



# WASHOE COUNTY

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Risk Mgt.\_N/A

Clerk \_\_\_\_\_

Comptroller \_\_\_\_\_

## STAFF REPORT

BOARD MEETING DATE: July 12, 2016

**DATE:** June 3, 2016

**TO:** Board of County Commissioners

**FROM:** Trevor Lloyd, Senior Planner, Planning and Development Division  
Community Services Department, 328.3620, [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)

**THROUGH:** William H. Whitney, Division Director, Planning and Development  
Community Services Department, 328-3617, [bwhitney@washoecounty.us](mailto:bwhitney@washoecounty.us)

**SUBJECT:** Hearing, discussion, and possible action on Case No. AX16-003 (TL Mt. Rose Estates, LP), an appeal of the Parcel Map Review Committee's decision to approve Parcel Map Case No. PM16-006, which requested the division of a ±6.65 acre property into two parcels of ±3.90 and ±2.75 acres. The Board of County Commissioners may take action to confirm the Parcel Map Review Committee's approval; reverse the Parcel Map Review Committee's approval; or modify the Parcel Map approval.

The applicant and property owner is TL Mt. Rose Estates, LP. The appellant is the Homeowners at Monte Vista, C/O Jeff Spencer, Esq. The subject parcel (APN: 150-460-05) is located at the northern terminus of Callahan Road directly north of Monte Vista at the Estates at Mount Rose within the Southwest Truckee Meadows Area Plan and South Truckee Meadows/Washoe Valley Citizen Advisory Board boundaries, Section 35, Township 18N, Range 19E, MDM. The Development Code article applicable to this amendment is Article 606, Parcel Maps. (Commission District 2).

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### SUMMARY

Confirmation, reversal or modification of the Parcel Map Review Committee's approval of Parcel Map Case No. PM16-006, requesting to divide a ±6.65 acre property into two parcels of ±3.90 and ±2.75 acres.

Washoe County Strategic Objective supported by this item: Safe, secure, and healthy communities.

### PREVIOUS ACTION

May 12, 2016, Parcel Map Review Committee. After conducting a public hearing, taking public testimony and discussing the proposed parcel map, the Parcel Map Review Committee approved Parcel Map case number PM16-006 with conditions. The vote was unanimous.

AGENDA ITEM # \_\_\_\_\_

## **BACKGROUND**

The property involved in this parcel map application is part of a subdivision off of the Mt. Rose Highway known as the Monte Vista at Mt. Rose Estates. TL Mt. Rose Estates, LP, is the principal developer of that subdivision, which includes multiple phases of development. The Estate at Mt. Rose Phase 3A was recorded in 2006, and lots have since been sold to private buyers who now live in the area. Monte Vista at Estates at Mt. Rose, which includes the specific 6.65 acre parcel sought to be divided by the instant parcel map application, is in the process of being readied for the filing of a final map that will formally create the subject 6.65 acre parcel.

In February of this year, TMWA received approval from the Washoe County Board of Adjustment for a special use permit (SUP) to construct and operate several water treatment facilities in the vicinity of the Mt. Rose corridor. Part of that SUP application included the placement of a water facility in the area of Whites Creek where it runs through the Monte Vista at Mt. Rose Estates. More specifically, TMWA's water facility is planned for placement in an area designated as "open space" on the Monte Vista at Mt. Rose Estates tentative maps. A copy of the map showing the open space designation is attached to this staff report as Attachment E. Relevant to this case, TMWA's SUP allows TMWA to construct a  $\pm 8,800$  square foot water treatment facility to include a creek diversion, an exterior recycle tank and standby generator.

As with all SUPs, TMWA's SUP was noticed for a public hearing in February. That hearing was held. Members of the public were in attendance and did speak. None of the objections now being raised to the operation of TMWA's water facility in the "open space" area of the subdivision was raised at the SUP hearing in February. There was no appeal of the board of adjustment's approval of the SUP, and the SUP has gone into effect.

The next step for TMWA to put its SUP into operation is to gain the legal right to place its water facilities in the areas identified in the SUP application process. One way of accomplishing this is to create a new parcel that the developer would then convey to TMWA. Here, the land that would constitute the new parcel is identified as "open space" on the Monte Vista subdivision tentative map. It is owned by TL Mt. Rose Estates, LP, and it is offered for dedication on that map to Washoe County as "open space". As of the time of the SUP hearing, TMWA and the developer had already reached an agreement for this land to be conveyed to TMWA for the water treatment facilities once the parcel was created. Approval of the parcel map is a necessary step in this process.

The subject property has a regulatory zone of High Density Rural (HDR) and General Rural (GR) and a master plan designation of Rural Residential (RR) and Rural (R). The request met all requirements of the HDR regulatory zone and of the master plan designation(s). Based on these facts staff recommended approval of the parcel map with conditions.

On May 12, 2016, the parcel map review committee held the public hearing on this parcel map application. Unlike the February SUP hearing on TMWA's water facility operation, this time homeowners in the Monte Vista subdivision, represented by Jeff Spencer, appeared and objected to the placement and operation of TMWA's facilities in the "open

space” identified area of the subdivision. Among other things, they argued that the homeowners association must approve the project first, and that the CC&Rs and subdivision maps restrict the area in question to open space, which is not compatible with the placement of TMWA’s planned water facility.

After hearing this and other evidence, including a staff presentation, the parcel map review committee voted unanimously to approve the parcel map application with conditions. One of the conditions of the approval is that use of the parcel --- when conveyed to TMWA--- must comply with any existing legal restrictions on the property. This would include any applicable easements, CC&Rs, or other property rights that apply to the subject parcel. By placing this condition in the approval, the committee sought to avoid becoming the arbiter of the dispute between the Monte Vista homeowners opposed to the project, and TMWA and TL Mt. Rose States, LP.

Jeff Spencer, Esq. on behalf of the homeowners of Monte Vista, filed an appeal to the Parcel Map Review Committee’s decision to approve the parcel map.

### **JUSTIFICATION FOR APPEAL**

*In the appeal application, the appellants stated the reason for appealing the Parcel Map Review Committee’s approval is that “the HOA should own the land per recorded documents and the CC&R’s control the usage of the land. It is designated open space and this fact was not presented to the Parcel Map Review Committee. Under Washoe County Municipal (Development) Code 110.912.10(7)(j)(A), (D), and (E) the decision made was wrong. The Parcel Map application of the Property Owner failed to identify restrictive covenants on the parcel, the controlling body of the HOA failed to approve the division, and the usage is improper for designated Open Space.”*

The Washoe County Assessor records show that the property subject to the parcel map application is owned by TL Mt. Rose Estates, LP and that the HOA has no ownership interest in the parcel. Furthermore, the land has a regulatory zone designation of High Density Rural (HDR) and a small amount of General Rural (GR). Although the subject property does not officially have a zoning or master plan designation of Open Space (OS), the subdivision maps identify the property as “open space.” Within Washoe County Code a water facility use type like the one proposed by TMWA would be allowed with a board of adjustment special use permit in the OS, HDR, or GR regulatory zones. . WCC 110.302.05.2 (Table of Uses: Civic Use Types, Major Services and Utilities, Utility Services).

However, zoning is not the only source of possible limitations on the use of the property, because this subdivision is covered by CC&Rs. The CC&Rs contain information regarding “common elements” in the subdivision, and appropriate use for those elements. Moreover, the CC&R’s contemplate the possibility of common elements being dedicated to public service providers like TMWA for the operation of various utility systems. This dedication concept is found in section 2.4.2 of the CC&Rs, a copy of which is attached to this staff report as Attachment F.

But what is not clear is whether the label “open space” as used in the subdivision is considered part of the subdivision’s “common elements,” because the CC&Rs and maps do not specify whether open space and common elements are synonymous.

To the extent there is a dispute over the appropriateness of TMWA’s proposed facility in subdivision “open space,” it is best characterized as a private one between those who support TMWA’s project and those opposed to it. The conditions of approval were crafted with this in mind. One such condition in particular, requiring the developer and TMWA to comply with any restrictions on the property in question, such as applicable CC&R restrictions (if any), was designed to remove the county from this dispute.

Based on the information provided in this staff report regarding the act of approving the parcel in question, staff believes that they have applied the development code appropriately based on the definitions, zoning, and master plan designations. Staff also believes that the parcel map review committee validly approved the parcel map in this case. Now the matter is before the County Commission for review.

The issue before the County Commission in this appeal is whether the parcel map review committee abused its discretion by acting arbitrarily and capriciously, or whether it made its decision based on substantial evidence. Substantial evidence is generally defined as facts that a reasonable mind would accept as adequate to support a conclusion. The Development Code lays out the framework for this analysis by requiring the County Commission to address whether the decision:

- (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case.
- (D) Is affected by an erroneous interpretation or other error of law.
- (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

In making this decision, the Board of County Commissioners is free to rely on all evidence already in the record, as well as any evidence submitted at the hearing on this appeal.

### **FISCAL IMPACT**

None

### **RECOMMENDATION**

It is recommended that the Board of County Commissioners confirm the Parcel Map Review Committee’s decision to approve Parcel Map Case No. PM16-006.

### **MOTION**

Should the Board agree with the Parcel Map Review Committee’s decision to approve Parcel Map Case No. PM16-006, staff offers the following motion:

“Move to confirm the Parcel Map Review Committee’s decision to approve Parcel Map Case No. PM16-006, which requested the division of a ±6.65 acre property into two parcels of ±3.90 and ±2.75 acres. This approval is based on this Board’s review of the written materials and oral testimony at the public hearing, and this Board’s interpretation of the findings made by the Parcel Map Review Committee. ”

### **OTHER POSSIBLE MOTIONS**

Should the Board not agree with the Parcel Map Review Committee's decision to approve Parcel Map Case No. PM16-006, staff offers the following possible motions:

1. **Possible Motion to REVERSE the Parcel Map Review Committee's approval of the Parcel Map.**

"Move to reverse the Parcel Map Review Committee's approval and deny Parcel Map No. PM16-006, which requested the division of a ±6.65 acre property into two parcels of ±3.90 and ±2.75 acres. This reversal is based on this Board's review of the written materials and oral testimony at the public hearing, and this Board's interpretation that the required findings cannot be made in accordance with Washoe County Development Code Section 110.606.30."

2. **Possible Motion to MODIFY the Parcel Map Amendment of Conditions.**

"Move to approve Parcel Map Case Number PM16-006, with modifications, based on this Board's review of the written materials and oral testimony at the public hearing and this Board's interpretation of the findings required to be made for such approval. (Please state the proposed modifications that are being recommended)."

Attachments:

- A. Appeal Application
- B. PM16-006 Action Order
- C. Parcel Map Case Number PM16-006 Staff Report
- D. May 12, 2016 Minutes of the Parcel Map Review Committee
- E. Overall Site Map for Monte Vista
- F. CC&R's for Estates at Mt. Rose

xc. Appellant(s): Homeowners at Monte Vista C/O Jeff Spencer, Esq. 9460 Double R Blvd Suite 103, Reno, NV 89521

Applicant/Owner: TL Mt. Rose Estates, LP, Attn: Rich Balestreri, 3300 Douglas Blvd, Ste. 450, Roseville, CA, 95661

Other Contact: Wood Rodgers, Inc., Attn: Steve Strickland, 5440 Reno Corporate Dr., Reno, NV 89511

# Washoe County Appeal of Decision Application

## Appeal of Decision by (Check one)

|  |   |
|--|---|
| <input type="checkbox"/> Board of Adjustment                         | <input type="checkbox"/> Hearing Examiner                       |
| <input type="checkbox"/> Design Review Committee                     | <input checked="" type="checkbox"/> Parcel Map Review Committee |
| <input type="checkbox"/> Director of Building & Safety (NRS 278.310) | <input type="checkbox"/> Planning Commission                    |
| <input type="checkbox"/> Director of Planning and Development        | <input type="checkbox"/> Code Enforcement Officer               |

## Appellant Information

|  |                                       |
|--|---------------------------------------|
| Name: Homeowners at Monte Vista C/O Jeff Spencer, Esq. | Phone: 775-786-7445                   |
| Address: 9460 Double R Blvd Suite 103                  | Fax: 775-786-7947                     |
|  | Email: jspencer@springerlawnevada.com |
| City: Reno State: NV 89521 Zip:                        | Cell:                                 |
| Original Application Number: PM16-006                  |                                       |
| Project Name: TM Mt. Rose Estates, LP                  |                                       |
| Project Location: Northern Terminus of Callahan Road   |                                       |

Date of decision for which appeal is being filed: May 16, 2016

State the specific action you are appealing:

Parcel Map Review approved the division of APN 150-460-05 into two parcels. One to be used for a TMWA Water Treatment Plant. The other parcel to be added to HOA open space.

State the reasons why the decision should or should not have been made:

The HOA should own the land per recorded documents and the CC&R's control the usage of the land. It is designated open space and this fact was not presented to the Parcel Map Review. Under Washoe Municipal Code 110.912.10(7)(j)(A), (D), and (E) the decision made was wrong. The application of Property Owner failed to identify restrictive covenants on the parcel, the controlling body of the HOA failed to approve the division, and the usage is improper for designated Open Space.

## For Staff Use Only

|                       |                   |
|-----------------------|-------------------|
| <b>Appeal Number:</b> | <b>Date Stamp</b> |
| Notes:                | Staff: _____      |

| <b>Appellant Information (continued)</b>   |  |
|--|--|
| Cite the specific outcome you are requesting under the appeal:<br>Denial of the parcel split as the land cannot be split without approval of the HOA Board and alteration of the CC&R's to permit the proposed use, neither of which have occurred.  |  |
| State how you are an affected individual entitled to file this appeal:<br>The 29 homeowners are living directly next to this proposed water treatment plant. They oppose this location. The HOA controls the usage and ownership of the land yet the HOA did not vote or approve the water treatment plant. The Homeowners will suffer decrease in property value, increased traffic, and litigation to enforce the open space requirements. Petition has been circulated and signed among affected homeowners opposing this division. |  |
| Did you speak at the public hearing when this item was considered?   | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |
| Did you submit written comments prior to the action on the item being appealed?  | <input checked="" type="checkbox"/> Yes<br><input type="checkbox"/> No |

For time limitations imposed for the various types of appeals, please refer to the Washoe County Development Code (WCC Chapter 110) and Nevada Revised Statutes Chapter 278 (NRS 278).

### APPELLANT AFFIDAVIT

STATE OF NEVADA     )  
                                  )  
COUNTY OF WASHOE    )

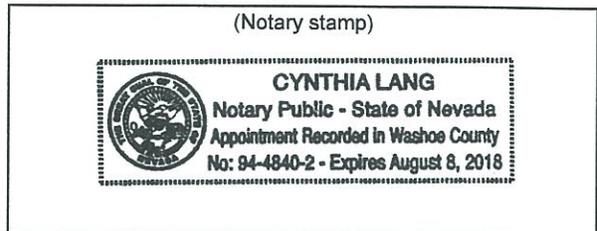
I, Jeff Spencer  
being duly sworn, depose and say that I am an appellant seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development.

Signed [Signature]  
Address 9460 Double R Suite 103  
 Reno NV 89521

Subscribed and sworn to before me this 25<sup>th</sup> day of May, 2016.

Cynthia Lang  
Notary Public in and for said county and state

My commission expires: 8-18-2018





## Parcel Map Review Committee Action Order

Parcel Map Case Number PM16-006

Decision: Approval with Conditions  
 Decision Date: May 12, 2016  
 Mailing/Filing Date: May 16, 2016  
 Property Owners: TL Mt. Rose Estates, LP  
 Assigned Planner: Trevor Lloyd, Senior Planner  
 Washoe County Community Services Department  
 Planning and Development Division  
 Phone: 775.328.3620  
 E-Mail: tilloyd@washoecounty.us

**Tentative Parcel Map Case Number PM16-006 (TL Mt. Rose Estates)** – Hearing, discussion, and possible action to approve a parcel map dividing a ±6.65 acre property into two parcels of ±3.90 and ±2.75 acres.

- Applicant/Property Owner: TL Mt. Rose Estates, LP
- Location: Northern Terminus of Callahan Road
- Assessor’s Parcel Number: 150-460-05
- Parcel Size: 6.65 Acres
- Master Plan Category: Suburban Residential (SR) and Rural (R)
- Regulatory Zone: High Density Rural (HDR) and General Rural (GR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 606, Parcel Maps
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 35, T18N, R19E, MDM, Washoe County, NV

Notice is hereby given that the Washoe County Parcel Map Review Committee granted approval with conditions for the above referenced case number based on the findings in accordance with Washoe County Development Code Article 606, Parcel Maps. If no appeals have been filed within 10 calendar days after the Mailing/Filing Date shown on this Action Order, the approval by the Washoe County Parcel Map Review Committee is final. If filed, an appeal stays any further action on the decision until final resolution of the appeal. An appeal shall be filed in accordance with the provisions found in Article 912 of the Washoe County Development Code.

The action was based on the Committee’s review of the following criteria in accordance with Washoe County Development Code Article 606, Parcel Maps:

- 1) General improvement considerations for all parcel maps including, but not limited to:



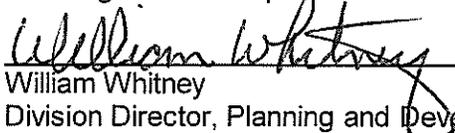
To: TL Mt. Rose Estates, LP  
Subject: Parcel Map Review Case Number PM16-006  
Date: May 16, 2016  
Page: 2

- a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
- b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
- c) The availability and accessibility of utilities;
- d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks;
- e) Conformity with the zoning ordinances and master plan;
- f) General conformity with the governing body's master plan of streets and highways;
- g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
- h) Physical characteristics of the land such as floodplain, slope and soil;
- i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive;
- j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands;
- k) Community antenna television (CATV) conduit and pull wire; and
- l) Recreation and trail easements.

This Action Order is issued subject to the attached conditions and Washoe County development standards. Please contact the planner assigned to your project at the above-referenced phone number within 7 days of receipt of this Order to review the steps necessary to satisfy the Conditions of Approval. Any business license, certificate of occupancy, or final approval shall not be issued until all of the Conditions of Approval are satisfied. Additionally, compliance shall be required with all federal, state, and local statutes, ordinances, and regulations applicable to the approved project.

**This Action Order does not authorize grading or building without issuance of the necessary permits from the Washoe County Building and Safety Division.**

Washoe County Community Services Department  
Planning and Development Division

  
William Whitney  
Division Director, Planning and Development

WW/TL/df

Attachments: Conditions of Approval

To: TL Mt. Rose Estates, LP  
Subject: Parcel Map Review Case Number PM16-006  
Date: May 16, 2016  
Page: 3

Applicant/Owner: TL Mt. Rose Estates, LP  
Attn: Rich Balestreri  
3300 Douglas Blvd. Ste. 450  
Roseville, CA 95661

Representatives: Wood Rodgers, Inc.  
Attn: Dan Bigrigg  
5440 Reno Corporate Drive  
Reno, NV 89511

Representatives: Wood Rodgers, Inc.  
Attn: Steve Strickland  
5440 Reno Corporate Drive  
Reno, NV 89511

Action Order xc: Nathan Edwards, District Attorney's Office; Keirsten Beck, Assessor's Office (CAAS); Josh Wilson, Assessor's Office; John Cella, Utilities; Leo Vesely, Engineering Division; Amy Ray, Truckee Meadows Fire Protection District; Nevada Division of Environmental Protection, 901 South Stewart Street, Suite. 4001, Carson City, NV 89701-5249; Regional Transportation Commission, Attn: Debra Goodwin; Truckee Meadows Regional Planning Agency, One East First Street, Suite 900, Reno, NV 89501-1625; South Truckee Meadows/Washoe Valley Citizen Advisory Board, Chair.



# Conditions of Approval

Parcel Map Case Number PM16-006

The tentative parcel map approved under Parcel Map Case Number PM16-006 shall be carried out in accordance with the Conditions of Approval granted by the Washoe County Parcel Map Review Committee on May 12, 2016. Conditions of Approval are requirements placed on a permit or development by each reviewing agency. These Conditions of Approval may require submittal of documents, applications, fees, inspections, amendments to plans, and more. These conditions do not relieve the applicant of the obligation to obtain any other approvals and licenses from relevant authorities required under any other act or to abide by all other generally applicable Codes, and neither these conditions nor the approval by the County of this project/use override or negate any other applicable restrictions on uses or development on the property.

**Unless otherwise specified**, all conditions related to the approval of this tentative parcel map shall be met or financial assurance must be provided to satisfy the conditions of approval prior to the recordation of a final parcel map. The agency responsible for determining compliance with a specific condition shall determine whether the condition must be fully completed or whether the applicant shall be offered the option of providing financial assurance. All agreements, easements, or other documentation required by these conditions shall have a copy filed with the County Engineer and the Planning and Development Division.

Compliance with the conditions of approval related to this tentative parcel map is the responsibility of the applicant, his/her successor in interest, and all owners, assignees, and occupants of the property and their successors in interest. Failure to comply with any of the conditions imposed in the approval of the tentative parcel map may result in the institution of revocation procedures.

Washoe County reserves the right to review and revise the Conditions of Approval related to this tentative parcel map should it be determined that a subsequent license or permit issued by Washoe County violates the intent of this approval.

For the purpose of conditions imposed by Washoe County, "may" is permissive and "shall" or "must" is mandatory.

Conditions of Approval are usually complied with at different stages of the proposed project. Those stages are typically:

- Prior to recordation of a final map.
- Prior to obtaining a final inspection and/or a certificate of occupancy.
- Prior to the issuance of a business license or other permits/licenses.
- Some "Conditions of Approval" are referred to as "Operational Conditions." These conditions must be continually complied with for the life of the project.

**The Washoe County Commission oversees many of the reviewing agencies/departments with the exception of the following agencies.**

- **The DISTRICT BOARD OF HEALTH, through the Washoe County Health District, has jurisdiction over all public health matters in the Health District. Any conditions set by the Health District must be appealed to the District Board of Health.**

FOLLOWING ARE CONDITIONS OF APPROVAL REQUIRED BY THE REVIEWING AGENCIES. EACH CONDITION MUST BE MET TO THE SATISFACTION OF THE ISSUING AGENCY.

**Washoe County Planning and Development**

1. The following conditions are requirements of the Planning and Development Division, which shall be responsible for determining compliance with these conditions.

**Contact: Trevor Lloyd, Senior Planner, 775.328.3620, tlloyd@washoecounty.us**

- a. The final map shall be in substantial compliance with all plans and documents submitted as part of this tentative parcel map application, and with any amendments imposed by the Parcel Map Review Committee. All documentation necessary to satisfy the conditions noted below shall accompany the final map when submitted to the County Engineer and the Planning and Development Division.
- b. The applicant shall comply with all the conditions of approval and shall submit a final map for signature by the Director of the Planning and Development Division within 22 months from the date of approval by the Parcel Map Review Committee. Each agency responsible for imposing conditions may determine whether its conditions must be fully completed or whether the applicant shall be offered the option of providing financial assurances as a means of assuring compliance.
- c. The final map shall contain the following jurat:

**DIRECTOR OF PLANNING AND DEVELOPMENT CERTIFICATE**

THE FINAL PARCEL MAP CASE NO. PM16-006 MEETS ALL APPLICABLE STATUTES, ORDINANCES AND CODE PROVISIONS; IS IN SUBSTANTIAL CONFORMANCE WITH THE TENTATIVE MAP AND ITS CONDITIONS, WHICH ARE INCORPORATED HEREIN BY THIS REFERENCE, AND THOSE CONDITIONS HAVE BEEN SATISFIED FOR RECORDATION OF THIS MAP. THE OFFER(S) OF DEDICATION IS (ARE) REJECTED AT THIS TIME, BUT WILL REMAIN OPEN IN ACCORDANCE WITH NEVADA REVISED STATUTES CHAPTER 278.

THIS FINAL MAP IS APPROVED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_, BY THE DIRECTOR OF PLANNING AND DEVELOPMENT OF WASHOE COUNTY, NEVADA, IN ACCORDANCE WITH NEVADA REVISED STATUTES 278.471 THROUGH 278.4725.

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WILLIAM H. WHITNEY, DIRECTOR, PLANNING AND DEVELOPMENT DMSION

- d. Any regulations, procedures, and conditions adopted by the Washoe County Health District must be met prior to recordation of a final map.
- e. The applicant shall provide verification to the Planning and Development Division that all conditions from the Truckee Meadows Fire Protection District have been satisfied.
- f. The applicant has indicated that the proposed improvements will not exceed the major grading thresholds that require a special use permit. If the final construction

drawings for the map include grading that exceeds the *Major Grading Permit Thresholds* listed in Article 438, Grading Standards, the applicant shall apply for a special use permit for grading; and if approved, may be delayed up to three months processing time. In addition, all related standards within the Washoe County Development Code shall be met on the construction drawings. Compliance shall be determined by the Planning and Development Division.

- g. The approval for this tentative parcel map does not include improvements for driveways to building pads. Grading for access to building pads, if they exceed the criteria stated in the previous condition, shall require a special use permit. Compliance shall be determined by the Planning and Development Division.
  - h. Any regulations, procedures, and conditions adopted by Washoe County Health District must be met prior to recordation of a final map.
  - i. The property is still subject to any applicable legal restrictions that might exist on it; Washoe County takes no position one way or the other on any such restriction.
  - j. The following note shall be placed on the final map: *No dwelling unit shall be placed on parcel A-1 or parcel A-2.*
2. The following conditions are requirements of the Engineering and Capital Projects, which shall be responsible for determining compliance with these conditions.
- Contact: Mike Gump, PLS, 775.328.2315, [mgump@washoecounty.us](mailto:mgump@washoecounty.us)**
- a. Recordation of the adjacent tract map, with bonding for the bridge, shall be recorded before this parcel map can be recorded.
  - b. Provide documented access to Parcel A-2.
  - c. If Parcel A-2 is to be common area, this must be indicated on the map.
  - d. Remove the note relating to the 15 foot SDE and "Washoe County Maintained" from the map.
  - e. Identify shown line work south of Whites Creek on the map.
  - f. Add a drainage easement for surface drainage on note 3.
  - g. Place a note on the map stating that the natural drainage will not be impeded.
  - h. Any access way shall be upgraded to a gravel road that will allow emergency vehicle travel, issuance of a building permit and take drainage into consideration. Submit plans for review and approval.
  - i. Provide evidence of documented access that favors the applicant.
  - j. Comply with the conditions of the Washoe County technical check for this map.
  - k. Add a Security Interest Holder's Certificate to the map, if applicable.
3. The following conditions are requirements of Environment Health Services, which shall be responsible for determining compliance with these conditions.
- Contact: James English, 775.328.2610, [jenglish@washoecounty.us](mailto:jenglish@washoecounty.us)  
Jim Shaffer, 775.785-4599; [jshaffer@washoecounty.us](mailto:jshaffer@washoecounty.us)**
- a. All proposed parcels are to be served by municipal water and sewer.

Washoe County Parcel Map Review Committee  
Conditions of Approval

- b. The proposed water treatment plan requires plans to be submitted to the WCHD for review and approval for the construction, design, and treatment of water.
- c. If the parcel (A-2) for the common area of Monte Vista at the Estates at Mt. Rose requires mechanical slope stabilization all voids in the stabilization process filled to a depth of 3-4 inches with mixed aggregate rock 3/4 inch to 1 1/2 inches in size (Health Regulations Governing the Prevention of Vector-Borne Diseases 040.0865).
- d. Prior to the sign off of the building plans the above detail designs are required on the plans and a scheduled compliance inspection with the Vector-Borne Diseases Program is required for the above condition(s).

\*\*\* End of Conditions \*\*\*



# Parcel Map Review Committee Staff Report

**Meeting Date: May 12, 2016**

Subject: Tentative Parcel Map Case Number PM16-006  
Applicant: TL Mt. Rose Estates, LP  
**Agenda Item Number: 7C**  
Project Summary: To divide a  $\pm 6.65$  acre property into two parcels of  $\pm 3.90$  and  $\pm 2.75$  acres  
**Recommendation: Approval with Conditions**  
Prepared by: Trevor Lloyd - Senior Planner  
Washoe County Community Services Department  
Division of Planning and Development  
Phone: 775.328.3620  
E-Mail: tlloyd@washoecounty.us

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## Description

**Tentative Parcel Map Case Number PM16-006 (TL Mt. Rose Estates)** – Hearing, discussion, and possible action to approve a parcel map dividing a  $\pm 6.65$  acre property into two parcels of  $\pm 3.90$  and  $\pm 2.75$  acres.

- Applicant/Property Owner: TL Mt. Rose Estates, LP
- Location: Northern Terminus of Callahan Road
- Assessor's Parcel Number: 150-460-05
- Parcel Size: 6.65 Acres
- Master Plan Category: Suburban Residential (SR) and Rural (R)
- Regulatory Zone: High Density Rural (HDR) and General Rural (GR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 606, Parcel Maps
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 35, T18N, R19E, MDM, Washoe County, NV

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**Exhibits Contents**

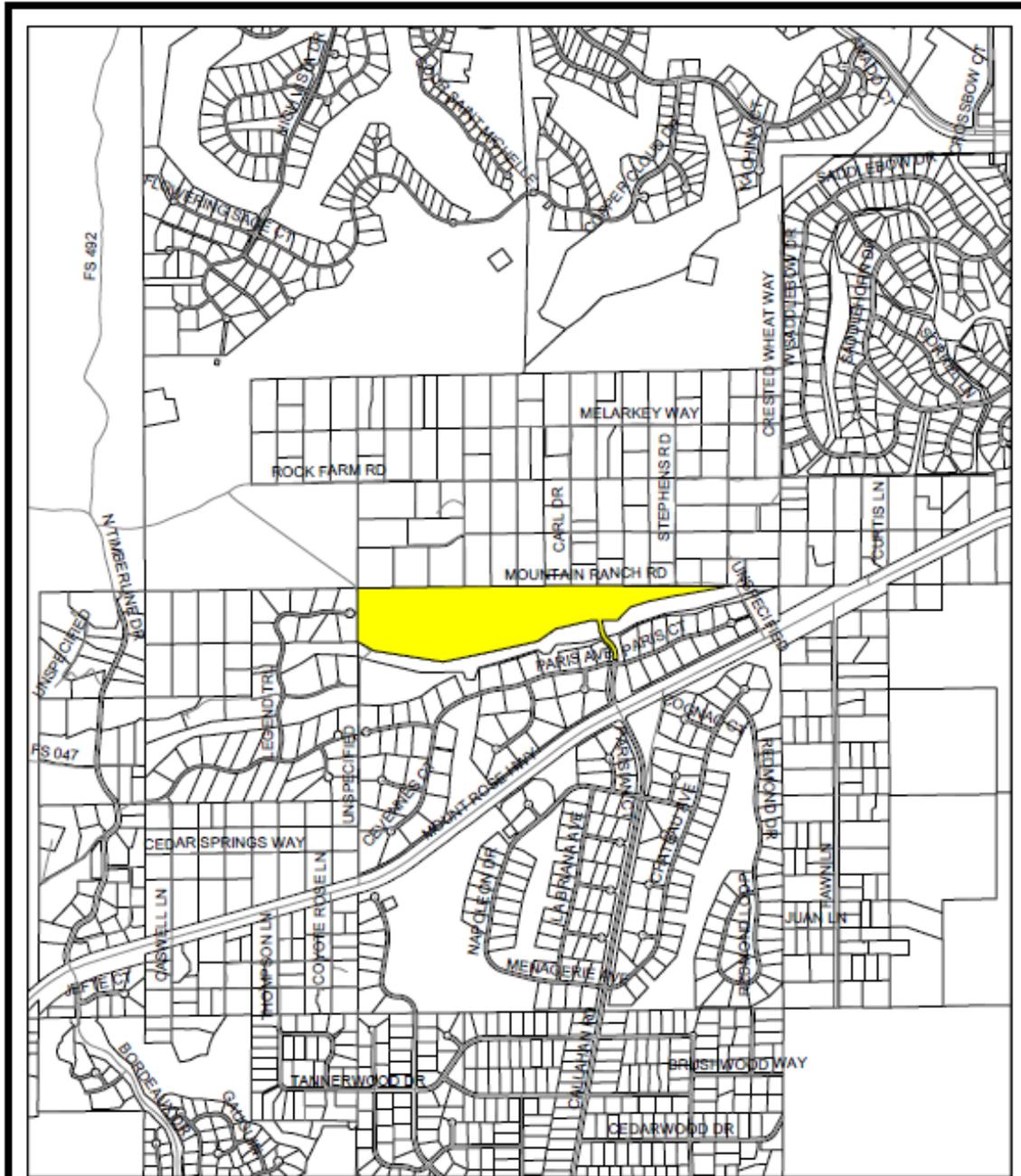
Conditions of Approval ..... Exhibit A  
District Health Letter..... Exhibit B  
Public Notice ..... Exhibit C

## **Parcel Map**

The purpose of a parcel map is to allow for the creation of subdivisions, merger and re-subdivision of existing lots, and common-interest communities consisting of four or fewer parcels pursuant to Article 606, *Parcel Maps*, of the Washoe County Development Code. A tentative parcel map must be submitted to the Planning and Development Division for the purpose of review prior to or concurrent with the final parcel map. Every tentative parcel map must be prepared by a professional land surveyor. The parcel map process exists to establish reasonable standards of design and procedures for subdividing in order to further the orderly layout and use of land and insure proper legal descriptions and monumenting of subdivided land. Additionally, the process helps to safeguard the public health, safety and general welfare by establishing minimum standards of design and development for any land division platted in the unincorporated area of Washoe County. If the Washoe County Parcel Map Review Committee grants an approval of the tentative parcel map, that approval is subject to Conditions of Approval. Conditions of Approval are requirements that may need to be completed during different stages of the proposed project. Those stages are typically:

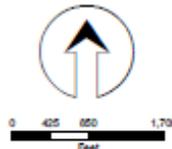
- Prior to recordation of a final map.
- Prior to obtaining a final inspection and/or a certificate of occupancy on a structure.
- Prior to the issuance of a business license or other permits/licenses.
- Some Conditions of Approval are referred to as “Operational Conditions.” These conditions must be continually complied with for the life of the project.
- Within 22 months from the date of approval of the tentative parcel map, the applicant must file a final parcel map along with any required supporting materials with the Planning and Development Division and the County Engineer showing that all conditions imposed by the Washoe County Parcel Map Review Committee have been met. Approval or conditional approval of a tentative parcel map imposes no obligation on the part of the Director of Planning and Development Division or the Board of County Commissioners to approve the final parcel map or to accept any public dedication shown on the tentative or final parcel map. Failure to submit a complete final parcel map and pay the required fees within the two year time period shall cease any further action on the map and shall render the tentative parcel map as expired.

The Conditions of Approval for Tentative Parcel Map Case Number PM16-006 is attached to this staff report and will be included with the Action Order.



TL Mt. Rose Estates

Vicinity Map



Community Services  
Department



**WASHOE COUNTY  
NEVADA**

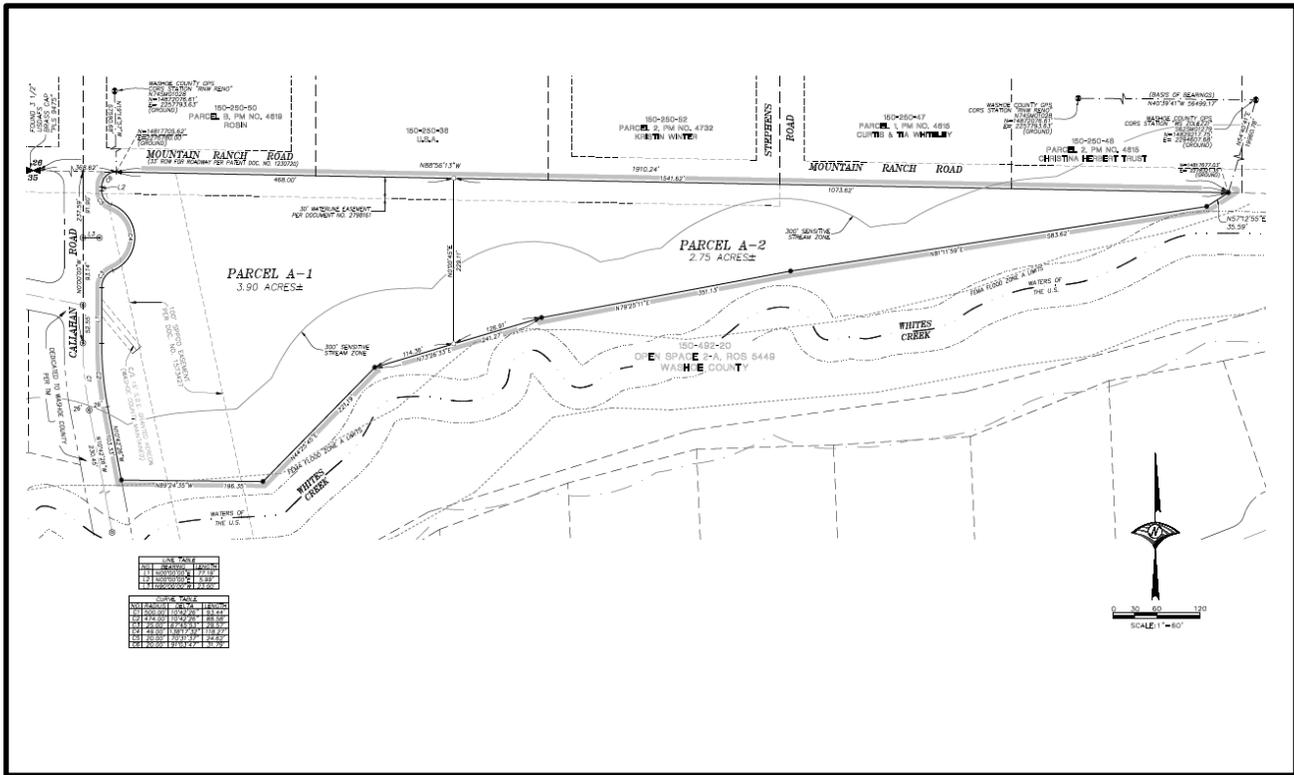
Post Office Box 11130  
Reno, Nevada 89520 (775) 328-3600

Source: Planning and Development Division

Path to map

Date: April 2016

**Vicinity Map**



**Site Plan**

## **Background**

The applicants are asking to parcel a 6.65 acre property into two parcels. The property has a regulatory zone of High Density Rural (HDR) and the request meets all requirements of the HDR regulatory zone. The tentative parcel map is being processed subsequent to the division of a tentative map (Monte Vista at Mt. Rose Estates) and the subject parcel cannot be recorded until the subject 6.65 acre property has been created through the recordation of the final Monte Vista at Mt. Rose subdivision map. Staff has included a condition (2(a) of the attached conditions) requiring the recordation of the subdivision tract map prior to recordation of the final parcel map.

## **Tentative Parcel Map Evaluation**

Land Use Designation: High Density Rural (HDR) and General Rural (GR)

Maximum Lot Potential: 2 lots

Number of Lots on Parcel Map: 2 lots

Minimum Lot Size Required: 2 acres

Minimum Lot Size on Parcel Map: 2.5 acres

Minimum Lot Width Required: 150 feet

Minimum Lot Width on Parcel Map: Approximately 200 feet

The tentative parcel map meets all minimum requirements for the High Density Rural (HDR) and General Rural (GR) regulatory zones.

Development Suitability Constraints: The Southwest Truckee Meadows Development Suitability Map, a part of the Southwest Truckee Meadows Area Plan, identifies the subject parcel as having slopes in excess of 15%.

Hydrographic Basin: The subject parcel is within the Truckee Meadows Hydrographic Basin.

The subject parcel is within the Truckee Meadows Service Area (TMSA).

**Development Information** The subject parcel is currently vacant but there is an approved water treatment facility that will be constructed and operated by the Truckee Meadows Water Authority (TMWA) on parcel A-1. The proposed parcel map is necessary for TMWA to begin such development.

## **Reviewing Agencies**

The following agencies received a copy of the project application for review and evaluation:

- Washoe County Community Services Department
  - Planning and Development
  - Engineering and Capitol Projects
  - Utilities
  - Water Management
- Truckee Meadows Water Authority (TMWA)
- Washoe County Health District
  - Vector-Borne Diseases Program

- Environmental Health Services
- Truckee Meadows Fire Protection District
- Regional Transportation Commission (RTC)
- Washoe-Storey Conservation District

Six out of the ten above listed agencies/departments provided comments and/or recommended conditions of approval in response to their evaluation of the project application. A **summary** of each agency's comments and/or recommended conditions of approval and their contact information is provided. The Conditions of Approval document is attached to this staff report and will be included with the Action Order if granted approval. Washoe County Planning and Development requires that the final map be in substantial compliance with all plans and documents submitted with the tentative parcel map.

**Contact: Trevor Lloyd, 328-3620, [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)**

- Washoe County Engineering and Capital Projects addressed access and drainage and requires the recordation of the recordation of the Monte Vista subdivision prior to recordation of this parcel map.

**Contact: Mike Gump, 328-2315, [mgump@washoecounty.us](mailto:mgump@washoecounty.us)**

- Washoe County Health District addressed water and sewer needs and vector issues.

**Contact: James English, 775-328-2610, [jenglish@washoecounty.us](mailto:jenglish@washoecounty.us)  
Jim Shaffer, 785-4599, [jshaffer@washoecounty.us](mailto:jshaffer@washoecounty.us)**

- Washoe County Water Management Planner requires a note on the map providing for TMWA water service.

**Contact: Vahid Behmaram, 954-4647, [vbehmaram@washoecounty.us](mailto:vbehmaram@washoecounty.us)**

### **Staff Comment on Required Findings**

Section 110.606.30 (i) of Article 606, *Parcel Maps*, within the Washoe County Development Code, requires that all of the following findings be made to the satisfaction of the Washoe County Parcel Map Review Committee before granting approval of the request. Staff has completed an analysis of the application and has determined that the proposal is in compliance with the required findings as follows.

- 1) General improvement considerations for all parcel maps including, but not limited to:
  - a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal.  
*Staff Comment:* The proposed maps have been reviewed by the relevant agencies and no recommendations for denial were received.
  - b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision.  
*Staff Comment:* TMWA is the service provider for community water.
  - c) The availability and accessibility of utilities.  
*Staff Comment:* The TMWA is the service provider for community water. NV Energy is the service provider for electricity. Washoe County is the provider of sewer services

- d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks.

Staff Comment: Truckee Meadows Fire Protection District and the Washoe County Sheriff provides emergency service for the area. It is not anticipated that the project will generate any students or need for public parks.

- e) Conformity with the zoning ordinances and master plan.

Staff Comment: The subject parcel conforms to requirements of the High Density Rural (HDR) Regulatory zone and to the Washoe County Master Plan.

- f) General conformity with the governing body's master plan of streets and highways.

Staff Comment: There are no streets or highways that will be significantly impacted by the addition of one parcel.

- g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision.

Staff Comment: This parcel map will not significantly impact existing public streets, or require new streets or highways.

- h) Physical characteristics of the land such as floodplain, slope and soil.

Staff Comment: The subject site is not identified as being within a FEMA flood zone according to the Southwest Truckee Meadows Development Suitability Map.

- i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive.

Staff Comment: The recommendations and comments of Reviewing Agencies meet the requirements of Nevada Revised Statutes.

- j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands.

Staff Comment: Truckee Meadows Fire Protection District (TMFPD) is the designated fire protection agency for this area.

- k) Community antenna television (CATV) conduit and pull wire.

Staff Comment: Access to cable and/or satellite TV is available in the area.

- l) Recreation and trail easements.

Staff Comment: These lots are not intended to be used for residential purposes, however, there are several public parks within close proximity of the subject site.

### **Recommendation**

Those agencies which reviewed the application recommended conditions in support of approval of the tentative parcel map. Therefore, after a thorough analysis and review, Tentative Parcel Map Case Number PM16-006 is being recommended for approval with conditions. Staff offers the following motion for the Parcel Map Review Committee's consideration.

### **Review Criteria**

I move that, after giving reasoned consideration to the information contained within the staff report and the information received during the public meeting, the Washoe County Parcel Map Review Committee approve Parcel Map Case Number PM16-006 for TL Mt. Rose Estates, LP,

subject to the conditions of approval as listed in the staff report, and make the determination that the following criteria is or will be adequately provided for pursuant to Washoe County Development Code, Section 110.606.30:

- 1) General improvement considerations for all parcel maps including, but not limited to:
  - a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
  - b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
  - c) The availability and accessibility of utilities;
  - d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks;
  - e) Conformity with the zoning ordinances and master plan;
  - f) General conformity with the governing body's master plan of streets and highways;
  - g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
  - h) Physical characteristics of the land such as floodplain, slope and soil;
  - i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive;
  - j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands;
  - k) Community antenna television (CATV) conduit and pull wire; and
  - l) Recreation and trail easements.

### **Appeal Process**

Parcel Map Review Committee action will be effective 10 calendar days after the written decision is filed with the Secretary to the Parcel Map Review Committee, unless the action is appealed to the Washoe County Board of County Commissioners, in which case the outcome of the appeal shall be determined by the Board of County Commissioners. Any appeal must be filed in writing within 10 calendar days after the written decision is filed with and signed by the Secretary of the Parcel Map Review Committee and mailed to the applicant.

xc: Applicant/Owner: TL Mt. Rose Estates, LP  
Attn: Rich Balestreri  
3300 Douglas Blvd. Ste. 450  
Roseville, CA 95661

Representatives: Wood Rodgers, Inc.  
Attn: Dan Bigrigg  
5440 Reno Corporate Drive  
Reno, NV 89511

Representatives: Wood Rodgers, Inc.  
Attn: Steve Strickland  
5440 Reno Corporate Drive

Reno, NV 89511

Staff Report xc: William Whitney, Director of Planning and Development Division



# WASHOE COUNTY PARCEL MAP REVIEW COMMITTEE DRAFT Meeting Minutes

## Parcel Map Review Committee Members

Thursday, May 12, 2016  
1:30 p.m.

James Barnes, Planning Commission  
James English, Health District  
Timothy Simpson, Utility Services  
Mike Gump, Engineering  
Amy Ray, Truckee Meadows Fire Protection District  
Lora R. Robb, Planning and Development

Washoe County Administration Complex  
Building A, Room 275  
Mt. Rose Conference Room  
1001 East Ninth Street  
Reno, NV

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The Washoe County Parcel Map Review Committee met in regular session on Thursday, May 12, 2016 at 1:30 p.m., in the Washoe County Mt. Rose Conference Room, 1001 East Ninth Street, Reno, Nevada.

### 1. \*Determination of Quorum

Lora R. Robb called the meeting to order at 1:30 p.m. The following members and staff were present:

Departments represented:

- Community Services Department (CSD)  
John Cella, Utility Services  
Mike Gump, Engineering  
Lora R. Robb, Planning and Development
- Health District  
Wes Rubio
- Truckee Meadows Fire Protection District  
Amy Ray, Fire Marshal
- Planning Commission  
James Barnes

Staff present:

- Eva M. Krause, AICP, Planner, Planning and Development
- Trevor Lloyd, Senior Planner, Planning and Development
- Dwayne Smith, Division Director, Engineering and Capital Projects
- Kimble Corbridge, P.E., Project Manager, Engineering
- David Watts-Vial, Deputy District Attorney, District Attorney's Office
- Donna Fagan, Recording Secretary

### 2. \*Ethics Law Announcement

Deputy District Attorney, David Watts-Vial, recited the Ethics Law standards.

Amy Ray disclosed she had questions from members of the community regarding the water treatment plant. DDA Watts-Vial asked Ms. Ray if there was any discussion that would require her recusal. Ms. Ray said no.

### 3. \*Appeal Procedure

Ms. Robb recited the appeal procedure for items heard before the Parcel Map Review Committee.

### 4. \* General Public Comment

Ms. Robb opened public comment.

Jeff Spencer, Attorney representing TL Mt. Rose Estate homeowners, noted many of the people in attendance were there to comment on the Mt. Rose Estates item 7C and would reserve their comments to that item.

### 5. Possible action to approve Agenda

In accordance with the Open Meeting Law, Mike Gump moved to approve the agenda of May 12, 2016, as written. The motion, seconded by Wes Rubio, passed unanimously.

### 6. Possible action to approve April 14, 2016 Draft Minutes

Mike Gump moved to approve the April 14, 2016 draft minutes, as written. The motion, seconded by Amy Ray, passed unanimously.

### 7. Project Review Items

**A. Tentative Parcel Map Case Number PM16-002 (Braninburg)** – Hearing, discussion, and possible action to approve a parcel map dividing one parcel of ±3.71 acres into four parcels of 1.43 acres (Parcel 1); 0.68 acre (Parcel 2); 0.5 acre (Parcel 3); and 1.09 acres (Parcel 4).

- Owner/Applicant: Joseph Braninburg
- Location: 15355 Toll Road
- Assessor's Parcel Number: 017-110-51
- Parcel Size: 3.71 Acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Southeast Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 606, Parcel Maps
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 34, T18N, R20E, MDM, Washoe County, NV
  
- Staff: Lora Robb, Planner  
Washoe County Community Services Department  
Planning and Development Division
  
- Phone: 775-328-3627
- E-mail: lrobb@washoecounty.us

Lora R. Robb opened the public hearing. Ms. Robb reviewed her staff report dated April 25, 2016.

Ms. Ray disclosed she met with Mr. Braninburg to make sure he was meeting the requirements of his jurisdiction.

Mr. Gump requested an additional condition 2(e), to identify any existing documentation over that portion of Sylvester Road on the property that may exist. Mr. Braninburg said he passed the information on to Dave, during their last conversation.

Mr. Braninburg noted he spoke with Ms. Ray about her wanting him to identify the driveway. Mr. Braninburg said there are four lots there and he doesn't know exactly where the homes might be built so he is reluctant to add the driveways. He spoke with NV Energy and TMWA and they don't want any surfaces in before a building permit is issued as that is what triggers the location of the utilities. If he shows the driveways now, the final map may be stuck with locating the house where the driveway is. Ms. Robb noted Ms. Ray's condition 5(c), "the final map shall show proposed access to these properties." Mr. Braninburg said he would rather orient the driveway to the house, not the house to the driveway. Ms. Ray said per the discussion with Mr. Braninburg, Toll Road is listed as a state highway on the map. Her concern is if it is a state highway there is going to be specification from Nevada Department of Transportation DOT as to where Mr. Braninburg can access the parcel from or what DOT's requirements would be. Ms. Ray would like future possible property purchasers to know DOT may not allow access to the properties from Toll Road. Mr. Braninburg said Dave Brown the surveyor checked with the state and found that the document Ms. Ray is referring to had been deleted years ago. He is not opposed to the driveway on Toll Road as the property address is on Toll Road. There are two lots that don't have driveways but he thinks they could be addressed at the time of the building permit. Ms. Ray noted, in her conditions, she requested "proposed access."

As there was no response to the call for public comment, the comment period was closed.

Mike Gump moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public meeting, that the Washoe County Parcel Map Review Committee approve with conditions and additional condition 2(e) Parcel Map Case Number PM16-002 for Joseph Braninburg, and that the following criteria is or will be adequately provided for pursuant to Washoe County Development Code, Section 110.606.30. Ms. Ray seconded the motion which carried unanimously.

The motion carried and considered the following criteria:

- 1) General improvement considerations for all parcel maps including, but not limited to:
  - a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
  - b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
  - c) The availability and accessibility of utilities;
  - d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks;
  - e) Conformity with the zoning ordinances and master plan;
  - f) General conformity with the governing body's master plan of streets and highways;
  - g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
  - h) Physical characteristics of the land such as floodplain, slope and soil;
  - i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive;

- j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands;
- k) Community antenna television (CATV) conduit and pull wire; and
- l) Recreation and trail easements.

**B. Tentative Parcel Map Case Number: PM16-004 (Cole)** – Hearing, discussion, and possible action to approve a Tentative Parcel Map to divide a 2.15 acre parcel into a 1.008 acre parcel and a 1.14 acre parcel.

- Applicant: Terri Cole
- Property Owner: Terri Cole
- Location: 265 Theobald Lane
- Assessor's Parcel Number: 017-342-29
- Parcel Size: 2.15 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Low Density Suburban (LDS)
- Area Plan: South Valleys
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 606, Parcel Maps
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 04, T17N, R20E, MDM, Washoe County, NV
- Staff: Eva M. Krause, AICP, Planner  
Washoe County Community Services Department  
Planning and Development Division
- Phone: 775-328-3628
- E-mail: [ekrause@washoecounty.us](mailto:ekrause@washoecounty.us)

Ms. Robb opened the public hearing. Eva Krause reviewed her staff report dated April 21, 2016.

Terri Cole, the applicant, had her representative Dennis Chapman, with Landmark Surveying, note there was some confusion on the spelling of Theobald Lane. Ms. Krause said the correct spelling showing on the assessor's records and the parcel map is Theobald. Mr. Chapman asked for clarification regarding the emergency vehicle turn-around on the parcels. Ms. Ray said for the wildland interface code he is required to provide emergency vehicle turn-around access if the driveways exceed a certain square footage. At the time of the building application they will evaluate the needs to meet the requirements of the code. Ms. Cole asked if that was a condition of the parcel map or the building permit. Ms. Ray said she wants it noted on the parcel map so if someone pulls the map, or the property gets sold there is a condition that at the time of building it'll need to meet all aspects of the code which will include those things. Ms. Cole noted condition 1(o), "add a security interest holder's certificate to the map if applicable." Mr. Gump asked the applicant to submit it to him when she gets it. Ms. Cole requested clarification on condition 1(c), "remove fencing and debris that will be on parcel 1." Mr. Gump wants the fence removed if it's going to be going across the middle of a new parcel. He'd like it cleaned up to represent where the parcel lines are going to be.

As there was no response to the call for public comment, the comment period was closed.

Mr. Gump moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public meeting, that the Washoe County Parcel Map Review Committee approve Tentative Parcel Map Case Number PM16-004 for Terri Cole, subject to the conditions of approval as listed in the staff report and make the

determination that the following criteria is or will be adequately provided for pursuant to Washoe County Development Code, Section 110.606.30. Mr. Rubio seconded the motion which carried unanimously.

The motion carried and considered the following criteria:

- 1) General improvement considerations for all parcel maps including, but not limited to:
  - a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
  - b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
  - c) The availability and accessibility of utilities;
  - d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks;
  - e) Conformity with the zoning ordinances and master plan;
  - f) General conformity with the governing body's master plan of streets and highways;
  - g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
  - h) Physical characteristics of the land such as floodplain, slope and soil;
  - i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive;
  - j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands;
  - k) Community antenna television (CATV) conduit and pull wire; and
  - l) Recreation and trail easements.

**C. Tentative Parcel Map Case Number PM16-006 (TL Mt. Rose Estates) –** Hearing, discussion, and possible action to approve a parcel map dividing a  $\pm 6.65$  acre property into two parcels of  $\pm 3.90$  and  $\pm 2.75$  acres.

- Applicant/ Property Owner TL Mt. Rose Estates, LP
- Location: Northern Terminus of Callahan Road
- Assessor's Parcel Number: 150-460-05
- Parcel Size: 6.65 Acres
- Master Plan Category: Suburban Residential (SR) and Rural (R)
- Regulatory Zone: High Density Rural (HDR) and General Rural (GR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 606 Parcel Maps
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 35, T18N, R19E, MDM, Washoe County, NV
- Staff: Trevor Lloyd, Senior Planner  
Washoe County Community Services Department  
Planning and Development Division
- Phone: 775-328-3620
- E-mail: [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)

Ms. Robb opened the public hearing. Mr. Lloyd reviewed his staff report dated April 26, 2016. Mr. Lloyd noted there are two additional conditions 1(i), "The property is still subject to any applicable legal restrictions that might exist on it; Washoe County takes no position one way or the other on any such restriction" and 1(j), "The following note shall be placed on the final map: *No dwelling unit shall be placed on parcel A-1 or parcel A-2.*"

Ms. Ray requested a note be added that all permits pulled for this site, parcel A-1 and A-2 shall meet the requirements of Washoe County Code

Steve Strickland, the applicant's representative with Wood Rodgers, said they had no problem with the conditions in the staff report or the additional conditions made by Mr. Lloyd. Mr. Strickland emphasized the meeting today is about the parcel map, the water treatment plant has already been approved.

Mr. Lloyd added, the use of the water treatment facility has been approved and could be established whether or not this parcel map is approved.

Ms. Robb opened public comment.

Jeff Spencer, attorney retained by the homeowners, is here to oppose the division of the parcel. The one parcel is planned to be used by TMWA for a water treatment facility. The other parcel; it is uncertain what its future is. Mr. Spencer provided the Committee with a signed petition from homeowners in the Mt. Rose Estates community. There are 29 signatures representing 29 homes in the community, all opposed to the division of the parcel and further opposed to the TMWA facility in that location. Mr. Spencer confirmed there are 62 lots in the Mt. Rose Estates subdivision, two of them are owned by Washoe County, 16 are owned by the developer, and 44 are owned by homeowners. Within a week 29 of the homeowners have signed the petition and formally opposed the division of the parcel. If there is any question whether the public is in favor or opposed to this, the overwhelming evidence is they are completely opposed. The basis of the opposition is: Mr. Spencer doesn't believe the developer had the right to strip off this parcel to begin with. This tentative parcel map shouldn't be in front of the Parcel Map Review Committee and he will seek further action to unwind this task. Mr. Spencer submitted a example of a zoning plat that was signed by each of the homeowners, in 2013, at the time they purchased their lots. In it, it clearly shows an open space designation next to a retention basin in the parcel they are discussing today, in the upper right portion of the subdivision. That open space designation goes along with the bylaws of Monte Vista at Mt. Rose language which defines common area and open space and its land that should have been deeded to the community itself rather than taken off for the developers own personal benefit. During the application process, on December 15, 2015 as part of the application, Wood Rodgers prepared a map that contained a designation of this lot as "common area C." "Common area C" is not part of a recorded plat but it does show the intent, at least up to this point, of the developer was this was going to be open space or common area for the homeowners to enjoy and, based on the signature cards, they bought their lots in reliance of this parcel remaining open. Mr. Spencer went on to say, a subsequent application by Wood Rodgers corrected their designation and now it became the mysterious "parcel A". Not recorded, this does not change its designation. Mr. Spencer indicated a notice issue where, when the application was submitted by TMWA, the location was designated as, "water treatment plant is located in the approved, unbuilt Monte Vista subdivision approximately 1/3 mile north." At the time of this application, December 2015, this was not an unbuilt subdivision. It was lived in. These homeowners were in place before this approval was granted. Mr. Spencer noted open space requirements as promised by the developer initially have not been met. Wood Rodgers has been very good about keeping track of the open space, they're very consistent about their other measurements but the open space hasn't been followed. It has been shrinking: 8.3 acres has disappeared out of the 28 acres, which is a 30% error. That's far beyond substantial compliance. Mr. Spencer asks the Committee, because of the opposition,

the lack of appropriate notice, and the fact the developer didn't have the right to sell this land to begin with and the damage to the homeowners should this go forward, to deny this application.

John Enloe, with TMWA, addressed some of the aforementioned issues expressed. In terms of the "open space" designation; the current CC&R's are applicable to the Estates at Mt. Rose 3A. Mt. Rose 3B is where this parcel will lie, ultimately, is an annexable portion of that property or of those CC&R's but isn't currently part annexed into that CC&R, so technically that property is not currently subject to the CC&R's as they are today. If it were, those CC&R's also reserve the right for the developer to dedicate parcels to quasi-public and public entities and utilities for the purposes of public utilities of which the water treatment plant would be one of. The CC&R's also talk about the ability to annex in a portion, or all, or none of the annexable portion which is 3A. Mr. Enloe continued, in terms of the acreages they have worked with the County to make sure the acreages meet what they need to meet the future 23 sub-dividable lots. The parcels have changed. The original tentative map has changed. Originally, we showed a much bigger portion of that area as open space but Washoe County Parks didn't want all that open space they just wanted the trail around White's Creek. So, some of the property changed from open space or common area elements. There's been a boundary line adjustment to create the parcel that was ultimately dedicated to Washoe County. There has been a lot of moving parts getting to this point but they have worked with the County and they are in conformance with acreages that are required to develop the 23 lots they've got there.

Bret Lowry, a homeowner, said he doesn't feel he got proper notice of the water plant being approved. A lot of the neighbors he spoke with didn't receive anything. He feels this was pushed under the rug and they were never really notified. When they did find out about it and started digging into it, they found out a lot of things in the CC&R's do apply to this property and they were all induced, fraudulently, into purchasing their properties because that parcel was always supposed to be open space and it didn't remain that way. All the documents they have on their purchase agreements enforce that. They feel what's going on is underhanded and that is why they are here today.

Jason Cowen, a homeowner, said his backyard will look into the water treatment facility. The problem he has is; when he bought the house he made the mistake of believing the salesperson that nothing would ever be built behind us, except across the street. Now, conveniently, things have been moved around and now our builder is selling this land to help them to pay for a bridge for them to continue to build homes. He feels it was misleading. If he and his wife had been told there was a potential for this to happen they would have never bought there. He thinks the salesperson had a responsibility. In his dealings with the builder he feels they'll take any shortcut they can to make a profit. He's frustrated and wants to sell his house. He bought the land for their family to grow but thinks this will affect the value of their homes. Who wants to look at a water treatment plant behind their homes?

Mr. Enloe wanted to address two things regarding public notification and misperceptions about the timing of how all this went down. Mr. Enloe opined there was a perception the developer knew this was in the works for a long period of time which is not the case. TMWA took over the water system in that area from Washoe County, January 1, 2015. TMWA knew there were issues with groundwater sustainability in this area when they acquired the water system so they started working immediately towards improvements to help the situation. Based on a meeting he had with Mr. Garcia, a resident, he looked for the first email correspondence he had with Rich Ballestrari, of Tim Lewis Homes, and he thinks it was sometime in August 2015. That was the first written communication TMWA had with this developer, that they were interested in his parcel. So, in 2013 – 2014, the developer had no idea. This treatment plant wasn't proposed until May or June 2015 when TMWA adopted new rules. Did the process happen quickly, yes. TMWA had a public meeting with their Board of Directors on November 18, 2015 where the purchase agreement for this piece of property was reviewed and approved by their Board. Mr. Spencer asked who approached who. Mr. Enloe said he approached Rich Ballestrari. Mr. Spencer asked, because of the location? Mr. Enloe said yes. Mr. Enloe went

on that November 18, 2015, after the Board of Directors meeting, TMWA had a meeting with Monte Vista HOA at which they presented the concept of the water treatment plant. The meeting was held at an office off Professional Circle in Damonte Ranch. TMWA filed the special use permit application in December 2015. They sent out 6,500+ letters to the community and all of south Reno regarding the need for the water treatment plant. The people in the Monte Vista subdivision got two variations of that letter one of which notified them of a TMWA sponsored open house on January 11, 2016. There was also a Citizen Advisory Board (CAB) meeting on January 14, 2016 where this issue was discussed. There was also a district forum meeting hosted by Commissioner Lucey on January 21, 2016 regarding this project. Then there was the public hearing at the Board of Adjustment on February 4, 2016 for the special use permit, which was reviewed and approved. Mr. Enloe feels TMWA has been very transparent and open. He understands the property owners may have been told one thing by the salespersons but at that time they didn't know any different. The Ross', who live to the north of the property, immediately adjacent to the treatment plant, had concerns about the reduction to their homes value so TMWA hired an appraiser to review their house, the treatment plant as was proposed, and would it cause any detriment to their property. The comment from the appraiser was, "...based upon my inspection of the subject residence and the site for the new water treatment plant coupled with the information which has been set forth in the preceding paragraphs it is my opinion based on the information currently available that the proposed water treatment plant will not have a material impact on the value of the nearby Ross' residence." TMWA has agreed to work with the neighbors to install landscape, etc., to mitigate potential view impacts. TMWA knows it's not what the property owners signed up for then they bought their residences there but this is an essential facility for the water system that serves those residences.

Duane Warth spoke in response to Mr. Enloe saying he doesn't think the history is the problem. From his research he doesn't think Tim Lewis had a right to sell the property. He thinks if the map is approved it will be premature and will cause a lot of problems down the road. He thinks there are other things in the "wind" of which he's not at liberty to discuss. He asks the Committee to put off approving the map until the issues can be resolved.

Joseph Pennacchio, a resident, submitted a plat showing the location of his residence in relation to the water treatment plant along with a map which complies with the CC&R map. He noted there is a common area and open space as indicated on what Mr. Spencer produced as the document of plat the residence all signed given to them by Tim Wilson (Lewis?). Mr. Pennacchio submitted a drawing of the water treatment plant that will be behind his house along with pictures of the lots in relationship to the water treatment plant.

Ms. Robb closed public comment.

Mr. Gump said he was concerned about making a decision on the item without a resolution between the two parties. He suggested a condition be added that all parties sign off before the construction of the facility.

Ms. Ray confirmed the use of the parcel, before splitting, has already been determined and whether the Committee approves, recommends continuance, or disapproves, the use of the parcel is still going to continue based on actions already stated. Ms. Ray requested advice from legal counsel on how to proceed.

DDA Watts-Vial noted there is specific review criteria described in Article 606 and agreement of adjacent property owners is not listed in there. To put that in as a condition of approval is not appropriate. The use of the property has already been approved and that is not what this committee is here to do. They are here to decide whether or not to parcel.

Mr. Rubio said he understood everyone's concerns and based on the Health aspect side TMWA has met every condition of the Washoe County Health District. From his standpoint, he wouldn't have any grounds not to approve this project.

DDA Watts-Vial read into the record, under development code section 110.606.30 (c), "action required by the Parcel Map Review Committee, if the application is determined to be complete, the Parcel Map Review Committee shall approve, conditionally approve, or disapprove the tentative parcel map within 60 days of the date the application is determined to be complete unless the time limit is extended in writing by the mutual consent of the sub-divider and the Director of Community Development. Failure of the Parcel Map Review Committee to take action within the time prescribed, in this section, shall result in approval of the parcel map." DDA Watts-Vial brought that up as there has been a call for a motion but there is not a response to that, essentially it will die due to a lack of a motion the time limit will continue to press on. If the time limit goes by, it'll be approved by operation of law.

Ms. Robb moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public meeting, the Washoe County Parcel Map Review Committee approve Parcel Map Case Number PM16-006 for TL Mt. Rose Estates, LP, subject to the conditions of approval as listed in the staff report, and make the determination that the following criteria is or will be adequately provided for pursuant to Washoe County Development Code, Section 110.606.30, including conditions 1(i) and 1(j). Mr. Rubio seconded the motion which carried unanimously.

The motion carried and considered the following criteria:

- 1) General improvement considerations for all parcel maps including, but not limited to:
  - a) Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal and, where applicable, individual systems for sewage disposal;
  - b) The availability of water which meets applicable health standards and is sufficient for the reasonably foreseeable needs of the subdivision;
  - c) The availability and accessibility of utilities;
  - d) The availability and accessibility of public services such as schools, police and fire protection, transportation, recreation and parks;
  - e) Conformity with the zoning ordinances and master plan;
  - f) General conformity with the governing body's master plan of streets and highways;
  - g) The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision;
  - h) Physical characteristics of the land such as floodplain, slope and soil;
  - i) The recommendations and comments of those entities reviewing the tentative parcel map pursuant to NRS 278.330 and 278.348, inclusive;
  - j) The availability and accessibility of fire protection including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires including fires in wild lands;
  - k) Community antenna television (CATV) conduit and pull wire; and
  - l) Recreation and trail easements.

## **8. \*Reports and Future Agenda Items**

### **A. \*Legal Information and Updates**

Ms. Robb said she will be creating a staff report to update the current PMRC Rules, Policies, and Procedures to better reflect how the Committee should function and to change membership due to the water merger and fire service changes. Ms. Robb also requested members to think about alternates.

**9. \*Public Comment**

Jeff Spenser requested the Committee look at the amount of time still available under Section 606.15(c) and give it some time to work itself out. All the issues that have been identified so far were found within a week so they will find additional issues. Rather than complicating things by having to unwind a division, he asks the Committee to take the time allotted to them.

**10. Adjournment**

Ms. Robb adjourned the meeting at 2:34 p.m.

Respectfully submitted,

\_\_\_\_\_  
Donna Fagan, Recording Secretary

Approved by Committee in session on \_\_\_\_\_, 2016.

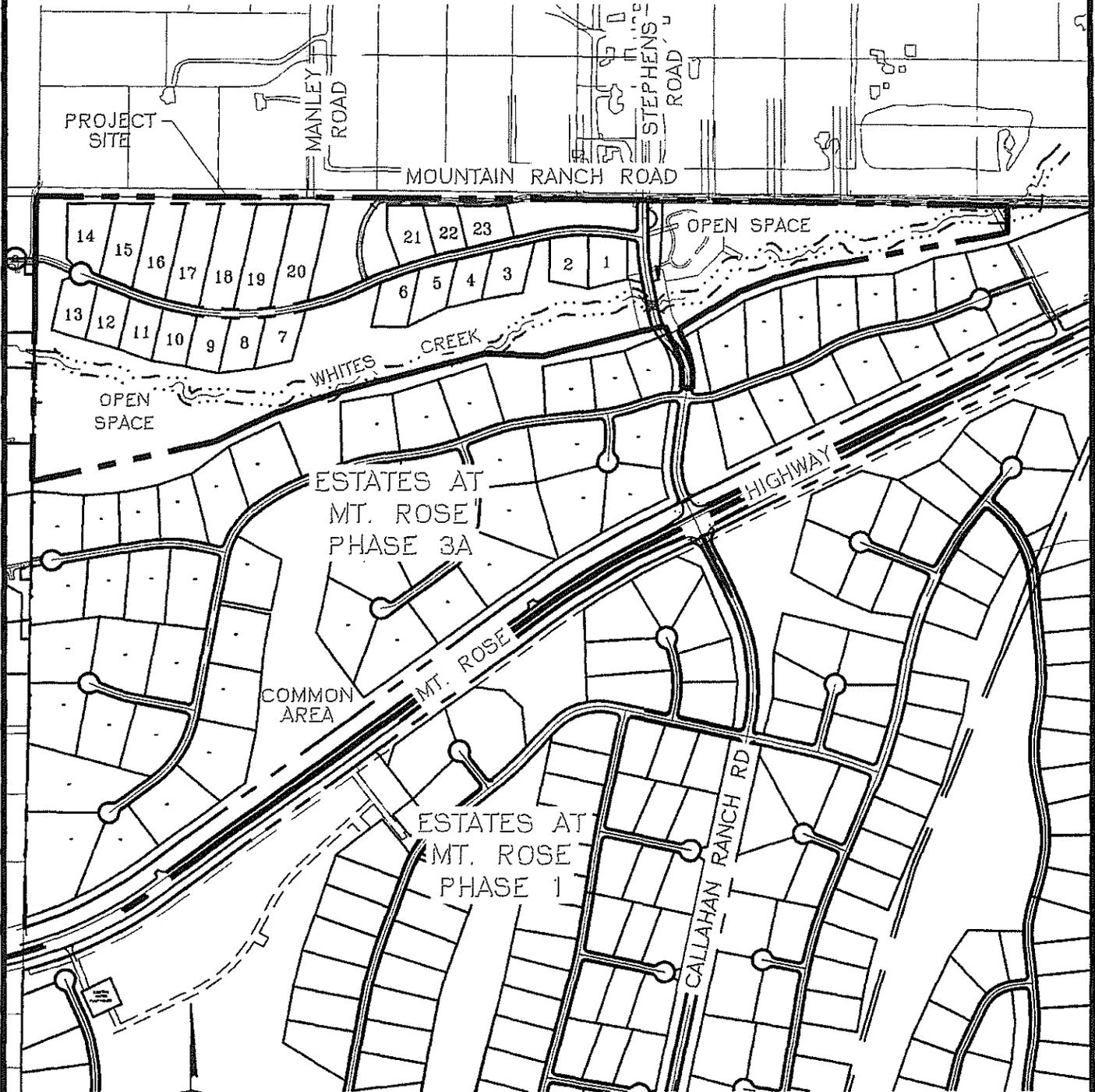
\_\_\_\_\_  
William H. Whitney  
Secretary to the Parcel Map Review Committee

# FIGURE 1 - OVERALL PROJECT SITE MAP MONTE VISTA AT ESTATES AT MOUNT ROSE

WASHOE COUNTY

NEVADA

JULY 2011



NOT TO SCALE

**WOOD RODGERS**  
DEVELOPING INNOVATIVE DESIGN SOLUTIONS  
5440 Reno Corporate Drive Tel 775.823.4066  
Reno, NV 89511 Fax 775.823.4066

**WHEN RECORDED MAIL TO:**

**TL MT. ROSE ESTATES, L.P.**

**3300 DOULGAS BLVD, SUITE 450**

**ROSEVILLE, CA 95661**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS AND  
ALTERNATE DISPUTE RESOLUTION  
FOR  
MONTE VISTA AT MT. ROSE  
A NEW HOME COMMUNITY**

**IMPORTANT NOTE: ARTICLE XII OF THIS DECLARATION  
CONTAINS PROVISIONS WHICH, AMONG OTHER THINGS, REQUIRE  
CERTAIN DISPUTES TO BE RESOLVED BY BINDING ARBITRATION  
AND WAIVE THE CONSTITUTIONAL RIGHT TO TRIAL BY JURY.**

This instrument is being recorded as an  
"Accommodation Only" by First American  
Title Insurance Company and has not  
been examined as to its validity, execution  
or its effect upon title, if any.

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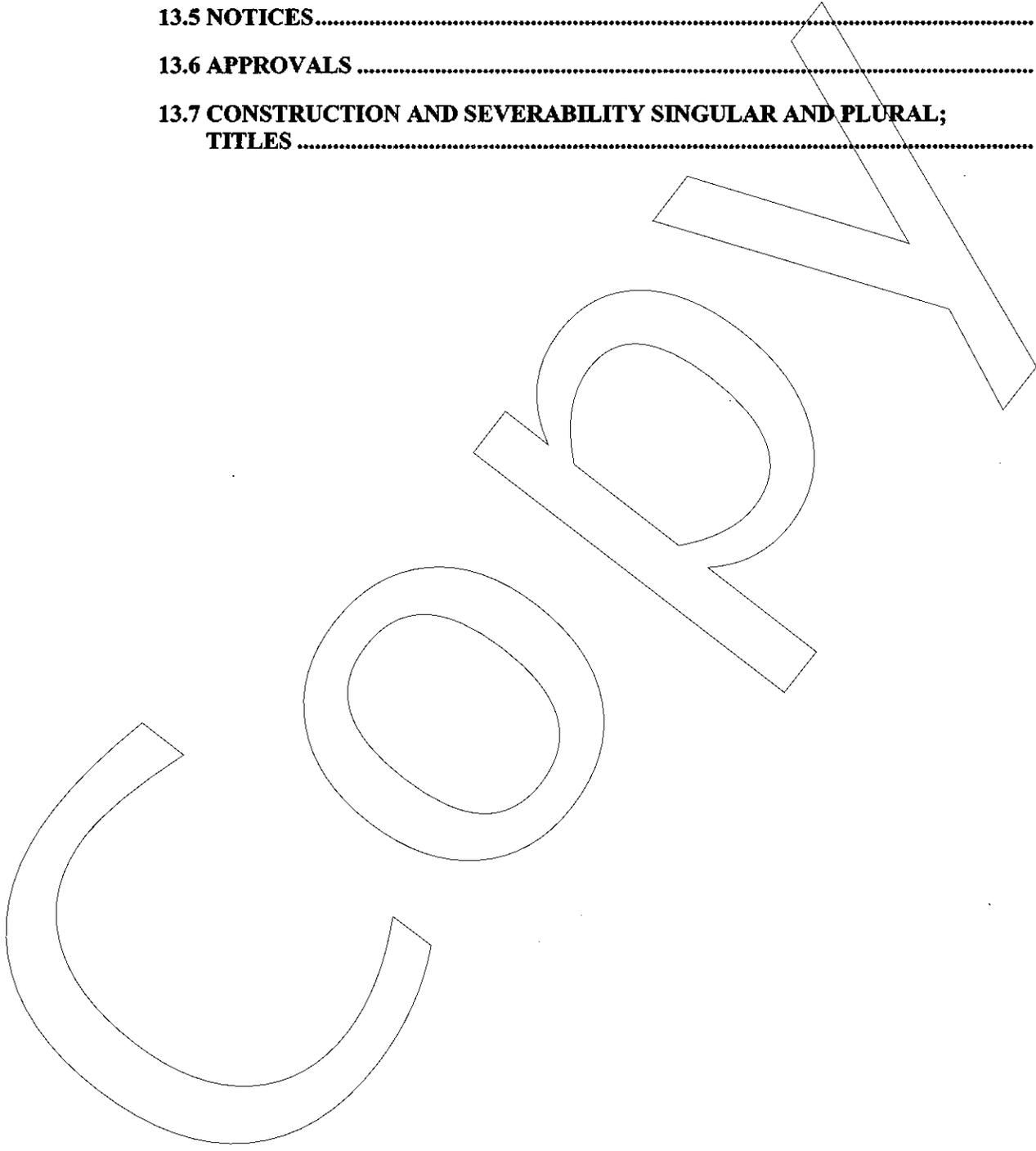
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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND PROVISION FOR ALTERNATE DISPUTE RESOLUTION FOR MONTE VISTA AT MT. ROSE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND PROVISION FOR ALTERNATE DISPUTE RESOLUTION FOR MONTE VISTA AT MT. ROSE ("Declaration") is made this 19<sup>th</sup> day of July, 2012 by TL MT. ROSE ESTATES L.P., a California limited partnership, herein referred to as "Declarant", with reference to the following facts and is as follows:**

### RECITALS

**A. Declarant is the Owner of that certain real property, which includes 59 lots, located in the County of Washoe, State of Nevada, known as Phase 3A of Estates at Mt. Rose, which is described in Exhibit "A" and made a part hereof.**

**B. Declarant is the owner of that certain real property located in Washoe County, Nevada, known as Estates at Mt. Rose Phase 3B, and more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Annexable Property"). At some future time, in accordance with this Declaration and the Act, Declarant may or may not annex all, a portion, or none of the Annexable Property into the jurisdiction of this Declaration. All portions of the Annexable Property annexed into and made subject to the jurisdiction of this Declaration are referred to herein collectively as the "Annexed Property." The Property, the Annexed Property, and all improvements, modifications and amendments thereon and thereto are referred to herein as the "Project."**

**C. This Declaration is designed to create equitable servitudes and covenants appurtenant to and running with the Project imposing conditions, covenants and restrictions for the development, operation, protection and maintenance of the Project, including, without limitation, the assessment against the Owners for the cost of operation and maintenance of Common Elements within the Project.**

**D. This Declaration is intended to secure the development of the Project as a high quality residential community.**

**E. Declarant reserves the right to create a maximum of eighty two (82) Lots within the Project.**

**F. It is hereby declared that all of the real property described herein constitutes a "Planned Community" within the meaning of NRS 116.075.**

**DECLARATION:**

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

**ARTICLE 1  
DEFINITIONS**

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

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

"Annexable Property" is defined in Recital C.

"Annexed Property" is defined in Recital C

"Annual Assessment" is defined in Section 6.4.1

"Architectural Committee" shall mean the committee responsible for implementing and enforcing the requirements and restrictions governing the construction and alteration of all Improvements on Lots, as more particularly set forth in Article VIII below.

"Architectural Committee Rules" is defined in Section 8.4 of this Declaration.

"Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Association, as amended from time to time.

"Assessments" is defined in Section 5.1.1.

"Association" means Monte Vista at Mt. Rose Homeowners Association, Inc., a Nevada Nonprofit Corporation

"Association Property" means all real and personal property now or hereafter owned by or leased to the Association or in which the Association has a recognizable legal or equitable present or future interest.

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

"Board" or "Board of Directors" means the Board of Directors of the Association and is synonymous with "Executive Board" as defined by the Act.

"Budget" is defined in Section 6.4.1.

"Bylaws" mean the Bylaws of the Association, as amended from time to time.

"Capital Improvement" is defined in Section 6.6.1. "Capital Improvements Assessment" is defined in Section 6.6.1.

"Common Elements" means that portion of the Project designated as common elements or common area on a Map, together with all Improvements constructed or to be constructed thereon, including, but not limited to, all streets, roadways, median landscaping, entry gates, entry monumentation, water features, trash receptacles, picnic tables, benches, trails, street lighting, general landscaping, drainage ways and facilities within the Project (exclusive of Lots) which have not been accepted for dedication by the applicable governmental entity having jurisdiction; together with any easements for the benefit of the Common Elements created or reserved in this Declaration.

"Common Expenses" is defined in Section 6.4.1.

"Construction" is defined in Section 2-A.4.

"Cure Period" is defined in Section 3.29.4

"Declarant" means the undersigned that has made and executed this Declaration, or its successors, assigns, or representatives in the event Declarant assigns its rights and obligations, or in the event Declarant's interest in the Project and the Annexable Property is sold pursuant to foreclosure or deed in lieu thereof.

"Declarant's Control Termination Date" is defined in Section 4.3.3(b).

"Declaration" means this instrument and any and all amendments and supplements thereto.

"Deed of Trust" means an interest in real estate, created by contract or conveyance, which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, and any other consensual lien or title retention contract intended as security for an obligation.

"Eligible Mortgage Holder" is defined in Section 9.5.

"First Deed of Trust" means the most senior Deed of Trust on a particular property.

"Governing Documents" means the Declaration, the Articles, the Maps, the Plans, the Bylaws, and the Rules as each may be amended from time to time. Any exhibit, schedule or certification accompanying any Governing Document shall be deemed a part thereof.

"Hearing Panel" is defined in Section 3.29.3.

"Impacts" is defined in Section 2-A.4.

"Improvement" means all structures, and works of improvement and appurtenances thereto, of every type and kind, including but not limited to buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees, shrubs, poles, signs, exterior air conditioning, water softener, satellite dishes, antennae, fixtures or equipment.

"Lot" or "Parcel" means any portion of the Property designated as a lot or parcel on a Map and intended for improvement with a single family residence, whether or not the Lot or Parcel is so improved. The boundaries of each Lot/Parcel and the number identifying the Lot or Parcel are set forth on the Maps.

"Lot Wall" is defined in Section 3.28.

"Maintenance Violation" is defined in Section 3.29.1.

"Maintenance Violation Notice" is defined in Section 3.29.1.

"Manager" means a person, firm, or corporation possessing all licenses and certifications required by the Act, employed or engaged to perform management services for the Project and the Association.

"Map" means Phase 3A of the final subdivision map or parcel map approved by the County of Washoe or the City of Reno, as applicable, related to the tentative subdivision map for The Estates at Mt. Rose (Washoe County Case No. TM03-005), and filed for record against the Project in the Office of the County Recorder, Washoe County, Nevada, and any and all amendments thereto.

"Member" or "Association Member" means every person or entity including Declarant who holds a membership in the Association pursuant to the provisions of this Declaration, the Articles and the Bylaws.

"Natural Corridor" and "Open Space Corridor" mean that portion of a Lot designated as a natural corridor and/or open space corridor on a Map.

"Notice of Default" is defined in Section 6.14.1 (b).

"Notice of Delinquent Assessment" is defined in Section 6.14.1(a).

"Notice of Sale" is defined in Section 6.14.2.

"NRS" means the Nevada Revised Statutes.

"Owner" means any person or entity, including Declarant, holding a fee simple interest in a Lot or Parcel, or who is the buyer of a Lot or Parcel under a recorded contract of sale.

"Owner Complaint" is defined in Section 3.29.1.

"Perimeter Wall" is defined in Section 3.28.

"Plan" means those items set forth in NRS 116.2109, including drawings of Improvements which are filed with agencies which issue permits for the Project, and all number and letter designations set forth thereon identifying Units, all of which are by this reference incorporated herein.

"Project" is defined in Recital C.

"Property" is defined in Recital A.

"Rules" means the rules and regulations for the use of the Common Elements and the conduct of persons in connection therewith, as adopted by the Board of Directors pursuant to this Declaration and the Bylaws, together with such other rules and regulations as the Board may adopt under this Declaration and/or the Act.

"Special Assessment" is defined in Section 6.5.

"Special Declarant's Rights" means all rights reserved by Declarant for itself under this Declaration which are personal to Declarant and may be exercised only by Declarant, including, but not limited to, those set forth in Article X hereof.

"Subsidy Agreement" is defined in Section 6.16.

"Violation Assessment" is defined in Section 6.7.

The phrase "visible from neighboring property" means, with respect to any given object, that such object is or would be visible to a person six feet (6') tall standing on an assumed floor elevation two feet (2') above the highest ground surface of any neighboring property.

## ARTICLE 2 COMMON ELEMENTS

**2.1 Ownership of Common Elements.** All of the Common Elements are or will be owned by the Association. The Common Elements shall remain private property of the Association unless dedicated to a public authority pursuant to the provisions hereof, and nothing contained herein shall be construed as a dedication to the public of the Common Elements or any portion thereof.

**2.2 Owners' Easements of Enjoyment.** Except as otherwise expressly provided elsewhere in this Declaration, and subject to Section 2.3, each Owner shall have, and Declarant and the Association hereby grants to each Owner, a non-exclusive easement of use and enjoyment in, to, and

throughout the Common Elements for recreation, ingress, egress, support, and all other appropriate purposes, provided, however, that this easement shall not extend to any portion of the Common Elements located on an individual Lot. Each such easement shall be appurtenant to and pass with title to each Lot.

**2.3 Use of the Common Elements.** Common Elements may be used solely for residential subdivision purposes, including landscaping, ingress and egress, and recreation. The Board shall regulate the use of the Common Elements through its Rules, as promulgated and amended from time to time. No persons other than the Owners, their family members, guests and invitees or the Owner's tenants, their family members, guests and invitees shall be allowed to in any manner use or occupy the Common Elements. Each Owner shall at all times be responsible for any and all activities of his tenants, guests and invitees using the Common Elements. Furthermore, each Owner shall reimburse the Association for any damage to the Common Elements caused intentionally or negligently by such Owner or his family, tenants, guests, or invitees, and the amount of such reimbursement shall be levied as a Violation Assessment if not paid upon request from the Association. No Improvements within the Common Elements shall be altered or removed, except at the express direction of the entity responsible for maintaining such Common Elements.

**2.4 Declarant's Common Elements Easement Rights; Dedication of Common Elements.**

**2.4.1 Reservation of Common Elements Easements In Favor of Declarant.** Declarant hereby reserves unto itself such easements over, through and under the Common Elements as may be reasonably necessary to (i) discharge Declarant's obligations under this Declaration, or (ii) exercise any Special Declarant's Rights, whether arising under NRS chapter 116 or reserved in this Declaration, or (iii) complete any Improvement or make any repair Declarant deems desirable on the Common Elements, the Annexable Property, or any Lot owned by Declarant.

**2.4.2 Reservation of Right to Grant Additional Common Elements Easements and to Dedicate Common Elements.** Declarant hereby reserves unto itself the right to grant easements and rights of way on, over, through and under the Common Elements for the purposes described below and for the benefit of the Owners, the Association, and the right to offer for dedication any portion of the Common Elements to any political subdivision, or any public or quasi-public entity or utility. Such grants of easement or dedications may be for any or all of the following described purposes: constructing, erecting, operating, or maintaining on the Common Elements, at any time: (i) roads, streets, trails, walks, driveways, vehicle parking areas, parkways, and park areas; (ii) poles, wires, or conduits for transmission of electricity, telephonic communication or cable or master antenna television for the Project and the necessary apparatus incident thereto; and (iii) public and private sewers, sewage disposal systems, storm drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any and all equipment and other apparatus relating thereto. The rights reserved by Declarant in this Section 2.4.2 may be exercised during such time as Declarant owns any portion of the Property or the Annexable Property, or holds any contractual right to purchase any portion of the Annexable Property. Furthermore, the rights reserved by Declarant in this Section 2.4.2 shall permanently expire at such time as Declarant no longer owns any portion of the Property or the Annexable Property, and no longer holds any contractual right to purchase any portion of the Annexable Property.

**2.4.3 Rights of Association to Grant Easements over Common Elements and to Dedicate Portions of Common Elements.** At such time as the rights reserved by Declarant

under Section 2.4.2 have expired, the Association shall be entitled to exercise the rights reserved to Declarant under Section 2.4.2, provided that at least sixty-seven percent (67%) of the voting power of the Association has approved such action.

**2.4.4 Right of Association to Encumber Common Elements.** The Association may encumber the Common Elements in connection with authorized obligations, but only upon the affirmative vote of not less than sixty-seven percent (67%) of the voting power of the Association.

**2.4.5 Declarant's Obligation to Convey.** Declarant shall convey fee simple title to the Common Elements shown on a particular Map to the Association prior to the first conveyance of a Lot shown on such Map to an Owner other than Declarant, free and clear of all encumbrances and liens, except (i) real property taxes and assessments that may be due but are not delinquent; (ii) easements, covenants, conditions and reservations then of record or apparent, including those set forth on the relevant Map and in this Declaration; and (iii) the obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution, or regulation of the United States of America, the State of Nevada, County of Washoe, or any other political subdivision or public organization having jurisdiction over the Property, or by virtue of any organization or political body created pursuant to any such statute, law, ordinance, or regulation.

**2.4.6 Maintenance of Common Elements.** Maintenance of any particular Common Elements and any and all Improvements thereon shall be the obligation of the Declarant solely until such Common Elements are conveyed to the Association and such conveyance is recorded in the official records of the County Recorder of Washoe County, Nevada. From and after the date of such conveyance, the obligation to maintain said Common Elements and the Improvements thereon shall be the obligation of the Association, except as to any portion of such Common Elements for which maintenance responsibility is assumed by a special assessment district or any other appropriate governmental entity, and thereafter Declarant shall have no further obligation to maintain the Common Elements. During the period of its maintenance obligation, the Association shall maintain and manage the Common Elements and all improvements thereon in a first class and workmanlike manner.

**2.5 Indemnification.** Each Owner shall indemnify, defend and hold harmless Declarant, without limitation, on any claims arising from the negligence or willful misconduct of that Owner, his family, relatives, guests, or invitees, for damages sustained on the Common Elements, except to the extent any such claims arise from the negligence or willful misconduct of Declarant. Similarly, each Owner shall indemnify, defend and hold harmless the Association, without limitation, on any claims, arising from the negligence or willful misconduct of that Owner, his family, relatives, guests, or invitees, for damages sustained on the Common Elements, except to the extent any such claims arise from the negligence or willful misconduct of the Association.

## **ARTICLE 2-A PROPERTY RIGHTS**

**2-A.1 Construction Access Easement.** Declarant hereby reserves for itself an easement over the Project for such access, ingress and egress as may be necessary for Declarant to complete any

improvement on the Project, provided that, in exercising the rights reserved under this Section 2-A.1, Declarant shall not unreasonably interfere with any non-Declarant Owner's use and enjoyment of his or her Lot. The easement reserved by Declarant in this Section 2-A.1 shall permanently expire at such time as Declarant no longer own any portion of the Project or the Annexable Property and no longer holds any contractual right to purchase any portion of the Annexable Property.

**2-A.2 Encroachment Easements.** Declarant hereby reserves for each Lot, as the dominant tenement, an easement over all adjoining Lots and Common Elements, as the servient tenements, for the purpose of accommodating and maintaining any encroachment which occurs due to engineering errors, errors in original construction, settlement, or shifting of structures, or any other cause as long as the encroachment remains. Furthermore, Declarant hereby reserves, for the Common Elements, as the dominant tenement, an easement over adjoining Lots, as the servient tenements, for the purpose of accommodating and maintaining any encroachment due to engineering-errors, errors in original construction, settlement or shifting structures; or any other causes. In the event a Lot or Improvement on the Common Area is partially or totally destroyed, and then repaired and rebuilt, minor encroachments over adjoining Lots and the Common Elements shall be permitted and there shall be valid easements for the maintenance of the encroachments as long as they shall exist. In no event shall a valid easement exist pursuant to this Section 2-A.2 in favor of Declarant, an Owner, or the Association if the encroachment occurred due to the willful misconduct of Declarant, the Owner, or the Association, respectively.

**2-A.3 Drainage Easements.** Declarant hereby reserves over the Common Elements and each Lot, for the Common Elements and each Lot, reciprocal easements for drainage according to the drainage patterns created or required by the grading plans for the Project approved by Washoe County, as well as the actual, natural, and existing patterns for drainage. Each Owner covenants that if it becomes necessary to alter the pattern of water drainage over his Lot for the protection of his Lot, such Owner shall do so in accordance with Section 3.11 and in a manner that will not harm or unduly increase the burden on any adjacent Lots or Common Elements.

**2-A.4 Construction Impacts Easement.** During Declarant's development of the Project the construction of streets, utilities, homes, structures and other Improvements (generally, the "Construction") will produce substantial dust, noise, light (during nighttime hours) and other adverse impacts ("Impacts") within the Project to Owners and their guests, invitees and licensees which may be alleged in the future to constitute a nuisance or otherwise impair the use and enjoyment of the Common Elements, Lots, and Improvements thereon. The term "Impacts" is intended to be construed liberally to include all adverse consequences of Construction activity which might be an annoyance or nuisance, particularly without limitation dust and noise.

An easement is hereby reserved by Declarant, from each Lot and the Common Elements, for itself and its agents to cause Impacts to occur.

**2-A.5 Maintenance Violation Easement.** Declarant hereby reserves over each Lot, for the benefit of the Association, an easement for such access and use as the Association may require in exercising its rights under Section 3.29.

**2-A.6 Access Easement.** Declarant hereby reserves over all improved streets and roadways within the Project a perpetual, non-exclusive easement for access, ingress and egress for the benefit of each portion of the Annexable Property owned by Declarant or for which Declarant holds a contractual right to purchase.

2-A.7 Perimeter Lot Easement. Declarant hereby reserves over each Lot on which a Perimeter Wall is located, for the benefit of the Association, and easement for such access as the Association may require in meeting its obligations under Section 3.28.

2-A.8 Slope Easement and Berming. Declarant hereby reserves over each Lot, for itself and the Association, a ten (10) foot wide easement from all Lot lines coinciding with street right-of-way lines and berming for the purpose of cutting, filling, drainage and maintenance of slopes and drainage courses.

2-A.9 Natural Corridor Restriction. The Natural Corridor area on a Lot shall be left as a natural corridor and open space corridor. There shall be no grading allowed on the Natural Corridor portion of a Lot. Moreover, no Improvements of any kind (including, without limitation, landscaping and structures) shall be constructed, installed, or placed on the Natural Corridor portion of a Lot. The Natural Corridor portion of a Lot shall remain at all times in its natural vegetative state, free from changes of any kind.

### ARTICLE 3 PROHIBITIVE AND MANDATORY USE RESTRICTIONS

3.1 Purpose of Restrictions; Other Restrictions. It is the desire and intention of the Declarant, with this Article III, to impose on the Property mutually beneficial restrictions to insure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as would depreciate the value of their property or interfere with the peaceful and quiet enjoyment of their Lot; and to preserve the natural beauty of the Lots. Additional conditions on the use and development of each Lot may be found in the Nevada Revised Statutes, the Washoe County Code, and the various project approvals issued by Washoe County. In the event standards and restrictions are addressed in both this Declaration and any of the preceding, the more restrictive standard shall apply.

3.2 Single Family Residences. Subject to Section 3.9, each Lot shall be used as a residence for a single family and for no other purpose. All residences shall be single story with a minimum interior living space square footage of 2,400 square feet excluding porches, patios, decks, overhangs and garages. All lots shall maintain a 30 foot minimum front yard setback and 12 foot minimum side yard setbacks. All rear yards shall maintain a minimum 30 foot setback and those lots adjacent to Mt. Rose Highway shall maintain an additional 20 foot buffer (total 50 feet). An Owner may rent his Lot to a single family; provided, however, that any lease or rental agreement shall be in writing and must specify that failure to abide by the provisions of the Governing Documents shall be a default under the lease or rental agreement, and the initial term of each such lease shall not be less than six (6) months. Whether or not the written leases or rental agreement so provides, all tenants of Lots are subject to and are required to abide by the provisions of the Governing Documents.

Unless prohibited by law, no residence in the Project may be used for a public boarding house, home for a group of unrelated persons operated or financed by a public or private institution, sanitarium, hospital, asylum, or institution of any kindred nature, or any other use not permitted by local law. Moreover, no Owner shall rent or lease his Lot for transient or hotel purposes, nor shall any Lot be time shared.

**3.3 Parking and Vehicular Restrictions.** No Owner shall park, store or keep within the Property any inoperable or commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck, ice cream truck or van) unless said inoperable or commercial vehicle can be stored in the garage of the Lot. No Owner shall park, store or keep on his Lot any recreational vehicle (including, but not limited to, any camper unit, house/car or motor home); any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home, or any other similar vehicle, unless the recreational vehicle is not visible from the front of the Lot or from neighboring property. (The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject, to approval by the Board). In addition, no Owner shall park, store, or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. No vehicles of any type shall be parked on any street or Lot within the Property for the purpose of accomplishing repairs thereto or the reconstruction thereof, except for emergency repairs and then only to the extent necessary to enable movement of the vehicle. The Board shall have the power to enforce all parking and vehicle use restrictions applicable to the Property, including the power to remove violating vehicles from any of the Property to the extent permitted by applicable law. Nothing herein shall apply to vehicles used by Declarant or Declarant's agents in the course of Declarant's construction of Improvements within the Project or upon the Annexable Property. Although the streets within the Development are public streets, it is the purpose and intent of this Declaration to impose an equitable servitude that prohibits any parking of vehicles by Owners or tenants on any street or driveway within the Development. Instead, parking shall be limited to the parking of vehicles in garages; provided, however, that if the residents of a home have more vehicles than can be stored in the parking bays of the garage, not more than one additional vehicle may be parked in the resident's driveway for a period not to exceed twelve (12) hours. Notwithstanding the foregoing restriction on street parking, guests and invitees of the Owners and residents who are entertaining may temporarily park their visitor vehicles on the street for the duration of the party or event, not to exceed twelve (12) hours. Infrequent overnight guests and infrequent visitors may park their vehicles in the driveway or street.

**3.4 Garages.** Each Owner shall maintain the garage on such Owner's Lot in a neat, orderly condition with all storage areas completely enclosed. Garages shall be used only for the purposes of parking vehicles and other storage and workshop purposes, subject to the Rules. No garage may be converted into a living area unless approved in writing by the Architectural Committee, and no conversion will be allowed that changes or alters the exterior appearance of the garage. Garages shall remain available for the storage of at least the number of motor vehicles that can be stored in the parking bays of the garages and for other purposes not incompatible with such use. Automobiles are to be kept in the garage when not in use and garage doors shall be maintained in a closed position with the exception of those occasions when the door(s) must be open to permit the ingress and egress of vehicles or residents, or to provide ventilation to persons who are working in the garage area.

**3.5 Signs.** Other than during construction of a house, no sign, billboards or advertising structures of any kind may be displayed on any Lot without the approval of the Architectural Committee. Notwithstanding the foregoing provisions of this Section, the Owner of each Lot shall have the right to place one sign on such Owner's Lot to advertise such Lot for sale or lease, provided that such sign shall not be larger than two feet (2') by three feet (3'). All residences shall have a designated address number that is easily viewable from the road and of a design that is consistent with the community. No other signs shall be permitted except as specified in this Section. The foregoing provisions of this Section shall not apply to any signs utilized by Declarant in any sales, construction, or marketing program, nor to any street signs or Project monument signs maintained by Declarant or the Association.

**3.6 Antennae, Satellite Dishes.** No pole, flagpole, mast, satellite dish, receiver, or other outdoor antenna or related device shall be allowed on any Lot if such device is visible from a neighboring property or the street, except satellite dishes not exceeding eighteen inches (18") in diameter located in the side or rear yard of the Lot. Nothing in this Section shall be deemed to conflict with any federal statutes, rules or regulations promulgated by the Federal Communications Commission pertaining to the use or installations of satellite dishes, or any statutes rules or regulations promulgated by the State of Nevada or the United States Congress pertaining to the display of the flag of the United States of America. In the event of any conflict, federal and/or state law shall control.

**3.7 Unightly Articles.** No unsightly articles, including clotheslines, shall be permitted to remain on any Lot so as to be visible from neighboring property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or enclosed areas designed for such purpose. In no event shall such containers be kept where they are visible from any neighboring Lot unless such containers are less than six feet (6') in height and are enclosed by a fence, screen or wall which is not less than six feet (6') in height and, notwithstanding such enclosure, such containers remain visible from a neighboring Lot or public street within the Property. Notwithstanding the foregoing, trash kept in covered, sanitary fly-proof containers may be brought to the front of a Lot no earlier than the day before the next scheduled day for trash pickup, provided that such containers are removed from the front of the Lot by the end of such pick up date. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles designed therefore, such that they do not create a fire hazard, and except as specifically authorized in writing by the Association (and subject to applicable ordinances and fire regulations).

**3.8 Animals.** No animals, fowls, reptiles, poultry, fish or insects of any kind ("animals") shall be raised, bred or kept within the Property, except that a reasonable number of dogs, cats or other household pets may be kept within a residence, provided that they are not kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any applicable local ordinance or any other provision of this Declaration and such limitations as may be set forth in the Rules. As used in this Declaration "unreasonable quantities" shall ordinarily mean more than four (4) pets per household; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to other Owners in the Property. Animals belonging to Owners, residents, or their guests within the Property must be either kept within an enclosure or on a leash or other restraint being held by a person capable of controlling the animal, and who then has in his possession a proper or adequate utensil or other means of cleaning up immediately all feces of such animal. No animal may be tethered and left unattended in any front yard area or in any portion of the Common Elements. Furthermore, to the extent permitted by law, any Owner shall be liable to each and all remaining Owners, residents, their families and guests, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Property by an Owner or resident or by members of their family or guests; and it shall be the absolute duty and responsibility of each such Owner to clean up immediately after such animals which have used any portion of the Common Elements.

**3.9 Business or Commercial Activity.** Subject to the right to lease under Section 3.2, no part of the Property shall ever be used for any business, commercial (including garage sales, moving sales, rummage sales, auctions or similar events), manufacturing, mercantile, storage, vending or

other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license. Notwithstanding any provision of this Declaration to the contrary, Declarant may use any portion of the Property for a model home site and display and sales offices in accordance with Article X hereof. The provisions of this Section and Section 3.2 shall not preclude any of the above-described activities which are conducted without external evidence thereof provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not routinely or in significant numbers visit the Lot or park automobiles or other vehicles within the Property; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the residence on such Lot; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of the Property and otherwise conform with the provisions of this Declaration. Additionally, notwithstanding the above, garage sales, moving sales, and rummage sales may be conducted upon the prior written approval of the Board, which approval may be granted or withheld in the Board's sole and absolute discretion.

**3.10 No Further Subdivision.** No Lot may be further subdivided without the prior written approval of the Board, which approval may be granted or withheld within the Board's sole and absolute discretion; provided, however, that nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Board for: (a) selling a Lot; or (b) transferring or selling any Lot to more than one (1) person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property; or (c) the leasing or renting by any Owner of all of his Lot, provided that any such lease or rental shall be subject to and in accordance with Section 3.2 of this Declaration.

**3.11 Drainage.** There shall be no interference with the established drainage in the Property unless an adequate alternative provision, previously approved in writing by the Architectural Committee, is made for proper drainage, and such alternative provision will not harm or unduly increase the burden on any adjacent Lots or Common Elements. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time a Lot is conveyed to an Owner by Declarant or later grading changes which are shown on plans approved by the Architectural Committee.

**3.12 View Obstructions.** No vegetation, Improvement or other obstruction shall be planted, constructed, or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot. Each Owner or resident of a Lot shall be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on that portion of his Lot which is subject to his control or maintenance, so as to not unreasonably obstruct the view of other Owners or residents. Each Owner, by accepting a deed to a Lot, hereby acknowledges that any construction or, installation by Declarant may impair the view of such Owner, and hereby consents to such impairment.

**3.13 Lot/Residence Alterations.** Neither the appearance of the Common Elements nor the exterior appearance of a Lot (or any Improvement thereon) or any other portion of the Project may be modified without the prior written approval of the Architectural Committee, in accordance with

Article VIII. No modification may be made that will impair the structural integrity or mechanical systems or lessen the support of any portion of the Project.

3.14 Maintenance and Repair. The Owner of each Lot shall be solely responsible for maintaining such property, and all Improvements thereon, in a clean and orderly manner, in a good condition and state of repair, and adequately painted or otherwise finished, all at such Owner's sole cost and expense. The Owner of each Lot shall keep such Lot free of debris, junk, and abandoned or inoperable vehicles, machinery, and equipment. Furthermore, the Owner of each Lot, subject to the restriction set forth in Section 2-A.9, shall keep all vegetation on such Lot appropriately irrigated, mowed, and pruned, as applicable, and shall immediately replace or otherwise landscape any yard area cultivated with grass or sod if such grass or sod is allowed to die. No building, structure, or other Improvement within the Project shall be permitted to fall into disrepair. No Owner shall do any act or work that will impair the structural soundness or safety of any Improvement located in the Project. If any Improvements are damaged or destroyed by fire or other calamity, the insurance proceeds shall be paid to the Owner or the mortgagees thereof, as their respective interests may appear; and such Owner or mortgagee shall, within a reasonable time period, rebuild or repair the damage or restore the Lot to a state that is not offensive to the general appearance of the Project in full compliance with the terms and provisions of Article VIII of this Declaration.

3.15 Utility Service. No lines, wires, or devices for transmission of electric current or telephone, television, or radio signals shall be constructed, placed, or maintained anywhere within any Lot unless the same shall be contained in conduits or cables placed and maintained underground or concealed in or under buildings or approved structures. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incidental to the construction of Improvements.

3.16 Fences. Except as to fencing installed and maintained by Declarant, no fencing may be installed or modified within the Project without the prior written approval of the Architectural Committee, in accordance with Article VIII. Fences shall be no higher than six (6) feet in height anywhere within the Project. There shall be no chicken wire, chain link, woven wire, or any other type of wire fencing within the Project.

3.17 Landscaping. Each Lot shall be fully landscaped as to the front yard no later than one hundred eighty (180) days after the close of escrow of the sale of such Lot by Declarant to the first non-Declarant Owner thereof, and no later than one (1) year thereafter as to the back and side yard of such Lot (excluding any Natural Corridor area on the Lot). All landscaping shall be subject to the prior approval of the Architectural Committee, in accordance with Article VIII hereof.

3.18 Nuisances. No Owner shall permit anything or condition to exist upon his Lot that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects. No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere within the Property, and no odor shall be permitted to arise there from so as to render the Property or any portion thereof unsanitary, unsightly, or offensive. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other Lot in the Property or to its occupants. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road

motor vehicles or other items which may unreasonably disturb other Owners or residents or their guests shall be located, used or placed on any portion of the Property without the prior written approval of the Board. Alarm devices used exclusively to protect the security of a Lot and its contents shall be permitted, provided that such devices do not produce annoying sounds or conditions as a result of frequently occurring false alarms. Nothing shall be done to or kept on any Lot or Improvement thereon that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project, without the prior written consent of the Board. The provisions of this Section are subject to Declarant's right to construct and complete Improvements within the Project, as well as Declarant's right to cause Impacts pursuant to Section 2-A.4.

3.19 Mineral Exploration. No portion of the Project shall be used in any manner to explore or to remove any oil or other hydrocarbons, minerals of any kind, gravel, or earth substance. No drilling, exploration, refining, quarrying, or mining operations of any kind shall be conducted or permitted to be conducted thereon; nor shall wells, tanks, tunnels, mineral excavations, shafts, derricks, or pumps used to mine or drill for any substances be located on the Project. Notwithstanding the foregoing, excavation may take place on any Lot to the extent necessary for construction of main dwelling units, retaining walls, outbuildings and pools, and for the purpose of contouring, shaping, and landscaping, or in the erection of permitted fencing generally improving any Lot.

3.20 Roofs. No flat roofs on any building or other structure shall be permitted (excepting any trailers or temporary structures for use incidental to Declarant's construction on the Property or the sales of Lots owned by Declarant).

3.21 Used and Temporary Structures. No used structures or structures of a temporary character, including trailers, shacks, or other outbuildings, shall be permitted on any Lot, either temporarily or permanently. This Section shall not apply to trailers or temporary structures for use incidental to Declarant's construction on the Property or the sales of Lots owned by Declarant, which structures may be maintained and used for such purposes, but shall be promptly removed upon completion of all such construction and all such sales.

3.22 Operation of Motor Vehicles. Except as to authorized maintenance vehicles, no motorized vehicles shall be operated in any area within the Project except on a street or driveway. All speed limit and other traffic control signs erected within the Project shall be observed at all times. Motorized vehicles are specifically prohibited on all paths, trails or walkways. Nothing herein shall apply to vehicles operated by Declarant or Declarant's agents in the course of Declarant's construction of Improvements within the Project or upon the Annexable Property.

3.23 Exterior Lighting. All exterior lighting plans, other than for low voltage decorative lighting, must be approved by the Architectural Committee.

3.24 Construction Procedures. Prior to commencement of any construction activity on any Lot, the Owner and/or contractor shall take appropriate precautions to protect the site from unnecessary damage and to reduce erosion and dust problems. The site shall be kept in a clean and orderly fashion at all times and the contractor shall have approved sanitary facilities on site as well as a garbage dumpster or other suitable device for regular disposal of trash. Except as to construction materials belonging to Declarant or its agents, no construction materials shall be dumped or stored on roadways or Common Elements. Except as to construction work performed or caused to be

performed by Declarant, construction work hours shall be limited to 7:00 a.m. to 7:00 p.m. Under no circumstances shall any Owner, including Declarant, conduct blasting activities or otherwise detonate any explosive material on any portion of the Property.

**3.25 Sports and Play Equipment.** Bicycles, toys and children's play equipment, sports apparatus and equipment, motorcycles, ATV's, snowmobiles, and similar vehicles must be garaged or stored in an enclosure or fenced in a manner to be hidden from public view when not in use; provided, however, that nothing herein shall prohibit the placement of play equipment and sports apparatus of a permanent nature in a back yard area (other than a Natural Corridor area), subject to prior approval by the Architectural Committee.

**3.26 Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the property, or is associated with a hobby (but not a business) of a Lot resident, provided that no such machinery or equipment may exceed six (6) feet in height, weigh more than one ton, or be visible from adjacent residences or the Common Elements. Nothing herein shall apply to machinery and equipment used by Declarant or Declarant's agents in the course of Declarant's construction of Improvements within the Project or upon the Annexable Property.

**3.27 Party Walls.** Each wall or fence which is built as a part of the original construction by Declarant and placed on the property line between Lots shall constitute a party wall. In the event that any party wall is not constructed exactly on the property line, the Owners affected shall accept the party wall as the property boundary. The cost of reasonable repair and maintenance of party walls shall be shared by the Owners who use such wall in proportion to such use (e.g., if the party wall is the boundary between two Owners, then each such Owner shall bear half of such cost). If a party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot has use of the wall may restore it and any other Owner whose Lot makes use of the wall shall contribute to the cost of restoration thereof in proportion to such use. The foregoing shall not prejudice the right of any such Owner to call for a larger contribution from another Owner pursuant to any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any provision of this Section, an Owner who by his negligent or willful act causes a party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title. In the event of any dispute arising concerning a party wall under the provisions of this Section, each party shall choose one arbitrator, such arbitrator shall choose one additional arbitrator, and the decision of a majority of such panel of arbitrators shall be binding upon the Owners which are a party to the arbitration.

**3.28 Perimeter Walls and Berms.** Walls, fences and/or berms around the exterior boundary of the Project or Lots ("Perimeter Walls and Berms") constructed or to be constructed by Declarant are Improvements, some of which may be located, in part, within the boundaries of individual Lots. By acceptance of a deed to his Lot, each Owner on whose Lot a portion of a Perimeter Wall or Berm is located, hereby covenants, at the Owner's sole expense, with regard to said portion of the Perimeter Wall or Berm ("Lot Wall"): to maintain at all times in effect thereon property and casualty insurance, on a current replacement cost; to maintain and keep the Lot Wall or Berm at all times in good repair; and, if and when reasonably necessary, to replace the Lot Wall or Berm to its condition and appearance as originally constructed by Declarant. No changes or alterations (including, without

limitation, temporary alterations, such as removal of the Lot Wall or Berm for construction of a swimming pool or other Improvement) shall be made to the Perimeter Walls or Berm, or any portion thereof, without the prior written approval of the Architectural Committee. An Owner's failure to insure, failure to maintain, or failure to repair or replace a Lot Wall or Berm within sixty (60) days when reasonably necessary, in accordance with this Section, constitutes a nuisance under Section 3.4 that may be corrected pursuant to Section 3.29. The foregoing notwithstanding, the Association, at its sole expense, shall be responsible for removing or painting over any graffiti from or on the exterior sides of the Perimeter Walls or Berms.

### 3.29 Maintenance Violations.

3.29.1 Maintenance Violation Notice. If any Owner allows, permits, or causes any condition to exist on or within such Owner's Lot or any of the Common Elements, as the case may be, or the Improvements thereon, which violates the provisions of Article III of this Declaration or, in the sole reasonable discretion of the Board, is unsightly, unsanitary, or hazardous (including, but not limited to, a condition which causes dust to carry to another Lot) (herein collectively "Maintenance Violation"), then, except as otherwise provided in Section 3.29.6 hereof, (in the case of an emergency), the Association shall give the Owner written notice ("Maintenance Violation Notice"), specifying the nature of the Maintenance Violation and a reasonable time period within which the Owner(s) must correct such Maintenance Violation, as the Board determines is reasonably required, which cure period shall be no less than thirty (30) days. In the event that the Board fails to give a Maintenance Violation Notice to an Owner who has defaulted in its maintenance obligation hereunder, then upon the filing with the Board of a meritorious written complaint (herein "Owner Complaint") executed by the Owners of any two (2) Lots within the Project, the Board shall have the obligation to give such Maintenance Violation Notice.

3.29.2 Owner's Right to File an Objection; Hearing Panel; Arbitration. The Owner to whom a Maintenance Violation Notice is given shall have the right to file a written objection thereto with the Secretary of the Association within ten (10) days after such Owner is deemed to have received such Maintenance Violation Notice (failure by an Owner to file an objection within said period shall be deemed a binding decision by all parties that the alleged Maintenance Violation exists, and shall trigger the Association's rights under Sections 3.29.4 and 3.29.5). In the event such an objection is filed, and within thirty (30) days after the objection is filed, the Board may elect either (i) to convene a Hearing Panel (defined below), or (ii) submit the matter to binding arbitration pursuant to the provisions of Chapter 38 of the Nevada Revised Statutes. By acceptance of his deed or other instrument of conveyance, each Owner shall be deemed to have agreed to binding arbitration pursuant to the provisions of NRS 38.300, *et seq.*, or any successor statute, if such matter goes to arbitration.

3.29.3 Hearing Panel. In the event the Board elects pursuant to Section 3.29.2 above, to convene a Hearing Panel, then the President of the Association shall appoint, within thirty (30) days after receipt of the Owner's objection, a panel of three (3) Board Members or three (3) members of any committee of the Board established by the Board pursuant to the Bylaws (the "Hearing Panel"). The Hearing Panel shall convene no later than fifteen (15) days after its appointment for the purpose of conducting a hearing on the disputed Maintenance Violation. Notice of such hearing, and time and place thereof, shall be given to the Owner to whom the Maintenance Violation Notice is given and any other Owners who have filed

Owner Complaints .at least five (5) business days prior to the date set for such hearing. The Hearing Panel shall give written notice of its decision to the Owner against whom the Maintenance Violation Notice was given as to whether or not a Maintenance Violation exists and the nature of such violation. Copies of such decision shall be mailed to all persons who filed an Owner Complaint. The decision of the Hearing Panel shall be appealable as set forth in NRS 38.300, *et seq.*, or any successor statute. Appeals must be initiated within fifteen (15) days after the Hearing Panel renders its decision. Except as permitted under Section 3.29.6, no action shall be taken by the Association on the Maintenance Violation until the later of the expiration of the aforementioned fifteen (15) day appeal period, or, if an appeal is filed, the date of disposition of the appeal.

**3.29.4 Association's Right to Correct Maintenance Violation.** If a binding decision is rendered that a Maintenance Violation exists and the Owner fails to correct a Maintenance Violation within the period specified in such decision, or, if no time is specified, within a reasonable time ("Cure Period"), then the Association, acting through the Board, shall have the right, but not the obligation, to correct the Maintenance Violation in accordance with the procedures set forth below.

**3.29.5 Procedure for Association's Correction of Maintenance Violation.**

(a) **Bids.** In the event the Association elects to correct a Maintenance Violation, then prior to commencement of work to correct the Maintenance Violation and promptly after the expiration of the Cure Period afforded a defaulting Owner, the Board shall obtain three (3) written bids to perform the required work and shall mail the bids to the Owner. The Owner shall have the right to select the bid by notifying the Board in writing within seven (7) days after the bids are mailed by the Board to the Owner. In the event the Owner fails to select a bid within such time period, the Board shall select the bid.

(b) **Violation Assessment.** When the bid has been selected as set forth in subsection (a), above, the Board shall levy a Violation Assessment pursuant to Section 6.7 hereof against the Owner in the amount of the cost of correcting the Maintenance Violation and the costs and expenses, including attorneys' fees, incurred by the Association incident thereto.

(c) **Performance of Corrective Work by Association.** The Board may, at its sole option and discretion, elect to cause the corrective work to be commenced promptly after the Violation Assessment has been levied against the Owner, or elect to postpone the corrective work until after the amount of the Violation Assessment has been collected partially or in full. Neither the Association, the Board, nor any of the Association's agents, or employees shall be liable for any damage which may result from any work performed by the Association to cure a Maintenance Violation.

**3.29.6 Emergencies.** In the event any officer of the Association believes, in his or her sole reasonable discretion, that an emergency situation exists within a Lot (including within any Improvement thereon) or within any Common Element and that immediate repairs are necessary to prevent or mitigate damages, then such officer or the Association's authorized

agent shall have the right to exercise the Association's right of entry without notice. If after gaining entry, any officer or agent of the Association still believes in his or her sole reasonable discretion, that immediate repairs are necessary to prevent or mitigate damages, then the Association shall have the right to make such repairs without notice to the Owner and without a hearing or right to cure, and without obtaining competitive bids as provided above. The Association shall levy a Violation Assessment against the Owner in the amount of the cost of the corrective work and all costs and expenses, including attorneys' fees, incurred by the Association incident thereto. Neither the Association, the Board, nor any of the Association's agents or employees, nor any person hired by the Association to perform the corrective work, shall be liable for any damage which may result from any work so performed on behalf of the Association.

**3.29.7 Entry by Court Order.** In the event an Owner prevents an officer of the Association or authorized agent of the Association from gaining access to such Owner's Lot (including within any Improvement thereon) or Common Element for the purpose of correcting a Maintenance Violation or for the purpose of attending to an emergency situation, then the Owner(s) shall be jointly and severally liable to the Association for attorneys' fees, court costs and incidental expenses incurred by the Association for the purpose of gaining such entry and all other costs and expenses incident thereto, and all such costs and expenses shall be assessed to the Owner as a Violation Assessment pursuant to Section 6.7 hereof.

**3.29.8 Remedy Not Exclusive.** The Association's rights of enforcement under this Section 3.29 are in addition to, not in lieu of, any other rights or mechanisms of enforcement available to the Association under this Declaration, at law, or in equity.

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

**4.1 Formation.** The Association is a nonprofit corporation, formed under the laws, of the State of Nevada. The Association shall be charged with the duties and invested with the powers set forth in the Articles, Bylaws, and this Declaration. The Association is not authorized to have and shall not issue any capital stock. Neither the Articles nor Bylaws shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any conflict between the language of this Declaration and the Articles, Bylaws, or any other Governing Documents, the provisions of this Declaration shall control.

**4.2 Association Action: Board of Directors and Officers; Members' Approval.** Except as to matters requiring the approval of members as set forth in the Articles, Bylaws, this Declaration, or other appropriate Chapters of the Nevada Revised Statutes, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with this Declaration or the Bylaws, or their amendments. Except for the Member of the Board appointed by Declarant in accordance with this Declaration, the Articles and the Bylaws, and the members of the first Board named in the Articles, the Board shall be composed of Members only. All members of the Board must be at least eighteen (18) years of age. The members of the first Board of the Association named in the Articles shall serve until the first meeting of the Members of the Association which is called for the purpose of electing their successors. The annual meeting of the Members of the Association shall be held in September or October each calendar year, on such date as is designated by the Board in accordance with this Declaration and the Bylaws; provided, the Association shall

meet at least once in each calendar year, and not more than one (1) full calendar year shall elapse between each Annual meeting of the Members of the Association. Such meeting shall be called, noticed and conducted in accordance with the Articles and the Bylaws. Except as otherwise provided in the Articles, Bylaws, this Declaration, or other appropriate Chapters of the Nevada Revised Statutes, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting power assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members, as determined by the Bylaws, at any regular or special meeting held in accordance with the Bylaws.

#### 4.3 Membership.

4.3.1 Membership Qualifications. All Owners shall be Members of the Association. Each Owner shall automatically be a Member of the Association without the necessity of any further action on his part.

4.3.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws, and the Rules, as the same may from time to time be amended.

#### 4.3.3 Voting.

##### (a) Allocation of Votes.

(i) Allocation. One (1) vote shall be allocated to each Lot

(ii) Association Lots. No vote shall be allocated to a Lot owned by the Association.

(iii) Cumulative Voting. Voting shall not be cumulative.

(b) Appointment and Removal of Members of Board and Officers of Association. Subject to the provisions of subsection (c) of this Section 4.3.3, Declarant reserves the right to appoint and remove all of the members of the Board and all of the officers of the Association until the earlier of the following events:

(i) Sixty (60) days after conveyance, to Owners other than a declarant, of seventy-five percent (75%) of the maximum number of Lots that may be created in the Property and the Annexable Property (as set forth in Recital F);

(ii) Six (6) years after Declarant has ceased to offer for sale in the ordinary course of business any Lots within the Project; or

(iii) Six (6) years after any right to add new Lots was last exercised.

Declarant shall have the right to designate a person or persons who are entitled to exercise the rights reserved to Declarant under this subsection (b). The date on which the rights reserved by Declarant under this subsection (b) terminate is herein called "the Declarant's Control Termination Date". From and after the Declarant's Control Termination Date, the Board of Directors and the officers of the Association shall be elected and appointed as provided in the Articles and Bylaws.

(c) Composition of Board of Directors. Notwithstanding anything to the contrary set forth herein, not later than sixty (60) days after Declarant's conveyance, to Owners other than a declarant, of Lots equal to twenty-five percent (25%) of the maximum number of Lots that may be created within the Property and the Annexable Property, at least one member and not less than twenty-five percent (25%) of the members of the Board shall be elected by Owners other than the Declarant. Not later than sixty (60) days after conveyance, to Owners other than a declarant, of fifty percent (50%) of the maximum number of Lots that may be created within the Property and the Annexable Property, not less than thirty-three and one third percent (33-1/3%) of the members of the Board shall be elected by Owners other than the Declarant. Not later than on the Declarant's Control Termination Date, the Owners shall elect a Board of five (5) members, at least a majority of whom must be Owners. Following Declarant's Control Termination Date, the election and removal of Board members shall be conducted in accordance with the Bylaws.

(d) Persons Entitled to Serve on the Board. Except for the members of the Board appointed by Declarant in accordance with the Declaration; the Articles and Bylaws, and the members of the first Board named in the Articles, all members of the Board shall be Members of the Association. Each Board member shall meet the eligibility requirements further set forth in the Bylaws and the Act. In all events where the person serving or offering to serve as an officer of the Association or member of the Board is not the record Owner, such person shall file proof of his or her authority in the records of the Association.

4.3.4 Exercise of Voting Rights. On any Association matter subject to Member voting, a Member (including Declarant), in accordance with the provisions of this Declaration, the Articles and Bylaws, may cast the vote(s) allocated to his Lot(s). In the case of a Lot owned by two (2) or more persons or entities, the vote allocated to that Lot shall be cast by only one of them in accordance with the Bylaws.

4.4 Transfer of Membership. The Association membership of the Owner(s) of a Lot shall be appurtenant to such Lot, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to such Lot, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title or interest to a Lot shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner(s). Prior to any transfer of title to a Lot (including the sale of a Lot under a recorded contract of sale), either the transferring owner or the acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer. The Association shall have the right to charge a reasonable transfer fee payable to the Association on

the date of transfer of title to the Lot, which transfer fee shall be assessed against the Lot as a Violation Assessment if not paid when due.

## ARTICLE 5 POWERS AND DUTIES OF THE ASSOCIATION

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

5.1.1 Assessments. The Association shall have the power to establish, fix and levy assessments as set forth in Article VI hereof (herein collectively "Assessments") and to enforce payment of such Assessments in accordance with the provisions of this Declaration.

5.1.2 Rules. The Board shall have the power to adopt, amend; and repeal the Rules. The Rules may include, without limitation, rules and regulations regarding the use and operation of the Common Elements. The Rules may also include, without limitation, rules and regulations relative to the prohibitive and mandatory use restrictions set forth in Article III above in order to protect and enhance the value of the Property and the orderly functioning of the Project, and to adapt and respond to changing circumstances and times; provided, however, that no such rule adopted or enacted by the Board may be less restrictive or more mandatory in its scope or effect without the consent of not less than fifty-one percent (51%) of the voting power of the Association, and no Rule adopted by the Board may impair any right of Declarant hereunder without Declarant's prior written consent. The power of the Board to enact and adopt such rules and regulations shall in no way be limited by the treatment or the specificity of treatment of a subject matter in Article III above. A copy of the Rules as adopted, amended, or repealed, shall be mailed or otherwise delivered to each Member. In case of any conflict between any provision of the Rules and any provisions of this Declaration, the Articles, or Bylaws, the conflicting provision of the Rules shall be superseded by the provisions of this Declaration, the Articles, or the Bylaws.

### 5.1.3 Right of Enforcement.

(a) General. The Association in its own name and on its own behalf (or on behalf of the Owners of two (2) or more Lots who consent), any Member on its own behalf, and Declarant on its own behalf, shall have the power and authority to commence and maintain actions for damages for, or to restrain and enjoin, any actual or threatened breach of any provision of the Governing Documents, and to enforce by mandatory injunction, or otherwise, all of these provisions. The Court in any such action may award the successful party reasonable expenses in prosecuting such action, including reasonable attorneys' fees.

(b) Suspension of Voting Rights; Fines. The Association shall have the power and authority to suspend the voting rights, suspend an Owner's right to use any recreational amenities comprising the Common Elements, and can assess monetary penalties as allowed pursuant to the Act; against any Owner of a Lot or other person entitled to exercise such Owner's rights or privileges for any violation of this Declaration, the Articles, Bylaws or the Rules. Before invoking any such suspension or fine, the Board shall give such Owner or other person notice and opportunity to be heard with respect to such violation, which notice shall provide not less than ten (10) days prior written notice of such hearing and reasonable detail with respect to the matter of which complaint is being made. Said notice and opportunity to be heard may be provided in conjunction with a Maintenance Violation proceeding, if the Board so chooses. The Association does not have the power or authority to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of such Owner's Lot if the Owner does not comply with provisions of this Declaration or of the Articles, Bylaws, or Rules, except when the loss or forfeiture is the result of a court judgment, arbitration decision, or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association. If the Association adopts a policy imposing a fine on Owners for violations of the Rules (which it is hereby authorized to do) the Secretary or other officer specified in the Bylaws shall prepare and cause to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated in writing by the Lot's Owner, a schedule of the fines that may be imposed for those violations. No fine may be assessed against an Owner unless at least thirty (30) days prior to the alleged violation, the Owner alleged to have violated the rule was given written notice of the rule and all amendments thereto. Each fine must be commensurate with the severity of the violation, but must not exceed \$100.00 for each violation or a total amount of \$500.00, whichever is less (but excluding the interests, charges, and costs that may accrue in the event the fine becomes past due). If a fine is imposed and the violation is not cured within fourteen (14) days or a longer period as may be established by the Board, the violation shall be deemed a continuing violation. Thereafter, the Board may impose an additional fine for the violation for each seven (7) day period or portion thereof that the violation is not cured. Any additional fine may be imposed without notice and an opportunity to be heard. The right of the Association to impose fines pursuant to this Section is in addition to, and shall not limit, the Association's right to levy a Violation Assessment resulting from a Maintenance Violation. Interest on and the collection costs of past due fines shall be governed by the applicable provisions of the Act and this Declaration. The maximum dollar amounts for fines stated herein may be adjusted by the Board, provided that such amounts may not exceed the maximum amounts allowed by the Act.

5.1.4 Delegation of Powers; Professional Management, Other Services. The Association, acting by and through the Board, can delegate its powers, duties, and responsibilities to committees of Members, employees, agents and independent contractors, including a professional managing agent. The Association may engage the services of a

professional Manager to manage the Association Property and the Common Elements. The Association may obtain and pay for legal, accounting, and other services necessary and desirable in connection with the operation of the Project and the enforcement of this Declaration.

**5.1.5 Personal Property.** The Association may acquire and hold for the use and benefit of all the Owners tangible and intangible personal property, and may dispose of the same by sale or otherwise.

**5.1.6 Other Services and Properties.** The Association shall have the power to obtain or pay for, as the case may be, any other property, services, taxes, or assessments which the Association or the Board is required to secure or pay for pursuant to the terms of this Declaration, the Articles, or Bylaws, including security services for the Project generally, or which, in its opinion, shall be necessary or proper for the operation of the Association, and to incur liabilities and make contracts respecting the same.

**5.2 Duties of the Association.** In addition to the duties delegated to it by its Articles or the Bylaws, and without limiting their generality, the Association, acting by and through The Board, or persons or entities described in Section 5.1.4, has the obligation to conduct all business' affairs of common interest to all Members and to perform each of the following duties:

**5.2.1 Taxes and Assessments.** Except for those portions of the Common Elements and Association Property which are owned in fee by an Owner, the City of Reno, or Washoe County, the Association shall pay all taxes and assessments levied against all Association Property or against the Association. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

**5.2.2 Insurance.** The Association shall obtain and maintain, from reputable insurance companies, the insurance described in Article VII.

**5.2.3 Operation and Maintenance of Association Property.** Subject to the provisions of this Declaration (including, without limitation, Section 5.1.4 above), the Association shall operate, maintain, and otherwise manage or provide for the operation, maintenance, and management of any and all Association Property, including, but not limited to, any Common Elements in which the Association has a vested present interest, and all its facilities, improvements, and landscaping, including, but not limited to, any and all private streets and any other property acquired by the Association, including personal property. Such operations and management shall be conducted in a first-class manner, and the Association Property shall be maintained in a good state of repair. Perimeter Walls shall be kept free of graffiti and maintained in the same style and condition as installed by Declarant, subject to normal wear and tear. In connection with its maintenance obligations, the Association may enter into contracts for services or materials for the benefit of the Association Property including contracts with Declarant. Without limiting the generality of the foregoing, the Association shall maintain all flood control facilities within the Common Elements (e.g. channels, culverts, retention and detention ponds, etc.) in accordance with the following terms:

(a) Inspection. All such flood control facilities will be inspected at least once per year and following any significant storm event. For purposes of this Declaration, a significant storm event is one that produces a flow depth of one (1) foot in any channel.

(b) Removal. Woody species within the immediate channel flow lines and ponds will be removed annually.

(c) Debris. Debris such as branches, trash, etc., shall be removed from all flood control facilities at each inspection in order to reduce the potential for the-clogging and/or obstruction of culverts.

(d) Sediment and Silt. Sediment and silt deposits in excess of one-half (1/2) foot in depth shall be removed from the channels and ponds. The removal shall conform to the original geometric section of the channel or pond.

(e) Erosion Control. Any erosion in excess of one-half (1/2) foot in depth shall be back-filled and compacted in conformance with the original geometric section of the relevant channel. If rip-rap has been displaced, it shall be restored to its original configuration.

(f) Timing of Repair. Any deposit or erosion to be remedied in accordance with subsections (d) and (e) above shall be addressed as soon as the channel or pond has dried sufficiently to allow maintenance equipment to operate within the channel in an efficient manner so as to minimize channel disturbances. Notwithstanding the foregoing, should the degree of deposit or erosion be such that channel or pond integrity is compromised in a manner that imperils public health, safety, and welfare, remedial measures to restore the channel or pond shall be taken immediately, whether during or after a storm event, to keep flows confined within the flood control facilities.

(g) Pond Bottoms. If the bottoms of retention ponds become silt-laden and/or compacted, in addition to removal of silt, ripping of the bottom may become necessary to maintain its infiltration capability. Ripping of a pond shall be undertaken if storm water remains in that pond for more than sixty (60) hours after a storm event.

(h) Manufacturer's Specifications. All pollution, sedimentation and other environmental control facilities shall be inspected and maintained per manufacturer's specifications.

5.2.4 Declarant's Rights to Information. From the date of this Declaration until one (1) year after the termination of Declarant's Control Period, Declarant shall be given prior notice of and shall have the right to attend any inspection to be conducted under this Section 5.2.3. Furthermore, for of period of ten (10) years after close of escrow of the, last Lot to a member of the home buying public, the Board of Directors shall promptly deliver to Declarant informational copies of all written inspections and reports prepared in accordance with this Section 5.2.3, without any obligation whatsoever of Declarant to review such documents or to take any action in connection therewith.

5.2.5 Other. The Association shall carry out the other duties of the Association set forth in the Declaration, Articles, and Bylaws.

5.3 Limitations on Authority of Board. Except with the vote or written consent of a majority of the voting power of the Association, the Board shall not pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board, or an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

5.4 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any Manager, or Declarant, or any agent of Declarant, shall be personally liable to any Member, or to any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has on the basis of such information as may be possessed by him or it, acted in good faith without willful or intentional misconduct.

5.5 Meetings of Members. Meetings of Members shall be noticed and held as provided in the Articles, Bylaws, and this Declaration.

5.6 Association Books and Records and Association Property.

5.6.1 Right of Inspection. All membership registers, accounting records, and minutes of meetings of the Members, the Board, and committees of the Board, and all other books, documents, documents and records of the Association, and the physical property of the Association, shall be made available for inspection by any Member of the Association, or his, her or its duly appointed representative, or any mortgagee, during the regular working hours of the Association, at the office of the Association or at such other place as the Board prescribes. All such records shall be kept for at least ten (10) years, except as otherwise provided in NRS 116.31175. The right of inspection shall include the right to make copies of documents. The Board shall establish by resolution reasonable rules with respect to (a) notice to be given to the custodian of the records of the Association by the Member representative, or mortgagee desiring to make an inspection, and (b) payment of the actual cost (not to exceed .25 cents per page or such higher amount as allowed pursuant to the Act) of reproducing copies of documents requested by a Member or by a representative or mortgagee. The rights of inspection and duplication in this Section do not apply to the personnel records of the Association (except for the records of the hours worked and salaries and benefits of such employees), or the records of the Association relating to another Owner (except for the general record of violations maintained pursuant to NRS 116.31175). In addition to the foregoing, the Board shall maintain and make available for review at the business office of the Association or other suitable location:

- (a) The financial statement of the Association;
- (b) The budgets of the Association; and
- (c) The study of the reserves of the Association required to be conducted pursuant to Section 6.4.2 below.

The Board shall provide a copy of any of the records required to be maintained pursuant to subsections (a), (b) and (c) immediately preceding to an Owner within fourteen (14) days after receiving a written request therefore.

**5.6.2 Declarant's Obligation to Deliver Association Property and Records to Board.**

Within thirty (30) days after the Declarant's Control Termination Date, the Declarant shall deliver to the Association all property of the Owners and of the Association held by or controlled by Declarant, including:

(a) The original or a certified copy of the Declaration, the Articles, the Bylaws, minute books and other books and records of the Association and any. Rules that may have been adopted;

(b) An accounting for money of the Association and financial statements from the date the Association received money to the Declarant's Control Termination Date. The financial statements shall fairly and accurately report the Association's financial condition prepared in accordance with generally accepted accounting principles;

(c) The Association's money or control thereof;

(d) All of the tangible personal property that has been represented by the Declarant to be Association Property or, all tangible personal property that is necessary for and has been used exclusively in, the operation and enjoyment of the Common Elements, and inventories of those properties; unless Declarant has disclosed in a public offering statement that such personal property will remain the property of Declarant;

(e) All insurance policies then in force, in which the Owners, the Association, or its directors or officers are named as insured persons;

(f) Any permits and approvals issued by governmental bodies applicable to the Project which are in force or which were issued within one (1) year before the Declarant's Control Termination Date;

(g) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective;

(h) A roster of Owners and mortgagees of Lots, if known, and their addresses and telephone numbers, if known, as shown on Declarant's records;

(i) Contracts of employment in which the Association is a contracting party;

(j) Any contract for service in which the Association is a contracting party or in which the Association or the Owners have any obligation to pay a fee to the persons performing the services;

(k) A complete study of the reserves of the Association, conducted by a person qualified by training and experience to conduct such a study;

(l) A reserve account that contains the Declarant's share of the amounts then due, and control of the account;

(m) A disclosure, in writing, of the amount by which Declarant has subsidized the Annual Assessments on a per Lot basis;

(n) A copy of any plans and specifications used in the construction of any Improvements which were completed within two (2) years before the Declaration was recorded; and

(o) Copies of any certificates of occupancy that may have been issued with respect to any Improvements in and to the Common Elements.

## ARTICLE 6 ASSESSMENTS

6.1 Agreement to Pay. Declarant, for each Lot owned by it, and each Owner for each Lot owned by such Owner, hereby covenants and agrees to pay to the Association such Assessments as are made pursuant to this Article VI.

6.2 Personal Obligations. Each Assessment or installment thereof, together with any late charges, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the person or entity who is the Owner of the Lot at the time such Assessment (or installment) became due and payable. If more than one person or entity is the Owner of the Lot, the personal obligation to pay such Assessment (or installment) respecting such Lot shall be both joint and several. Subject to the provisions of Section 9.3 hereof, a purchaser of a Lot shall be jointly and severally liable with the seller for all unpaid Assessments against the Lot, up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such Assessments. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosure or waiver of the lien securing the same. No Owner may avoid or diminish such personal obligation by non-use or abandonment of his Lot.

6.3 Purpose and Amount of Assessments. The Assessments levied by the Association shall be the amount estimated to be required, and shall be used exclusively, to promote the health, safety, and welfare of the Members of the Association, for the performance of the duties of the Association as set forth in this Declaration, and for the repair, maintenance and upkeep of the Common Elements and any other Association.

### 6.4 Budget and Reserve Requirements.

6.4.1 Definitions. As used herein, "Annual Assessment" shall mean the amount to be assessed against the Lots, as stated on the Association budget ("Budget") for each fiscal year, to pay the Common Expenses (defined below), as established pursuant to the provisions of this Section. The Budget must include, without limitation, the estimated annual revenue and

expenditures of the Association, including the Common Expenses. As used herein, "Common Expenses" means the expenditures made by the Association in the performance of its obligations hereunder, and the financial liabilities of the Association during the applicable fiscal year, including the costs and expenses of the daily operation of the Association and an allocation for reserves. Common Expenses include, but are not limited to, expenditures for the following purposes: (i) to operate, manage, maintain and repair the Common Elements and other Association Property, and to administer the operation of the Association; (ii) to provide for reasonable reserves consistent with sound business practice for the repair, replacement and restoration of Improvements to the Common Elements and any Association Property and for such other purposes as are consistent with good business practice, and otherwise as required by NRS116.3115(2) (b) and Section 6.4.2 of this Declaration; and (iii) to provide for the possibility that some Assessments may not be paid on a current basis. Without limiting the generality of the foregoing, Common Expenses shall include: all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the Association administration, including, but not limited to, the maintenance of the Common Elements; any taxes and assessments assessed against Association Property, any taxes assessed against the Association itself, insurance premiums, including fire and other casualty insurance, liability insurance, workman's compensation insurance, and other insurance obtained pursuant to this Declaration; payment of any liability of the Association whatsoever for loss or damage arising out of or in connection with the Common Elements or any fire, accident, or nuisance occurring within the Common Elements; the cost of repair, rebuilding and replacement of the Improvements to the Common Elements; the cost of all utility services to the Common Elements, including water, electricity, refuse removal, landscape maintenance services, and any other similar service attributable to the Common Elements; the unpaid share of any Assessment levied during the previous fiscal year against any Owner who has defaulted in payment thereof to the extent that the same becomes uncollectible; accounting and legal fees, management fees, and cleaning, janitorial and lawn care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Common Elements and the Improvements thereon.

6.4.2 Reserve Requirements. That portion of the Budget specific to the reserve required by NRS 116.3115(2) (b) must include, without limitation:

- (a) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component of the Common Elements;
- (b) As of the end of the fiscal year for which the Budget is prepared, the current estimate of the amount of cash reserves that are necessary and the current amount of accumulated cash reserves that are set aside, to repair, replace or restore the major components of the Common Elements;
- (c) A statement as to whether the Board has determined or anticipates that the levy of one or more special assessments will be required to repair, replace or restore any major component of the Common Elements or to provide adequate reserves for that purpose; and

(d) A general statement describing the procedures used for the estimation and accumulation of cash reserves pursuant to subsection (b) immediately above, including, without limitation, the qualifications of the person responsible for the preparation of the study required below in this Section.

In addition to the foregoing, the Board shall:

(i) Cause to be conducted at least once every five (5) year, a study of the reserves required to repair, replace and restore the major components of the Common Elements;

(ii) Review the results of that study at least annually to determine if those reserves are sufficient;

(iii) Make any adjustments it deems necessary to maintain the required reserves; and

(iv) Submit the results of the study of the reserves to the Commission for Common Interest Communities not later than forty-five (45) days after the date of the results of the study are adopted by the Board.

The study required by subparagraph (i) immediately above must be conducted by a person qualified by training and experience to conduct such a study, including a member of the Board, an Owner or the Manager of the Association who is so qualified. The study must include without limitation:

(1) A summary of an inspection of the major components of the Common Elements the Association is obligated to repair, replace or restore;

(2) An identification of the major components of the Common Elements that the Association is obligated to repair, replace or restore which have a remaining useful life of less than thirty (30) years;

(3) An estimate of the remaining useful life of each major Component identified pursuant to item (2) immediately above.

(4) An estimate of the cost of repair, replacement or restoration of each major component identified pursuant to item (3) immediately above during and at the end of its useful life; and

(5) An estimate of the total Annual Assessments That maybe required to cover the cost of repairing, replacement or restoration the major components identified pursuant to item (2) immediately above, after subtracting the reserves of the Associations of the date of the study.

Money in the reserve account required by this Section may not be withdrawn without the signatures of at least two (2) members of the Board or the signatures of at least one member of the Board and

one officer of the Association who is not a member of the Board. The reserve account may be used only for Common Expenses that involve repairs, replacement or restoration of the major components of the Common Elements, including, without limitation, repairing and replacing roofs, roads and sidewalks, and must not be used for daily maintenance or any other purpose.

**6.4.3 Procedure for Establishing Annual Assessments.** Not less than ninety (90) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of preparing the proposed Budget for the next succeeding fiscal year and establishing the Annual Assessment for such fiscal year. Not less than thirty (30) nor more than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall adopt a proposed Budget for such fiscal year, provide and distribute a copy of such proposed Budget to each Owner, and set a date for a meeting of the Owners to consider ratification of the Budget which date shall be less than fourteen (14) nor more than thirty (30) days after mailing of the proposed Budget. Unless at that meeting sixty six and two-thirds percent (66-2/3%) of the voting power of the Association votes to reject the proposed Budget, the proposed Budget shall be deemed ratified by the Owners, whether or not a quorum is present at such meeting. If the proposed Budget is so rejected, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.

In lieu of distributing copies of the Budget required by this Section, the Board may distribute to each Owner a summary of the Budget, 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 Budget will be provided upon request.

**6.5 Special Assessments.** If the Board determines that the estimated total amount of funds collected to defray the Common Expenses for a given fiscal year is or will become inadequate to meet the Common Expenses for any reason, including, but not limited to, delinquencies in the payment of Assessments, or in the event the Association has insufficient reserves to perform its obligations under this Declaration, then the Board shall determine the approximate amount of such shortfall, shall provide a summary thereof to all of the Owners with the Board's recommendation for a special assessment ("Special Assessment") to meet such shortfall and shall set a date for a meeting of the Owners which is not less than fourteen (14) nor more than thirty (30) days after the mailing of the summary. Unless at that meeting a majority of the voting power of the Association votes to reject the proposed Special Assessment, the proposed Special Assessment shall be deemed ratified by the Owners, whether or not a quorum is present at such meeting, and shall become a Special Assessment against, and allocated equally to, the Owners of the Lots. The Board may, in its discretion, provide for payment of any Special Assessment in any number of installments or provide that it is payable in one (1) installment within such time period as the Board deems reasonable.

**6.6 Capital Improvement Assessments.**

**6.6.1 Association's Power to Levy: Definition.** The Association shall have the power to levy assessments for Capital Improvements ("Capital Improvement Assessments") on the terms and conditions set forth below. As used herein "Capital Improvement" means (i) any improvement upon the Common Elements which is not a repair or replacement of an existing

Improvement or (ii) any expenditure relating to the Common Elements which is outside the ordinary course of business of the Association. .

**6.6.2 Petition: Association Approval.** Owners of not less than twenty-five percent(25%) of the Lots comprising the Project from time to time may petition the Association for the construction, installation, or acquisition of, or expenditure for, a Capital Improvement. Such petition shall be in writing and be in such form and shall contain such information as the Board may reasonably require. The Board may, on its own motion, move for the construction installation, or acquisition of, or expenditure for, a Capital Improvement, in which case such motion shall be treated as if it were a petition duly submitted by Owners of not less than twenty five percent(25%) of the Lots comprising the Project. Upon receipt of a petition for a proposed Capital Improvement or if the Board desires to propose a Capital Improvement; the Board shall obtain three (3) estimates from licensed contractors for the construction of the Capital Improvement. The Board shall submit the Capital Improvement proposal to the Members at the annual meeting, or a special meeting called for such purpose. Written notice of any meeting during which an assessment for a capital improvement is to be considered shall be delivered to each Owner not less than twenty-one (21) days prior to such meeting and otherwise as required by this Declaration, the Bylaws and the Act. The Capital Improvement Assessment shall be deemed approved upon the affirmative vote of two-thirds (2/3rds) of the voting power of the Association and Declarant, unless Declarant owns no Lots within the Property.

**6.6.3 Levy of Capital Improvement Assessments.** Capital Improvement Assessments shall be levied in equal proportions against all of the Lots. A Capital Improvement Assessment shall be paid in such installments and during such period or periods as shall be voted upon by the Members at the time such Assessment is approved. If no terms of payment are specified by such vote of the Membership, then the Capital Improvement Assessment shall be due and payable upon terms set by the Board.

**6.6.4 Expenditure for Capital Improvement.** After the levy of the Capital Improvement Assessment and the collection of the entire Capital Improvement Assessment, or a sufficient portion thereof as the Board deems prudent, then the Board shall cause the Capital Improvement to be constructed, installed, or acquired, or shall contract for the' extraordinary expenditure constituting the Capital Improvement.

**6.6.5 Deficiency in Capital Improvement Assessment.** If at any time and from time to time a Capital Improvement Assessment proves or appears likely to be inadequate for any reason, including nonpayment of any Owner's share thereof, the Board may, subject to the limitations set forth in this Section levy a further Capital Improvement Assessment in the amount of such actual or estimated inadequacy, which shall be assessed to the Owners of all of the Lots within the Property in the same manner set forth in Section 6.6.3 hereof. If such additional assessment is in excess of five percent (5%) of the original Capital Improvement Assessment, the affirmative vote or written consent of a majority of the voting power of the Association shall be required for any such further assessment.

**6.7 Violation Assessments.** The Board shall levy a violation assessment against the Owners of a Lot ("Violation Assessment"): (i) to pay for the cost of curing any Maintenance Violation of such Owners and/or any other work performed by the Association for such Owners' account

pursuant to the provisions of this Declaration, and any costs or expenses incident thereto, including but not limited to attorneys' fees and court costs, (ii) to collect liquidated damages and fines levied by the Association pursuant to the terms of this Declaration and any and all attorneys' fees and court costs, (iii) to collect reimbursement from an Owner pursuant to Section 2.3 or 3.28; (iv) to collect on an unpaid transfer fee imposed pursuant to Section 2.3 or 3.28, (iv) to collect on an unpaid penalty imposed pursuant to a contract entered into under Section 8.8.

**6.8 Rate of Assessment.** Except as otherwise provided in Section 6.7, all Assessments levied by the Association must be fixed at an equal rate for all Lots within the Project at the time the Assessment is levied (collectively, the "Existing Lots"). Notwithstanding the foregoing, Lots created subsequent to the levy of an Assessment shall pay installments at the same rate as Existing Lots (provided regular installment payments are still being made), provided that such new Lot(s) shall not be responsible for installment payments coming due against Existing Lots prior to the time such Lot was created. Thus, by way of example only, in the event the Annual Assessment for a fiscal year is \$1,200 per Existing Lot, to be paid in installments of \$100 on the first of each month from January through December, and a Lot is created by Declarant on the 20<sup>th</sup> of July, the Annual Assessment shall commence against that Lot and the Owner shall commence installment payments as of August 1, but shall not be responsible for any prior installment payment for the Annual Assessment for that fiscal year.

**6.9 Assessment Period.** The Annual Assessment period shall coincide with the fiscal year of the Association, which shall commence on January 1 of each year and shall terminate on December 31 of such year. However, the initial Annual Assessment period for the Lots shown on a particular Map shall commence on the first day of the calendar month following the earlier of (i) the date the Common Elements (or any portion thereof) show on such Map is transferred to the Association or (ii) the date on which the first sale to a non-Declarant Owner of a Lot shown on such Map is closed and recorded; and shall terminate on the following December 31. The first Annual Assessment and all Special Assessments shall be adjusted according to the number of months remaining the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

**6.10 Notices of Assessments: Delinquencies.** Any Assessment installment hereunder which is not paid within fifteen (15) days following the date it is due shall be deemed delinquent. All delinquent Assessments shall bear interest at the rate of eighteen percent (18%) per annum (or such higher or lower rate as is proscribed by the Act) from the date the Assessment becomes delinquent hereunder until paid, and, in addition, a late charge of \$25.00 shall be due for each delinquent installment. The Association shall give written notice of all Assessments, except Violation Assessments, to the Owners of the Lots, which notice shall specify the amount of the Assessment and the date or dates payment of the same is due and shall be given in the manner provided for notices in this Declaration. Notice of a Violation Assessment is required to be given only to the Owners of the Lot against whom the Violation Assessment is made. Nothing contained herein shall be construed so as to require the Association to give periodic notices of the same Assessment; and one notice of an Assessment shall be sufficient to meet the requirements of this Section, even though the Assessment may be payable in installments. Failure of the Association to give notice of any Assessment shall not affect the liability of the Owners of the Lot for such Assessment; provided, however, that the date when payment of the first installment of such Assessment shall become due in such a case shall be

deferred to a date fifteen (15) days after such notice shall have been given, and the first installment of such Assessment shall not be deemed delinquent until fifteen (15) days after such deferred due date.

6.11 Statement of Account. Upon payment of a reasonable fee, not to exceed \$25.00, and upon written request of any Owner or any mortgagee, prospective mortgagee or prospective purchaser of a Lot, Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment, and the date that such assessment becomes or became due, and if there is any credit for advance payments. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) business days following receipt of the written request and fee, all unpaid assessments which became due prior to the date of making such request shall be subordinate to the lien of a mortgagee which acquired its interest subsequent to requesting such statement.

6.12 Collection of Assessments. The right to collect and enforce Assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity; or the Board may enforce by judicial proceedings or, to the extent permitted by applicable law, through the exercise of the power of sale granted to the Board pursuant to applicable statutes and laws, and this Declaration. Suit to recover a money judgment against an Owner for unpaid assessments together with all other amounts due hereunder shall be maintainable without first foreclosing against the Lot which is subject to the lien for such assessment or waiving the lien rights granted hereby. Furthermore, in the event of default in which any Owner does not make payment when due of any Assessment levied against his or her Lot, the Board shall have the right, after granting notice and an opportunity to be heard (in the manner set forth in Section 5.1.3(b)), to declare all unpaid assessments for the pertinent fiscal year immediately due and payable.

6.13 Lien for Assessments; Priority. All sums assessed to any Lot pursuant to this Declaration, and all fines imposed by the Association against the Owners of a Lot, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association from the date the Assessment or fine becomes due. If an Assessment or fine is payable in installments, the full amount of the Assessment or fine is a lien from the time the first installment thereof becomes due. Recording of this Declaration constitutes record notice and perfection of such, and further recording of a claim of lien for Assessments is not required. Such lien shall be prior to all other liens and encumbrances on such Lot, except for: (a) valid tax and special assessment liens in favor of any governmental assessing authority; (b) liens and encumbrances recorded before the recordation of this Declaration; and (c) a 'First Deed of Trust recorded before the date on which the Assessment or fine sought to be enforced' became delinquent, except to the extent the lien is for Annual Assessments for Common Expenses based on the Budget adopted by the Association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the six (.6) months immediately preceding institution of an action to enforce the lien.

6.14 Enforcement of Lien.

6.14.1 Notice of Delinquent Assessment and Notice of Default. Except for liens attributable to an Owner's failure to pay a fine or fines imposed for a violation which does not threaten the health, safety or welfare of the residents of the Project, which lien must be

foreclosed judicially, the Association may foreclose all liens by sale pursuant to NRS Chapter 116 after:

(a) The Association has mailed in accordance with NRS 116.31162, or any successor statute, a notice of delinquent assessment (herein "Notice of Delinquent Assessment"), which states the amount of the Assessments or fines which are due together with all interest and late charges thereon in accordance with the provisions of this Declaration, a description of the Lot against which the lien is imposed, and the name of the record Owner of the Lot; and

(b) The Association or other person conducting the sale has executed and caused to be recorded with the Washoe County Recorder, a notice of default and election to sell the Lot to satisfy the lien ("Notice of Default"), which shall contain the same information as the Notice of Delinquent Assessment, but which shall also describe the deficiency in payment and the name and address of the person authorized by the Association to enforce the lien by sale; and

(c) The Owners of the Lot or their successors in interest have failed to pay the amount of the lien, including interest and late charges, and costs, fees and expenses incident to its enforcement for a period of sixty (60) days, which commences on the first day following the later of:

(i) The day on which the Notice of Default is so recorded; and

(ii) The day on which a copy of the Notice of Default is mailed by certified or registered mail, return receipt requested, to the Owners of the Lot or their successors in interest at their address if known, or otherwise to the address of the Lot.

**6.14.2 Notice of Sale.** The Association or other person conducting the sale shall, at any time after the expiration of such sixty (60) day period and before selling the Lot, give notice of the time and place of the sale ("Notice of Sale") in the manner and for a time not less than that required by law for the sale of real property upon execution, except that a copy of the Notice of Sale must be mailed on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the Owners of the Lot or their successors in interest at their address if known, or otherwise to the address of the Lot. Such sale shall be conducted in any manner permitted by law. Each Owner who is liable for payment of the Assessment shall be required to pay the costs and expenses of such foreclosure proceeding including, but not limited to, the cost of preparation of all notices (whether or not such notice has been given to the Owners at the time payment is made), reasonable attorneys' fees, and title insurance costs.

All such costs and expenses of the foreclosure shall be secured by the lien being foreclosed. Each Owner who is liable for payment of the Assessment shall be required to pay to the Association and all Assessments against such Owner which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use,

and otherwise deal with the improved Lot. The Association shall be entitled to bid on credit up to and including the amount secured by the lien being foreclosed.

A further notice stating the satisfaction and release of any such lien shall be executed by the Association and recorded in the Washoe County, Nevada, real estate records, upon payment of all sums secured by such lien

Any encumbrancer holding a lien on a Lot may, but shall not be required to, pay any amounts secured by a lien for unpaid assessments, and upon such payment, such encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including rights of priority.

**6.15 Surplus Funds.** Any surplus funds of the Association remaining after payment of or provision for Common Expenses and any prepayment of reserves must be paid to the Owners in proportion to their liabilities for Common Expenses or credited to them to reduce their future assessments for Common Expenses.

**6.16 Subsidy Agreements.** The Association through the Board is specifically authorized and empowered to enter into a subsidy agreement or other similar agreement with the Declarant whereby assessments otherwise payable by the Declarant on Lots owned by the Declarant are waived in exchange., for the payment by the Declarant of shortfalls in the Association's operating expenses or the provision of maintenance' of the' Common Elements and/or the performance of certain other services which are Common Expenses of the Association ("Subsidy Agreements").

## ARTICLE 7 INSURANCE

**7.1 Insurance to be Obtained.** The Association shall obtain and maintain in full force and effect at all times insurance coverage, provided by companies duly authorized to do business in Nevada, generally as set forth in this Article.

**7.2 Casualty Insurance.** The Association shall obtain a master policy of insurance equal to full replacement value (i.e., 100% of current "replacement costs" exclusive of land, foundation, excavation, and other items normally excluded from coverage) on all insurable Improvements upon the Common Elements and any other Improvements under the control of the Association (including all building service equipment and the like and any fixtures or equipment within such improvements) and all other personal property commonly owned by the Owners. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection. The Association shall comply with the above requirements by the purchase of a policy containing such coverage with "deductible" provisions as in the Association's opinion are consistent with good business practice, provided that in no event shall such deductible be in an amount greater than the lesser of \$10,000.00 or one percent(1%) of the face amount of such policy.

**7.3 Liability Insurance.** The Association shall purchase broad form comprehensive liability coverage in such amounts and in such forms as it deems advisable to provide adequate protection.

Such coverage shall be in an amount generally required by private institutional mortgage investors for projects similar in construction, location, and use, and in no event shall be less than \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association and activities in connection with the ownership, operation, maintenance, and other use of the Common Elements. The liability insurance shall name as separately protected insured Declarant, the Association, the Board, and their representatives, members, and employees, with respect to any liability arising out of the maintenance or use of any Association Property. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, the Board, and their representatives; members, and employees. After Declarant has no further interest in any portion of the Project or the Annexable Property, and no longer holds any contractual right to purchase any portion of the Annexable Property, then the above insurance provisions regarding Declarant shall not apply.

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

**7.5 Fidelity Insurance.** The Association shall purchase insurance covering officers and employees of the Association and employees of any Manager or managing agent, whether or not any such persons are compensated for their services, against dishonest acts on their part or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate assessments on all Lots, plus reserve funds.

**7.6 Other Insurance.** The Association may obtain insurance against such other risks; of a similar or dissimilar nature, as it shall deem appropriate with respect to the Project, including any personal property of the Association located thereon.

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

**7.8 Form.** Casualty insurance shall be carried in a form or forms naming the Association the insured. Each policy shall also provide that it cannot be canceled by either the insured or the insurance company until after ten (10) days written notice is first given to the Association and to each first mortgagee. All policies of insurance shall provide for a waiver of subrogation by the insurer as to claims against the Association, the Board, employees, and agents, and against each Owner and each Owner's employees, agents, and guests, and shall provide that the insurance cannot be canceled, invalidated, or suspended on account of the conduct of the Association, the Board, employees, and agents or of any Owner or such Owner's employees, agents, or guests, and shall provide that any "no

other insurance" clause in the insurance policy shall exclude any policies of insurance maintained by any Owner or mortgagee and that the insurance policy shall not be brought into contribution with insurance maintained by any Owner or mortgagee.

**7.9 Owner's Insurance Responsibilities.** The following insurance coverages shall be the responsibility of each respective Owner: insurance on items of personal property placed in an Improvement by Owner; insurance for hazard (including, without limitation, earthquakes), casualty and public liability coverage within each Lot" including, without limitation all structures located therein; and insurance coverage for activities of the Owner, not acting for the Association, with respect to the Common Elements.

## ARTICLE 8 ARCHITECTURAL COMMITTEE

**8.1 Organization.** There shall be an Architectural Committee comprised of persons appointed by Declarant until such time as Declarant no longer owns a fee interest in any portion of the Property or the Annexable Property, and no longer holds any contractual right to purchase any portion of the Annexable Property. Thereafter, the Architectural Committee, shall be comprised of the Board; provided, however, that the Board may appoint an Architectural Committee of not less than three (3) members, at least one (1) of whom must be a Director, and remainder of whom need not be Members.

**8.2 Duties.** It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof to adopt Architectural Committee Rules to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration. Each Owner understands and acknowledges that Architectural Committee approval of any item (including, but not limited to, Improvements and alterations in drainage patterns) is in addition to, and not in lieu of any approval that may be required by governmental entities having jurisdiction over the Property; similarly, approval of an Improvement or other modification by a governmental entity is in addition to, and not in lieu of, approval by the Architectural Committee.

**8.3 Meetings.** The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its-members is otherwise required by this Declaration. The Architectural Committee may charge a filing fee to be used to pay an architect and/or engineer, who may or may not be a member of the Architectural Committee, to review the submitted plans and specifications. The Board may reimburse members for reasonable expenses incurred by them in the performance of any Architectural Committee function.

**8.4 Architectural Committee Rules.** The Architectural Committee shall from time to time and in its sole discretion adopt, amend, and repeal by unanimous vote rules and regulations to be known as "Architectural Committee Rules" interpreting and implementing the provisions of this Declaration and setting forth fees to be charged and procedures, and design, and construction criteria to be followed in submitting proposals to the Architectural Committee. A copy of the Architectural Committee Rules, as they may from time to time be adopted, amended, or repealed, certified by any member of the Architectural Committee, shall be maintained by the office of the Association and

shall be available for inspection and copying by any Owner at any reasonable time during the business hours of the Association.

**8.5 Application for Approval of Plans and Specifications.** Any Owner of a Lot proposing to make any Improvements or to perform any work that requires the prior approval of the Architectural Committee shall apply to the Architectural Committee for approval by notifying the Architectural Committee of the nature of the proposed work. Prior to the commencement of construction, the Owner shall submit to the Architectural Committee for its review and approval such information and materials as the Architectural Committee in the exercise of its reasonable discretion deems necessary for it to be adequately informed with respect to the work to be undertaken by such Owner.

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

(a) The Owner shall have strictly complied with the provisions of Section 8.5; and

(b) The Architectural Committee finds that the plans and specifications conform to this Declaration and to the Architectural Committee Rules in effect at the time such plans were submitted to the Architectural Committee; and

(c) The Architectural Committee in its reasonable discretion determines that the proposed Improvements would be compatible with the other property in the Project and the purposes of the Declaration as to the quality of workmanship and materials, and as to harmony of external design with existing structures.

**8.7 Basis for Disapproval of Improvements.** The Architectural Committee may disapprove any application on aesthetic grounds, and more specifically: (a) because of the reasonable dissatisfaction of the Committee with the Improvement proposed to be erected, because of which it is to be built, the harmony there of with its surroundings, or any additional maintenance, repair or replacement burden such matter would impose upon the Association; or (b) because of non-compliance with any of the specific conditions and restrictions contained in this Declaration or with reasonable guidelines that the Architectural Committee may from time to time adopt; or (c) because the proposed Improvement represents an unreasonable risk to the health, safety, or welfare of the Owners within the Project.

**8.8 Form of Approval.** All approvals or disapprovals given under Sections 8.6 or 8.7 shall be in writing; provided, however, any request for approval which has not been rejected within sixty (60) days from the date of submission thereof to the Architectural Committee shall be deemed approved. The approval may be conditional, including the condition of a deposit by the Owner of a performance bond, cash deposit, or other undertaking to assure completion of the approved Improvement in accordance with the terms of the approval once construction thereof is commenced. Furthermore, the approval may be given in the form of a contract between the affected Owner and the Architectural Committee, and such contract may provide for a penalty of a stated maximum amount, following notice and hearing in the manner set forth in Section 5.1.3(b), in the event the Owner fails to complete construction in accordance with the terms of the Architectural Committee's

approval. Such penalty shall not be deemed a fine, but may be levied and collected as a Violation Assessment if not paid when due.

8.9 Proceeding with Work. Upon receipt of approval from the Architectural Committee pursuant to Section 8.6, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to the approval. Construction of the approved Improvements shall commence, in all cases, within one year from the date of such approval. If the Owner shall fail to comply with this Section, any approval given pursuant to Section 8.6 shall be deemed revoked unless the Architectural Committee, upon written request of the Owner made prior to the expiration of the on-year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

8.10 Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of any such Improvement within one year after commencing construction thereof, except Land for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents.

8.11 Right to Inspect. Any member or authorized consultant of the Architectural Committee, or any authorized officer, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect any structural addition, alteration or Improvement constructed or under construction in the Lot to determine whether the work has been or is being built in compliance with the plans and specifications approved by the Architectural Committee:

8.12 Waiver. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed or for any other matter requiring the approval of the Architectural Committee under the Declaration shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

8.13 Liability. Provided that the Architectural Committee or a particular member of the Architectural Committee has acted in good faith on the basis of the information as may be possessed by the Architectural Committee or the member, as the case may be, then neither the Architectural Committee nor any member thereof shall be liable to the Association, to any Owner or any other person for any damage, loss, or prejudice suffered or claimed on account of:

- (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective;
- (b) the construction or performance of any work, whether or not such performance complied with approved plans, drawings, and specifications or was rendered ill a good and workman like manner or,
- (c) the development or any property subject to this Declaration. Without limiting the generality of the foregoing, the Architectural Committee and any member thereof may, but it is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Committee.

**ARTICLE 9**  
**PROTECTION OF LENDERS**

9.1 Encumbrance of Parcels Permitted. Any Owner may encumber such Owner's Lot with a Deed of Trust.

9.2 Subordination. Except as provided otherwise by the Act or Article VI hereof, any lien created or claimed under Article VI of this Declaration is subject and subordinate to the lien of any First Deed of Trust encumbering any Lot, unless the priority of such First Deed of Trust is expressly subordinated to such assessment lien by a written instrument duly recorded.

9.3 Non-Liability for Unpaid Assessments. Any beneficiary of a First Deed of Trust who acquires title to a Lot pursuant to the judicial or non-judicial foreclosure remedies provided in the First Deed of Trust shall take the Lot free of any claims for unpaid assessments, '01' Association charges against the encumbered Lot that accrue greater than six (6) months prior to the time such beneficiary so acquires ownership of the Lot; provided, however, after the foreclosure of any Deed of Trust, such Lot shall remain subject to the Declaration; and the amount of all regular and special assessments, to the extent they relate to expenses incurred subsequent to such foreclosure sale, shall be assessed hereunder to the grantee or purchaser there under.

9.4 Breach of Covenants. A breach by an Owner of any of the provisions of this Declaration, shall not defeat or render invalid the lien of any Deed of Trust made in good faith and for value as to the Project or any portion thereof; provided, however, the provisions of this Declaration shall be binding upon the Owners whose title thereto is acquired under foreclosure, trustee's sale, or otherwise.

9.5 Notice to Eligible Mortgage Holders. The holder of any Deed of Trust shall be entitled to become an "Eligible Mortgage Holder" pursuant to the provisions of this Declaration by notifying the Association of its name, address and the address of the Lot encumbered by the Deed of Trust which it holds in the manner provided in Section 13.5 below. Such notification shall be deemed to be a request with respect to such Lot for written notice from the Association of: (i) any default in the payment of Assessments which remains uncured for a period of sixty (60) days, (ii) any condemnation or casualty loss that affects a material portion of the Project or the Lot; and (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. The Association shall give written notice to Eligible Mortgage Holders in accordance with the provisions of this Section and in the manner prescribed in Section 13.5 below. Any holder of a Deed of Trust encumbering any Lot or any portion of the Property who does not so request notice, shall not be deemed to be an Eligible Mortgage Holder under the terms of this Declaration. Unless and until notice is given to the Association as provided in this Declaration by a mortgage holder, such mortgage holder shall not be entitled to notice of default, nor to any right, distribution or notice pursuant to this Declaration.

9.6 Insurance Proceeds and Condemnation Awards. No provision of this Declaration or the Articles shall give an Owner, or any other party, priority over any rights of the holders of First Deeds of Trust in the case of a distribution to Owners of insurance proceeds or condemnation awards.

9.7 Appearance at Meetings. Because of its financial interest in the Project, any beneficiary of a Deed of Trust may appear (but cannot vote) at meetings of the Member and the Board, and may draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or Assessments.

9.8 Examination of Records. The holders of Deeds of Trust shall have the right to examine at reasonable times the books and records of the Association and can require the submission of financial data concerning the Association, including annual audit reports and operating statements as and when furnished to the Owners.

## **ARTICLE 10 DECLARANT'S RIGHTS**

10.1 General Declarant may be undertaking the work of constructing Improvements to and upon the Project and adding real property to the Project in accordance with the terms and provisions of this Article X. The completion of such construction and the sale or other disposition of Lots within the Project is essential to the establishment and welfare of the Project as a planned community.

10.2 Special Declarant's Rights. Declarant hereby reserves unto itself the rights to:

(a) Complete all Improvements within the Project, including, but not limited to those indicated on a Map or Plans or described in this Declaration

(b) Maintain model residences within the Property for use in Declarant's sales activities, and maintain at least one (1) sales office and management office within the Property which may be relocated from time to time;

(c) Maintain signs and flags advertising the Project, which signs and flags may be maintained anywhere on the Project, excluding Lots owned by Owners other than Declarant;

(d) Use easements through the Common Elements for the purpose of making Improvements within the Project and/or the Annexable Property;

(e) Maintain construction offices, storage facilities, and parking facilities within the Property for its materials, equipment, staff, and contractors, and

(f) Appoint or remove any officer of the Association or any member of the Board at any time and from time to time prior to the Declarant's Control Termination Date.

10.3 Declarant's Development Rights. Declarant reserves the following Development Rights:

10.3.1 The right to add real estate to the Project and to create Lots and Common Elements within such real estate as follows:

(a) **Property Subject to Annexation.** Declarant hereby reserves unto itself the right to cause to be annexed to this Declaration as part of the Project from time to time all or a portion of the Annexable Property, and to create within the real property so annexed additional Lots and Common Elements, for a maximum total of one hundred (100) Lots in both the Property and the Annexable Property. In addition Declarant reserves the right to add unspecified real property to the Project in the manner provided in Section 116.2122 of the Act. No assurances are made by Declarant prior to the annexation of any portion of a parcel of such real property as to the size or configuration of such portion, or the order in which any such portion may be annexed. If any portion of a parcel of such real property is annexed to the Project, there are no assurances that any other portion or all of such parcel will be annexed.

(b) **Manner of Annexation.** Such real property shall be annexed by recording in the real estate records of the County Recorder of Washoe County, Nevada; a supplemental declaration ("Supplemental Declaration") executed by Declarant describing the real property to be so annexed and declaring that such property shall thereafter be deemed to be Annexed Property as defined in this Declaration and declaring that such Annexed Property shall be held, conveyed, sold, encumbered, leased, rented, used, occupied, improved or otherwise affected in any manner subject to the provisions of this Declaration. Such Supplemental Declaration may set forth any additional restrictions or covenants that may be applicable to such Annexed Property, provided that such additional restrictions shall not be in any manner inconsistent with the provisions of this Declaration. In the event of any inconsistency between the provisions of this Declaration and those of a Supplemental Declaration, the provisions of this Declaration shall control.

(c) **Effect of Annexation.** Upon recordation of the Supplemental Declaration described in Section 10.3.1(b) above, the real property described in the Supplemental Declaration shall become Annexed Property, as defined herein, and part of the Project, and shall be subject to all of the provisions of this Declaration. Without limiting the generality and effect of the foregoing, after the required annexation procedures are fulfilled, the following shall have been affected thereby:

(i) All Owners shall be entitled to use the Common Elements in such Annexed Property, subject to the provisions of the Declaration;

(ii) Owners of Lots in such Annexed Property shall thereupon become Members of the Association shall be subject to the provisions of the Declaration, and shall be entitled to use the Common Elements of the Project; and

(iii) All Owners of Lots in such Annexed Property shall; have the same membership and voting rights as other Owners. Votes shall not be cast separately by phase.

**10.3.2 The right to create Lots and Common Elements within the Project.**

10.3.3 The right, but not the obligation, to convert any Lot or Lots owned by Declarant into Common Elements or limited common elements (as defined in the Act), and to allocate Common Elements as limited common elements (as defined in the Act).

As to each portion of the Property, the right, but not the obligation, to withdraw such portion of the Property from this Declaration at any time prior to the sale or conveyance of a Lot created by a Map covering that portion of the Property.

The Development Rights reserved in this Section may be exercised at any time within twenty (20) years after the recording of the initial Declaration (provided such rights shall expire at any earlier time that Declarant no longer owns any portion of the Project or the Annexable Property and no longer holds a contractual right to purchase any portion of the Annexable Property), and shall be exercised in accordance with Section 116.211 of the Act. The Development Rights reserved in this Section may be exercised with respect to different parcels of real estate at different times, or not at all, and no assurances are made as to the boundaries of such parcels or the order in which they may be subjected to the exercise of a development right, nor is any representation made that a development right must be exercised as to an entire parcel if such right is exercised as to a portion of that parcel.

**10.4 Declarant's Right to Complete.** No provision of this Declaration (including, without limitation, any provision of Article III) shall be construed to prevent or limit Declarant's rights to complete the development, construction, promotion, marketing, and sale of properties within the Project; to construct or alter Improvements on any property owned by Declarant or the Association (which right is hereby reserved by Declarant); to maintain model homes, offices for construction, sales Or leasing purposes or similar facilities on any property owned by Declarant or owned by the Association; or to post signs incidental to the development, construction, promotion, marketing, sale and leasing of property. Nothing contained in this Declaration shall limit the right of Declarant or require Declarant to obtain approval to: (a) excavate, cut, fill or grade any property owned by Declarant or to construct, alter, remodel, demolish or replace any Improvements on any part of the Project or any property owned by Declarant; (b) use any structure on any part of the Project or any property owned by Declarant as a construction, model home or real estate sales or leasing office in connection with the sale of any property within such boundaries; or (c) require Declarant to seek or obtain the approval of the Board of Directors, the Architectural Committee or the Association for any such activity or Improvement to property by Declarant on any part of the Project or any property owned by Declarant. Nothing in this Section shall limit or impair the reserved rights of Declarant as elsewhere provide in this Declaration.

**10.5 Priority of Declarant's Rights; Amendment.** Declarant shall have, and hereby retains and reserves, certain rights as set forth in this Declaration with respect to the Association and the Project. The rights and reservations of Declarant set forth in this Declaration shall be deemed accepted and reserved in each recorded amendment and supplement to this Declaration, in each conveyance of property by Declarant to the Association and in each deed or other instrument by which any property

encumbered hereby is conveyed by Declarant, whether or not specifically stated therein. The rights, reservations and easements of Declarant set forth in this Declaration Shall be prior and superior to any other provisions of this Declaration and may not, without Declarant's prior written consent, be modified, amended, rescinded or affected by any amendment of this Declaration, including, without limitation, any amendment of this Article. Declarant's consent to anyone such amendment shall not be construed as consent to any other or subsequent amendment.

**10.6 Assignment of Declarant's Rights.** Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant to any person or entity that will assume any or all of the duties of Declarant here under, and upon any such assignee's evidencing consent in writing to accept such assignment, said assignee shall, to the extent of assignment, assume Declarant's duties hereunder, have the same rights and powers and be subject to, the same obligation & and duties as are given to and assumed by Declarant herein. Upon such assignment, and to the extent thereof, Declarant shall be relieved from all liabilities, obligations and duties hereunder.

**10.7 Limitations on Declarant's Rights.** Nothing in this Article shall give the Declarant the right to damage any Lot or Improvement not owned by Declarant or interfere unreasonably with the Owners' use of the Common Elements; and Declarant's rights hereunder shall terminate at such time as Declarant no longer owns any portion of the Property or the Annexable Property and no longer holds a contractual right to purchase any portion of the Annexable Property, or twenty (20) years from the recordation of this Declaration, whichever first occurs, except as required for maintenance and repair obligations conducted by Declarant which may continue after such date. Neither the Association nor any Owner may take any action or adopt any rule that will interfere with or diminish any Declarant, including Special Declarant's Rights and Development Rights, without the prior written consent of Declarant.

#### **ARTICLE 11 BOARD'S POWER TO COMMENCE SUIT**

The Board of Directors may not commence a civil suit or arbitration on behalf of the Association, except as otherwise permitted under the Act and this Declaration. In the event the Act permits commencement of a civil suit or arbitration without the assent of a majority of the voting power of the Association (a "Majority of Members"), the Association may not maintain such an action and shall be required to dismiss the action within 120 days after its commencement if the action is not ratified by a Majority of Members within 90 days after the commencement of the action (unless the action is to enforce the payment of an assessment to enforce the Governing Documents; or to proceed with a counterclaim). Prior to seeking any assent of a Majority of Members under this Section, the Board of Directors shall first comply with the provisions of Article XII.

#### **ARTICLE 12 ASSOCIATION'S POWER TO BRING SUIT; ARBITRATION OF DECLARANT DISPUTES**

To protect the Association and the Owners from being subjected to potentially costly or prolonged controversies without full disclosure, analysis and consent; to protect the Board and individual Directors from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners;

and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, the Board, in seeking the assent of the Members to commence an action or maintain an action pursuant to the Act, shall take the steps set forth below. Any action that may be commenced or maintained only upon the assent of a Majority of Members is referred to in this Article as a Major Controversy.

12.1 Negotiation. The Board shall first endeavor to resolve any Major Controversy by good faith negotiations with the adverse party or parties.

12.2 Alternative Dispute Resolution. In the event that good faith negotiations fail to reasonably resolve the Major Controversy, the Board shall then endeavor in good faith to resolve such controversy by mediation, provided that the Board shall not incur liability for or spend more than Two Thousand Dollars (\$2,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of a Majority of the Members for such additional amount for mediation before proceeding to arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Major Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Major Controversy until the Board has fully complied with the following procedures:

(a) The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Major Controversy, and shall obtain, if reasonably available; the written opinions of each and every one of: (1) a licensed Nevada attorney regularly residing in Washoe County, Nevada, with a Martindale-Hubbell rating of "AV", expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Major Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association ("Legal Opinion"); and (2) a reputable appraiser and/or real estate consultant regularly conducting business in Washoe County, Nevada expressly opining how the marketability and market value of Lots will likely be affected by such Major Controversy ("Appraiser's Opinion"). (The Legal Opinion and Appraiser's Opinion are sometimes collectively referred to herein as the "Opinions"). The Board shall be authorized to spend up to an aggregate of Two Thousand Dollars (\$2,000.00) to obtain such Opinions, including all amounts paid to said attorney therefore and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$2,000.00 limit, with the express consent of seventy-five percent (75%) or more of the voting power of the Association, at a special meeting called for such purpose.

(b) The Legal Opinion shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including without limitation court costs, costs of investigation and all

further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Major Controversy. Said Legal Opinion shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorneys proposed contingent fee agreement. (Such written Legal Opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent are collectively referred to herein-as the "Attorney Letter").

(c) Upon receipt and review of the Attorney Letter and the Appraiser's opinion, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, intervention in, or maintenance of the Major Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent and the Appraiser's Opinion together with a written report ("Special Assessment Report") prepared by the Board: (1) itemizing the amount necessary to be assessed to each Member, on a monthly basis, to fund the Quoted Litigation Costs ("Special Litigation Assessment"), and (2) specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs, the Appraiser's Opinion, and Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Major Controversy against the desirability of accepting any settlement proposals from the adversary party of parties, the Board shall call for a vote of the Members, whereupon: (i) if less than Majority of the Members vote in favor of pursuing such Major Controversy and levying the Special Litigation Assessment, then the Major Controversy shall not be pursued further; but (ii) if a Majority of the Members affirmatively vote in favor of pursuing such Major Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute, maintain, and/or intervene in the Major Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require (x) that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred ten percent (110%) of the Quoted Litigation Costs, and (y) that said attorney shall provide; and the Board shall distribute to the Members, not less frequently than monthly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Major Controversy, including any offers of settlement and/or

settlement prospects together with an itemized summary of attorneys fees and costs incurred to date in connection therewith.

(d) Settlement. In the event of any bona fide settlement offer from the adverse party or parties in the Major Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon assent by a Majority of the Members:

(e) No Use of Reserves. In no event shall any Association reserves be used as the source of funds to institute, prosecute, maintain and/or intervene in proceeding, including any Major Controversy.

(f) Failure to Comply. Any provision in this Declaration notwithstanding other than Jig set forth in this Article, the Association shall have no power whatsoever to institute, prosecute, maintain, or intervene in any Major Controversy Proceeding. Any institution, prosecution, or maintenance of, or intervention in, a Major Controversy by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Article, shall be unauthorized and ultra vires as to the Association, and shall subject any Director who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Article to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution, or maintenance of, or intervention in, the Major Controversy. This Article may not be amended or deleted at any time without the express prior written approval of both: (1) Members representing not less than seventy-five percent (75%) of the total voting power of Association, and (2) not less than seventy-five percent (75%) of the total voting power of the Board of Directors; and any purported amendment or deletion of this Article, or any portion hereof, without both of such express prior written approvals shall be void.

**12.3. Dispute Resolution Procedures Applicable to Declarant Disputes. With respect to the Claims involving the Parties described in subparagraph (a), below, this Section sets forth a process of progressive dispute resolution that has as its objective the prompt resolution of disputed Claims without the necessity of resort by any Party to civil litigation.**

(a) **Description of Claims That Are Subject to This Section.** The provisions of this Section shall apply to the following claims, disputes or controversies (collectively "Claims") between the Association and/or any Owner or Owners, on the one hand, and the Declarant (including any director, officer, shareholder, partner, employee or agent of the Declarant) or any builder, developer, subcontractor, material supplier, individual product manufacturer, or design professional involved in the construction or design of

**Residences within the Development, on the other hand, (collectively, the potential parties on either side of such Claims shall be collectively referred to in this Section as the "Parties"):**

**(i) Any Claims involving such Parties, or any of them, relating to this Declaration;**

**(ii) Any Claims involving such Parties, or any of them, seeking recovery of damages arising out of, or related to deficiencies in the residential construction, design, specifications, surveying, planning, supervision, testing, grading or observation of construction relating to the use or condition of any Unit, Residence, or other Improvements or landscaping located thereon that are subject to NRS 40.600, *et seq.*; and**

**(iii) Any Claims involving such Parties, or any of them, seeking recovery for damages involving any purchase agreement for the Owner's Unit executed by and between the Owner and the Declarant (including, without limitation, claims for breach of contract, fraud, or misrepresentation), Claims involving alleged breaches of the Governing Documents of the Development (including, without limitations, claims alleging a breach of any covenants, conditions and restrictions or claims for fraud or breach of fiduciary duty, and any Claims involving alleged breaches of any other documents provided by the Declarant or any Declarant Parties to an Owner in connection with the purchase of a Unit in the Development.**

**(b) Resort to Customer Service and Warranty Programs. If the Declarant has a customer service program in effect to respond to Owner complaints regarding matters that are identified as Claims, in subparagraph (a), above, Owners are encouraged to endeavor to resolve those Claims (including, without limitation, Claims concerning Mold) with the Declarant through the normal customer service procedures set forth in the customer service program or in any contractual, warranty, or other builder-generated document. As provided in NRS 40.600 *et seq.* any requests that an Owner makes pursuant to such warranties or customer service procedures are in addition to, and shall not constitute satisfaction of, the notice requirements identified in subparagraph (c), below. Owners are advised that if they wish to pursue Claims that are covered by any contractual warranty issued or provided by the Declarant or any manufacturer of a product or component of the Owner's Unit or Residence, the provisions of the applicable contractual warranty are not affected by the provisions of this Declaration, including this Section. In other words, if an Owner desires to enforce a contractual warranty, the notice and dispute resolution provisions of the applicable warranty must be followed, rather than the procedures set forth below.**

If the Claim cannot be resolved between the Parties through the customer service program process or applicable warranty procedures, the Claim shall first be subject to the applicable non-adversarial dispute resolution procedures identified in subparagraph (c), below, and if those procedures are unsuccessful in resolving the Claim to the satisfaction of the Parties, the Claim shall be decided through the arbitration procedure set forth in

subparagraph (d), below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding.

(c) Notice of Actions against Declarant and Compliance with Applicable Non-Adversarial Pre-Litigation Dispute Resolution Procedures. Prior to the initiation of any civil litigation to resolve disputed Claims, the Parties to any Claim shall comply with NRS 40.600 *et seq.* (which sets forth certain notice and non-adversarial pre-litigation dispute resolution procedures with respect to any Claims seeking recovery of damages relating to residential construction. The Notice requirements of this subparagraph (c) are in addition to any contractual notice requirements set forth in any limited warranty given to an Owner by the Declarant or any manufacturer of a product installed in the Owner's Residence.

**(d) ARBITRATION OF WARRANTY CLAIMS. ANY AND ALL CLAIMS THAT ARE COVERED BY THE LIMITED WARRANTY GIVEN BY DECLARANT TO EACH OWNER SHALL BE RESOLVED PURSUANT TO THE ARBITRATION AGREEMENT CONTAINED IN THE MOST RECENT EDITION OF THE HOME BUYERS WARRANTY ASSET PROTECTION PROGRAM BOOKLET AS IN EFFECT ON THE DATE OF THE EXECUTION OF THE PURCHASE AND SALE AGREEMENT BY OWNER AND DECLARANT WHICH PERTAINS TO THE UNIT OR RESIDENCE THAT IS THE SUBJECT OF THE CLAIM. THAT BOOKLET HAS BEEN MADE AVAILABLE TO EACH OWNER AND THE ARBITRATION AGREEMENT SET FORTH IN THAT BOOKLET WAS INCORPORATED IN SAID PURCHASE AGREEMENT BY REFERENCE AND MADE A PART THEREOF.**

**(e) ARBITRATION OF CLAIMS BETWEEN OWNERS AND DECLARANT THAT ARE NOT WARRANTY CLAIMS. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY CLAIM, AS DEFINED IN SUBPARAGRAPH (a) OF THIS SECTION 12.3 (OTHER THAN THOSE CLAIMS COVERED BY SUBPARAGRAPH (d)) DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE NEVADA ARBITRATION ACT PURSUANT TO THIS SUBPARAGRAPH (e), TO THE EXTENT THAT NRS CHAPTER 38 IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND EACH OWNER, THE ASSOCIATION, AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, EACH OWNER, AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE CLAIM LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, EACH OWNER, AND THE ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SUBPARAGRAPH (e). IF DECLARANT OR ANY OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND NRS CHAPTER 38, TO THE EXTENT THAT NRS CHAPTER 38 IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.**

(i) **RULES APPLICABLE TO ALL CASES.** THE ARBITRATION WILL BE DETERMINED IN ACCORDANCE WITH THE COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION, AND JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF;

(A) THE PROVISIONS OF NRS CHAPTER 38 WILL BE APPLICABLE TO SUCH ARBITRATION:

(B) A NEUTRAL AND IMPARTIAL INDIVIDUAL(S) SHALL BE APPOINTED TO SERVICE AS ARBITRATOR(S) NO MORE THAN SIXTY (60) DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE. IN SELECTING THE ARBITRATOR(S), THE PROVISIONS OF SECTION 1297.121 OF THE NEVADA CODE OF CIVIL PROCEDURE SHALL APPLY, AND THE ARBITRATOR(S) MAY BE CHALLENGED FOR ANY GROUNDS LISTED THEREIN;

(C) THE VENUE OF THE ARBITRATION SHALL BE WASHOE COUNTY, NEVADA, UNLESS THE PARTIES MUTUALLY AGREE TO SOME OTHER LOCATION;

(D) THE ARBITRATOR(S) IS/ARE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY, OTHER THAN PUNITIVE DAMAGES, FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION.

(ii) **FEDERAL ARBITRATION ACT.** BECAUSE MANY OF THE MATERIALS AND PRODUCTS INCORPORATED INTO THE RESIDENCES CONSTRUCTED WITHIN THE PROPERTIES ARE MANUFACTURED IN OTHER STATES, THE DEVELOPMENT AND CONVEYANCE OF THE PROPERTY EVIDENCES A TRANSACTION INVOLVING INTERSTATE COMMERCE AND THE FEDERAL ARBITRATION ACT (9 U.S.C. §1, *ET SEQ.*) NOW IN EFFECT AND AS IT MAY BE HEREAFTER AMENDED WILL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THE ARBITRATION PROVISIONS OF THIS DECLARATION.

(iii) **WAIVER OF JURY TRIAL.** IN THE EVENT THE FOREGOING ARBITRATION PROVISIONS OF THIS SECTION ARE HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN THEIR ENTIRETY FOR ANY REASON, ALL CLAIMS SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION, THE ASSOCIATION, AND EACH OWNER BY ACCEPTING A DEED TO ANY UNIT WITHIN THE DEVELOPMENT, HEREBY WAIVE AND

**COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY CLAIMS, INCLUDING, BUT NOT LIMITED TO, CLAIMS RELATING TO CONSTRUCTION DEFECTS, MISREPRESENTATION OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF THE DECLARANT, ANY OWNER, OR THE ASSOCIATION, OR THE SUCCESSORS AND ASSIGNS OF ANY SUCH PARTIES.**

**(iv) FINAL AND BINDING AWARD. THE DECISION OF THE ARBITRATOR OR, IF AN APPEAL IS HEARD, THE DECISION OF THE APPEAL ARBITRATORS, SHALL BE FINAL AND BINDING. A PETITION TO CONFIRM, VACATE, MODIFY OR CORRECT AN AWARD OF THE ARBITRATORS MAY BE FILED IN ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE DEVELOPMENT IS LOCATED, BUT THE AWARD MAY BE VACATED, MODIFIED OR CORRECTED ONLY AS PERMITTED BY THE FEDERAL ARBITRATION ACT.**

**(v) SEVERABILITY. IN ADDITION TO AND WITHOUT LIMITING THE EFFECT OF ANY GENERAL SEVERABILITY PROVISIONS OF THIS DECLARATION, IF THE ARBITRATOR OR ANY COURT DETERMINES THAT ANY PROVISIONS OF THIS SECTION ARE UNENFORCEABLE FOR ANY REASON, THAT PROVISION SHALL BE SEVERED AND THE PROCEEDINGS AGREED TO IN THIS SECTION SHALL BE CONDUCTED UNDER THE REMAINING ENFORCEABLE TERMS OF THE SECTION.**

**ARTICLE 13  
MISCELLANEOUS PROVISIONS**

**13.1 Duration.** The provisions of this Declaration shall continue and be effective for a period of fifty (50) years from the date of recordation hereof and shall be automatically extended for successive periods of ten (10) years each until (i) the Owners of at least eighty percent (80%) of the Lots within the Project shall execute a written instrument, which may be executed in counterparts, in recordable form declaring that the provisions of this Declaration shall terminate, and (ii) such written instrument is recorded in the office of the Recorder of Washoe County, Nevada.

**13.2 Amendment.** Except as otherwise provided in NRS Section 1.16.2117, Section 10.5, Section 12.5, Section 13.1, and this Section 13.2, this Declaration may be amended by vote or agreement of not less than sixty seven percent (67%) of the voting power of the Association. All such amendments must be in writing, and prepared, executed, recorded and certified on behalf of the Association by an officer of the Association designated for such purpose or by the President of the Association in the absence of such designation. Such amendment shall be recorded in the office of the Washoe County Recorder. An action to challenge the validity of an amendment adopted by the Association under this Section may not be brought more than one year after the amendment is recorded.

**13.3 Enforcement and Waiver.**

**13.3.1 Owner's Right of Enforcement.** In addition to the rights of enforcement granted to the Association pursuant to the provisions of Sections 3.29 and 5.1.3 hereof, any Owner shall have the right (but not the duty) to enforce any and all of the covenants, conditions, and restrictions now or hereafter imposed by this Declaration upon the Owners or upon any of the Property.

**13.3.2 Violations and Nuisance.** Every act or omission whereby a covenant, condition, or restriction of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action.

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

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

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

**13.4 Termination of Former Owner's Liability for Assessments.** Upon the conveyance, sale, assignment, or other transfer of a Lot to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Lot after notification of the Association of such transfer in the manner provided in Sections 4.4 and 13.5 hereof and the payment of a transfer fee as provided in Section 4.4 hereof. No person, after the termination of his status as an Owner and prior to his again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration.

**13.5 Notices.** All notices hereunder to the Association or the Board shall be sent by regular mail or registered or certified mail, return receipt requested, addressed to the Board at the address of the Manager, or to such other place as the Board may designate from time to time by notice in writing to the Owners of all of the Lots. Until the Owners are notified otherwise, all notices to the Association or to the Board shall be addressed as follows,

Monte Vista at Mt. Rose Homeowners Association c/o TL MT. ROSE ESTATES,  
L.P., 3300 Douglas Blvd, Building 400, Suite 450, Roseville, CA 95661.

All notices given by the Association to any Owner shall be sent by regular mail, or by registered or certified mail, return receipt requested, to such Owner's Lot address or to such other address as may be designated by such Owner from time to time, in writing, to the Board. All notices to Eligible-Mortgage Holders shall be sent by registered or certified mail, return receipt requested, at the address

to which such Eligible Mortgage Holder has last requested that notice be sent by notifying the Association in the manner provided in this Section 13.5. All notices shall be deemed to have been received within seventy-two (72) hours after the mailing thereof, except notices of change of address which shall be deemed to have been given when actually received.

13.6 Approvals. Any consent or approvals by the Board or Architectural Committee shall be in writing.

13.7 Construction and Severability Singular and Plural; Titles.

13.7.1 Restrictions and Easements Construed Together. All of the covenants, conditions, restrictions and easements of this Declaration shall be liberally construed together to promote the purposes of this Declaration as set forth herein.

13.7.2 Restrictions and Easements Severable. The covenants, conditions, restrictions and easements contained in this Declaration shall be deemed independent and severable; and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision.

13.7.3 Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine, or neuter shall each include the masculine, feminine, and neuter.

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

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

TL MT. ROSE ESTATES L.P., a California limited partnership

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

JAY TIMOTHY LEWIS, PRESIDENT

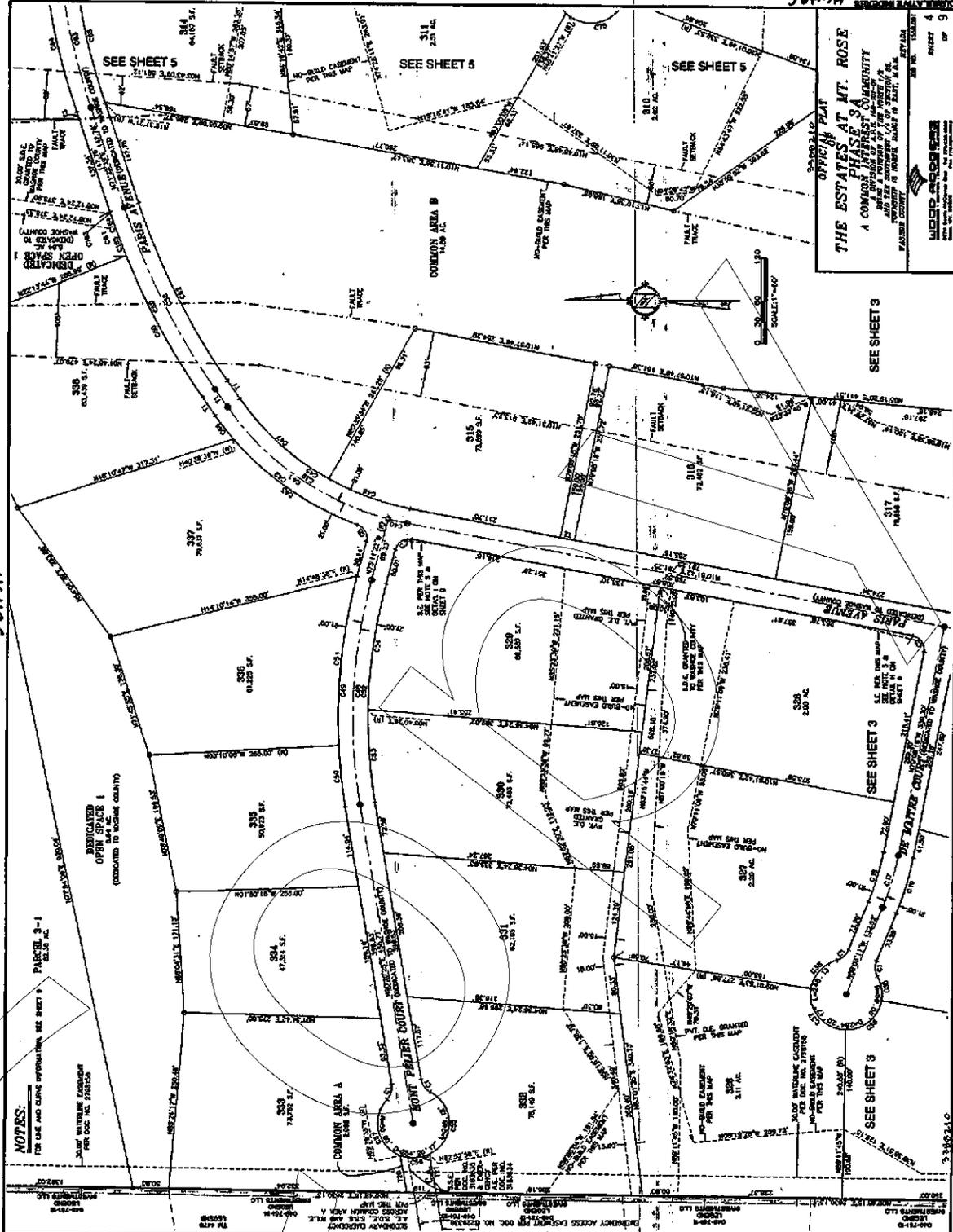
TL MANAGEMENT, INC

ITS: GENERAL PARTNER









OFFICE OF PLAT  
**THE ESTATES AT MT. ROSE**  
 A COMMON INTEREST COMMUNITY  
 PHASE 3A  
 A SUBDIVISION OF THE PARCELS  
 IDENTIFIED IN PARCEL MAP NO. 2871, A.K.A.  
 PARCEL COUNTY  
 WOOD BRIDGE  
 2871 PARCEL COUNTY  
 SHEET 4 OF 9

SUBDIVISION TRACT MAP 4649C

**NOTES:**

FOR USE AND CLARIFICATION SEE SHEET 5-1  
 PARCEL 5-1  
 5.1 AC.  
 DEDICATED  
 OPEN SPACE I  
 (DEDICATED TO PARCEL COUNTY)

CUMULATIVE INDEXES  
 SHOULD BE EXAMINED  
 FOR ANY SUBSEQUENT  
 CHANGES TO THIS MAP



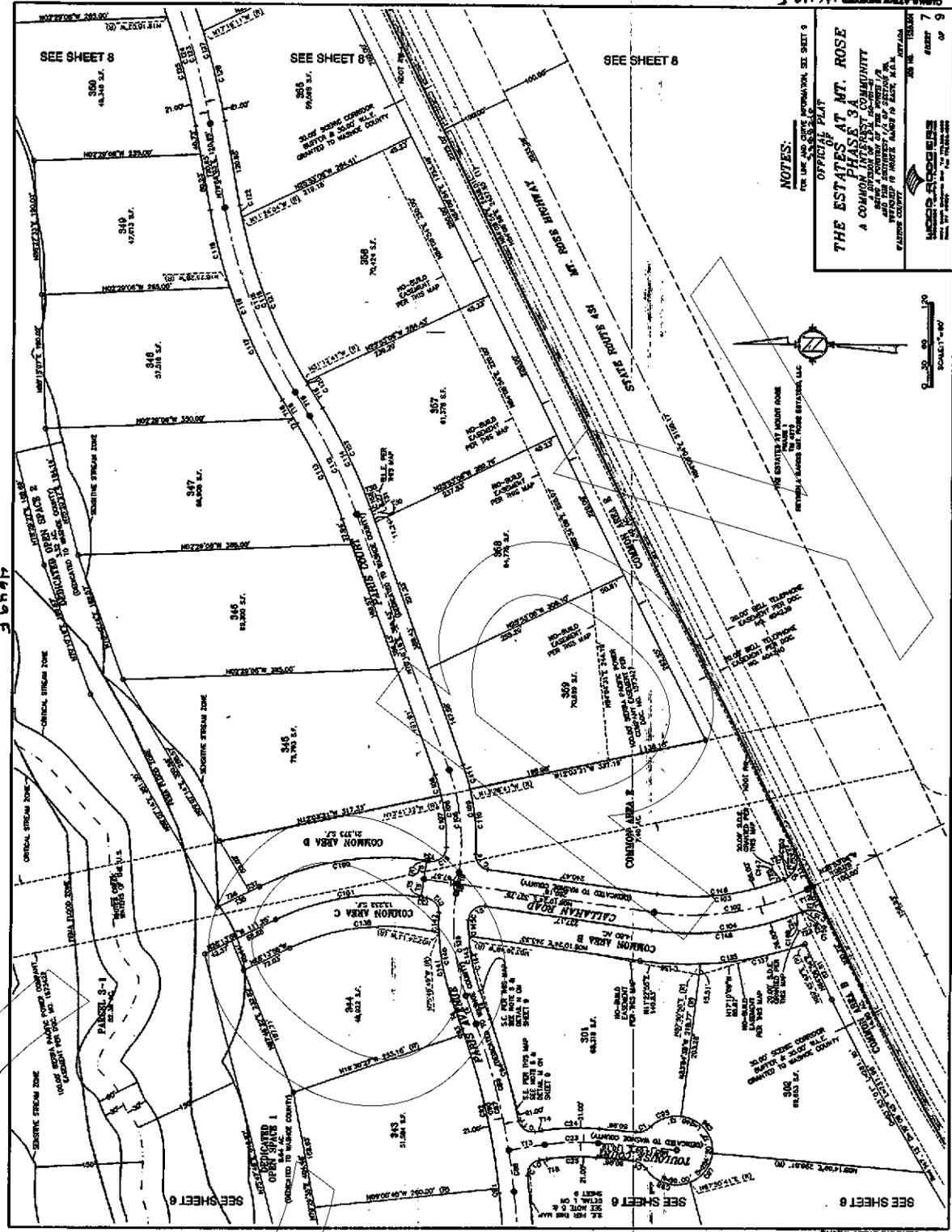


16494

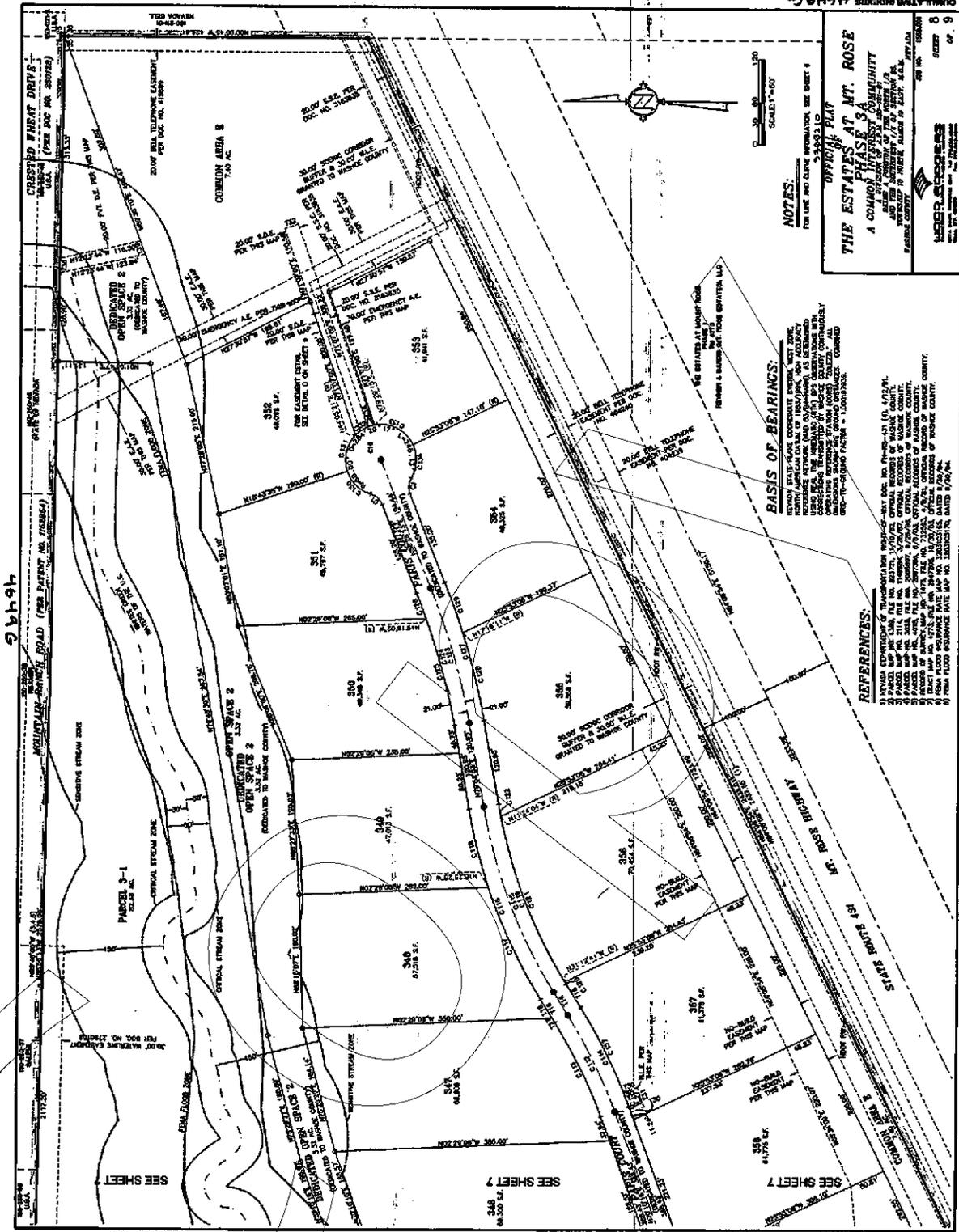
**NOTES:**  
 FOR THE USE OF THE PUBLIC, INFORMATION SEE SHEET 6  
 OFFICIAL PLAT  
**THE ESTATES AT MT. ROSE**  
 A COMMON INTEREST COMMUNITY  
 AS DIVISION OF THE ESTATES AT MT. ROSE  
 AND THIS INSTRUMENT IS A SUBDIVISION  
 OF THE INTEREST IN SAID TRACT, A.K.A.  
 EASTON COUNTY

WACOR RECORDS  
 1111 11th Street, NW  
 Atlanta, GA 30309  
 404.525.1111  
 SHEET 7 OF 9

SUBDIVISION TRACT MAP 16494



SHALL THE BORDERS SHOULD BE EXAMINED FOR ANY SUBSEQUENT CHANGES TO THIS MAP



**NOTES:**  
FOR USE AND CURVE INFORMATION, SEE SHEET 1  
5-2003 L.C.

**OFFICE OF PLAT**  
**THE ESTATES AT MT. ROSE**  
**PHASE 3A**  
A COMMON INTEREST COMMUNITY  
AS SET FORTH IN THE INSTRUMENT  
FILED IN THE PUBLIC RECORDS OF  
MARICOPA COUNTY, ARIZONA  
FILE NO. 2008-001000000  
SHEET 8 OF 9

**BASIS OF BEARINGS:**

THE BASIS OF BEARINGS FOR THE LOTS AND OPEN SPACES SHOWN ON THIS MAP IS THE MERIDIAN OF THE STATE OF ARIZONA, AS DETERMINED BY THE NATIONAL BUREAU OF SURVEYING AND MAPPING, U.S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY, WASHINGTON, D.C. 20548. THE BEARINGS ARE REFERRED TO THE MERIDIAN OF THE STATE OF ARIZONA, AS DETERMINED BY THE NATIONAL BUREAU OF SURVEYING AND MAPPING, U.S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY, WASHINGTON, D.C. 20548.

**REFERENCES:**

- 1) THE INSTRUMENT OF TRANSFER OF THE INTEREST IN THE COMMON INTEREST COMMUNITY SHOWN ON THIS MAP IS FILED IN THE PUBLIC RECORDS OF MARICOPA COUNTY, ARIZONA, FILE NO. 2008-001000000, DATED 7/19/12.
- 2) THE INSTRUMENT OF TRANSFER OF THE INTEREST IN THE COMMON INTEREST COMMUNITY SHOWN ON THIS MAP IS FILED IN THE PUBLIC RECORDS OF MARICOPA COUNTY, ARIZONA, FILE NO. 2008-001000000, DATED 7/19/12.
- 3) THE INSTRUMENT OF TRANSFER OF THE INTEREST IN THE COMMON INTEREST COMMUNITY SHOWN ON THIS MAP IS FILED IN THE PUBLIC RECORDS OF MARICOPA COUNTY, ARIZONA, FILE NO. 2008-001000000, DATED 7/19/12.
- 4) THE INSTRUMENT OF TRANSFER OF THE INTEREST IN THE COMMON INTEREST COMMUNITY SHOWN ON THIS MAP IS FILED IN THE PUBLIC RECORDS OF MARICOPA COUNTY, ARIZONA, FILE NO. 2008-001000000, DATED 7/19/12.

CUMULATIVE REVISIONS SHOULD BE EXAMINED FOR ANY SUBSEQUENT CHANGES TO THIS MAP

Subdivision Tract Map 4649





# WASHOE COUNTY RECORDER

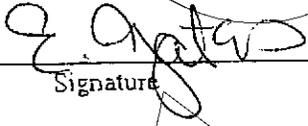
OFFICE OF THE RECORDER  
KATHRYN L. BURKE, RECORDER

1001 E. NINTH STREET  
POST OFFICE BOX 11130  
RENO, NEVADA 89520-0027  
PHONE (775) 328-3661  
FAX (775) 325-8010

## LEGIBILITY NOTICE

The Washoe County Recorder's Office has determined that the attached document may not be suitable for recording by the method used by the Recorder to preserve the Recorder's records. The customer was advised that copies reproduced from the recorded document would not be legible. However, the customer demanded that the document be recorded without delay as the parties rights may be adversely affected because of a delay in recording. Therefore, pursuant to NRS 247.120 (3), the County Recorder accepted the document conditionally, based on the undersigned's representation (1) that a suitable copy will be submitted at a later date (2) it is impossible or impracticable to submit a more suitable copy.

By my signing below, I acknowledge that I have been advised that once the document has been microfilmed it may not reproduce a legible copy.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

Elizabeth Gates - Recording Executive  
First American Title Insurance Company of Nevada