being occupied. Chipping, grinding and/or bushing of the concrete slab is expressly prohibited, due to the post tension design of the Building. Additionally, the floor coverings (and insulation and adhesive material therefor) installed on any Terrace shall not exceed a thickness that will result in the finish level of the Terraces being above the bottom of the scuppers or diminish the required height of the rails (as established by the applicable building code). Also, the installation of any improvement or heavy object must be submitted to and approved by the Board, and be compatible with the overall structural design of the Building. All areas within a Unit, unless containing floor coverings installed by the Developer or to receive floor covering approved by the Board, are to receive sound absorbent, less dense floor coverings, such as carpeting. The Board will have the right to specify the exact material to be used on Terraces. Any use guidelines set forth by the Association shall be consistent with good design practices for the waterproofing and overall structural design of the Building. Owners will be held strictly liable for violations of these restrictions and for all damages resulting therefrom and the Association has the right to require immediate removal of violations. This subsection 17.10 applies to improvements and alterations to Cabanas by Owners to which the Cabanas are an appurtenant Limited Common Element to their Units. Applicable warranties of the Developer, if any, shall be voided by violations of these restrictions and requirements. Each Owner, by acceptance of a deed or other conveyance of their Unit, hereby acknowledges and agrees that sound transmission in a multi-story building such as the Condominium is very difficult to control, and that noises from adjoining or nearby Units and or mechanical equipment can often be heard in another Unit. The Developer does not make any representation or warranty as to the level of sound transmission between and among Units and the other portions of the Condominium Property, and each Owner shall be deemed to waive and expressly release any such warranty and claim for loss or damages resulting from sound transmission.

Notwithstanding anything herein contained to the contrary, the installation of insulation under hard surface floor coverings shall not be required for any Unit that is not located above another Unit or above Common Elements that may reasonably be considered by the Board to be areas of general circulation (e.g. lobbies, hallways, mailrooms, if any etc.), and/or recreational areas. Accordingly, if a Unit has no Improvements below it, or only the parking garage or a mechanical room below it, it shall not be required to install insulation under hard surface floor coverings.

- 17.11 Exterior Improvements. Without limiting the generality of Sections 9.1 or 17.4 hereof, but subject to any provision of this Declaration specifically permitting same, no Unit Owner shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, Terraces, Cabanas or windows of the Building (including, but not limited to, awnings, signs, storm shutters, satellite dishes, screens, planters, window tinting, furniture, fixtures and equipment), without the prior written consent of the Association. Notwithstanding the provisions of this Section and Section 9.1 above, any Unit Owner may (a) display one portable, removable United States flag in a respectful way, and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps or Coast Guard and (b) political signs permitted by the Act.
- 17.12 Terraces. No articles other than high quality, patio-type furniture (except plastic furniture, which is strictly prohibited) shall be placed on Terraces or other Common Elements. No linens, cloths, clothing, bathing suits or swimwear, curtains, rugs, mops, or laundry of any kind, or other articles, shall be shaken or hung from any of the windows, doors, Terraces or other portions of the Condominium or Association Property.
- 17.13 Cabanas. Certain Units in the Building will be entitled to the exclusive use of a cabana as an appurtenant Limited Common Element. The use of Cabanas is subject to the use and other restrictions described elsewhere in this Declaration. Without limitation, other than improvements originally constructed or installed by the Developer, Owners may not make any improvements to the exterior of the Cabanas, without first obtaining the written consent of the Association, which consent may given, withheld or conditioned in the sole discretion of the Association. Curtains, blinds, shutters, levelors, or draperies (or linings thereof) which face the exterior windows or glass doors of casitas shall be white or off-white in color. The Common Cabanas shall be maintained, leased and operated by the Association as part of the Common Elements. The Association shall be exempt from the foregoing restrictions pertaining to the Common Cabanas.
- 17.14 Association Access to Units. In order to facilitate access to Units by the Association for the purposes enumerated in Subsection 11.1(a) hereof, it shall be the responsibility of all Unit Owners to deliver a set of keys to their respective Units (or to otherwise make access available) to the Association for use in the performance of its functions. No Unit Owner shall change the locks to his or her Unit (or otherwise preclude access to the Association) without so notifying the Association and delivering to the Association a new set of keys (or otherwise affording access) to such Unit.
- 17.15 Relief by Association. The Association shall have the power (but not the obligation) to grant relief in particular circumstances from the provisions of specific restrictions contained in this Section 17 for good cause shown, as determined by the Association in its sole discretion.
- 17.16 Cumulative with Restrictions of ECR. The foregoing restrictions shall be in addition to, cumulative with, and not in derogation of those set forth in the ECR.

17.17 Effect on Developer. Subject to the following restrictions and to the extent permitted by law, the restrictions and limitations set forth in this Section 17 shall not apply to the Developer nor to Units owned by the Developer. The Developer shall not be exempt from the restrictions, if any, relating to requirements that leases or lessees be approved by the Association, pet restrictions, occupancy of Units based on age and vehicular restrictions, except as such vehicular restrictions relate to the Developer's reserved Special Developer's Rights, including the Developer's construction, maintenance, sales, re-sales, leasing and other marketing and financing activities, which activities the Developer can perform without the prior consent of the Unit Owners.

18. Compliance and Default. The Association, each Unit Owner, occupant of a Unit, tenant and other invitee of a Unit Owner shall be governed by and shall comply with the terms of this Declaration and all exhibits annexed hereto, the Articles of Incorporation, the By-Laws and any rules and regulations adopted pursuant to those documents, as the same may be amended from time to time and the provisions of all of such documents shall be deemed incorporated into any lease of a Unit whether or not expressly stated in such lease. The Association (and Unit Owners, if appropriate) shall be entitled to the following relief in addition to the remedies provided by the Act:

18.1 Mandatory Nonbinding Arbitration of Disputes. Prior to the institution of court litigation, the parties to a Dispute shall petition the Ombudsman for Owners in Common-Interest Communities (the "Ombudsman") for nonbinding arbitration in accordance with Section 116.625 of the Act. The arbitration shall be conducted according to rules of the American Arbitration Act or the rules promulgated by the Ombudsman, except that there shall be a single arbitrator and the arbitrator shall have the authority to limit the scope and time of the parties' discovery. The filing of a petition for arbitration shall toll the applicable statute of limitation for the applicable Dispute, until the arbitration proceedings are completed. Any arbitration decision shall be presented to the parties in writing, and shall be deemed final if a complaint for trial de novo is not filed in a court of competent jurisdiction in which the Condominium is located within thirty (30) days following the issuance of the arbitration decision. If this occurs, judgment upon the arbitration decision may be entered in any court of competent jurisdiction in accordance with Chapter 38 of Nevada Revised Statutes. The prevailing party in the arbitration proceeding shall be awarded the costs of the arbitration, and attorneys' fees and costs incurred in connection with the proceedings. The party who files a complaint for a trial de novo shall be charged the other party's arbitration costs, courts costs and other reasonable costs, including, without limitation, attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence incurred after the arbitration decision, if the judgment upon the trial de novo is not more favorable than the arbitration decision. If the judgment is more favorable, the party who filed a complaint for trial de novo shall be awarded reasonable court costs and attorneys' fees. Any party to an arbitration proceeding may enforce an arbitration award by filing a petition in a court of competent jurisdiction in which the Condominium is located. A petition may not be granted unless the time for appeal by the filing of a complaint for a trial de novo has expired. If a complaint for a trial de novo has been filed, a petition may not be granted with respect to an arbitration award that has been stayed. If the petition is granted, the petitioner may recover reasonable attorneys' fees and costs incurred in enforcing the arbitration award.

18.2 Negligence and Compliance. A Unit Owner and/or tenant of a Unit shall be liable for the expense of any maintenance, repair or replacement made necessary by his/her negligence or by that of any member of his/her family or his/her or their guests, employees, agents or lessees, but only to the extent such expense is not met by the proceeds of insurance actually collected in respect of such negligence by the Association. In the event a Unit Owner, tenant or occupant fails to maintain a Unit or fails to cause such Unit to be maintained, or fails to observe and perform all of the provisions of the

Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable rules and regulations, or any other agreement, document or instrument affecting the Condominium Property or administered by the Association, in the manner required, the Association shall have the right to proceed in equity or at law to require performance and/or compliance, to impose any applicable fines under the rules and regulations of the Association and Section 18.3 below, to sue at law for damages, to prohibit the Unit Owner from using the recreational facilities located on the Common Elements and to suspend the voting rights of such Owner and to charge the Unit Owner for the sums necessary to do whatever work is required to put the Unit Owner or Unit in compliance, provided, however, that nothing contained in this Section 18 shall authorize the Association to enter a Unit to enforce compliance. In any proceeding arising because of an alleged failure of a Unit Owner, a tenant or the Association to comply with the requirements of the Act, this Declaration, the Articles of Incorporation, the By-Laws, or any rules and regulations adopted pursuant to said documents, as the same may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (including appellate attorneys' fees). A Unit Owner prevailing in an action with the Association, in addition to recovering his/her reasonable attorneys' fees, may recover additional amounts as determined by the court to be necessary to reimburse the Unit Owner for his/her share of Assessments levied by the Association to fund its expenses of the litigation.

- 18.3 Fines. In addition to any and all other remedies available to the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees, to comply with any covenant, restriction, rule or regulation herein or Articles of Incorporation, By-Laws or rules and regulations of the Association, provided the procedures outlined in the rules and regulations and the Act are observed. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.
19. Termination of Condominium. The Condominium shall continue until (a) terminated by casualty loss, condemnation or eminent domain, as more particularly provided in this Declaration, or (b) such time as withdrawal of the Condominium Property from the provisions of the Act is authorized by a vote of Owners owning at least 80% of the Allocated Interests in the Common Elements and by the Institutional First Mortgagees of Units to which at least sixty-seven percent (67%) of the voting interests of Units subject to mortgages held by Institutional First Mortgagees are appurtenant. In the event such withdrawal is authorized as aforesaid, the Condominium Property shall be subject to an action for partition by any Unit Owner, mortgagee or lienor as if owned in common in which event the net proceeds of the partition sale shall be divided among all Unit Owners in proportion to their Allocated Interests in the Common Elements, provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his/her share of such net proceeds all mortgages and liens on his/her Unit in the order of their priority. The termination of the Condominium, as aforesaid, shall be evidenced by a certificate of the Association executed by its President and Secretary, certifying as to the basis of the termination and said certificate shall be recorded among the official records of the County. This Section may not be amended without the consent of the Primary Institutional First Mortgagee and the Developer as long as it owns any Unit.
20. Additional Rights of Mortgagees and Others.
- 20.1 Availability of Association Documents. The Association shall have current and updated copies of the following available for inspection by Institutional First Mortgagees during

normal business hours or under other reasonable circumstances as determined by the Board: (a) this Declaration; (b) the Articles; (c) the By-Laws; (d) any rules and regulations of the Association; and (e) the books, records and financial statements of the Association.

- 20.2 Amendments. Subject to the other provisions of this Declaration and except as provided elsewhere to the contrary, an amendment directly affecting any of the following shall require the approval of a Majority of Institutional First Mortgagees: (a) voting rights; (b) a reallocation of responsibility for Common Expenses or a change in the priority of assessment liens; (c) reductions in reserves for maintenance, repair and replacement of Common Elements and/or Association Property; (d) responsibility for maintenance and repairs; (e) reallocation of interests in the Common Elements (including Limited Common Elements) or rights to their use; (f) redefinition of Unit boundaries; (g) conversion of Units into Common Elements or Common Elements into Units; (h) expansion or contraction of the Condominium; (i) hazard or fidelity insurance requirements; (j) imposition of restrictions on leasing of units; (k) imposition of restrictions on the selling or transferring of title to Units; (l) restoration or repair of the Condominium after a casualty or partial condemnation; (m) any action to terminate the Condominium after casualty or condemnation; and (n) any provision that expressly benefits mortgage holders, insurers or guarantors as a class.
- 20.3 Notices. Any holder, insurer or guarantor of a mortgage on a Unit shall have, if first requested in writing from the Association, the right to timely written notice of:
- (a) any condemnation or casualty loss affecting a material portion of the Condominium and/or Association Property or the affected mortgaged Unit;
 - (b) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Unit;
 - (c) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
 - (d) any proposed action which requires the consent of a specified number of mortgage holders.
- 20.4 Additional Rights. Institutional First Mortgagees shall have the right, upon written request to the Association, to: (a) receive a copy of an audited financial statement of the Association for the immediately preceding fiscal year if such statements were prepared; and (b) receive notices of and attend Association meetings.
- 20.5 Additional Mortgage Protection Provisions. Without limiting the other provisions of this Section 20 or the other provisions of this Declaration, Mortgagees (as defined below) are entitled to the following protective provisions:
- (a) Notice Provisions.
 - (i) Upon written request to the Association, which request identifies the name and address of the holder of a mortgage or deed of trust lien, including Institutional First Mortgagees ("Mortgagee"), encumbering any Unit ("Mortgage") and the Unit number or address, such Mortgagee will be entitled to timely written notice of:
 - (a) any condemnation or any casualty loss which affects a material portion of the Property (as defined below) or any Unit on which

there is a Mortgage held, insured, or guaranteed by such Mortgagee, as applicable;

- (b) any default in performance of obligations under the Declaration, Bylaws, or Rules and Regulations or delinquency in the payment of Assessments or charges owed by an Unit Owner subject to a Mortgage held by such Mortgagee which remains uncured for a period of thirty (30) days;
 - (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
 - (d) any proposed action under the Declaration which would require the consent of a specified percentage of the Mortgagees.
- (b) Cure Rights. Any Mortgagee shall have the right, but not the obligation, at any time prior to the termination of the Declaration, and without payment of any penalty, to do any act or thing required of any party under the Declaration; and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions of the Declaration. All payments so made and all things so done and performed by any Mortgagee shall be effective to prevent a default under the Declaration as the same would have been if made, done and performed by any party hereto instead of by the Mortgagee. Any event of default under the Declaration which in the nature thereof cannot be remedied by Mortgagee shall be deemed to be remedied if: (i) within sixty (60) days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Mortgagee shall have acquired the property owned by the defaulting party (the "Property") or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (ii) the Mortgagee diligently prosecutes any such proceedings to completion, (iii) the Mortgagee shall have fully cured any default in the payment of any monetary obligations owed to the non-defaulting party hereunder within such sixty (60) day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Property, and (iv) after gaining possession of the Property following a foreclosure or deed in lieu thereof, the Mortgagee performs all other obligations of the defaulting party hereunder as and when the same are due.
- (c) No Invalidity of Mortgage Lien. No violation of the Declaration by, or enforcement of the Declaration against, any party shall impair, defeat or render invalid the lien of any Mortgage.
- (d) Mortgagee Requirements. The Association and the Board of Directors agrees to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by a Mortgagee; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Declaration.
- (e) Material Changes. All Mortgagees, upon written request to the Association, shall be given thirty (30) days' written notice prior to the effective date of (a) any proposed material amendment to the Condominium restrictions or Condominium plans; (b) any termination of an agreement for professional management of the Condominium following any decision of the Owners to assume self-management

of the Condominium; and (c) any proposed termination of the Property as a condominium project.

- (f) Priority of Rights. No provision of this Declaration shall be construed or applied to give any Owner, or any other party, priority over any rights of any Mortgagee in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to, or taking of, a Unit and/or Common Element.

21. Covenant Running With the Land. All provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations of the Association shall, to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the Developer and subsequent owner(s) of the Land or any part thereof, or interest therein, and their respective heirs, personal representatives, successors and assigns, but the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All present and future Unit Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the Articles, By-Laws and applicable rules and regulations, all as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease, or the entering into occupancy of any Unit, shall constitute an adoption and ratification of the provisions of this Declaration, and the Articles, By-Laws and applicable rules and regulations of the Association, all as they may be amended from time to time, including, but not limited to, a ratification of any appointments of attorneys-in-fact contained herein.

22. Disclaimer of Warranties. Developer hereby disclaims any and all express or implied warranties as to design, construction, sound transmission, noise from exterior conditions (whether from nearby construction, vehicular or air passage or otherwise), furnishing and equipping of the Condominium Property, except only those that cannot be disclaimed pursuant to Section 116.4115(2) of the Act, to the extent applicable and to the extent that same have not expired by their terms. As to such warranties which cannot be disclaimed, and to other claims, if any, which can be made as to the aforesaid matters, all incidental and consequential damages arising therefrom are hereby disclaimed and the statute of limitation for bringing any such claim shall be limited to a maximum of two (2) years from the recording of this Declaration.

All unit owners, by virtue of acceptance of title to their respective units (whether from the Developer or another party) shall be deemed to have automatically waived all of the aforesaid disclaimed warranties and incidental and consequential damages.

23. Additional Provisions.

- 23.1 Notices. All notices to the Association required or desired hereunder or under the By-Laws of the Association shall be sent by certified mail (return receipt requested) to the Association in care of its office at the Condominium or to such other address as the Association may hereafter designate from time to time by notice in writing to all Unit Owners and to the Managing Agent (if any). Except as provided specifically in the Act, all notices to any Unit Owner shall be sent by first class mail to the Condominium address of such Unit Owner, or such other address as may have been designated by him or her from time to time, in writing, to the Association. All notices to mortgagees of Units shall be sent by first class mail to their respective addresses, or such other address as may be designated by them from time to time, in writing to the Association. All notices shall be

deemed to have been given when mailed in a postage prepaid sealed wrapper, except notices of a change of address, which shall be deemed to have been given when received, or 5 business days after proper mailing, whichever shall first occur.

- 23.2 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions hereof, the Exhibits attached hereto, the Articles of Incorporation, the By-Laws and any rules and regulations of the Association. Such interpretation shall be binding upon all parties unless determined by a court of competent jurisdiction to be wholly unreasonable. An opinion of legal counsel that any interpretation adopted by the Association is not unreasonable shall conclusively establish the validity of such interpretation.
- 23.3 Mortgagees. Anything herein to the contrary notwithstanding, the Association shall not be responsible to any mortgagee or lienor of any Unit hereunder, and may assume the Unit is free of any such mortgages or liens, unless written notice of the existence of such mortgage or lien is received by the Association.
- 23.4 CPI. Whenever specific dollar amounts are stated in this Declaration or any exhibits hereto, unless limited by law or the specific text hereof (or thereof), such amounts shall increase from time to time by application of a nationally recognized consumer price index chosen by the Board of Directors, using the date this Declaration is recorded as the base year. In the event no such consumer price index is available, the Board shall choose a reasonable alternative to compute such increases.
- 23.5 Exhibits. There is hereby incorporated in this Declaration all materials contained in the Exhibits annexed hereto, except that as to such Exhibits, any conflicting provisions set forth therein as to their amendment, modification, enforcement and other matters, if any, shall control over those hereof.
- 23.6 Signature of President and Secretary. Wherever the signature of the President of the Association is required hereunder, the signature of a vice-president may be substituted therefor, and wherever the signature of the Secretary of the Association is required hereunder, the signature of an assistant secretary may be substituted therefor, provided that the same person may not execute any single instrument on behalf of the Association in two separate capacities. Signatures of the President and Secretary on copies of any document required hereunder which is transmitted by facsimile machine shall be deemed originals for all purposes hereunder, and shall be binding upon the parties thereto.
- 23.7 Governing Law. Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration, the Articles of Incorporation, the By-Laws or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Nevada.
- 23.8 Severability. The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, paragraph, clause, phrase or word, or other provision of this Declaration, the Articles of Incorporation, the By-Laws, or applicable rules and regulations adopted pursuant to such documents, as the same may be amended from time to time, shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.
- 23.9 Waiver. The failure of the Association or any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Articles of Incorporation, the By-Laws, or any rules and regulations adopted pursuant to said documents, as the same

may be amended from time to time, shall not constitute a waiver of their right to do so thereafter.

- 23.10 Ratification. Each Unit Owner, by reason of having acquired ownership (whether by purchase, gift, operation of law or otherwise), and each occupant of a Unit, by reason of his/her occupancy, shall be deemed to have acknowledged and agreed that all of the provisions of this Declaration, and the Articles and By-Laws of the Association, and applicable rules and regulations, are fair and reasonable in all material respects.
- 23.11 Execution of Documents; Attorney-in-Fact. Without limiting the generality of other Sections of this Declaration and without such other Sections limiting the generality hereof, each Owner, by reason of the acceptance of a deed to such Owner's Unit, hereby agrees to execute, at the request of the Developer, all documents or consents which may be required by all governmental agencies to allow the Developer and its affiliates to complete the plan of development of the Condominium as such plan may be hereafter amended, and each such Owner further appoints hereby and thereby the Developer as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of such Owners, any and all of such documents or consents. This Power of attorney is irrevocable and coupled with an interest. The provisions of this Section may not be amended without the consent of the Developer.
- 23.12 Gender, Plurality. Wherever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall be deemed to include all or no genders.
- 23.13 Captions. The captions herein and in the Exhibits annexed hereto are inserted only as a matter of convenience and for ease of reference and in no way define or limit the scope of the particular document or any provision thereof.
- 23.14 Liability. Notwithstanding anything contained herein or in the Articles of Incorporation, By-laws, any rules or regulations of the Association or any other document governing or binding the association (collectively, the "Association Documents"), the Association, except to the extent specifically provided to the contrary herein, shall not be liable or responsible for, or in any manner be a guarantor or insurer of, the health, safety or welfare of any Owner, occupant or user of any portion of the Condominium and/or Association Property including, without limitation, Owners and their guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. Without limiting the generality of the foregoing:
- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;
 - (b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Nevada, Clark County and/or any other jurisdiction or the prevention of tortious activities; and
 - (c) the provisions of the Association Documents setting forth the uses of assessments which relate to health, safety and/or welfare shall be interpreted and applied only as limitations on the uses of assessment funds and not as creating a duty of the Association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each Owner (by virtue of each Owner's acceptance of title to the Owner's Unit) and each other person having an interest in or lien upon, or making use of, any portion of the properties (by virtue of accepting such interest or lien or making such use) shall be bound by this provision and shall be deemed to have automatically waived any and all rights, claims, demands and causes of action against the Association arising from or connected with any matter for which the liability of the Association has been disclaimed hereby. As used herein, "Association" shall include within its meaning all of Association's directors, officers, committee and board members, employees, agents, contractors (including management companies), subcontractors, successors and assigns. The provisions hereof shall also inure to the benefit of Developer and all of Developer's employees, affiliates and subsidiaries, all of who shall be fully protected hereby.

24. Commercial Units. As of the date of this Declaration, there exists one Commercial Unit. Neither the Commercial Unit nor the use, occupancy and operation of the Commercial Unit are subject to any of the terms, covenants and conditions of this Declaration or subject to any provision of the Act, except the extent specifically provided in this Section 24 or as specifically described elsewhere in this Declaration. Under no circumstances will a Commercial Unit be deemed to be a Unit and a Commercial Owner be deemed an Owner, as the terms Unit and Owner are used in this Declaration. The following terms, covenants, conditions and restrictions govern the Commercial Units in the Condominium:

24.1 Easements. Subject to the provisions of this Declaration, the Commercial Units and the Commercial Owners and Commercial Occupants and their respective invitees, licensees and guests have and enjoy the non-exclusive easements for support, utility, drainage and other services, encroachments, ingress and egress and additional easements as more particularly set forth in Section 3.5(a)-(d), inclusive, (h) and (i) of this Declaration; provided, however, that Commercial Owners and Commercial Occupants shall have no right to ingress, egress, access, use or enjoyment of any areas identified as Units or Limited Common Elements reserved exclusively in favor of Owners of Units.

24.2 Maintenance; Repair and Alterations. All maintenance, repairs and replacements of, in or to any Commercial Unit and any Limited Common Elements appurtenant thereto, whether structural or non-structural, ordinary or extraordinary, foreseen or unforeseen, including, without limitation, inspection, maintenance, repair and replacement of windows, window coverings, interior non-structural walls, interior side of any entrance door and all other doors within or affording access to a Commercial Unit and the electrical (including wiring), plumbing (including fixtures and connections), heating and air-conditioning equipment, fixtures and outlets, appliances, carpets and other floor coverings, all interior services and the entire interior of the Commercial Unit lying within the boundaries of the Commercial Unit or the appurtenant Limited Common Element (if any) or other property belonging to the Commercial Owner or Commercial Occupant, shall be performed by the Commercial Owner or Commercial Occupant at such person's sole cost and expense. As provided elsewhere in this Declaration, the Association shall maintain the Common Elements outside the boundaries of the Commercial Unit, a portion of the cost of which will be allocated to the Commercial Unit as more specifically provided in this Section 24. Except as may be limited by this Section 24, Commercial Units may be improved, altered and repaired without obtaining the consent of the Association or any Unit Owner and without complying with the other provisions of this Declaration (except where required by this Section 24).

24.3 Use Restrictions. No use or operation shall be made, conducted or permitted on or with respect to all or any part of the Commercial Units, which use or operation violates applicable laws, or zoning codes. In addition to the foregoing, no Commercial Unit shall

be used for any activity or purpose considered by the Board to pose a safety hazard or health risk within the Condominium, including, but not limited to, the following:

- (a) Any noise or sound that is unreasonably objectionable due to intermittence, beat, frequency, shrillness or loudness in relation to use of the Commercial Unit;
- (b) Any noxious, hazardous, toxic, caustic, explosive or corrosive fuel, gas or other substance;
- (c) Any fire, explosion or other damaging or dangerous hazard, including the storage or sale of explosive or fireworks;
- (d) Any distillation or refinery facility;
- (e) Any dumping of garbage or refuse, except in places designated for disposal by the Association;
- (f) Any mechanical or motorized vehicle repair shop;
- (g) Any indecent or pornographic uses, massage parlor, adult bookstore, peepshow store or any other similar store or club, and any business devoted to sale of articles and merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;
- (h) Any laundromat or dry cleaning facility or store, except that of a "drop off" service for dry cleaning (e.g., "Pressed-For-Time") shall be permitted so long as the actual dry cleaning is conducted at a site outside the Condominium.
- (i) Any signage related to Commercial Units shall be subject to the following limitations: (i) each sign shall be of dimensions not exceeding 15' X 20' (or of such greater dimensions as approved by the Board) for external signs; (ii) the sign shall not generate any noise or sound; (iii) no neon or argon sign shall be permitted without the prior written approval of the Board; (iv) the sign shall not violate or infringe in any manner any copyright, trademark, patent or other intellectual property right of any party (and the Commercial Owner shall indemnify and hold harmless Developer, the Association and the Board from any and all losses, costs, and damages arising out of the failure of the sign to comply with the foregoing requirement); (v) the sign shall be in compliance with all applicable zoning, land use, building, and other County or City laws, ordinances and restrictions applicable to the Condominium (and the Commercial Owner shall indemnify and hold harmless Declarant, the Association and the Board from any and all losses, costs, and damages arising out of the failure of the sign to comply with the foregoing requirement); and (vi) the sign shall not be vulgar or offensive (as reasonably determined by the Board).
- (j) Parking for any patrons with respect to the Commercial Units shall be solely in spaces designated for such use by the Developer or, if not designated by the Developer, then as designated by the Board, from time to time.
- (k) Any and all commercial uses with respect to the Commercial Units shall be in accordance with and in strict compliance with applicable City and County laws, ordinances, and regulations, including without limitation obtaining any and all business licenses, approvals, zoning compliance, use permits, variances, health department approvals, and so forth.

- (l) The Commercial Units are intended for commercial uses only, as outlined in the Declaration. No temporary (e.g., overnight) or permanent residential use of any Commercial Unit or any portion thereof shall be permitted.
- (m) The Commercial Units shall be continuously operated for business purposes during ordinary and customary business hours for businesses of the type of business there maintained, and in any event, from the hours of 8:00 a.m. to 5:00 p.m., on Monday through Friday, excluding federal holidays. Notwithstanding the foregoing, any Commercial Unit may be used up to twenty-four hours per day, seven (7) days per week.
- (n) No Commercial Unit shall be permitted to hold "going out of business" or similar sales or functions.
- (o) Commercial leases for the Commercial Units shall require the tenants thereof to comply with this Declaration, including this Section 24, and shall provide that a failure to do so constitutes a violation of the lease.
- (p) Commercial leases for the Commercial Units shall not be subject to review or approval by the Association or any other party or to minimum or maximum time restrictions.
- (q) Commercial Owners and Commercial Occupants, their guests, invitees, agents, employees, and others, by reason of ownership or use of the Common Elements, shall have only the use of such Common Elements or Limited Common Elements as required for ingress to and egress from the Commercial Units and for the use and enjoyment thereof, and shall not have access to or use of lobbyways, elevators, hallways, recreational and other amenities of the Condominium, the parking facilities (subject to subparagraph (j) above), or other Common Elements. Any permitted use of such Common Elements shall be subject to the other provisions of this Declaration.
- (r) The use of Commercial Units shall be in compliance with all federal, state, and local laws, rules, ordinances, and regulations. Without limiting the foregoing, Commercial Owners and Commercial Occupants shall obtain and maintain in good standing any and all state and local business licenses, use permits, approvals, liquor licenses, and consents as may be required by any and all federal, state, and local governmental authorities.
- (s) Commercial Owners and Commercial Occupants shall at all times maintain premises liability insurance, general commercial liability insurance, workers' compensation insurance, and other insurance coverage pursuant to the requirements set forth in the Declaration applicable to the Association, including Section 14 hereof.
- (t) No use of any sidewalk or outdoor area shall be permitted without first obtaining approval of the Board, and so long as it owns any Unit, approval of Declarant. All outdoor or sidewalk use shall be in accordance with and subject to applicable laws, ordinances, and regulations, and the Commercial Owners or Commercial Occupants shall be required to obtain any and all governmental permits and approvals.

- (u) Deliveries of inventory and other materials required for the Commercial Units shall be performed at areas specified for that purpose and only between the hours of 8:00 a.m. to 6:00 p.m.
 - (v) Trash shall be maintained in sealed trash bins or containers, and shall be emptied and cleaned regularly. No trash receptacle shall be maintained near or in any portion of the Condominium, except in areas approved by the Board.
 - (w) All patrons to any Commercial Unit shall be required to wear appropriate attire, including shirts and shoes.
 - (x) Pets or animals of any nature may not be maintained in a Commercial Unit.
- 24.4 Further Subdivision. Commercial Owners may, without obtaining the consent of the Association, Unit Owners, any Mortgagee or any other person, in accordance with applicable law, legally subdivide the Commercial Unit into multiple Commercial Units, or, alternatively, construct demising walls to create separate spaces within a single Commercial Unit.
- 24.5 Commercial Allocated Interests. Commercial Unit Owners are allocated an undivided fractional interest in the Common Elements and Common Surplus and liability for Common Expenses in the percentage set forth on **Exhibit "4"** attached hereto. The budget for the Association includes a separate component for the Commercial Unit. This separate component amount, when multiplied by the Commercial Unit's percentage liability for Common Expenses set forth in **Exhibit "4"** hereto, will be deemed to be an Assessment to the Commercial Unit for all purposes of this Declaration, including, but not limited to, Section 12 hereof, and shall be payable to the Association and may be enforced by the Association in accordance with the provisions of Section 12 and Section 13 of this Declaration.
- 24.6 Voting Rights. Commercial Owners are not members of the Association and generally have no voting rights in the Association. However, Commercial Owners may vote on the following matters:
- (a) Any matter requiring a vote of Owners relating to the allocation, increase or decrease of the Commercial Unit assessment component of the Common Expenses (as set forth in the recurring budget of the Association) in accordance with the approval process of any budget by all Owners under this Declaration or the By-Laws; and
 - (b) Any matter requiring a vote of Owners relating exclusively to the Commercial Units or the Limited Common Elements exclusively serving the Commercial Units, or any matter that materially limits any Commercial Units' ability to operate its business must be approved (by simple majority vote) of only the Commercial Owners.

24.7 General. There is hereby reserved to the Commercial Units, the Commercial Owners and the Commercial Occupants all other rights and remedies afforded to them by applicable law, subject to the limitations set forth in this Declaration. In the event of any conflict or inconsistency between the provisions of this Declaration and, in particular, this Section 24, relating to the Commercial Units and any other applicable law, the conflicting or inconsistent provisions of this Declaration shall automatically be deemed modified to the minimum extent necessary to conform to the applicable provision of any other applicable law.

25. Conflicts and Changes in Law. This Declaration is intended to comply with the Act and other applicable law. In the event of any conflict or inconsistency between this Declaration and the Act or other applicable law, or in the event any change in the Act shall result in a conflict or inconsistency between the provisions of this Declaration and the Act or other applicable law, the conflicting or inconsistent provisions of this Declaration shall automatically be deemed modified to the minimum extent necessary to conform to the applicable provision of the Act or other applicable law.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed and its corporate seal to be hereunto affixed as of 10/4, 2007.

SP SAHARA DEVELOPMENT, LLC, a
Delaware limited liability company

By: FRC Sahara, L.L.C., a Delaware limited
liability company, its manager

By: [Signature]
Name: ALAN SCHACHTMAN
Title: SR. VP

Address: 550 West Adams Street
Suite 200
Chicago, Illinois 60661

STATE OF IL)
COUNTY OF Will) SS:

This instrument was acknowledged before me on Sept 20, 2007, by Alan Schachtmann, as Manager of FRC Sahara, L.L.C.

[Signature]
Notary Public



JOINDER

ALLURE HOMEOWNERS' ASSOCIATION, INC., a Nevada corporation not for profit, hereby agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

IN WITNESS WHEREOF, ALLURE HOMEOWNERS' ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed as of 10/4, 2007.

ALLURE HOMEOWNERS' ASSOCIATION,
INC., a Nevada corporation not for profit

By: [Signature]
Name: Alan Schachtman
Title: President

STATE OF NEVADA)
COUNTY OF CLARK) SS:
Will

This instrument was acknowledged before me on Sept 20, 2007, by Alan Schachtman, as President of ALLURE HOMEOWNERS' ASSOCIATION, INC., a Nevada corporation not-for-profit.

[Signature]
Notary Public



EXHIBIT 1

LAND AND CONDOMINIUM PLAT

Situated in the South Half (S 1/2) of the Southeast Quarter (SE 1/4) of Section 4, Township 21 South, Range 61 East, M.D.M., City of Las Vegas, Clark County, Nevada, consisting of all the land lying within the exterior boundaries of ALLURE CONDOMINIUMS, as shown by map thereof on file in Book 138 of Plats, Page 0016, as recorded in the Office of the County Recorder, Clark County, Nevada.

EXHIBIT 2

[INTENTIONALLY OMITTED]

EXHIBIT 3

[INTENTIONALLY OMITTED]

EXHIBIT 4
ALLOCATED INTERESTS

[See Attached]

ALLURE CONDOMINIUMS - RESIDENTIAL UNIT % SHARES

Unit Type	Description	Net SF	Total Units	Indiv. Unit %	Unit Type %	Unit Type Total Net SF
Unit S1	EFF./1BA	662.00	30	0.1292%	3.9%	19,860
Unit A1	1BR/1BA	867.00	68	0.1692%	11.5%	58,956
Unit A1a	1BR/1BA	880.00	9	0.1717%	1.5%	7,920
Unit A2	1BR/1BA	999.00	3	0.1949%	0.6%	2,997
Unit A3	1BR/1BA	999.00	3	0.1949%	0.6%	2,997
Unit A4	1BR/1.5BA	974.00	30	0.1900%	5.7%	29,220
Unit A5	1BR/1BA/1S	1,090.00	64	0.2127%	13.6%	69,760
Unit A6	1BR/1.5BA	1,422.00	2	0.2775%	0.6%	2,844
Unit A6a	1BR/1.5BA	1,422.00	2	0.2775%	0.6%	2,844
Unit B1	2BR/2BA	1,223.00	68	0.2386%	16.2%	83,164
Unit B1a	2BR/2BA	1,323.00	6	0.2581%	1.5%	7,938
Unit B2	2BR/2BA/1S	1,295.00	63	0.2527%	15.9%	81,585
Unit B2a	2BR/2BA/1S	1,367.00	3	0.2667%	0.8%	4,101
Unit B3	2BR/2BA	1,532.00	2	0.2989%	0.6%	3,064
Unit B3a	2BR/2BA	1,532.00	2	0.2989%	0.6%	3,064
Unit B4	2BR/2BA	1,563.00	31	0.3050%	9.5%	48,453
Unit B4a	2BR/2BA	1,723.00	3	0.3362%	1.0%	5,169
Unit B4-5	2BR/2BA	1,577.00	2	0.3077%	0.6%	3,154
Unit B8	2BR/2BA/1S	2,879.00	1	0.5617%	0.6%	2,879
Unit C1	3BR/2BA	1,828.00	30	0.3567%	10.7%	54,840
Unit C2	3BR/3BA	2,515.00	2	0.4907%	1.0%	5,030
Unit C3	3BR/3.5BA/2S	6,326.00	1	1.2343%	1.2%	6,326
Unit C4 - PH Flat	2BR/2.5BA/1S	2,109.00	1	0.4115%	0.4%	2,109
Unit C4 - PH TH	3BR/3.5BA/1S	4,237.00	1	0.8267%	0.8%	4,237
Residential Totals			427		100.0%	512,511
Retail		5,136.00	1		1.0%	5,136
Project Total			428			517,647