

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

RECORDING REQUESTED BY:

*Rollingwood North, LLC  
310 James Way, #150  
Pismo Beach, CA 93449*

AFTER RECORDING RETURN TO:

*Rollingwood North, LLC  
310 James Way, #150  
Pismo Beach, CA 93449*

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Accepted for Recording  
COPY-NOT CERTIFIED

AUG - 8 2005

Sacramento County  
Clerk-Recorder

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ROLLINGWOOD COMMONS CONDOMINIUMS

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OF  
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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ROLLINGWOOD COMMONS CONDOMINIUMS**

THIS DECLARATION is made on the date hereinafter set forth by Rollingwood North, LLC, a Delaware Limited Liability Company (herein referred to as "Declarant").

SECTION 1: RECITALS

1.01. Description of Real Property. Declarant is the owner of that certain real Property in Sacramento County, California, which is more particularly described on Exhibit "A" attached hereto and incorporated herein.

1.02. Single Phase. Declarant is developing the real Property which includes structures containing 272 residential Units ("Units") and other improvements in accordance with the Condominium Plan affecting the Project and prepared and recorded pursuant to California Civil Code Section 1351. By this Declaration, Declarant intends to establish a condominium under the provisions of the Davis -Stirling Common Interest Development Act.

1.03. Ownership Interests. Each owner shall receive title to his/her individual Unit and a membership in the Rollingwood Commons Condominiums Owners Association ("Association"), and an undivided percentage interest as tenant in common in the Common Area as provided herein.

1.04. Common Plan for Project. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the Project and the interests therein conveyed.

NOW, THEREFORE, Declarant hereby declares that the real Property described on Exhibit "A" shall be established as a planned development within the meaning of California Civil Code Section 1351(k), and shall be held, conveyed, hypothecated, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are declared and agreed to be in furtherance of a plan of condominium ownership for the project, as described in California Civil Code Section 1350-1376, and for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for improvement of the Property. Pursuant to California Civil Code Sections 1353 and 1354, all of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land, be enforceable as equitable servitudes, and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Property or the Project.

## SECTION 2: DEFINITIONS

In addition to other definitions provided for herein, the following terms shall have the following meanings:

2.01. "Articles" shall mean the Articles of Incorporation of Rollingwood Commons Condominiums Owners Association and any amendments thereto.

2.02. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Property which is to be paid by each Unit Owner as determined by the Association.

2.03. "Association" shall mean the Rollingwood Commons Condominiums Owners Association, a California non-profit mutual benefit corporation, the Members of which shall be the Owners of Units in the Project, their successors and assigns.

2.04. "Association Rules" shall mean rules and regulations regulating the use and enjoyment of the Common Area which may be adopted by the Board from time to time.

2.05. "Board" or "Board of Directors" shall mean the governing body of the Association.

2.06. "Bylaws" shall mean the Bylaws of Rollingwood Commons Condominiums Owners Association and any amendments thereto.

2.07. "Common Area" shall mean the entire Project, except all Units, as defined in this Declaration and as shown and defined on the Condominium Plan. The Common Area shall be owned by the Owners of the Units as tenants-in-common, in equal undivided interests, one undivided interest for each Unit. The Common Area includes all Exclusive Use Common Areas as hereinafter defined.

2.08. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated Common Expenses by or pursuant to the Project Documents.

2.09. "Condominium" shall mean an estate in real Property as defined in California Civil Code Section 1351(f), consisting of an undivided interest in common in all or any portion of the Common Area, together with a separate interest in a space called a Unit, the boundaries of which are described on a recorded final map, parcel map or Condominium Plan in sufficient detail to locate all boundaries thereof, and such other appurtenant rights and interests as are described in this Declaration, in the Condominium Plan or in the deed conveying the Condominium.

2.10. "Condominium Plan" shall mean the diagrammatic floor plan of the Units built on the Property which identifies each Unit and shows its dimensions pursuant to Civil Code Section 1351, as shown on Exhibit "B" attached hereto and made a part hereof, and any amendments thereto.

2.11. "County" shall mean the County of Sacramento, California, the County in which the Project is located.



2.12. "Declarant" shall mean Rollingwood North, LLC, a Delaware Limited Liability Company, its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 16.10 hereof or if such successor or assign is a mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

2.13. "Declaration" shall mean this Declaration, and any amendments, modifications or supplements thereto.

2.14. "Eligible First Mortgagee" shall mean a First Mortgagee who has requested notice by sending a written request to the Association, stating both its name and address and the Unit number or address of the Unit it has the mortgage on.

2.15. "Exclusive Use Common Area" shall mean that portion of the Common Area designated for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests and which is or will be appurtenant to the separate interest or interests for the uses and purposes described in Section 3.03.

2.16. "Final Public Report" shall mean the final public report for the Project issued by the California Department of Real Estate or any successor state agency pursuant to the California Subdivided Lands Act (Business & Professions Code Section 11000 et seq.) as it may be amended from time to time.

2.17. "Improvements" shall mean all structures and improvements on the Property, including, but not limited to, buildings, paving, fences, signs and landscaping.

2.18. "Map" shall mean that subdivision map entitled "Rollingwood Commons Condominiums", which Map recorded May 25, 1983, in Book 152 of Maps, Page 11, of the Official Records of Sacramento County. Said Map is also described in Exhibit "A" of this Declaration.

2.19. "Member" shall mean a person or entity entitled to membership in the Association as provided herein. Each Owner or Co-Owner of a Condominium shall be a Member.

2.20. "Mortgage" shall mean a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. "First Mortgage" or "First Mortgagee" is one having priority over all other Mortgages or holders of Mortgages encumbering the same condominium or other portion of the Project. A "First Mortgagee" shall include any holder (including FHLMC and FNMA), insurer (including FHA), or guarantor (including VA) of a First Mortgage on a condominium or other portion of the Project. "FHA" shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. "VA" shall mean the United States Department of Veterans Affairs. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation. "FNMA" shall mean the Federal National Mortgage Association. Where any provision of the Project Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval.

2.21. "Owner" or "Owners" shall mean the record holder or holders of title, if more than one, to any Condominium in the Project. This shall not include contract sellers or persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a recorded contract of sale (or a recorded memorandum of such contract), then such purchaser, rather than the fee Owner, shall be considered the "Owner".

2.22. "Project Documents" shall mean and include this Declaration as amended from time to time, the exhibits, if any attached hereto, together with the other basic documents used to create and govern the Project, including the Map, Articles, Bylaws, Condominium Plan, and Rules and Regulations of the Association.

2.23. "Project" or "Property" shall mean the entire real Property described in Exhibit "A" attached hereto, including all structures and improvements erected or to be erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.24. "Quorum" shall mean a majority of those entitled to act, except in the case of a quorum necessary for the imposition of regular and special assessments set forth in Section 8.

2.25. "Separate Interest" shall mean a Unit.

2.26. "Subdivided Property" shall mean the entire real Property described in Exhibit "A" attached hereto, including all structures and improvements erected or to be erected thereon or on such additional properties which may be brought within the jurisdiction of the Association.

2.27. "Subdivider" shall mean the Declarant.

2.28. "Unit" shall mean the elements of a Condominium that are not owned in common with other Owners of Condominiums in the Project, such Units and their respective boundaries being shown and particularly described in the Condominium Plan, deeds conveying Condominiums and this Declaration.

### SECTION 3: PROPERTY RIGHTS

3.01. "Units". Each of the Units are separately shown, described, numbered and designated on the Condominium Plan. A Unit does not include other interests in real Property that are less than estates in real Property, such as exclusive or nonexclusive easements. In interpreting deeds and plans the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan, regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component Unit elements. Each Unit Owner has the right to ingress and egress from such Unit with such right being perpetual and appurtenant to the Unit ownership.

3.02. Common Area. The Common Area shall consist of the entire Project except all Units, as defined in this Declaration and as shown on the Condominium Plan. Each Unit Owner shall have as appurtenant to the Unit one undivided interest in the Common Area for each Unit Owned. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit Owners affected and any First Mortgagee having a security interest in the Unit, as expressed in an amended Declaration. Such common interests cannot be separated from the Unit to which it is appurtenant. Each Unit Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners.

3.03. Exclusive Use Common Areas. The following described portions of the Common Area referred to as the "Exclusive Use Common Areas" are hereby set aside and allocated for the exclusive use of the Owner of the Unit to which they are attached, assigned by Unit number on the Condominium Plan or hereafter assigned by the Board:

- a) Patio designated "P";
- b) Garage Parking space designated "G";
- c) Carport Parking Space designated "CP" and;
- d) Deck designated "B".

3.04. Partition Prohibited. The common areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Unit is prohibited.

3.05. Annexation of Additional Property. Additional Property may be annexed to and become subject to this Declaration by the following method set forth in this Section. Upon annexation, additional parcels shall become subject to this Declaration without the necessity of amending individual sections thereof.

a) Annexation Pursuant to Approval: Upon approval in writing of the Association, pursuant to vote or written consent of 66-2/3% of the total votes residing in Members other than the Declarant, the Association and the owner of any Property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation. Said Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added Property, as are consistent with the scheme of this Declaration. Said Declaration shall include designation of Units and/or Common Areas for the purpose of this Declaration.

b) Effect of Annexation: Assessments collected from Owners in the Property may be expended by the Association without regard to the particular phase from which such assessments originated. All Owners shall have ingress and egress to all portions of the common area throughout the Property, subject to the provisions of this Declaration, the Bylaws of the Association and the Rules and Regulations of the Association in effect from time to time.

c) Quality of Construction: Future improvements to the Project shall be consistent with the initial improvements in terms of materials used and quality of construction.

3.06. Easements and Rights. In addition to any and all other easements and rights contained in this Declaration, the Properties shall be subject to the following easements and rights:

a) Owners' Rights. Every Owner shall have a nonexclusive right of enjoyment in and to the Common Area, including ingress and egress to and from his/her Unit. However, such nonexclusive rights shall be subordinate to, and shall not interfere with, exclusive rights over the Exclusive Use Common Area, if any. Each such nonexclusive right shall be appurtenant to and shall pass with the title to the Unit, subject to the following provisions:

i) Section 9 of this Declaration authorizes the Board to impose monetary penalties, temporary suspensions of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the established procedures are followed for notice and hearing which satisfy the minimum requirements of Corporations Code Section 7341 with respect to the accused Member before a decision to impose discipline is reached. These procedures are set out in Section 12 of the Bylaws.

ii) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds of the Members agreeing to such dedication or transfer has been recorded, provided, however, that no such dedication shall impair the ingress and egress to any individual Unit.

b) Easements and/or Rights for Utilities and Maintenance. Easements and/or rights over and under the Property for the installation, repair and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the Map, and as may be hereafter required or needed to service the Property, or any annexable Property thereto, are hereby reserved by Declarant and its successors and assigns, including the Association and all utility companies which serve the Project, together with the right to grant and transfer the same.

c) Encroachment Rights. Each Unit within the Property is hereby declared to have a right over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid rights for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid right for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area due to minor engineering errors, minor errors in construction, or settlement or shifting of the building, shall be permitted and that there shall be valid rights for the maintenance of said encroachments so long as they shall exist.

d) Entry for Repairs. The Board may authorize its agents and employees to enter any Unit and/or Exclusive Use Common Area when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible, to effect emergency repairs or to effect necessary repairs which the Owner has failed to perform as required by this Declaration. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. Except in case of an emergency, 24 hour advance notice shall be given to the Owner or occupant.

e) Declarant's Reservation of Easements and/or Rights. Declarant hereby reserves easements and/or rights over the Common Area for common driveway purposes, for drainage and encroachment purposes, and for ingress to and egress from the common area for the purpose of completing Improvements thereon or for the performance of necessary repair work. Said easement and/or right shall automatically terminate four years after the recordation of this Declaration.

3.07. Provisions Restricting Delegation of Use. Any Owner may delegate his/her rights of use and enjoyment of the Project, including any recreational facilities, to the members of their family, their guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his/her Unit to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, guests, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Project, including the recreational facilities, while the Owner's Unit is sold to a contract purchaser or rented to tenants. Instead, the contract purchaser, or tenants, while occupying such Unit, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenants were an Owner during the period of their occupancy. Each Owner shall notify the Secretary of the Association of the names of any contract purchasers of such Owner's Unit or tenants of such Owner's Unit. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Unit shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right to action directly against any tenant or contract purchaser of an Owner, as well as

against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

#### SECTION 4: USE RESTRICTIONS

4.01. Use of Units. No Unit, or any portion thereof, shall be occupied and used except for residential purposes by the Owners, their contract purchasers, lessees, tenants, or social guests. No trade or business or commercial activity shall be carried on or conducted in any Unit, except that Declarant, its successors or assigns, may use any Unit in the Project owned by Declarant for a model home site and display and sales office during construction and until the last Unit is sold by Declarant, or until three years from the date of closing of the first sale of a Unit in the Project, whichever occurs first. The provisions of this Section shall not prohibit home occupations so long as they are merely incidental to the use of the Unit as a dwelling, are permitted by local law, are conducted in such a manner as to not adversely affect other Owners' use and enjoyment of the Project, and have received prior written approval of the Board.

#### 4.02. Parking and Vehicle Restrictions.

a) All carports and garages shall be maintained in a neat and orderly condition and garage doors shall be kept in a closed position except as necessary to permit ingress and egress of vehicles or to clean or work in the garage area. Garages are to be used for the parking of standard passenger vehicles and trucks not to exceed one ton in load capacity, or the storage of items of personal property so long as such storage of personal property will not necessitate or result in the parking of vehicle on streets or regularly on driveways within the Properties. Furthermore, garages shall not be converted to living quarters or work shops which will preclude the parking of vehicles.

b) No vehicle shall be parked or left within the Project except within specified parking areas so designated by the Board.

c) No motor vehicle shall be constructed, reconstructed or repaired within the Properties, except within an enclosed garage and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however, that the provisions of this subparagraph c) shall not apply to emergency vehicle repairs.

d) Campers, boats, trailers, trucks and recreational vehicles shall not be parked within the Properties.

e) Commercial trucks and vehicles that bear signage on the exterior shall not be parked within the Properties, except for purposes of loading or unloading and then for periods not in excess of four hours. This restriction shall not apply to commercial vehicles involved in construction activities of a Unit or vehicles owned and operated by persons providing services to a Unit (during the time when the services are being rendered).

f) The Board shall have the authority to promulgate as part of the Association's rules such further rules and restrictions regarding parking and vehicles within the Properties as may be deemed prudent and appropriate.

4.03. Burning. There shall be no exterior fires whatsoever except barbecue fires located only in the Common Area and/or Exclusive Use Common Area and contained within receptacles designed for such purpose. No Owner or resident shall permit any condition to exist on his or her Unit and/or Exclusive Use Common Area, including, without limitation, trash piles, or weeds, which create a fire hazard or is in violation of local fire regulations.

4.04. Signs. All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all state and federal laws and applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area shall be as follows:

- a) Declarant: Signs may be displayed by Declarant on Common Area or unsold Lots/Units, as Declarant deems appropriate, advertising Units owned by Declarant for sale or rent;
- b) Legal Proceedings: Signs required by legal proceedings may be displayed;
- c) Non-Commercial: Non-commercial signs, posters, flags, or banners may be displayed in accordance with the provisions of California Civil Code Section 1353.6. Any such sign or poster may not exceed nine square feet in size and any such flag or banner may not exceed 15 square feet in size;
- d) Project Identification: Appropriate signs may be displayed by the Association to identify the Project;
- e) Sale or Rent: One sign of reasonable dimensions may be placed on a Unit advertising the Unit for sale or rent; and
- f) Signs Approved By Board: Other signs, posters and notices approved by the Board or specified in the Association Rules or in this Declaration may be posted in locations designated by the Board.

4.05. Animals. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred, or kept in any Unit or portion of the Project; except that no more than two usual and ordinary household pets such as dogs, cats, fish, or birds inside bird cages may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. This provision shall not apply to aquarium type fish. Notwithstanding the foregoing, no pets may be kept on the Project which result in an annoyance or nuisance to other Owners. No pets shall be allowed on the Common Area except as may be permitted by Association Rules. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. Owners shall prevent their pets from soiling any portion of the Common Area.

4.06. Trash; Storage of Materials. All garbage and trash shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. It shall be placed and kept in covered sanitary containers where it is not visible from any neighboring Unit except for a reasonable time prior to or after collection. All woodpiles or storage piles shall be kept screened and concealed from view of Units, streets and Common Areas. Garbage and trash shall be placed for pick up as required by the disposal service and any Association Rules.

4.07. Television or Radio Equipment. No television, video or radio poles, antennae, satellite dishes, cables or other transmission and/or reception fixtures or personal property (individually and collectively the "Antenna Equipment") shall be installed or maintained on any Unit except as follows:

- a) Authorized Antenna Requirements. Owners are prohibited from installing any antennae on the exterior of a Unit for any purpose except for an "Authorized Antenna" which may be installed so long as the proposed location for such installation is reviewed by the Board before installation to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The



Board may require that the location of the Authorized Antenna be moved so long as such review by the Board does not (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception.

b) **Authorized Antenna Defined.** An "Authorized Antenna" means (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one meter or less in diameter or diagonal measurement, (iii) an antenna designed to receive television broadcast signals, and (iv) a mast supporting an antenna described in items (i), (ii), and (iii) above.

c) **Additional Restrictions.** The Association may adopt additional restrictions on installation or use of Authorized Antenna on an Owner's Unit as part of the Association's rules and regulations so long as such restrictions do not (i) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (iii) preclude acceptable quality reception. The Association may prohibit the installation of an Authorized antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety-related reason established by the Association.

Nothing herein shall be construed to restrict in any manner the Board's right to authorize a cable television franchisee or other provider of similar services to provide cable television, radio or other similar services to the Project.

4.08. **Right to Lease.** No Owner shall be permitted to lease or rent his/her Unit for transient or hotel purposes, which shall include, but not be limited to, rental for any period less than 30 days. All leases must be in writing and be expressly subject to the Project Documents and the Association's adopted Rules & Regulations, and the breach of any provision shall be a default under the Lease or Rental Agreement. Subject to the foregoing restrictions, the Owners of Units shall have the right to lease the same, provided that the Board is notified of the name of the tenant and the duration of the Lease. The Owner shall provide the Lessee with a copy of the Articles, Bylaws, Declaration and any Association Rules.

4.09. **Architectural Control.** No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board.

No building, fence, wall, obstruction, screen, awning, or structure of any kind shall be commenced, erected or maintained upon the Property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation.

Failure of the Board to act within 30 days after the plans have been submitted to it shall constitute approval.

In the event of the failure of any individual Unit owner to comply with a written directive or order from the Board, the Board shall have the right and authority to perform the subject matter of such directive or order and the cost of such performance shall be charged to the owner of the Unit in question and may be recovered by the Board in an action of law against such individual Unit owner.

4.10. Window Coverings. Windows shall be covered by drapes, shades or shutters and shall not be painted or covered by foil, cardboard or similar materials. All window coverings visible from the Common Area shall be of a material, design and color which, in the opinion of the Board, is compatible with the exterior design and coloration of adjacent portions of the Project.

4.11. Clotheslines. No exterior clotheslines or other outside clothes drying or airing facility shall be erected or maintained on the properties in any location where the same would be visible from any street or neighboring Unit. Further, no clothes washers, clothes dryers, refrigerators or freezers may be kept, stored or operated on any balcony, patio, porch or other exterior area.

4.12. Power Equipment and Car Maintenance. No power equipment, work shops or major car maintenance of any nature shall be permitted on the Project without the prior written approval of the Board. In deciding to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

4.13. Drainage. No Owner shall do any act or construct any improvement which would interfere with the natural or established drainage systems or patterns within the Project without the written consent of the Board.

4.14. Liability of Owners for Damage to Common Area. The Owner of each Condominium shall be liable to the Association for all damages to the Common Area and/or improvements thereon caused by such Owner, or any occupant of his/her Unit or guest, except for that portion of said damage, if any, fully covered by insurance of the Association. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

4.15. Recreational Facilities.

a) Every Member of the Association shall have a right to use the recreational facilities situated on the Common Area, subject to the following provisions:

i) The right of the Association to charge reasonable fees for the use of any recreational facility by non-members; and,

ii) The right of the Association to deny use after hearing for infringement of Association Rules or nonpayment of dues.

b) An Owner may delegate, in accordance with the Bylaws, his/her rights of enjoyment to the recreational facilities to family Members, tenants or contract purchasers who reside in the Unit.

4.16. Sports Fixtures. No fixed basketball standards or fixed sports apparatus shall be attached to any Unit, garage, carport or within the Common Area, unless the location of the standard or other sports fixture has been approved by the Board. When portable basketball standards are not in use, they shall be stored out of view.

4.17. Nuisances. No noxious, illegal, or offensive activities shall be carried on within any Unit, or in any part of the Project, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each Owner's Unit or Common Area, or which would in any way increase the rate of insurance for the Project or for any Unit, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which would impair the structural integrity of any building.

4.18. Compliance with Project Documents. Each Owner, contract purchaser, lessee, tenant, guest, invitee or other occupant of a Unit or user of the Common Area shall comply with the provisions of the Project Documents and Association Rules.

4.19. Sound Transmissions. No Unit shall be altered in any manner that would increase sound transmissions or reverberations to any adjoining or other Unit, including, but not limited to, the replacement, modification, or penetration of any flooring or floor covering, ceiling, or wall that increases sound transmissions or reverberations to any other Unit.

## SECTION 5: MAINTENANCE OBLIGATIONS

5.01. Association Maintenance Obligations. The Association shall have the following duties: To manage, operate, improve, maintain, repair and replace the Common Area and all its facilities, improvements, and landscaping including, without limitation, all parking spaces, Condominium buildings, garage building, carport structures, fences, walkways, lighting, pool, spa, tennis court, weight room/racket-ball building, clubhouse, office and private streets located on the Common Area, and any other Property acquired by or subject to the control of the Association, including personal property, in a safe, sanitary and attractive condition. Notwithstanding the foregoing, the Association shall have no duty to maintain the Units or the non-structural areas and/or Owner installed improvements within the Exclusive Use Common Areas.

The Association shall also bear the costs for the repair and maintenance of Common Area damaged by the presence of wood-destroying pests or organisms.

a) The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the owner of the Separate Interest affected.

b) i) The Association may cause the temporary, summary removal of any occupant for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

ii) The Association shall give notice of the need to temporarily vacate a Separate Interest to the occupants and to the Owners, not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation.

iii) Notice by the Association shall be deemed complete upon either:

a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

b) By sending a copy of the notice to the occupants at the Separate Interest address and a copy of the notice to the Owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the association.

c) For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the Separate Interest.

If any of the maintenance or repair work referred to above is necessitated by the willful or negligent acts of the Owner, his/her family, guests or invitees, the costs of such special restoration or repairs shall be chargeable to the Owner as provided in Section 8.

5.02. Owners' Maintenance Obligations. Each Owner of a Condominium shall be responsible for maintaining his/her Unit, including but not limited to the equipment and fixtures in the Unit and its interior walls, ceilings, windows and doors in a safe, sanitary and attractive condition. Each Owner has complete

only by drapes, shutters or shades and may not be painted or covered by foil, cardboard or other similar materials. Each Owner also shall be responsible for repair, replacement and cleaning of the windows and glass of his/her Unit, both exterior and interior, and for maintaining the non-structural areas and/or Owner installed improvements of his/her appurtenant Exclusive Use Common Area in a safe, sanitary and attractive condition.

If an Owner fails to maintain his/her Unit and/or his/her Exclusive Use Common Area as provided herein in a manner which the Board reasonably deems necessary to preserve the safety, appearance and/or value of the Project, the Board may notify the Owner of the work required and request that it be done within a reasonable and specific period. If the Owner fails to perform such maintenance and/or repairs within said period, the Board shall, subject to the notice and hearing requirements set forth in the Bylaws, have the right to enter upon the Unit and/or Exclusive Use Common Area to cause such maintenance and/or repair work to be performed. The cost of any such repair or maintenance shall be charged to the Owner through an Individual Charge as provided in Section 8.

Notwithstanding the foregoing, in the event of an emergency arising out of the failure of an Owner to maintain his/her Unit and/or Exclusive Use Common Area, the Board shall have the right, through its agents and employees, to immediately enter the Unit and/or Exclusive Use Common Area to abate the emergency and individually charge the cost thereof to such Owner.

SECTION 6: ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING

6.01. Association to Manage Project. The management of the Project shall be vested in the Association in accordance with the Project Documents, and all applicable laws, regulations and ordinances of any governmental or quasi-governmental body or agency having jurisdiction over the Project.

6.02. Membership. Each Owner shall be a Member of the Association, and shall remain a Member thereof until such time as ownership ceases for any reason, at which time that Owner's membership in the Association shall automatically cease.

6.03. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Unit. A Mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. Any person or entity acquiring fee title or equitable title to a Unit, whether by reason of a deed from the Owner or through a foreclosure, shall within 15 days of acquiring such title inform the Association in writing of the date such title transferred and the name or names in which title is held.

6.04. Classes of Membership and Voting. The Association shall have two classes of voting members:

Class A. Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each Unit owned. When more than one person or entity owns a Unit, all such persons and entities shall be Members and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.

Class B. The Class B Member shall be the Declarant, which shall be entitled to three votes for each Unit owned.

6.05. Termination of Class B Membership. The Class B membership shall be irreversibly converted to Class A membership on the occurrence of whichever of the following is first in time:

a) When the total outstanding votes held by Class A Members equal the total outstanding votes held by the Class B Member; or,

b) The second anniversary of the first conveyance of a Unit in the Project pursuant to a Final Public Report.

6.06. Approval of Members Other Than Declarant. With the exception of actions authorized for the Enforcement of Bonded Obligations, no action which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant shall preclude the Declarant from casting votes attributable to subdivision interests which it owns.

Where a two class voting structure is still in effect, any action requiring the approval by the vote or written assent of a prescribed majority of the Class A voting power shall also require the vote or written assent of a bare majority of the Class B voting power.

Where a single class voting structure exists, after the conversion of Class B to Class A membership, approval of any action by the vote or written assent of a prescribed majority of the total voting power of Owners other than the Declarant shall also require the approval by vote or written assent of a bare majority of the total voting power of the Association.

6.07. Inspection of Books. All Members shall have reasonable access to inspect the books, records and financial statements of the Association, including annual audited financial statements, when such are prepared, pursuant to this Declaration and subject to the same.

6.08. Commencement of Voting Rights. Voting rights attributable to Units shall not vest until assessments against those Units have been levied by the Association.

6.09. Co-Owner Votes. The vote for each Unit may not be cast on a fractional basis. If Co-Owners of a Unit are unable to agree among themselves as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If only one Owner exercises the vote of a particular Unit, it shall be conclusively presumed for all purposes that he/she was acting with the authority and consent of all other Owners of the same Unit. If more than one Co-Owner exercises the vote for a particular Unit, their votes shall not be counted and shall be deemed void.

6.10. Membership Meetings. Regular and special meetings of Members and of the Board shall be held with the frequency and at the time and place and in accordance with the provisions of the Bylaws.

6.11. Notice and Place of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least 10 days but not more than 90 days before such meeting to each first mortgagee requesting notice and to each Member, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. Meetings shall be held within the Project or at a meeting place as close thereto as reasonably possible.

6.12. Board of Directors. The affairs of the Association shall be managed by a Board of Directors, which shall be established, and which shall conduct regular and special meetings according to the provisions of the Bylaws.

SECTION 7: POWERS, DUTIES AND LIMITATIONS OF THE ASSOCIATION

7.01. Powers and Duties of Association. In addition to the powers and duties enumerated in its Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association and the Board shall have the following powers and duties:

- a) Delegation of Powers. To delegate all powers to committees, officers or employees of the Association as expressly authorized by the Project Documents.
- b) Management Agent. To employ a management agent and to contract with independent contractors to perform any part of the duties and responsibilities of the Association, provided that any contract with a firm or person appointed as a managing agent or any other contract providing for services of the developer, sponsor or builder shall not exceed a one year term renewable by the parties for successive one year periods and shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, to terminate the same for cause on 30 days written notice, and either Party may terminate without cause and without payment of a termination fee on 60 days written notice.
- c) Maintenance. To maintain the Project as required by the provisions of this Declaration.
- d) Supervision. To supervise all officers, agents and employees of the Association and see that their duties are properly performed.
- e) Assessments, Liens and Fines. To levy and collect assessments and as provided in the Project Documents, impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Project Documents. Penalties may include, but are not limited to: fines, temporary suspension of voting rights or rights to use of the facilities on the Common Area, or other appropriate discipline for failure to comply with the governing instruments, provided that the accused Member is given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is reached. Such notice and hearing procedures shall satisfy the minimum requirements of Corporations Code Section 7341.
- f) Enforcement of Project Documents. To enforce applicable provisions of the Project Documents for the ownership, management and control of the Project.
- g) Adoption of Rules. To adopt, amend and repeal reasonable rules consistent with the Project Documents relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their contract purchasers, lessees, tenants, guests and invitees with respect to the Property and other Owners. A copy of such Association Rules as adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Project.
- h) Records. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by 5% or more of the total voting power of the Association; keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names, addresses and classes of Membership.



i) Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas and other utility services as necessary for the Common Area.

j) Granting of Easements. To grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Area and the Units.

k) Exercise of Easements. To exercise all easement rights as granted to it in this Declaration for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association, the Association's agent or employees, or the Board of their responsibilities.

l) Contracts. To contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to limitations elsewhere set forth in the Project Documents.

m) Limit Number of Guests. To limit the number of an Owner's guests who may use any facilities on the Common Area.

n) Acquisition of Property. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association.

o) Budgets. To prepare budgets and financial statements for the Association as prescribed in this Declaration.

p) Legal and Accounting. To obtain and pay the cost of legal, accounting and other professional services necessary or proper for the maintenance and operation of the Project and the enforcement of the Project Documents.

q) Emergency Repair. To enter upon any privately owned Unit as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common.

r) Election of the Officers of the Board. To elect the Officers of the Board.

s) Filling Vacancies. To fill vacancies on the Board created by the removal of a Board Member.

7.02. Property Taxes and Assessments. Each Owner shall be obligated to pay any taxes or assessments levied by the County Assessor against his/her Unit and personal property. To the extent not assessed to or paid directly by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area or other property owned by the Association.

The Association shall prepare and file annual tax returns with the Federal government and the State of California and make such elections as may be necessary to reduce or eliminate the tax liability of the Association.

7.03. Insurance. The Association shall maintain casualty, liability and other insurance on behalf of the Association as required by the provisions of this Declaration.

7.04. Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Owners responsible for the existence of said lien.

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

7.06. Prohibited Acts. The Association Board shall be prohibited from taking any of the following actions, except with the vote or written assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the voting power of the Association residing in Members other than the Declarant constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than the Declarant:

a) Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association Property for a term longer than one year with the following exceptions:

i) A management contract, the terms of which have been approved in writing by the Federal Housing Administration or the Department of Veterans Affairs;

ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

iii) Prepaid casualty and/or liability insurance policies of not to exceed three years duration provided that the policy permits short rate cancellation by the insured;

iv) Lease agreements for laundry room fixtures and equipment of not to exceed five years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect Ownership interest of 10% or more;

v) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of 10% or more;

vi) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of 10% or more; or,

vii) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety days written notice of termination to the other party.

- b) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;
- c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted gross expenses of the Association for that fiscal year;
- d) Paying compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association; and,
- e) Filling of a vacancy on the Board created by the removal of a Director.

7.07. Action Requiring Consent. The Board shall take the following actions only upon obtaining the consent of Members as follows:

- a) The consent of two-thirds of the voting power of the Association residing in Members other than the Declarant so long as the Declarant holds or directly controls at least 25% of the voting power of the Association, and after the Declarant no longer controls 25% or more, the consent of two-thirds of the total voting power of all Members shall be necessary to do the following:
  - i) Borrow money, and only with the assent (by vote or written consent) of two-thirds of Members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
  - ii) Dedicate, sell or transfer all of or any part of any interest it may have in the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided that no such dedication or transfer shall be effective unless an instrument has been signed by two-thirds of the Members agreeing to such dedication, sale or transfer, and any sale of all or substantially all of the Association's assets must be in compliance with Section 7.07(b) below; or,
  - iii) Participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional residential property, provided that any merger, consolidation or such annexation shall have the assent by vote of two-thirds of Members or by the written consent of such Members, excluding Declarant.
- b) The consent of 100% of the Members shall be required so long as there is any parcel, area, apartment or Unit for which the Association is obligated to provide management, maintenance, preservation or control for the Association to do the following:
  - i) Transfer all or substantially all of its assets; or,
  - ii) File a certificate of dissolution.

7.08. Disputes Regarding Damage To Property. Not later than thirty days prior to the filing of any civil action by the Association against the Declarant or Successor of the Project for alleged damage to Common Area or alleged damage to a Unit that arises out of, or is integrally related, to damage to the

Common Area, the Board shall provide written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil actions, that are available to address the problems, and (c) the time and place of the meeting. If the Association has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the foregoing notice not later than thirty days after the filing of the action.

7.09. Dispute Resolution. Any disputes between all or any of the Association, Owner(s), the Declarant, or any director, officer, partner, employer, contractor, design professional, consultant, subcontractor or agent of the Declarant (collectively "Declarant Parties"), arising under this Declaration or relating to the Properties, shall be subject to the following provisions of this Section 7.09 and the following Sections: 7.10, 7.11, 7.12.

7.10. Construction Defect Disputes.

7.10.1. Notice of Construction Claims Statute. California Civil Code 895 et seq., as hereafter amended ("Construction Claims Statute"), delineates standards for how various components of Units should be constructed and function, limits the time frames for bringing various claims against the Declarant to anywhere from one year to ten years (as listed in the Construction Claims Statute) from the close of escrow for the Unit, imposes an obligation on all Owner's to follow Declarant's maintenance recommendations and schedules, or other applicable maintenance guidelines, and establishes a non-adversarial claims resolution procedure that must be followed by an Owner before the Owner can initiate an adversarial claim and proceed to Judicial Reference or Binding Arbitration, as described below. THE CONSTRUCTION CLAIMS STATUTE AFFECTS EACH OWNER'S LEGAL RIGHTS. OWNERS ARE ADVISED TO READ THE STATUTE CAREFULLY AND SEEK LEGAL ADVICE IF OWNER HAS ANY QUESTIONS REGARDING ITS AFFECT ON OWNER'S LEGAL RIGHTS. PURSUANT TO CALIFORNIA CIVIL CODE SECTION 914, DECLARANT IS PERMITTED TO ELECT TO USE ALTERNATE CONTRACTUAL NON-ADVERSARIAL PROCEDURES INSTEAD OF USING THE STATUTORY PRE-LITIGATION PROCEDURES PROVIDED IN THE CONSTRUCTION CLAIMS STATUTE, AND DECLARANT HAS ELECTED TO DO SO.

7.10.2 Owners' Construction Defect Claims. Prior to the commencement of any legal proceeding by any Owner against Declarant or any Successor thereto based upon a claim for defects in the design or construction of any Unit, Common Area, or any Improvements thereon, the Owner must first comply with the provisions of this paragraph. If at any time during the ten year period following the close of escrow for the original Owner's purchase of such Owner's Unit from Declarant, as such period may be extended by any applicable tolling statute or provision, or any shorter period as provided by applicable law, such Owner believes Declarant has violated any of the standards set forth in the Construction Claims Statute ("Claimed Defect"), which such Owner feels may be the responsibility of Declarant, such Owner shall promptly notify Declarant in writing. Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the Claimed Defect, (b) the date upon which the Claimed Defect was first discovered, and (c) dates and times when Owner or Owner's agent will be available during ordinary business hours, so that service calls or inspections by Declarant can be scheduled. Declarant shall, in its sole discretion, be entitled to inspect the applicable property regarding the reported Claimed Defect and, within its sole discretion, shall be entitled to cure such Claimed Defect. Nothing contained in this Section shall obligate Declarant to perform any such inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner. Owner's written notice delivered to Declarant shall be a condition precedent to

Owner's right to institute any legal proceeding and to proceed to Judicial Reference or Binding Arbitration as set forth below, and Owner shall not pursue any other remedies available to it, at law or otherwise, including without limitation the filing of any legal proceeding or action, until Declarant has had the reasonable opportunity to inspect and cure the Claimed Defect. During the term of any written Limited Warranty provided to the original Owner of the Unit by Declarant, any conflict between the provisions of this Section and the Limited Warranty shall be resolved in favor of the Limited Warranty. Declarant shall not be liable for any general, specific or consequential damage, cost, diminution in value or other loss which Owner may suffer as a result of any Claimed Defect in the Unit, which reasonably might have been avoided had the Owner given Declarant the notice and opportunity to cure as described above within a reasonable time of discovering the Claimed Defect. Except as otherwise provided in the written Limited Warranty, if any, provided to Owner, nothing contained herein shall establish any contractual duty or obligation on the part of Declarant to repair, replace or cure any Claimed Defect. If an Owner sells or otherwise transfers ownership of such Owner's Unit to any other person during such ten year period, as such period may be extended by an applicable tolling statute or provision, Owner covenants and agrees to give such other person written notice of these procedures by personal delivery. Owner's continuing obligation under this covenant shall be binding upon Owner and Owner's successors and assigns.

a) All Owners who originally purchased a Unit from Declarant were provided copies of certain documents through escrow in conjunction with the purchase of the Unit, including copies of this Declaration, maintenance recommendations from Declarant, maintenance recommendations for manufactured products or appliances included with the Unit, a limited warranty, claim forms, and other documentation relating to the Construction Claims Statute. All Owners are required by the Construction Claims Statute to retain these documents and provide copies of such documents to Owner's successors in interest upon the sale or transfer of such Owner's Unit.

b) All Owners are obligated by Section 907 of the Construction Claims Statute to follow Declarant's maintenance recommendations and schedules, including the maintenance recommendations and schedules for manufactured products and appliances provided with the Property, as well as all commonly accepted maintenance practices (collectively, "Maintenance Recommendations"). Per Section 945.5 of the Construction Claims Statute, failure to follow the Maintenance Recommendations may reduce or preclude Owner's right to recover damages relating to such Owner's Unit, which could have been prevented or mitigated had the Maintenance Recommendations been followed.

7.11. Association's Construction Defect Claims. DECLARANT ELECTS TO USE THE ALTERNATIVE CONTRACTUAL NON-ADVERSARIAL PROCEDURES CONTAINED IN CIVIL CODE SECTION 1375, EXCEPT AS OTHERWISE PROVIDED HEREIN, RATHER THAN THE STATUTORY PRE-LITIGATION PROCEDURES OF THE CONSTRUCTION CLAIMS STATUTE, WITH RESPECT TO CLAIMS BY THE ASSOCIATION. Prior to the commencement of any legal proceeding by the Association against Declarant or any Declarant Party based upon a claim for defects in design or construction of the Common Area, or any Improvements thereon, or any other area within the Project which the Association has standing to make a claim for defects in design or construction, the Association must first comply with all of the applicable requirements of Civil Code Section 1375, as the same may be amended from time to time, or any successor statute thereto. In addition to the requirements of said Section 1375, Declarant shall have an absolute right, but not an obligation, to repair any alleged defect or condition claimed by the Association to be in violation of the standards set forth in the Construction Claims Statute, within a reasonable period of time after completion of the inspection and

testing provided for in such Section and prior to submission of a settlement offer under such Section. If the parties to such dispute are unable to resolve their dispute in accordance with the procedures established under Civil Code Section 1375, as the same may be amended from time to time, or any successor statute, the dispute shall be resolved in accordance with the Judicial Reference or Binding Arbitration provisions referenced below and the parties to the dispute shall each be responsible for their own attorneys' fees. The Association shall have the power to initiate claims against a Declarant Party for violations of Construction Claims Statute, as soon as the Association has one (1) Class A Member other than Declarant. Upon the written request of any Class A member to the Board of Directors, the Board shall establish a committee consisting exclusively of Class A Member(s) other than Declarant to investigate claimed violations of the standards of the Construction Claims Statute. Upon the committee's determination that cause exists to initiate a claim, the decision of whether to initiate a claim shall be made by a vote of the Class A members other than Declarant. A majority of the votes cast shall be deemed to be the decision of the Association, which the board shall carry out by submitting the necessary claim to Declarant or the appropriate Declarant Party; provided, however, that the vote is either conducted at a properly convened meeting with the requisite quorum in accordance with the provisions of the Bylaws relating to meetings and voting, or the vote was conducted without a meeting in accordance with California Corporations Code Section 7513, as authorized by the Bylaws.

7.12. Other Disputes Involving Declarant. Any other disputes arising under this Declaration, or otherwise, between the Association or any Owner and Declarant or any Declarant Party (except for any action taken by the Association against Declarant for delinquent assessments and any action involving enforcement of any completion bonds) shall be resolved in accordance with the Alternate Dispute Resolution provisions provided below.

7.13. Alternative Dispute Resolution Procedures. The following procedures provide for resolution of disputes through general judicial reference or, in the alternative, binding arbitration. In either event, Declarant, the Association and each Owner of a Unit within the Project, expressly acknowledge and accept that they are waiving their respective rights to a jury trial.

7.13.1. Judicial Reference. Subject to compliance with the provisions of all of the above Subsections to the extent applicable, it is the intention of Declarant that, except as otherwise expressly provided herein, any and all disputes, based upon which litigation is filed, shall be resolved by judicial reference under California law. Accordingly, except as otherwise expressly provided in this Declaration (such as the collection of delinquent assessments), any dispute, between the Association or any Owner(s) and the Declarant, or Successor, or between the Association and any Owner with respect to the interpretation of any of the provisions of this Declaration, or with respect to any alleged breach hereof, or with respect to any other claim related to a Unit or the Common Area, including, without limitation, any alleged latent or patent construction or design defect in the Project, any Unit or any part thereof, any alleged violation of the standards set forth in the Construction Claims Statute, any judicial determination to be made under California Civil Code Section 1375(h), or for alleged damage to the Common Area, or alleged damage to Units that arises out of, or is integrally related to the Common Area shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 through 645.1. Notwithstanding any other provision of this Declaration, this Section shall not be amended without the written consent of Declarant. In the event litigation is filed based upon any such dispute, the following shall apply:

a) The proceeding shall be brought and held in the County in which the Project is located, unless the parties agree to an alternative venue.

- b) The parties shall use the procedures adopted by JAMS for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties).
- c) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.
- d) The parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon to the court. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction in accordance with California Code of Civil Procedure Sections 638 and 640.
- e) The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy.
- f) The referee may require one or more pre-hearing conferences.
- g) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- h) A stenographic record of the trial shall be made.
- i) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.
- j) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- k) The parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.
- l) Except as otherwise agreed by the parties or as required by applicable law, neither the Association nor any Owner shall be required to pay any fee of the Judicial Reference proceeding except to the extent of the cost that would be imposed upon the Association or Owner if the dispute had been resolved as a dispute in court. The referee may not award against the Association or any Owner any expenses in excess of those that would be recoverable as costs if the dispute had been litigated to final judgment in court. Each party to the Judicial Reference proceeding shall bear its own attorney fees and costs in connection with such proceeding.
- m) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action that may be brought by any of the parties.

7.13.2. Binding Arbitration of Disputes. If for any reason the Judicial Reference procedures above are legally unavailable or unenforceable at the time a dispute would otherwise be referred to judicial reference, then such dispute shall be submitted to binding arbitration under the rules and procedures in this Section. Any dispute submitted to binding arbitration shall be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Construction Industry Arbitration Rules in effect on the date of the submission. If such entity is not then in existence, then the dispute shall be submitted to JAMS, and administered in accordance with either the Streamlined Arbitration Rules and Procedures, or (if applicable) the Comprehensive Arbitration Rules of JAMS. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such dispute. If the claimed amount exceeds \$250,000.00 or includes a demand for punitive damages, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved. All decisions concerning the arbitrability of any dispute shall be decided by the arbitrator(s). At the request of any party, the award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither party nor the arbitrator(s) may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

a) Applicability of Federal Arbitration Act. The Binding Arbitration procedures contained above are implemented for the Project in accordance with the philosophy and intent of the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) ("FAA"), which is designed to encourage the use of alternative methods of Dispute Resolution and avoid costly and potentially lengthy traditional court proceedings. The Binding Arbitration procedures in said Section are to be interpreted and enforced as authorized by the FAA. Parties interpreting this Section shall follow the federal court rulings, which provide among other things that: (1) the FAA is a congressional declaration of liberal federal policy favoring alternate dispute resolution notwithstanding substantive or procedural state policies or laws to the contrary; (2) alternate dispute resolution agreements are to be rigorously enforced by state courts; and (3) the scope of issues subject to alternate dispute resolution are to be interpreted in favor of alternate dispute resolution.

7.14. Disputes Between the Association and Owner(s) or Between Owners Regarding Enforcement Of Project Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of the Project Documents of the Association, the parties shall comply with the provisions of California Civil Code Section 1354(b) through (j), prior to filing of any civil action.

7.15. Civil Code Sections 1368.4, 1375, 1375.05 and 1375.1. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05, or 1375.1.

7.16. Use of Damage Award Amounts. Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Project, or damage suffered as a result thereof, shall be expended by such claimant for the attorney fees and costs of the proceeding and the repair, rehabilitation, or remediation of the claimed defect or damage.

7.17. Miscellaneous. Nothing in this Section shall constitute a waiver of any of the benefits of the Statute of Limitations or equitable defense of any party. Furthermore, notwithstanding any other



provision of this Declaration, this Section may not be amended without the prior written consent of the Declarant.

7.18. Inspection and Maintenance Guidelines. The Board shall adopt inspection and maintenance guidelines for the periodic inspection and maintenance of the Common Area improvements and landscaping, including, but not limited to, foundations, gutters, down-spouts and down-spout connections, drainage, deck drains, decks, wall surfaces, trim, roofs, window caulking, utility equipment maintained by the Association, streets, parking areas, any and all recreational facilities, and the irrigation system.

The inspectors shall include, at least, an Architect, a Civil Engineer and a Landscape Architect. Inspections shall be made at least yearly, and for appropriate items or events, more often. Inspections will include a review of all repair records since the previous inspection.

The inspections shall be reported at a regular Association meeting and in writing, and shall include recommendations for cleaning, maintaining, repair, replacement, etc. (if any), as well as opinions of the costs.

The reports shall address any noted deterioration which may require future attention. The reports may also recommend supplemental specialized investigations (i.e., elevators, termite, pool, mechanical, arborist, limnologist, geologist, structural, etc.).

The Board shall keep permanent records of all:

Complaints and potential problems, including description, date and by whom.

Reports, including inspections and recommendations.

Repairs, including description, location, date, by whom made and cost.

Plans, including construction drawings, subsequent modifications, and repair plans.

The Board periodically and at least once every year, shall review and update the inspection and maintenance guidelines.

The Board shall take all appropriate steps to implement and comply with the inspection and maintenance guidelines.

8.01. Agreement to Pay, Personal Obligation. Declarant, and its successor in interest, if any, for each Unit owned by it, and each Owner, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) Regular Annual Assessments; (b) Special Assessments for capital improvements or unusual expenses to be established and collected as hereinafter provided (Regular Assessments and annual Assessments are for convenience of reference collectively referred to as "Assessments"); and, (c) Individual Charges levied against an individual Owner, to be established and collected as provided in this Declaration and in the other Project Documents.

All Assessments and Individual Charges, together with any late charges, interest, collection costs and reasonable attorney's fees incurred in collecting delinquent Assessments and Individual Charges, shall be the obligation of the Owner of such Unit at the time when the Assessments or Individual Charges fell due. If more than one person or entity was the Owner of a Unit at the time the Assessments or Individual Charges fell due, the obligation to pay each Assessment and Individual Charge shall be joint and several. The obligation for delinquent Assessments and Individual Charges shall not pass to any transferee unless expressly assumed by him/her. No Owner may exempt him/herself from liability for his Assessments or Individual Charges obligation by waiver of the use or enjoyment of any of the Project.

If an Owner has a dispute with the Association regarding an assessment levied by the Association, the Owner may pay the assessment under protest in accordance with the procedures set forth in Civil Code Section 1366.3 or any successor statute thereto.

8.02. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for paying the costs of and creating reserves for the costs of all obligations which the Association is authorized or obligated to perform as described in this Declaration.

8.03. Common Facility Assessment Exemption. The Declarant and any other Owner of a Unit may be exempt by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments shall be in effect only until the earlier of the following events:

- a) A Notice of Completion of the common facility has been recorded; or,
- b) The common facility has been placed into use.

8.04. Regular Annual Assessments and Special Assessments. The provisions of this subsection entitled "Regular Annual and Special Assessments" are intended to comply with Civil Code Sections 1366(a) and (b) as presently in effect. If said Civil Code sections are amended in any manner, the provisions of this Subsection automatically shall be amended in the same manner, provided that if Section 1366(b) is repealed and no successor statute is enacted with respect to restrictions on assessments, the provisions of this Subsection shall remain in full force and effect. Civil Code Sections 1366(a) and (b) may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

Regular Annual Assessments shall be payable in equal monthly installments, due on the first day of each month, unless the Board adopts some other basis for collection.

Notwithstanding any other provisions contained in this section, the Board may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.

8.05. Quorum. For the purposes of establishing "Assessments" above, a quorum means more than 50% of the Members of the Association. In addition, any meeting or election of the Association for purposes of complying with this section and the subsection above entitled "Regular Annual Assessments and Special Assessments" shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

8.06. Division of Regular and Special Assessments. A portion of the Regular and Special Assessments shall be levied against each Unit in the Project (and its Owner) unequally, based on a fraction, the numerator of which is the square footage of the living Unit to be assessed and the denominator of which is the total square footage of the living areas of all Units to be assessed, as set forth on Exhibit "B" attached hereto. The following common services provided to the Units shall be unequally prorated among the Units based upon the assessment fraction as derived above: insurance; gas serving the Condominium Units, laundry rooms, plumbing room, and recreation room; water serving the Condominium Units; paint reserve for the Condominium Buildings; and roof reserve for the Condominium Buildings. The balance of all remaining responsibilities of the Association shall be equally prorated among all Units in the Project subject to assessment.

8.07. Individual Charges. Individual charges may be levied against a Member as follows:

- a) As a monetary penalty imposed by the Association as a disciplinary measure for the failure of a Member to comply with the Project Documents, or;
- b) As a means of reimbursing the Association for costs incurred by the Association for the repair of damage to Common Areas and facilities for which the Member was responsible, or to otherwise bring the Member and his/her Unit into compliance with the Project Documents. Such individual charges (other than reasonable late charges, interest, costs of collection and reasonable attorneys' fees related to the collection of Assessments) are not enforceable through the lien provisions of the Project Documents. All individual charges shall comply with California Civil Code Section 1366 to the extent that it is applicable.

8.08. Delinquent Assessments. Regular and Special Assessments levied pursuant to this Declaration are delinquent 15 days after the date they become due. If an assessment is delinquent, the association may recover all of the following:

- a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
- b) A late charge not exceeding ten percent of the delinquent assessment or ten dollars, whichever is greater.
- c) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed ten percent interest, commencing thirty days after the assessment becomes due.

8.09. Commencement of Assessments and Individual Charges. The right to levy Assessments and Individual Charges shall commence as to Units on the close of escrow for the first conveyance of a Unit in the Project. Regular Assessments shall commence as to all Units on the first day of the month following the first conveyance of a Unit under authority of a Final Public Report. Thereafter, Regular Assessments shall be levied on the first day of each month.

8.10. Assessment Lien. Each delinquent Assessment or installment shall be a charge and a continuing lien upon the Unit against which each Assessment is made, the lien to become effective upon recording of a Notice of Delinquent Assessment, subject to any costs of collection (including attorney's fees), late charges, and interest, by taking the following steps:

(a) At least 30 days prior to recording a lien upon the Owner's Unit to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following ("Delinquency Notice"):

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Unit has the right to inspect the Association records pursuant to section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION".

(2) An itemized statement of the charges owed by the Owner including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, and any late charges and interest if any.

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(4) The right to request a meeting with the Board.

(b) Any payments made by the Unit Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorney's fees, late charges and/or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of assessments.

(1) An Owner may dispute the delinquent assessment no later than 15 days of the postmark of the Delinquency Notice by submitting either personally or by mail to the Board a written explanation of the reason(s) for his or her dispute. The Board shall respond to the Owner within 15 days of the explanation.

(2) An Owner may submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. The Association shall provide the Owners the standards for payment plans if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the Delinquency Notice. If there is no regularly scheduled Board meeting within that period, the Board may designate a committee of one or more Members to meet with the Owner.

(c) The amount of the assessment, plus any costs of collection, late charges and interest assessed, shall be a lien on the Owner's Unit from and after the time the Association causes to be recorded with the County recorder of the County in which the Unit is located a notice of delinquent assessment. Said notice shall state the amount of assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's interest in the Project against which the assessment and other sums are levied, and the name of the record owner of the Owner's interest in the Project against which the lien is imposed in order for the lien to be enforced by nonjudicial foreclosure, (as provided herein). The notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by any officer of the Association or by the person designated by the Association for that purpose, and mailed in the manner set forth in Civil Code Section 2924b to all record owners of the Owner's interest in the Project no later than 10 calendar days after recordation.

Within 21 days of the payment of the sums specified in the notice of delinquent assessments, the Association shall record or cause to be recorded in the office of the County recorder a lien release or notice of rescission and provide the Owner of a copy of the lien release, or a notice that the delinquent assessment has been satisfied.

A monetary charge imposed by the Association: (i) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area Improvements or landscaping for which the Member or the Member's guests or tenants were responsible; or (ii) as a disciplinary measure for failure of a Member to comply with the governing instruments (except for the late payments), may not be characterized nor treated as an assessment that may become a lien against the Member's Unit enforceable by the sale of the interest under Civil Code Sections 2924, 2924b and 2924c.

(d) A lien created herein shall be prior to all other liens recorded subsequent to the notice of assessment, except as described in the Section entitled "Insurance, Destruction, Condemnation".

(e) Subject to the limitations of this Section, after the expiration of 30 days following the recording of a lien therein created, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code Sections 2924, 2924b and 2924c applicable to then exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

(f) If it is determined that a lien previously recorded against a Unit was recorded in error, the party who recorded the lien, within 21 calendar days, shall record or cause to be recorded in the office of the County recorder in which the notice of delinquent assessment is recorded, a lien release or notice of rescission and provide the Unit Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(g) If the Association fails to comply with the procedures set forth in this Section, prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Unit Owner.

The provisions of this Section are intended to comply with the requirements of Civil Code Section 1367.1 in the effect as of January 1, 2003. If these sections are amended or rescinded in any manner the provisions of this Section automatically shall be amended or rescinded in the same manner. Civil Code

Section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

## SECTION 9: ENFORCEMENT OF RESTRICTIONS

9.01. General. The Association or any Owner shall have the right to enforce compliance with the Project Documents in any manner provided by law or in equity, including without limitation, the right to enforce the Project Documents by bringing an action for damages, an action to enjoin the violation or to specifically enforce the provisions of the Project Documents, to enforce the liens provided for herein (except that no Owner shall have the right to enforce independently of the Association any Assessment, Individual Charge or Assessment lien created herein) and any statutory lien provided by law, including the foreclosure of any such lien and the appointment of a receiver for an Owner and the right to take possession of the Unit in the manner provided by law. In the event the Association or any Owner shall employ an attorney to enforce the provisions of the Project Documents against any Owner, the prevailing Party shall be entitled to reasonable attorneys' fees and costs in addition to any other amounts due as provided for herein. All sums payable hereunder by an Owner shall bear interest at the maximum rate permitted by law from the due date, or if advanced or incurred by the Association or any other Owner pursuant to authorization contained in the Project Documents, commencing 15 days after repayment is demanded. All enforcement powers of the Association shall be cumulative. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

9.02. Specific Enforcement Rights. In amplification of, and not in limitation of, the general rights specified in Section 9.01 above, the Association, or its authorized representative, shall have the following rights:

a) Enforcement by Sanctions.

i) Limitation. The Association shall have no power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his/her Unit on account of a failure by the Owner to comply with provisions of the Project Documents except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

ii) Disciplinary Action. The Association may impose monetary penalties, temporary suspensions of a reasonable duration (not to exceed 30 days per violation) of an Owner's rights as a Member of the Association or other appropriate discipline for failure to comply with the Project Documents. Notwithstanding the foregoing, the Association shall have no right to interfere with an Owner's right of ingress to or egress from his/her Unit.

If the Board adopts a policy imposing monetary penalties, the Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board may change the schedule from time to time and shall distribute a notice of such changes to the Members in the same manner as the schedule of penalties. The provisions of this paragraph are intended to comply with requirement of Civil Code Section 1363(g) as presently in effect. If the provisions of Section 1363(g) are amended or repealed in any manner, this paragraph automatically shall be amended or repealed in the same manner. Civil Code Section 1363(g) may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

If the Board meets to consider or impose discipline upon a Member, the Board shall notify the Member in writing, by either personal delivery or first-class mail, at least 10 days prior to the meeting. The notification shall contain, at minimum, the date, time, and place of the meeting, the nature of

the alleged violation for which a Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board of the Association shall meet in executive session if requested by the Member being disciplined. In such session, the Member, and, if applicable, the Member's counsel, and the Association's counsel shall be entitled to attend. In addition, the Board may interview witnesses and other appropriate parties to the disciplinary proceeding in executive session. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within 15 days following the action. A disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of this subsection. The provisions of this paragraph are intended to comply with requirement of Civil Code section 1363(h) presently in effect. If provisions of section 1363(h) are amended or repealed in any manner, this paragraph automatically shall be amended or repealed in the same manner. Civil Code section 1363(h) may be amended by the State Legislature, and the Board should confirm the current statutory requirements.

Before disciplinary action authorized under this section may be imposed by the Association, the Owner against whom such action is proposed to be taken shall be given notice and the opportunity to be heard in accordance with Section 7341 or the Corporations Code, as set forth in Section 12 of the Bylaws.

b) Suit to Collect Delinquent Assessments or Individual Charges. A suit to recover a money judgment for unpaid Assessments or unpaid Individual Charges, together with late charges, interest, costs and reasonable attorneys' fees shall be maintainable by the Association. In the case of unpaid Assessments, such suit shall be maintainable without foreclosing or waiving the lien securing such unpaid Assessments.

c) Transfer by Sale or Foreclosure. In a sale or transfer of a Unit, the obligation for delinquent Assessments or individual charges shall not pass to the transferee unless expressly assumed by him or her. The sale or transfer of any Unit shall not affect the Assessment lien, nor the right of the Association to impose a lien for Assessments which became due prior to such sale or transfer. However, the sale or transfer of any Unit pursuant to the exercise of a power of sale or judicial foreclosure involving a default under a First Mortgage shall extinguish the lien and right to lien for Assessments which became due prior to such sale or transfer. No transfer of the Unit as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former beneficiary of the First Mortgage or another person, from liability for any Assessments or individual charges thereafter becoming due or from the lien thereof.

d) Waiver of Homestead Benefits. Each Owner to the extent permitted by law, waives, to the extent of any liens created pursuant to the Project Documents, the benefit of any homestead or exemption laws of California in effect at the time any Assessment becomes due.



SECTION 10: BUDGETS, FINANCIAL STATEMENTS AND BANK ACCOUNTS

10.01. Proposed Budget. Not less than 75 days before the beginning of each fiscal year, the Board shall prepare or cause to be prepared, a proposed pro forma budget for the forthcoming fiscal year. Any Owner or Mortgagee may make written comments to the Board with respect to said pro forma operating budget. The pro forma operating budget shall be prepared consistently with the prior fiscal year's operating budget and shall include adequate reserves for contingencies and for maintenance, repair and replacement of the Common Area improvements, Units and Association personal property likely to need maintenance, repair or replacement in the future.

10.02. Adopt Budget. Not more than 120 days nor less than 45 days before the beginning of each fiscal year, the Board shall meet to review the proposed pro forma budget, any written comments received and any other information available to it and, after making any adjustments that the Board deems appropriate, shall adopt the budget and establish the Regular Assessment for the forthcoming fiscal year.

10.03. Budgets, Financial Statements. The following financial and related information shall be regularly prepared and distributed by the Board to all Members of the Association in accordance with Section 1365 of the Civil Code:

a) Budget. A copy of the budget, shall be annually distributed not less than 30 days and not more than 90 days prior to the beginning of the Association's fiscal year, which shall include all of the following:

i) The estimated revenue and expenses of the Association on an accrual basis;

ii) A summary of the Association's reserves based on the most recent reserves review or study conducted pursuant to Section 1365.5 of the Civil Code, which shall be printed in bold type and include all of the following:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component.

(2) As of the end of the fiscal year for which the study was prepared:

(a) The current estimate of cash reserves necessary to repair, replace, restore or maintain the major components; and,

(b) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components; and,

(3) The percentage that the amount in (ii) of sub-paragraph (b) is to the amount in (i) of sub-paragraph (b).

(iii) 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, or to provide adequate reserves therefor; and,

(iv) A general statement setting forth the procedures used by the Board in the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components for which the Association is responsible.

The summary of the Association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

b) Financial Statements. A review of the financial statements of the Association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000). A copy of the review of the financial statements shall be distributed within 120 days after the close of each fiscal year.

In lieu of the distribution of the operating budget referred to in subsection "a)" above entitled "Budget", the Board may elect to distribute a summary of the proforma operating budget to all Members of the Association with a written notice (in at least 10-point bold type on the front page) that the budget is available at the business office of the Association, or at a location within the Project's boundaries, and that copies will be provided upon request and at the expense of the Association. The Association must mail such copies of the pro forma operating budget, by first-class United States mail to any Member requesting same at the expense of the Association, which copies shall be mailed within five days from receipt of such request.

c) Statement of Enforcement Policies. In addition to financial statements, the Board shall annually distribute within 60 days prior to the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing lien right or other legal remedies against Members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against Members' Units.

10.04. Summary of General Liability and Earthquake and Flood Policies. A summary of the Association's General Liability and Earthquake and Flood policies (individually and collectively referred as the "Policy" or "Policies") shall be distributed to, all Members within 60 days preceding the beginning of the Association's fiscal year. The summary shall include the following information on the Policies:

- a) The name of the insurer.
- b) The type of insurance.
- c) The Policy limits of the insurance;
- d) The amount of deductibles, if any; and
- e) The Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the Policies have been canceled and not immediately renewed or restored or if there is a significant change, such as a reduction in coverage or limits, or an increase in the deductible for any Policy.

This summary shall contain, in at least 10-point boldface type, the following statement:

"This summary of the Association's policies of insurance provides only certain information as required by subdivision (e) of section 1365 of the Civil Code and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any member, upon request and reasonable notice, may review the Association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance brokers or agent for appropriate additional coverage."

The provisions of this Sub-section are intended to comply with the requirements of Civil Code Sections 1354(i), 1363.05(e) and 1365 as presently in effect. If these Civil Code Sections are amended or repealed in any manner, the provisions of this Sub-section shall be amended or repealed in the same manner. Civil Code Sections 1354(i), 1363.05(e) and 1365 may be amended by the State Legislature, and the Board should confirm the current statutory requirements.

10.05. Reserves and Reserves Study.

a) Reserves. Each annual regular assessment shall include a portion for reserves in such amount as the Board in its discretion considers appropriate to meet the cost of the future repair, replacement or additions to the major components that the Association is obligated to maintain and repair. Reserve funds may not be expended for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to maintain.

b) Transfer of Reserves. Notwithstanding the foregoing, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Project, temporarily delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in maintaining the integrity of these funds, and shall, if necessary, levy a special Assessment to recover the full amount of the expended funds within the time limits required herein. The Special Assessment is subject to the Assessment increase restrictions set forth in Subsection 8.4 (entitled "Regular Annual Assessments and Special Assessments") and Civil Code Section 1366(b). The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the Members of the Association of that

decision in the next available mailing to all Members pursuant to Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. Unless the governing documents impose more stringent standards, the Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members of the Association at the Association's office.

c) Reserve Study. At least once every three years, the Board shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated to repair, replace, restore, or maintain as a part of a study of the reserve account requirements of the Project if the current replacement value of the major components is equal to or greater than one-half of the gross budget of the Association, which excludes the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study shall, at a minimum, include:

- i) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years;
- ii) Identification of the probable remaining useful life of the components identified in subparagraph (i) as of the date of the study;
- iii) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in subparagraph (i) during and at the end of its useful life; and,
- iv) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life after subtracting total reserve funds as of the date of the study.

As used herein, "reserve accounts" means moneys that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and "reserve account requirements" means the estimated funds which the Board has determined will be required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

The provisions of the Subsection entitled "Reserves and Reserves Study" are intended to comply with the requirements of Civil Code Section 1365.5(c) and (d) as presently in effect. If these Civil Code sections are rescinded or amended in any manner, the provisions of the Subsection automatically shall be rescinded or amended in the same manner. Civil Code Sections 1365.5(c) and (d) may be amended by the State Legislature, and the Board should confirm the current statutory requirements.

10.06. Bank Accounts. The Association shall deposit all funds collected from Owners pursuant to the Section herein entitled "Assessments" and all other amounts collected by the Association as follows:

- a) General. All funds shall be deposited in a separate bank account ("General Account") with a bank located in California. The Association shall keep accurate books and records regarding such

account. Funds deposited in such account may be used by the Association only for the purposes for which such funds have been collected.

b) *Reserve.* Funds which the Association shall collect for reserves for capital expenditures relating to the repair and maintenance of the Common Area, and for such other contingencies as are required for good business practice shall, within ten days after deposit in the General Account, be deposited into an interest bearing account with a bank or savings and loan association selected by the Association, or invested in Treasury Bills or Certificates of Deposit or otherwise prudently invested, which shall collectively be referred to as the "Reserve Account". Funds deposited into the Reserve Account shall be held in trust and may be used by the Association only for the purposes for which such amounts have been collected.

SECTION 11. INSPECTION OF BOOKS AND RECORDS

11.01. Inspection by Members.

a) Commencing not later than 90 days after the close of escrow of the first Unit in the Project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by the Declarant to the Board of the Association at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last subdivision interest covered by a Final Public Report or (ii) three years after the expiration of the most recent Public Report for the Project:

- (1) A copy of the recorded subdivision Map or Maps for the Project.
- (2) The recorded Condominium Plan, if any, and all amendments thereto.
- (3) The deeds and easements executed by the Declarant conveying the Common Area or other interest to the Association, to the extent applicable.
- (4) The recorded Declaration for the Project, including all amendments and annexations thereto.
- (5) The Association's filed Articles of Incorporation, and all amendments thereto.
- (6) The Association's Bylaws and all amendments thereto.
- (7) All architectural guidelines and all other rules regulating the use of an Owner's interest in the Project or use of the Common Area which have been promulgated by the Association.
- (8) The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- (9) All Notice of Completion certificates issued for Common Area improvements (other than residential structures).
- (10) Any bond or other security device in which the Association is the beneficiary.
- (11) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements.
- (12) Any insurance policy procured for the benefit of the Association, its Board or the Common Area.
- (13) Any lease or contract to which the Association is a party.

(14) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, of the Board and of committees of the Board.

(15) Any other instrument which establishes or defines the common, mutual or reciprocal rights or responsibilities of Owners or Members of the Association.

b) If the Project is phased, commencing not later than 90 days after the annexation of additional phases to the Project, copies of those documents listed under subdivision a) which are applicable to that phase, shall as soon as they are readily obtainable, be delivered by Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed in subsection a) shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last subdivision interest covered by a Final Public Report or (ii) three years after the expiration of the most recent Final Public Report for the Project.

c) The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members, the Board, and of committees of the Board shall be made available for inspection and copying by any Member of the Association or by his/her duly-appointed representative at any reasonable time and for a purpose reasonably related to his/her interest as a Member at the office of the Association or at such other place within the Project as the Board shall prescribe.

d) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board, other than an executive session, shall be available to Members within 30 days of the meeting and shall be distributed to Members only upon request and payment of the fee prescribed in Section 11.02(c) below.

At the time the pro forma operating budget is distributed as required by Section 10 or at the time of any general mailing, Members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the Board and as to how and where those minutes may be obtained and the cost of obtaining such copies.

11.02. Rules for Inspection by Members. The Board shall establish reasonable rules with respect to:

- a) Notice to be given to the custodian of the records by the Member desiring to make the inspection;
- b) Hours and days of the week when such an inspection may be made; and,
- c) Payment of the costs of reproducing copies of documents requested by a Member.

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

11.04. Review of Financial Records. The Board shall review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account.

statements prepared by the financial institution where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

11.05. Reserve Account Withdrawal Restrictions. The Board shall require that at least two signatures be needed for the withdrawal of monies from the Association's reserve accounts, which signatures shall be either those of Members of the Board or of one Member of the Board and of one officer who is not a Member of the Board.



SECTION 12: INSURANCE, DESTRUCTION, CONDEMNATION

12.01. **Insurance.** In addition to other insurance required to be maintained by the Project Documents, the Association, through its Board, shall obtain from generally accepted insurance carriers, and maintain in effect at all times, the following insurance at common expense:

a) **Liability Insurance.** The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, its officers and directors, and each Owner against any liability incident to the ownership, use or maintenance of the Common Area, including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$3,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance may include protection against water damage liability, liability for nonowned and hired automobiles, liability for property of others, and such other risks as are customarily covered with respect to projects similar in construction, location and use. Such policy may provide for a reasonable deductible.

b) **Fire, Casualty and Extended Coverage Insurance.** The Association shall also obtain and maintain a policy of fire, casualty and extended coverage insurance for the full insurable replacement value (without deduction for depreciation) of all of the improvements within the Project (including the Common Area and all Units). Such policy may provide for a reasonable deductible. The form, content, term of policy, its endorsements and the issuing company shall meet the reasonable standards of all First Mortgagees and shall be consistent with good sound insurance coverage for properties similar in construction, location and use. The policy shall name as insured the Association for the benefit of the Owners and Declarant, as long as Declarant is the Owner of any Unit, and all Mortgagees as their respective interests shall appear, and may contain a loss payable endorsement in favor of any trustee described below.

c) **Individual Fire Insurance Limited.** Except as provided in this Section, no Owner shall separately insure his/her Unit against loss by fire or other casualty covered by any insurance carried under Section 12.01(b). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described above that results from the existence of such other insurance shall be chargeable to the Owner who acquired other insurance, and such Owner shall be liable to the Association to the extent of any such diminution. An Owner may insure his/her personal property against loss. In addition, any improvements made by an Owner to his/her Unit may be separately insured by the Owner, but the insurance is to be limited to the nature of coverage commonly known as "tenant's improvements". All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, Declarant and the First Mortgagee of such Unit.

d) **Trustee.** All fire, casualty and extended coverage insurance proceeds payable under Section 12.01(b) above for losses to real property and improvements may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. Said trustee shall be a commercial bank, savings and loan or trust company in the county in which the Project is located that agrees in writing to accept such trust.

e) **Other Insurance.** The Board shall purchase and maintain Worker's Compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount equal to at least one fourth (1/4) of the total sum budgeted for the current operation account and reserve account for the current fiscal year and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any First Mortgagee. The Board

shall also purchase and maintain insurance on personal property owned by the Association, and any other insurance that it deems necessary, that is required by any First Mortgagee or that is customarily obtained for projects similar in construction, location and use.

f) Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 12.01(a), (b) and (c). With respect to these sections, the Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

g) Officer and Director Insurance. The Association may purchase and maintain insurance in an amount up to \$500,000 on behalf of any Director, Officer, or Member of a committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Association would have the power to indemnify the agent against such liability under applicable law.

h) General Provisions. To the extent possible, the Board shall make every reasonable effort to secure insurance policies providing for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Board, Association, Directors, Officers, Declarant, the manager, the Owners and their respective servants, agents and guests;

(ii) That the policy will be primary, even if an Owner has other insurance which covers the same loss;

(iii) That no policy may be cancelled or substantially modified without at least ten days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;

(iv) An agreed amount endorsement, if policy contains a coinsurance clause;

(v) A guaranteed replacement cost or replacement cost endorsement; and

(vi) An inflation guard endorsement.

i) Notice of Cancellation. All insurance carried by the Association shall require the insurer to notify any First Mortgagee and Declarant requesting such notice at least 15 days prior to the effective date of any reduction or cancellation of the policy.

j) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is adequate. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements without respect to depreciation. The Board shall adjust the policies to provide the amounts and types of coverage and protection that are customarily carried by prudent owners of similar property in the area in which the Project is situated.

k) Payment of Premiums. Premiums on insurance maintained by the Association shall be a common expense funded by Assessments levied by the Association.

1) Actions Against Owners. Any cause of action in tort against any Owner of a Unit arising solely by reason of an ownership interest as a tenant in common in the Common Area shall be brought only against the Association and not against the individual Owner of the Unit if both of the insurance requirements in the following paragraphs (1) and (2) are met:

i) The Association maintained and has in effect for this cause of action, one or more policies of insurance which include coverage for general liability of the Association.

ii) The coverage described in paragraph (i) is in the following minimum amounts:

a) At least two million dollars (\$2,000,000) if the Project consists of 100 or fewer Units.

b) At least three million dollars (\$3,000,000) if the Project consists of more than 100 separate interests.

m) Other Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies (except earthquake insurance) shall be written with a company legally qualified to do business in the State of California and (i) holding a "B" or better general policyholder's rating and a "6" or better financial performance index rating as established by Best's Insurance Reports, (b) reinsured by a company described in (i), above, or (c) if such a company is not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Owners. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(d) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(e) Term: The period of each policy shall not exceed three years. Any policy for a term greater than one (1) year must permit short rate cancellation by the insureds.

(f) Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

n) Annual Notice to Members: The Association shall provide a summary of the Association's property damage, general liability, earthquake and flood insurance policies as required by Section 1365 of the California Civil Code.

12.02. Damage and Destruction. The term "restore" shall mean repairing, rebuilding or reconstructing a damaged Common Area Improvement to substantially the same condition and appearance in which it existed prior to fire or other casualty damage. If fire or other casualty damage extends to any Common Area which is so insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies and shall represent all Owners in such proceedings. The insurance proceeds shall be paid to and held by the Association for the benefit of the Owners and their Mortgagees.

a) Bids: Whenever restoration is to be performed pursuant to this Section, the Board shall obtain such bids from responsible licensed contractors to restore the damaged Common Area as the Board deems reasonable; and the Board, on behalf of the Association, shall contract with the contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion bond naming the Association and each Owner as beneficiaries.

b) Sufficient Proceeds: The costs of restoration of damaged Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Common Area, the Board shall then add to the insurance proceeds all Reserve Account funds designated for the repair or replacement of the capital Improvement(s) which has been damaged. If the total funds then available are sufficient to restore the damaged Common Area, the damaged Common Area shall be restored. If the aggregate amount of insurance proceeds and such Reserve Account funds are still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in elsewhere in this Declaration. If the total funds then available are sufficient to restore the damaged Common Area, the damaged Common Area shall be restored. If the total funds then available are still insufficient to restore the damaged Common Area, then the Board shall attempt to first impose an additional Special Assessment pursuant to Sub-section c), below; secondly, use a plan of alternative reconstruction pursuant to Section d), below; and lastly, purchase the damaged Units pursuant to Sub-section e). If the Members do not approve action under Sub-sections c), d), e), then the entire Project shall be sold by the Board pursuant to Sub-section f), below.

c) Additional Special Assessment: If the total funds available to restore the damaged Common Area as provided in Sub-section b), above, are insufficient, then a meeting shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by each class of Members, together with the amounts available pursuant to Sub-section b), above, is sufficient to restore the damaged Common Area, the damaged Common Area shall be restored. If the amount of the Special Assessment approved by each class of Members, together with the amounts available pursuant to Sub-section b), above, is insufficient to restore the damaged Common Area or if no additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Sub-section d), below.

d) Alternative Reconstruction: The Board shall consider and propose plans to reconstruct the damaged Common Area making use of whatever funds are available to it pursuant to Sub-section b) and whatever funds, if any, are available to it pursuant to Sub-section c), above,

("Alternative Reconstruction"). All proposals shall be presented to the Owners. If one hundred percent (100%) of the Owners whose Units were directly affected by the damage to Common Area ("Affected Owners") and a majority of the Members (including the Affected Owners) agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Common Area in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the Association shall consider purchasing the Units of the Affected Owners pursuant to Sub-section e), below.

e) Purchase of Units of Affected Owners: If no plan of Alternative Reconstruction is agreed to within six months after the date of the damage, then the Board shall seek to obtain the approval of all Affected Owners and their Mortgagees to the Association's purchase of the Condominiums of the Affected Owners. The purchase price ("Purchase Price") for each Condominium shall be the fair market value of the Condominium immediately prior to the damage as determined by an independent appraiser selected by the Board with a "Member of the Appraisal Institute" certificate or the equivalent. If a majority of the Members (including the Affected Owners) agree to the purchase, the Association shall purchase the Condominiums of the Affected Owners who, together with all of their Mortgagees, agree to the purchase. If there are insufficient funds to pay the Purchase Price for all Condominiums owned by Affected Owners who, together with all of their Mortgagees, agree to the purchase, then a Special Assessment shall be levied against all Owners. The aggregate amount of the Special Assessment shall be the amount needed to pay the difference between the aggregate amount of available funds (pursuant to Sub-sections b) and c)) and the aggregate fair market values of the Condominiums to be purchased.

f) Sale of Entire Project: If the aggregate amount of funds available for restoration of the Common Area is insufficient to restore the damaged Common Area, Alternative Reconstruction (as defined in Sub-section d), above,) cannot be agreed to, and the Owners did not approve a purchase pursuant to Sub-section e), then the Board shall be empowered to sell the entire Project, including all Units and the Common Area in their then present condition, on terms to be determined by the Board. If the entire Project is sold, the proceeds from the sale, together with the insurance proceeds received and any balance of funds held by the Association, shall be distributed among those Owners who then own Condominiums and their respective Mortgagees in proportion to the respective fair market values of the Condominiums immediately prior to the destruction, as determined by an independent appraisal made by an independent real estate appraiser with a Member of the Appraisal Institute certificate or the equivalent as selected by the Board.

### 12.03. Condemnation.

a) Sale in Lieu. If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental or quasi-governmental or other entity having the right of eminent domain, then on the unanimous written consent of all of the Owners and subject to the rights of all Mortgagees, the Project, or a portion of it, may be sold by the Board acting as irrevocable attorney-in-fact of all of the Owners for a price deemed fair and equitable by the Board but in no event less than the aggregate unpaid balance of all Mortgages encumbering Condominiums in the Project.

b) Distribution of Proceeds of Sale. On a sale occurring under Section 12.03(a), if the agreement of sale does not by its terms apportion the sale proceeds among the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the sale, in accordance with SREA Standards. The sale

proceeds shall then be apportioned among the Owners, and their respective Mortgagees, according to such relative values.

c) Distribution of Condemnation. Distribution of Condemnation Award. If the Project, or a portion of it, is not sold but is instead taken, the judgement of condemnation shall by its terms apportion the award among the Association (for condemnation expenses occurred), the Owners and their respective Mortgagees. If the judgement of condemnation does not by its terms apportion the award among the Association, the Owners and their respective Mortgagees, the Board shall select an independent SREA appraiser who shall determine the relative fair market values of the Condominiums affected by the condemnation, in accordance with SREA Standards. The award shall then be apportioned among the Association, the Owners, and their respective Mortgagees, equitably, according to such relative values. Ordinarily, proceeds are distributed in the following order of priority: (1) the Association, to reimburse it for its condemnation expenses; (2) the Owners and their Mortgagees whose Units were taken; (3) the Owners and their Mortgagees whose Units lost value because of the condemnation; and (4) any remaining balance to all Owners and their Mortgagees.

12.04. Mechanics Liens. If a notice of mechanic's lien is filed against the Project for labor or material alleged to have been furnished to or delivered for any Owner within the Project or at that Owner's Unit, the Owner shall immediately cause the lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may provide Notice and Hearing to the Owner to determine the effect of the lien and any offsets or defenses thereto. At the hearing, if the Board determines that the lien adversely and improperly affects and encumbers the ownership interests of other Owners and that no adequate protection of the interests of other Owners has been provided, the Board may cause the lien to be discharged by payment, bond or otherwise. The Board shall then levy a Individual Charge against the Owner(s) responsible for the existence of the lien. If the Board determines that the lien does not adversely affect the interests of other Owners, it may take whatever other action may be necessary to properly protect the interests of the Owners.

### SECTION 13: MORTGAGEE PROTECTIONS

13.01. Mortgages Permitted. Any Owner may encumber his/her Unit with Mortgages.

13.02. Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in the Project Documents by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Unit or any part thereof. Any lien which the Association may have on any Unit in the Project for the payment of common expense assessments attributable to such Unit will be subordinate to the lien or equivalent security interest of any first mortgage on the Unit recorded prior to the date of recordation of a notice of delinquent assessment.

13.03. Payment of Taxes or Premiums by Mortgagees. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Mortgagees shall be governed by the provisions of their Mortgages. Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for the Common Area and Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any Mortgagee which requests the same to be executed by the Association.

13.04. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

13.05. Mortgagee's Rights. A First Mortgagee's rights shall include, but not be limited to, the following:

a) Attend Meetings. Any First Mortgagee, upon written request, shall receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

b) Furnish Information. Any Mortgagee may furnish information to the Board concerning the status of any Mortgage.

c) Inspect Books and Records. The Association shall make available to Owners, prospective purchasers and First Mortgagees current copies of the Project Documents and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours.

In addition, if the project contains 50 or more Units, the Association must provide an audited financial statement for the immediately preceding fiscal year if the First Mortgagee submits a written request for it. Said financial statement shall be furnished by the Association within a reasonable time following such request. If the project contains fewer than 50 Units and there is no audited financial statement available, any First Mortgagee should be allowed to have an audited financial statement prepared at its own expense.

13.06. No Restrictions on Owner's Right to Ingress and Egress. Except as allowed in Section 16.09, there shall be no restriction upon any Owner's right to ingress and egress from his/her Unit, which right shall be perpetual and appurtenant to his/her Unit ownership.

13.07. Notices to Mortgagees. Upon written request to the Association, any First Mortgagee shall be entitled to timely written notice of the following:

- a) Any proposed amendment to the Project Documents effecting a change in:
  - i) The boundaries of any Unit or the exclusive use rights appurtenant thereto, if any;
  - ii) The interests in the general or Exclusive Use Common Areas, if any, appurtenant to any Unit or the liability for common expenses appurtenant thereto;
  - iii) The number of votes in the Association appurtenant to any Unit; or,
  - iv) The purposes to which any Unit or the Common Area are restricted.
- b) Any proposed termination of the legal status of the Project as a condominium.
- c) Any condemnation or casualty loss which affects either a material portion of the Project or any Unit on which there is a First Mortgage held, insured or guaranteed by such requesting Party.
- d) Any 60-day delinquency in the payment of Assessments or Individual Charges owed by an Owner subject to a First Mortgage held, insured or guaranteed by such requesting Party.
- e) Any default in the performance by the affected Owner of any obligation under the Project Documents which is not cured within 60 days.
- f) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- g) Any proposed action which requires the consent of a specified percentage of First Mortgagees as specified in Section 13.08.

13.08. FNMA, FHLMC, FHA, VA Mortgages.

- a) Conditions When This Section Applicable. The provisions of this Section 13.08 shall apply if any of the following conditions exist pertaining to First Mortgages on any of the Units:
  - i) Any First Mortgage is sold or transferred to FNMA;
  - ii) Any First Mortgage is sold or transferred to FHLMC; or,
  - iii) Any First Mortgage is FHA insured or a Veterans Affairs ("VA") mortgage.
- b) Approval of Material Amendments. The approval of 67% of the total voting power of the Association and 51% or more of the Eligible First Mortgagees (based upon one vote for each first



mortgage owned) must be obtained for amendments of a material nature to the Project Documents. A change to any of the following would be considered as material:

- i) Voting rights;
- ii) Assessments, assessment liens, or subordination of assessment liens;
- iii) Reserves for maintenance, repair and replacement of common areas or any other portions of the Project which the Association has a duty to maintain, repair and replace;
- iv) Responsibility for maintenance and repairs;
- v) Reallocation of interests in the general or Exclusive Use Common Areas, if any, or rights to their use;
- vi) Boundaries of any Unit;
- vii) Convertibility of Units into Common Area or vice-versa;
- viii) Expansion or contraction of the Project or the addition, annexation or withdrawal of Property to or from the Project;
- ix) Insurance or fidelity bonds;
- x) Leasing of Units;
- xi) Imposition of any right of first refusal or similar restriction on a Unit Owner's right to sell, transfer or convey his/her Unit;
- xii) A decision by the Owner's Association to establish self management when professional management has been required previously by a First Mortgagee;
- xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or,
- xv) Any provisions that expressly benefit First Mortgagees, insurers or guarantors.

An addition or amendment to the Project Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

If an addition or amendment is not considered as a material change, approval will be implied when a First Mortgagee fails to submit a response to any written proposal for an amendment within 30 days after the proposal is submitted.

- c) Termination of Legal Status. Except as provided above, any election to terminate the legal status of the Project as a condominium must be approved by at least 67% of the voting power of the Association and 67% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.
- d) Reallocation of Interests in the Common Area. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project shall be effected without the approval of 51% of the Eligible First Mortgagees based upon one vote for each First Mortgage owned.
- e) Restriction on Certain Changes. Unless at least 66-2/3% of the First Mortgagees (based on one vote for each First Mortgage owned) and 66-2/3% of the Owners other than Declarant have given their prior written approval, the Association shall not:
  - i) By act or omission seek to abandon or terminate the Condominium Project;

ii) Change the pro rata interest or obligations of any condominium Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium Unit in the common elements;

iii) Partition or subdivide any Condominium Unit;

iv) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission. The granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the Condominium Project is not a transfer within the meaning of this clause; or,

v) Use hazard insurance proceeds for losses to any Condominium Property (whether Units or common elements) for other than the repair, replacement, or reconstruction of the Condominium Property.

f) No Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey his/her Unit shall not be subject to any "right of first refusal" or similar restriction.

g) Foreclosure Eliminates Unpaid Assessments. Each holder of a first mortgage lien on a Unit who comes into possession of the Unit by virtue of foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid Assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a pro rata share of such Assessments or charges resulting from a pro rata reallocation of such Assessments or charges of all Project Units, including the mortgaged Unit.

h) Mortgage Priority in Case of Distribution. No provision in any Project Document will entitle a Unit Owner or other Party to priority over any rights of the First Mortgagee on the Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of the Unit and/or Common Area.

i) Working Capital Fund. If required by FHA, VA, FNMA or FHLMC as a condition of qualifying the Project for any mortgage purchase, guarantee or other related program, a working capital fund shall be established for the Project by the contribution to such fund, by the Owners and Declarant, of a sum not to exceed the amount of two months Regular Assessments for each Unit owned. Any amounts paid into this fund should not be considered as advance payments of regular assessments. Each Unit's share of the working capital fund should be collected at the time the sale of the Unit is closed and then should be transferred to the Association for deposit to a segregated fund. Within 60 days after closing has been held for the first Unit, the Declarant shall pay each unsold Unit's share of the working capital fund to the Association. The Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Units are sold.

j) Leasing Restrictions. No Owner shall be permitted to lease his/her Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. Any lease or rental agreement must be in writing and be subject to the provisions of the Project Documents. No Unit may be leased or rented for less than 30 days.

k) Taxes Relate Only to Individual Units. All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

13.09. FHA/VA Approval. During any period of time that a mortgage on any portion of the Project is held, insured or guaranteed by FHA or VA, and as long as there is a Class B Membership, the following actions shall require the prior approval of FHA or VA: amendment of the Project Documents, annexation of additional property, dedication or mortgaging of the Common Area, merger or consolidation of the Association with another corporation.

13.10. Additional FHA Provisions. If loans secured by mortgages encumbering Units within the development qualify for mortgage insurance by FHA, the following shall apply:

All Owners, tenants and occupants of Units in the development covenant and agree that the administration of the development shall be in accordance with the terms and provisions of the Regulatory Agreement (FHA Form No. 3278) executed by FHA and the Association and that such terms and provisions of said Regulatory Agreement shall be fully complied with.

To the extent any matters in this Declaration or in the Articles or the Bylaws are in any way inconsistent with any matters in said Regulatory Agreement if in effect, then said Regulatory Agreement shall prevail. The right to lease Units in the development shall be subject to all terms and provisions of said Regulatory Agreement.

In the event of any conflict between any of the provisions of this Section and any other provisions of this Declaration, the provisions of this Section shall control.

Any provision of this Declaration which confers a power or right upon the FHA or the Federal Housing Commissioner and all of the provisions of the Regulatory Agreement shall be inapplicable whenever there are no Units where FHA insures the mortgage held by any First Mortgagee.

Whenever a notice is required to be sent to a Mortgagee holding an FHA insured mortgage or the approval of FHA is required, the notice or the request for approval shall be sent to the supervisor of the FHA office that has jurisdiction in which the project is located. If the FHA does not respond to a request within 20 days after the notice is mailed or delivered, then the FHA shall be deemed to have approved the request.

13.11. Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intends that the Project shall comply with all of the requirements of the Federal Housing Administration ("FHA"), the Department of Veterans Affairs ("VA"), the Federal Home Loan Mortgage Corporation ("FHLMC") and the Federal National Mortgage Association ("FNMA"). All casualty and liability insurance covering any portion of the Project encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Unit Owners also agree that in the event the Project or the Project Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required to conform such Project Documents, or the Project, to the FHA/VA, FHLMC or FNMA requirements, subject to the review and approval of the California Department of Real Estate, in accordance with applicable law, so long as the Department of Real Estate retains jurisdiction.

13.12. Waivers. A Mortgagee may waive any requirement contained in this Declaration as it pertains to such Mortgagee, provided that such waiver shall be in writing.

13.13. **Conflicts.** In the event of a conflict between any of the provisions of this Section 13 and any other provisions of this Declaration, the provisions of this Section 13 shall control.

#### SECTION 14: ENFORCEMENT OF BONDED OBLIGATIONS

If any Common Area improvements in the Project have not been completed prior to the issuance of the Final Public Report and the Association is obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete such improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

A special meeting of Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held not less than 35 days nor more than 45 days after receipt by the Board of a petition for such meeting signed by Members representing 5% or more of the total voting power of the Association. At such special meeting, a vote of a majority of the voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## SECTION 15. AMENDMENTS

15.01. Prior to First Conveyance. Prior to close of escrow on the conveyance of the first Unit, Declarant may amend or revoke this Declaration subject to the requirements of Business and Professions Code Sections 11012 and 11018.7.

15.02. After First Conveyance. After conveyance of the first Unit, this Declaration may be amended or revoked only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the voting power of each class of Members of the Association. If only one class of Membership exists at the time an amendment is proposed, then it must be approved by at least a bare majority of the total voting power of the Association, which shall include at least a bare majority of the votes of Members other than Declarant. The percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause or provision.

15.03. Recordation. Any amendment must be recorded and shall become effective only upon being recorded in the County Recorder's Office.

15.04. Unanimous Consent for Specific Amendments. The consent of all Owners shall be required for any amendment of Project Documents effecting a change in:

- a) the boundaries of any Unit;
- b) the interest in the common elements pertaining to the Unit or the liability for Common Expenses appertaining thereto;
- c) the number of votes in the Owners Association appertaining to the Unit; or,
- d) the fundamental purposes to which any Unit or the common elements are restricted.

15.05. FHA Requirements. Notwithstanding any provision of this Section to the contrary, all requirements of Section 13.09 must be met in order to effectuate any amendment or revocation pursuant to this Section.

## SECTION 16: GENERAL PROVISIONS

16.01. Term. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be binding on the Association and the Owners of any Units, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of 30 years from the date this Declaration is recorded. Thereafter, subject to the Section above entitled "Amendments", they shall be automatically extended for successive periods of 10 years.

16.02. Owner's Compliance. Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration), the Project Documents and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, for injunctive relief, or to enforce such provisions, decisions or resolutions.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Project Documents shall be deemed to be binding on all Owners of Units, their successors and assigns.

16.03. Notices. Any notice permitted or required by the Project Documents may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered 72 hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Unit of such person if no address has been given to the Secretary.

16.04. Notice of Transfer. No later than 15 days after the sale or transfer of any Unit under circumstances whereby the transferee becomes the Owner thereof, the transferee shall notify the Association in writing of such sale or transfer. Such notice shall set forth:

- a) the Unit involved;
- b) the name and address of the transferee and transferor; and,
- c) the date of close of escrow.

Unless and until such notice is given, the Association shall not be required to recognize the transferee for any purpose, and any action taken by the transferor as an Owner may be recognized by the Association. Prior to receipt of any such notification by the Association, any and all communications required or permitted to be given by the Association shall be deemed duly given and made to the transferee if duly and timely made and given to said transferor.

16.05. Delivery of Project Documents to Transferee. Prior to the transfer of title to a Unit, the transferor shall provide to the prospective transferee a copy of the Project Documents and such other documents and information as are required by California Civil Code Section 1368.

16.06. Easements Reserved and Granted. Any easements appurtenant to a Unit referred to in this Declaration shall be deemed reserved and/or granted by reference to this Declaration in a deed to said Unit.

16.07. Termination of any Responsibility of Declarant. If Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or corporation, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or corporation shall be obligated to perform all such duties and obligations of the Declarant.

16.08. Mergers and Consolidations. To the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit organizations organized for the same purposes as this Association, provided that any such merger or consolidation shall have the written consent of all of the Members or the assent by vote of two-thirds of the Members voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be given to all Members at least thirty days in advance, and must comply with the annexation provisions contained in Section 3, incorporated herein by reference.

16.09. Limitation of Restrictions on Declarant. Nothing in this Declaration shall be understood or construed to:

- a) Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Unit, whatever is reasonably necessary or advisable in connection with the completion of said work; or,
- b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Property as a residential community and disposing of the same in parcels by sale, lease, or otherwise; or,
- c) Prevent Declarant from conducting on any part of the Property its business of completing said work and of establishing a plan of ownership and of disposing of said Property in Units by sale, lease or otherwise; or,
- d) Prevent Declarant from maintaining such sign or signs on any of the Property as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his/her Unit or the Common Area.

The foregoing limitations of the application of the restrictions to Declarant shall terminate upon the sale of Declarant's entire interest in the Project, or three years after the close of the first escrow, whichever occurs earlier.

Any action taken by Declarant pursuant to any provision of this Section will not unreasonably interfere with the Owners' rights and use of the project.

16.10. Successor. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

16.11. Severability. Should any provision or portion hereof be declared invalid or in conflict with any law within the jurisdiction where this Project is located, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.



16.12. Estoppel Certificate. Within ten days of the mailing or delivery of a written request by an Owner, the Board shall provide the Owner with a written statement containing the following information:

a) whether to the knowledge of the Association, the Owner or the Owner's Unit is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules;

b) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and,

c) the amount of any assessments levied against the Owner's Unit that are unpaid as of the date of the statement, including any late charges, interest, or cost of collection that as of the date of the statement are or may be made a lien against the Owner's Unit as provided by this Declaration, the Articles, Bylaws, or Association Rules.

16.13. Conflict with Project Documents. If there is a conflict among or between the Project Documents, the provisions of this Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Articles, Bylaws, and Rules and Regulations of the Association.

16.14. Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

## SECTION 17- DISCLOSURES

Because of the information included in this Section has been obtained from other sources (e.g. governmental and other public agencies and public records) and is subject to change for reasons beyond the control of Declarant and the Association, the Declarant and the Association undertakes to advise Owners of any changes affecting the disclosures in this Section. Owners should make their own investigations to determine the current status of the matters addressed in this Section.

17.01 No Representation or Warranties. No representation or warranties, express or implied, have been given or made by Declarant, the Association or their agents in connection with the Properties, its physical condition, zoning, compliance with laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned residential development, except as expressly provided in this Declaration, as submitted by Declarant to the California Department of Real Estate, or as provided by Declarant to the first Owner of each Unit.

17.02 Access Facilities. Vehicular and pedestrian access into the Properties may be controlled by entry gates located at various entrances into the Properties. Until the last close of escrow occurs in the Properties, (a) access gates may be open to general public, (b) Declarant may change the hours of access gate operation in its sole discretion without notice to accommodate construction and marketing activities, and (c) operation of access gates may be limited.

17.03 Security and Privacy Disclosures. Access gates are not intended to provide security or privacy for persons, personal property or Units within the Properties. Declarant and the Association do not undertake to provide security and safety of the Properties or Owners.

IN WITNESS WHEREOF, Declarant has executed this Declaration:

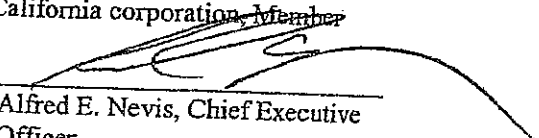
DATED: August 2, 2005.

ROLLINGWOOD NORTH, LLC,  
a Delaware Limited Liability Company

By: ROLLINGWOOD PKI, LLC,  
a California limited liability company, its  
Administrative Member

By: Klamath Investments, LLC, a  
California limited liability company,  
Manager

By: Port Kihei Investments, Inc., a  
California corporation, ~~Member~~

By:   
Alfred E. Nevis, Chief Executive  
Officer

State of California )

County of Sacramento )

On August 2, 2005 before me,

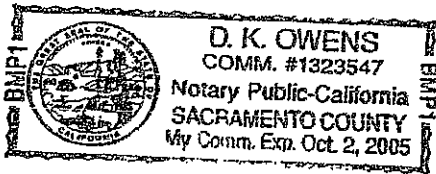
D.K. Owens

personally appeared Alfred E. Nevis

NAME(S) OF SIGNER(S)

NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

D.K. Owens  
SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

INDIVIDUAL(S)

TRUSTEE(S)

CORPORATE OFFICER(S)

SUBSCRIBING WITNESS

(Titles)

GUARDIAN/CONSERVATOR

PARTNERS(S)

OTHER: \_\_\_\_\_

ATTORNEY-IN-FACT

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONSENT OF LIENHOLDER AND SUBORDINATION OF LIEN**

The undersigned beneficiary under that certain Deed of Trust recorded November 18, 2004, as Book No. 20041118, Page 1376, of the Official Records of Sacramento County, California, consents to all of the provisions contained in the attached Declaration and attached Condominium Plan and agrees that the lien of the deed of trust shall be junior and subordinate and subject to said Declaration.

Dated JULY 27, 2005.

LIENHOLDER

WELLS FARGO BANK, NATIONAL ASSOCIATION

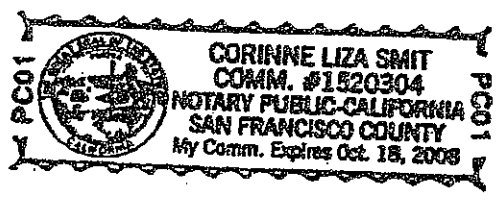
By 

Title: VP

State of California )

County of San Francisco )

On July 27, 2005 before me,  
CORINNE SMIT



personally appeared EMILIAN HALLORAN  
NAME(S) OF SIGNER(S)

NAME(S) OF SIGNER(S)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Corinne Smit*

SIGNATURE OF NOTARY

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL(S)
- CORPORATE OFFICER(S)
- PARTNERS(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

SIGNER IS REPRESENTING:  
NAME OF PERSON(S) OR ENTITY(IES)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

