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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
ESKATON VILLAGE ROSEVILLE HOMEOWNERS ASSOCIATION**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ESKATON VILLAGE ROSEVILLE HOMEOWNERS ASSOCIATION

THIS DECLARATION ("Declaration") is made this 13TH day of July, 2007, by ESKATON VILLAGE ROSEVILLE, a California non-profit, public benefit corporation ("Eskaton"), and by LAKEMONT VILLAGE ROSEVILLE, LLC, a Delaware limited liability company ("Lakemont") (hereinafter collectively referred to as "Declarant").

RECITALS

Eskaton is the owner of Lot "E" as shown on the Map which may include the Eskaton Units, the Institutional Units, and the Eskaton Certified Senior Friendly Unit (the "Eskaton Lot"), and Lakemont is the owner of the real property described on Exhibits "A" and "B-1" (except for Lot "E") located in the City of Roseville, County of Placer, State of California, described in Exhibit "A," attached hereto and made a part hereof (the "Real Property"). Declarant intends to improve the Development as a fully integrated senior-only, residential development in which Lakemont intends to construct senior-only, single-family attached and detached homes designed for independent living, and Eskaton intends to develop a multi-residential structure containing ninety-six (96) residential Eskaton Units designed for senior-only, assisted living, memory care, and other supportive residential services for seniors consisting of seventy-two (72) assisted living units and twenty-four (24) memory care units ("Eskaton Lodge"). It is contemplated that future Phases annexed by Eskaton may include independent living, skilled nursing units, and an Eskaton Certified Senior Friendly Unit. Lakemont intends to construct single-family homes and condominium units and sell the homes and condominium units. Eskaton intends to develop, own and manage the Eskaton Units, the Institutional Units, and the Eskaton Certified Senior Friendly Unit. Eskaton and Lakemont also intend that Eskaton provide management and other services to the Owners of the single family homes and condominium units that Lakemont intends to construct as part of the Development.

Eskaton and Lakemont have improved or intend to improve the Real Property by constructing improvements thereon, and by creating a planned development thereon, which Development may be increased in size, at the sole option of Declarant, its successor and assigns, and provided herein, by the addition (subject to the provisions of Section 2792.27 of the regulations of the Real Estate Commissioner) of one or more additional Phases consisting of Lots, Eskaton Units, Institutional Units, The Eskaton Certified Senior Friendly Unit, and Common Area to be constructed on the real property that is more particularly described on Exhibit "B-2," which is attached hereto and made a part hereof. By adoption of this Declaration, Declarant is not committing itself to the annexation of any additional property. An Owner who acquires a Lot or a Condominium Unit in the Development shall not have any legal right to insist that there be any such annexation other than as specifically provided in this Declaration and in instruments which hereafter may be filed subjecting other property to this Declaration.

DECLARATION

Declarant declares that the Real Property and any real property subsequently annexed thereto is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied, sold and improved subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be enforceable equitable servitudes and in furtherance of a plan for the individual ownership of the Lots, Condominium Units, and the Eskaton Units located within the Development, and for the common ownership and maintenance of the Common Area lots, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Real Property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Development, and shall be binding on and inure to the benefit of the successors in interest of such parties.

ARTICLE I

DEFINITIONS

1. "Annexed Property" shall mean and refer to any and all Lots, Condominiums and Eskaton Units which are annexed to the Development pursuant to a Declaration of Annexation.
2. "Articles" shall mean the Articles of Incorporation of the Association, and as said Articles may be amended from time to time.
3. "Association" shall mean and refer to the ESKATON VILLAGE ROSEVILLE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation created for the purpose of managing the Development, and its successors and assigns.
4. "Board" shall mean the Board of Directors of the Association.
5. "Bylaws" shall mean the Bylaws of the Association, and as such Bylaws may be amended from time to time.
6. "City" shall mean the City of Roseville, California.
7. "Common Area" shall mean all real property (including the improvements thereto) and any mutual or reciprocal easement rights hereafter described appurtenant to each Lot) owned by the Association for the common use and enjoyment of the Owners and the residents of the Eskaton Units. The Common Area to be owned by the Association at the time of the conveyance of the first Lot shall mean and refer to Common Area Lots F and K, as shown on the Map, and Parcel "B," as shown on that certain Parcel Map filed in Book 32 of Parcel Maps, at page 154 in the office of the Placer County Recorder.

8. "Common Facilities" means the swimming pool and apron area, pool storage and pump house, pool furniture, recreation building and trails, as shown on the subdivision maps, and the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area and owned by the Association.

9. "Condominium" shall mean an estate in real property as defined in California Civil Code, Sections 783 and 1351(f), consisting of an undivided interest as a tenant in common in a portion of the Condominium Association Common Area of the Condominium Project together with a fee interest in a Unit, the boundaries of which are shown and described in the Condominium Plan.

10. "Condominium Association" shall mean and refer to the ESKATON VILLAGE ROSEVILLE CONDOMINIUM ASSOCIATION, a California nonprofit mutual benefit corporation created for the purpose of managing the Condominium Project, owning, managing and maintaining the Condominium Association Common Area and maintaining the Building containing the Condominium Units.

11. "Condominium Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for the Condominium Project.

12. "Condominium Plan" shall mean the plan meeting the requirements of Civil Code Section 1351(e) that is to be recorded in the Official Records of Placer County concurrently with the Condominium Declaration in order to create the Condominium Project that is a part of the Development.

13. "Condominium Project" shall mean the Condominium Units and project common areas that are more particularly described in the Condominium Declaration and created on the Condominium Plan for the Eskaton Village Roseville Condominium Project.

14. "Condominium Unit" or "Unit" means a Unit in the Condominium Project, as defined in Civil Code section 1351(f). The boundaries of each Unit are shown on the Condominium Plan and are more particularly described in the Condominium Declaration.

15. "Cost Center" shall be a designation assigned by the Association to one or more discrete portions of the Development (and to the Owners of Lots or Condominiums located herein) for the purpose of expense accounting and assessments, all as more particularly provided in Article VI, below. A Cost Center is to be created when the Association is maintaining Common Area or facilities located within the designated Cost Center area which are fully or partially restricted to Owners of the Lots or Condominiums within the Cost Center. The Cost Center Assessments is, and shall continue to be, specifically identified in the operating budgets of the Association.

16. "County" shall mean the County of Placer, State of California.

17. "Declarant" shall mean Eskaton and Lakemont, and their successors and assigns. At such time as Lakemont sells all of its Lots and Condominium Units, Lakemont's status as a Declarant under this Declaration shall cease.

18. "Development" means all of the Lots described in **Exhibit "A,"** and any additional Lots, Condominiums and Eskaton Units annexed to this Declaration under Article XVI pursuant to any recorded Declaration of Annexation.

19. "Eskaton Certified Senior Friendly Unit" shall mean the model "senior friendly" single family, independent living home to be constructed on the Eskaton Lot.

20. "Eskaton Unit" shall mean the independent living units and assisted living units constructed by Eskaton as more particularly described initially in **Exhibit "A"** and, if annexed to this Declaration under Article XVI, as described in **Exhibit "B-2,"** but shall not include the Institutional Units. The Eskaton Units are not condominium units as defined in California Civil Code Section 1351(f).

21. "Governing Documents" shall mean this Declaration, the Articles of Incorporation, the Bylaws, and the Association Rules.

22. "Institutional Units" shall mean any future skilled nursing Units constructed by Eskaton on that certain real property, as more particularly described in **Exhibit "B-2."**

23. "Lot" shall mean and refer to Lots 1 through 10, 36 through 41, as described on **Exhibit "A,"** and described on **Exhibit "B-1,"** upon which it is intended there will be constructed a single-family home designed for senior-only, independent living. A "Lot" shall not include Lot "E," as described on **Exhibit "A,"** nor shall it include any Common Area lots.

24. "Map" shall mean and refer to that certain final map filed for record on September 6, 2006, in Book BB of Maps at page 28, Placer County Official Records.

25. "Member" shall mean every person or entity who holds a membership in the Association by virtue of being an Owner of a Lot, Condominium or an Eskaton Unit in the Development.

26. "Mortgage" shall mean a Mortgage, Deed of Trust, bond indenture, or similar financing encumbering a Lot, Condominium, an Eskaton Unit, or other portion of the Development. A "Mortgagee" shall include the beneficiary under a Deed of Trust, a mortgage or the Department of Veteran Affairs of the State of California under an installment land contract. An "institutional" Mortgagee is a Mortgagee that is a bank or savings and loan association, or established mortgage company or other entity chartered or licensed under federal or state laws, any corporation or insurance company, or any federal or state agency or any other entity that is a Mortgagee under a Mortgage encumbering Lots owned by the Declarant.

27. "Owner" shall mean each person or entity holding a record ownership interest in a Lot, Condominium or an Eskaton Unit, including Eskaton and Lakemont. The term "Owner" shall also include a contract purchaser pursuant to a contract of sale recorded in the Office of the County Recorder, provided that the vendor under such contract of sale has assigned all of his rights, title and interest to participate in the Association to the contract purchaser thereunder, and such assignment is either contained in said contract of sale or is otherwise recorded in the Office of the County Recorder. The term "Owner" shall not include a resident of an Eskaton Unit or a renter or lessee of a residence on a Lot or Condominium, or persons or entities who hold an interest in a Lot

or Eskaton Unit merely as security for the performance of an obligation or as a contract purchaser under a contract of sale which does not satisfy the conditions set forth in the preceding sentence.

28. "Permitted Health Care Resident" shall mean a person hired to provide live-in, long-term, or terminal health care to a Senior Citizen, or a family member of a Senior Citizen providing that care. The care provided by a Permitted Health Care Resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

29. "Phase" shall mean any Lot, Condominium or Eskaton Unit of real property which becomes a part of the Development pursuant to the annexation provisions of this Declaration.

30. "Qualified Permanent Resident" shall mean a person who meets both of the following requirements: (i) was residing with the Senior Citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the Senior Citizen; and (ii) was forty-five (45) years of age or older, or was a spouse, co-habitant, or person providing primary physical or economic support to the Senior Citizen. A "Qualified Permanent Resident" shall also mean a disabled person or person with a disabling illness or injury who is a child or grandchild of the Senior Citizen or a Qualified Permanent Resident who is defined in the preceding sentence and who needs to live with the Senior Citizen because of the disabling condition, illness or injury. For purposes of this subsection, "disabled" means a person who has a disability as defined in Civil Code Section 54(b). A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in Civil Code Section 54(b).

31. "Senior Citizen" means a resident of a Lot, Condominium or Eskaton Unit who is fifty-five (55) years or older.

ARTICLE II

PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS

1. **Ownership.** Ownership of each Lot, Condominium and each Eskaton Unit within the Development shall include a membership in the Association.

2. **Conveyance of Common Area.** Upon conveyance of the first Lot or Condominium in a Phase from Lakemont to an Owner, Lakemont shall convey to the Association in fee the Common Area in that Phase. The Association shall use the Common Area for the benefit and enjoyment of the Members of the Association and the residents of the Eskaton Units and Condominiums. Each Owner shall have a non-exclusive easement for ingress, egress and support over and through the Common Area, including parking areas. Each such right to said non-exclusive easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to limit the number of guests, and to adopt Association rules and regulations regulating the use and enjoyment of the Common Area.

(b) The right of the Association to borrow money to improve, repair or maintain the Common Area.

(c) The right of the Declarant, its contractors, subcontractors, or designees to enter over and upon the Development for the purposes of:

(1) Completing improvements of the Development;

(2) Making repairs and remedying construction defects;

(3) Erecting, constructing, and maintaining on any part or parts of the Development, such structures as may be reasonable and necessary for the conduct of Declarant's business of completing said work and establishing said Development as a residential community and disposing of the same in parcels by sale, lease or otherwise;

(4) Conducting on any part of the Development Declarant's business or completing said work and of disposing of the Development by sale, lease or otherwise; and

(5) Erecting and maintaining such signs, flags or banners on any portion of the Development as may be necessary for the improvement, development, sale, lease or disposition thereof.

3. Encroachments. Each Lot, the buildings in which the Eskaton Units are located, and each Condominium is hereby declared to have an easement over all other Lots and the Eskaton Lot, and the Common Area, and the Association, as the owner of the Common Area, is hereby declared to have an easement over all other Lots, Condominium and the Eskaton Lot, for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of a building, fences or other structures, or any other cause constructed by Eskaton or Lakemont. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners and the Association shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or the Association if said encroachment occurred due to the willful misconduct of said Owner or the Association. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot, Condominium and the Eskaton Lot, and the Association agree that minor encroachments over other Lots, Condominium, the Eskaton Lot or Common Area, as the case may be, shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

4. Easements Held by Association. The Association, or its agents, shall have the right after giving the Owner of a Lot or Condominium twenty-four (24) hours prior notice, to enter any Lot or Condominium to perform its obligations under this Declaration, including: (i) obligations with respect to construction, maintenance or repair for the benefit of the Common Area; (ii) construction, maintenance or repair of the exteriors of dwellings, landscaping and meandering sidewalk as described in Article IV, Section 3(b)(2) through (4), inclusive; or (iii) to make necessary repairs or maintenance that an Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Lot or Condominium, and the obligation can be performed whether or not the Owner is present. The right shall also be immediate where the

Association has the primary obligation to perform such construction, maintenance or repair to the exteriors of dwellings and landscaping as provided in Article IV, Section 3(b)(3) herein.

5. Easements Granted by Association. The Association shall have the power to grant and convey to any third party permits, licenses, easements and rights of way, in, on, over or under the Common Area and the Lots for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other communication systems that may now or hereafter exist, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Lot or Condominium, expressly consents hereto.

6. Easements. There are hereby specifically reserved for the benefit of the Lot and Condominium Owners, in common and for each Owner severally, as their respective interest shall obtain, the easements, reciprocal negative easements, secondary easements, and rights-of-way as particularly identified in this Declaration:

(a) There is reserved for the benefit of each Lot and Condominium as dominant tenement, an easement for utility services over, under and through the Common Area and the other Lots and Condominiums as the servient tenements.

(b) The Association shall have an easement appurtenant to the Common Area through each Lot and Condominiums for the maintenance and repair of the Common Area, including maintaining the irrigation system and landscaping located in the Common Area.

(c) The Association and Owners of adjoining Lots and Condominiums shall have an easement for entry upon and access to slopes and drainage ways located upon a Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided requests for entry are made in advance and that entry is at all times convenient to the Owner whose Lot or Condominium is being entered upon. In case of emergency, the right of entry shall be immediate.

(d) The Association and each Owner of a Lot in the Development shall have an easement for purposes of pedestrian access, ingress, and egress over and along the meandering sidewalks installed by the Declarant within the open yard areas of certain Lots in the Development. The Association's easement rights with respect to the meandering sidewalks shall also include the right, through its agents and contractors, to access the meandering sidewalks for purposes of maintenance, repair and replacement as provided in Article IV, Section 3(b)(4), below.

7. Easements Upon Adjacent Lots. Every Owner shall have a right and easement of ingress and egress in, over, across and upon the Lot which is adjacent to the Lot of such Owner, for the purpose of improvement, maintenance and repair of the Lot of such Owner and the dwelling located upon such Lot. In no event shall such easement extend to or encroach upon the dwelling located upon such adjacent Lot. In utilizing such easement, the Owner shall take all precautions to avoid doing any damage to said adjacent Lot or any of the improvements located thereon, and each Owner in utilizing such easement agrees to indemnify, defend and hold harmless the Owner of such adjacent Lot of and from all damage which arises from his entry upon and use of said Lot.

8. **Common Wall, Etc.** Each Lot that shares improvements, including but not limited to a common wall, common roof, walkway, fence, retaining wall, or party wall with an adjoining Lot and its Owner is declared to have an easement appurtenant, and the same is granted by Declarant, on, over, and upon such adjoining Lot for such common wall, common roof, or party wall, including the right to enter upon such adjoining Lot to service and maintain such easement and to service, maintain, repair or replace improvements constituting such common wall, common roof, or party wall. Such entry shall be at reasonable times after prior notice, except and in case of emergency the right of entry shall be immediate. No Owner shall alter the shape, size, construction or use, or use any materials different from those included in the initial construction of any such common wall, common roof, or party wall without the written consent of the Association. The provision of this Article II, Section 8 shall not apply to the Condominium Units.

9. **Other Easements.** Each Lot and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications and rights-of-way granted or reserved in, on, over, and under the Real Property as shown on the Map.

ARTICLE III

USE RESTRICTIONS

1. **Permitted Uses.** The Lots and Condominiums owned and to be sold by Lakemont shall be used for senior-only, single-family, independent living residential purposes in accordance with, and subject to the limitations and restrictions imposed by, California Civil Code Section 51.3. The Eskaton Lodge may be used for senior-only independent living units, assisted living units, memory care units, and Institutional Units. Any lease or rental agreement for any Lot, Eskaton Unit, Condominium, or Institutional Unit shall be in writing and any lessee thereof shall abide by and be subject to all terms and provisions of this Declaration, the Articles, Bylaws, and the Association rules, and any such lease agreement shall specify that failure to abide by such provisions shall be a default under said lease; and provided further that except for a mortgagee in possession of a Lot or Condominium following a default in a Mortgage, a foreclosure proceeding or acceptance of a deed or other arrangement in lieu of foreclosure, no Owner shall rent, lease or let his Lot or Condominium for an initial term of less than thirty (30) days.

2. **Senior-Only Community.** This Development shall be a senior citizen housing development. At least one resident in each Lot or Condominium must be a Senior Citizen who intends for the Lot or Condominium to be his or her permanent residency, and every other resident must be a Qualified Permanent Resident. If the Senior Citizen dies, becomes divorced, is hospitalized, or is absent from the Development for a prolonged period, any Qualified Permanent Resident may continue to reside in the Lot or Condominium previously occupied by the Senior Citizen without regard to the age restriction that applied to that person, provided that the person otherwise has the legal right to continue to reside in the Lot or Condominium and provided that at least eighty percent (80%) of all of the Lots or Condominiums in the Development are occupied by at least one Senior Citizen. A Permitted Health Care Resident shall be entitled to continue his or her occupancy, residency, or use of the Lot or Condominiums as a Permitted Resident in the absence of the Senior Citizen only if both of the following are applicable: (i) the Senior Citizen becomes absent from the Lot or Condominium due to hospitalization or other necessary medical treatment and expects to return to his or her residence within ninety (90) days from the date the absence began; and (ii) the absent Senior Citizen or an authorized person acting for the Senior Citizen submits a written request to the Board stating that the Senior Citizen desires that the

Permitted Health Care Resident be allowed to remain in order to be present when the Senior Citizen returns to reside in the Development. Upon written request of the Senior Citizen or an authorized person acting for the Senior Citizen, the Board shall have the discretion to allow a Permitted Health Care Resident to remain for a time period longer than ninety (90) days from the date that the Senior Citizen's absence began, if it appears that the Senior Citizen will return within a period of time not to exceed an additional ninety (90) days. A Permitted Health Care Resident shall be permitted to occupy a Lot or Condominium during any period that the person is actually providing live-in, long-term or hospice health care to a Senior Citizen for compensation. The term "for compensation" shall include provisions for lodging and food in exchange for care. The Association is and shall be empowered to and shall take the necessary steps to enforce this provision. The Eskaton Lodge is a Residential Care Facility for the Elderly, as said term is defined in California Health and Safety Code Section 1569, et seq., as amended from time to time.

3. Commercial Use. None of the Lots or Condominiums owned by Lakemont, or any successor in interest to a Lot or Condominium, shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, or other such non-residential purpose, except that an Owner or other resident of a Lot or Condominium may conduct a business activity within a Lot or Condominium so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot or Condominium; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Lot or Condominium; (iii) the business activity does not involve persons coming onto the Lot or Condominium or the door-to-door solicitation of Owners or other residents in the Development; and (iv) the business activity does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Development, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity. The provisions of this Article II, Section 3 shall not apply to the Eskaton Units, the Institutional Units and the Eskaton Certified Senior Friendly Unit. Notwithstanding the foregoing, in the event that Eskaton divests itself of ownership of any Eskaton Unit, Institutional Unit, or the Eskaton Certified Senior Friendly Unit, the successor owner's use of the acquired Eskaton Unit, Institutional Unit or the Eskaton Certified Senior Friendly Unit shall be limited to such commercial uses as are permitted to be exercised by Eskaton hereunder.

4. Offensive Conduct, Nuisances. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles outside of an Owner's dwelling, shall be carried on, upon, or within the Development, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the Development, or which shall in any way interfere with the quiet enjoyment of other Owners.

5. Parking Restrictions. The garages constructed in each residence are intended for parking vehicles only, and not simply for storage. If an Owner owns more than two (2) vehicles, said Owner may park no more than one vehicle in the driveway. No portion of any garage may be converted to residential uses, workshops or other uses that preclude the use of each garage bay for the parking of a vehicle in the bay. No vehicles may be parked in the streets within the Development. No boat, trailer, recreational vehicle, camper, commercial truck or other commercial vehicle shall be parked or left on any part of a Lot, unless the same is fully enclosed within the garage located on such Lot or in a location specifically designated by the Architectural Review Committee; provided, however, parking by commercial vehicles for the purpose of making deliveries, and commercial vehicles used by Declarant and the Association in connection with the operation of any services or activities provided for the Owners shall be permitted in accordance with the Association Rules. The Association shall post and maintain at the entrances of the Development signs required by Vehicle Code Section 22658.2 to permit the towing of improperly parked vehicles.

6. Signs. No signs of any kind shall be displayed to the public view on or from any Lot, Condominium or Eskaton Unit or on or from the Common Area without the approval of the Board, excepting: (i) signs for the sale, lease or exchange of a Lot or Condominium which comply with Civil Code Section 712; (ii) directional signs installed by Declarant; and (iii) such signs as may be used by the Declarant or its designees for a period of three (3) years from and after the date of recordation of the deed of the first Lot or Condominium sold in the last Phase in the Development for the purpose of developing, selling and improving Lots, Condominiums and Eskaton Units within the Development. Notwithstanding the foregoing, a non-commercial sign, poster, flag or banner which complies with Civil Code Section 1353.6 may be posted or displayed within a Lot, Condominium or Eskaton Unit by the Owner thereof, subject to approval by the Architectural Committee.

7. Awnings, Etc. No detached buildings, fences, awnings, ornamental screens, trellises, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of or elsewhere within the Development, except such as are installed in accordance with the original construction of the Development, and any replacement thereof, or as are authorized and approved by the Architectural Control Committee.

8. Animals. No animals, dogs, reptiles, rodents, birds, fish, livestock or poultry shall be kept on any Lot or elsewhere within the Development, except that two usual and ordinary household pets such as a dog or cat, may be kept as a household pet within any Lot, provided such animals are not kept, bred or raised therein for commercial purposes and they are kept under reasonable control at all times. The Association shall have the right to prohibit maintenance of any animal which constitutes, in the sole and exclusive opinion of the Board after notice and a hearing held pursuant to Article IV, Section 3(a)(2) hereof, a nuisance to any other Owner. Each person bringing or keeping a pet upon the Development shall be absolutely liable to each and all other Owners, their family members, guests, invitees, and contract purchasers, and their respective family members, guests, invitees for any damage to persons or property caused by any pet brought upon or kept upon the Development by such person or by members of his family, his guests or invitees. No dog shall be allowed on 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. The limitations on keeping pets within the Condominiums shall be governed by the Condominium Declaration. Notwithstanding the foregoing, the keeping of pets within the Eskaton Lodge shall be governed by the rules outlined in the Eskaton Lodge Resident Handbook.

9. **Trash Disposal.** Declarant has disclosed to each Owner, and thereafter each Owner shall disclose to its subsequent buyer the various methods of trash collection available, and any additional fee charged by the Association for trash collection services. The trash collection options shall be verbally explained and a written acknowledgment signed by the buyer prior to execution of a sales contract. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner of a Lot shall permit or cause any trash or refuse to be kept on any portion of the Development subject to this Declaration other than in the receptacles customarily used therefor located in places specifically designated for such purpose. Such containers shall be exposed to the view of other Lots only when set out for a reasonable period of time (not any earlier than 4:00 p.m. on the day before the scheduled pick-up days and not later than 7:00 p.m. on the day of the pick-up) before and after scheduled trash collection hours. No Owner of a Lot shall permit or cause any household trash or refuse to be placed in any litter containers located in the Common Area.

10. **Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained.

11. **Exterior Alterations.** No Owner of a Lot or Condominium shall, at his expense or otherwise, make any alterations or modifications to the exterior of his dwelling located on his Lot or Condominium without the prior written consent of the Architectural Control Committee.

12. **Compliance with Laws, Etc.** Nothing shall be done or kept on any Lot, Condominium, Eskaton Unit or in the Common Area which might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept on his Lot or Eskaton Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture of such Owner to remain within any portion of the Common Area.

13. **Indemnification.** Each Owner shall be liable to the remaining Owners for any damage to the Common Area, which may be sustained by reason of the negligence of said Owner, members of the Owner's family, the Owner's residents, contract purchasers, lessees, guests or invitees, to the extent that any such damage shall not be covered by insurance. Each Owner does further, by acceptance of their Deed, agree for themselves and for the members of their family, their residents contract purchasers, lessees, guests or invitees, to indemnify each and every other Owner, and to hold him or her harmless from, and to defend him or her against, any claim of any person or persons for personal injury or property damage occurring within the Lot of that particular Owner from any cause, including, but not limited to those arising out of the concurrent act or negligence or fault of any remaining Owner or Owners. Only such injury or harm as may be caused solely and exclusively by the fault or negligence of any remaining Owner or Owners shall be excepted from the provisions of this section.

14. Owner's Obligation for Taxes. To the extent allowed by local law, all Lots, Condominiums, Eskaton Units, the Common Area, and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to Mortgages under local law shall relate only to the individual Lots, Condominiums and Eskaton Units, and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of said County against his Lot, Condominium or Eskaton Unit, and against his personal property.

15. Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Development, and no oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the Development or within five hundred (500) feet below the surface of the Development. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on the Development.

16. Antennas. No masts, towers, poles, video, television or radio antennas, including satellite reception dishes, shall be placed or constructed on any Lot without the prior approval of the Architectural Control Committee. The Architectural Control Committee shall implement rules and regulations consistent with California Civil Code Section 1376 in dealing with applications for approval of videos or television antennas, including satellite dishes.

17. Pools / Spas / Sheds. No Owner of a Lot may install a pool, spa, water softener, storage shed or other accessory structure.

18. Water Softeners. No Owner of a Lot may install a water softener as part of his or her domestic water system.

19. Noise Disclosure. Owners are hereby advised that if Eskaton constructs skilled nursing Units as part of a future Phase, current state law requires the installation of an emergency power generator which would be used in the event of a power failure. Any emergency power generator will be required to be periodically tested and will cause loud noises when operated.

20. Enforcement. The failure of any Owner to comply with the provisions of this Article III, or with any other provision of this Declaration or the Articles or Bylaws shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages, or for injunctive relief, or both, in accordance with the enforcement procedures set forth in Article IV, Section 3(a)(2) through Section 3(a)(4).

ARTICLE IV

THE ASSOCIATION

1. Formation. The Association shall be incorporated as a nonprofit mutual benefit corporation under the laws of the State of California and, upon the close and recordation of the first Lot or Condominium sale to an Owner, shall be and become charged with the duties and invested with the powers set forth in the Articles, the Bylaws and this Declaration, including, but not limited to, control and maintenance of the Common Area and any Common Area facilities.

2. Association Action; Board of Directors and Officers. Except as to matters expressly requiring the approval of Members as set forth in this Declaration, the Articles or the Bylaws, the affairs of the Association shall in all instances be conducted by the Board and such officers as the Board may elect or appoint, such election or appointment to be in accordance with the Bylaws, as the same may be amended from time to time. Except as otherwise expressly provided in this Declaration, the Articles, the Bylaws, or applicable law, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent thereto by written consent or otherwise as provided herein or in the Bylaws, or if approved by a majority vote of a quorum of Members at any regular or special meeting called or otherwise as provided herein or in the Bylaws.

3. Powers and Duties of Association.

(a) **Powers.** The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any and all lawful things which maybe authorized, required or permitted to be done by the Association under this Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including, without limitation the following:

(1) **Assessments.** The Association shall have the power to establish, fix and levy assessments against the Owners of Lots, Condominiums, Eskaton Units and to enforce payment of such assessments, all in accordance with the provisions of this Declaration; provided, however, the approval of Members shall be required as to the amounts of all regular and special assessments except as otherwise hereinafter specifically provided.

(2) **Enforcement of Rules.** The Association in its own name and on its own behalf, or on behalf of any Owner who consents, or any aggrieved Owner, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provisions of this Declaration or of the Articles or Bylaws, or of the Association rules or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can suspend the voting rights, can suspend use privileges of the Common Area or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration or the Articles, Bylaws, Association rules, or Board resolutions. However, any such suspension of use privileges cannot exceed a period of thirty (30) days for any one violation and any monetary penalty must be reasonable in light of the violation, but in no event shall the penalty exceed FIVE HUNDRED DOLLARS (\$500.00). Any action imposing fine or suspension shall be ineffective unless:

(i) The discipline shall be approved by a majority of all Board Members at a regular or special meeting of the Board.

(ii) The Member being suspended or fined shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held not fewer than ten (10) days before the effective date of the proposed suspension or fine. The hearing will be held by a special member judicial committee composed of not fewer than three Members appointed by the president. The notice to the Member of his proposed suspension or fine shall state the date, time, and place of the hearing, the nature of the alleged violation for which the 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 shall meet in executive session if requested by the Member to be disciplined.

(iii) Following the hearing, the judicial committee shall decide whether or not the Member should in fact be disciplined. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action. The decision of the committee shall be final.

(iv) A notice shall be sent by mail by personal delivery, prepaid, first-class, or registered mail to the most recent address of the Member as shown on the Association's records, setting forth the disciplinary action and the reasons therefor. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the discipline.

(v) In the event that a Member shall correct an alleged violation prior to the hearing date, the Board shall discontinue the proceedings.

Except as provided in this section, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Lot or Condominium if the Owner does not comply with provisions of this Declaration or of the Articles or Bylaws or the Association rules, except when the loss or forfeiture is the result of a court judgment or arbitration decision or a foreclosure or sale under a power of sale based on failure of the Owner to pay assessments levied by the Association.

(3) Alternative Dispute Resolution. The Board is authorized to perform any act reasonably necessary to resolve any civil claim or action among Owners, or between an Owner or Owners and the Association involving their rights and obligations under either the Mutual Benefit Corporation Law or the Davis-Sterling Act, other than disputes involving Declaration through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. The Board is authorized to perform the following acts:

(i) Providing, or in good faith attempting to provide, one hundred twenty (120) days advance notice of the Board's intent to initiate the prosecution of any civil action and of the nature and basis of the claim to every Member and every entity or person who is a prospective party to the civil action, provided that notice can be given (A) more than one hundred twenty (120) days prior to the expiration of any pertinent statute of limitations, and (B) without prejudice to the Association's right to enforce this Declaration, and further provided that no such notice need be given prior to the filing of an action in small claims court or an action solely to enforce assessment obligations.

(ii) Prior to initiating the prosecution of a civil action solely for declaratory relief or injunctive relief to enforce this Declaration, or for declaratory relief or injunctive relief to enforce this Declaration in conjunction with a claim for monetary damages not in excess of FIVE THOUSAND DOLLARS (\$5,000.00), to endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of Section 1369.510 et seq. of the Civil Code.

(iii) Immediately after initiating the prosecution or defense of any civil action, making a reasonable effort, in good faith, to meet and confer with every person who is a party concerning appropriate processes for resolving the civil action, including available alternative dispute resolution proceedings; concerning appropriate processes for avoiding or reducing costs or losses by the parties associated with the action; providing an opportunity to cure any alleged defect in Common Areas which is the basis for the action; and providing for the scope of discovery, if any, to be conducted prior to the inception of any alternative dispute resolution procedure.

(iv) Considering diversion of the prosecution or defense of any civil action to alternative dispute resolution proceedings such as mediation, non-binding arbitration, or binding arbitration.

(v) Agreeing to participate and participating fully and in good faith in the resolution of any civil action through any alternative dispute resolution proceedings, including but not limited to mediation, non-binding arbitration, and binding arbitration, and paying costs reasonably incurred by the Association on account of those alternative dispute resolution proceedings.

(vi) In any action by the Association or any Owner to enforce, by any proceeding at law or in equity, any or all of the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the prevailing party shall be entitled to recover reasonable costs and attorney's fees as determined by the court.

(4) **Initiation of Actions.** The Board shall not ordinarily be required to do any of the following:

(i) As a prerequisite to initiating any civil action, to conduct inspections, maintain inspection records, exhaust applicable casualty insurance coverage maintained by the Association, provide an opportunity to cure, meet with Members, or obtain the consent of the Members.

(ii) Except in compliance with the provisions of Section 1354(b) of the Civil Code, to submit civil claims of any kind to binding or non-binding alternative dispute resolution procedures.

(5) **Notice of Action Against Declarant.** Not later than thirty (30) days prior to the filing of any civil action by the Association against Eskaton, Lakemont, or any other developer of the Development for alleged damage to the Common Areas, alleged damage to the separate interests that the Association is obligated to maintain or repair, or alleged damage to the separate interests that arises out of, or is integrally related to, damage to the Common Areas or separate interests that the Association is obligated to maintain or repair, the Board shall provide

written notice to each Member who appears on the records of the Association when the notice is provided. This notice shall specify all of the following:

- (i) That a meeting will take place to discuss problems that may lead to the filing of a civil action.
- (ii) The options, including civil actions, that are available to address the problems.
- (iii) The time and place of this meeting.
- (iv) Notwithstanding the preceding paragraph, 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 notice, as described above, within thirty (30) days after the filing of the action.

(6) Compliance With Civil Code Section 1368.5 and 1375. Before the Association commences an action against Eskaton, Lakemont or any other developer or builder of the Development based on a claim for defects in the design or construction of the Common Area, the requirements of California Civil Code Sections 1368.5 and 1375 shall be met.

(7) Dispute Notification and Resolution Procedure (Declarant Disputes); Waivers. Notwithstanding any provision of this Declaration to the contrary, any action or claim by, between or among the Declarant as the builder of any portion of the Development or any director, officer, partner, member, employee, agent or predecessors-in-interest of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Development and who is bound or has agreed to be bound to the following dispute notification and resolution procedure (collectively, the "Declarant Parties") and either the Association or any Owner relating to or arising out of the Development, this Declaration, or other governing documents for the Association, or any other agreements between the Declarant Parties and an Owner or the Association (unless any such agreement specifies another form of dispute resolution), the sale of any portion of the Development, the use, condition, design or construction of or any condition on or affecting the Development, including, but not limited to construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as the condition of the Development where the amount in controversy is greater than TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) (collectively, "Dispute(s)"), shall be subject to the provisions set forth below:

(i) **Notice.** Any person with a claim defined as a Dispute, above ("Claimant"), shall notify each applicable Declarant Party in writing of the claim, which writing shall describe the nature of such claim and any proposed remedy (the "Claim Notice").

(ii) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the applicable Declarant Parties and the Claimant(s) shall meet at a mutually acceptable place within or near the Development to discuss the Dispute. At such meeting or at such other mutually agreeable time, the applicable Declarant Parties and their respective representatives shall have full access to the Development and shall have the right to conduct inspections, testing and/or

destructive or invasive testing the same in a manner deemed appropriate by the Declarant Parties which rights shall continue until such time as the Dispute is resolved. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If any applicable Declarant Party elects to take any corrective action, the applicable Declarant Parties and their respective representatives and agents shall be provided full access to the Development to take and complete corrective action.

(iii) Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in Article IV, Section 3(a)(7)(ii) above, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association (except as such procedures are modified by the provisions of this Section Article IV, Section 3(a)(7)(iii) or any successor thereto or to any other entity offering mediation services that is acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. Each Owner covenants that it shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Article IV, Section 3(a)(7)(iii). Except as provided in Article IV, Section 3(a)(7)(vi) below, the Association and each Owner covenants that each shall not commence any litigation against the Declarant Parties without complying with the procedures described in this Article IV, Section 3(a)(7)(iii).

(A) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The mediation shall be held in the county in which the Development is located or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

(B) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.

(C) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to the Dispute participating in the mediation shall execute an agreement pursuant to California Evidence Code Section 1115 et seq. and any successor statutes or laws in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court

proceedings, reference proceedings or arbitration hearings. Pursuant to California Evidence Code Section 1115 et seq., the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of California Evidence Code Sections 1115 through 1128 shall also be applicable to such mediation process.

(D) Persons Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such parties' insurer in the mediation to the extent required under such parties' liability insurance policy. Confidential information disclosed to a mediator by such parties or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(E) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute participating in the mediation unless they agree otherwise. Each party to the Dispute participating in the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

(iv) Judicial Reference. Should mediation pursuant to this Article IV, Section 3(a)(7)(iii) above not be successful in resolving any Dispute, such Dispute shall be resolved by general judicial reference pursuant to California Code of Civil Procedure Sections 638 and 641 through 645.1 or any successor statutes thereto, as modified or as otherwise provided in this Article IV, Section 3(a)(7)(iv). Subject to the limitations set forth in this Article IV, Section 3(a)(7), the judicial referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The judicial referee shall be the only trier of fact or law in the reference proceeding, and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

(A) Participation by Declarant Parties. The Parties to the Dispute shall cooperate in good faith to ensure that all necessary and appropriate Parties are included in the judicial reference proceeding. Declarant, the Association, or an Owner, as applicable in a particular judicial reference proceeding (individually, "Party" or collectively, the "Parties"), shall not be required to participate in the judicial reference proceeding if (i) all parties against whom the applicable Party would have cross-claims or counterclaims necessary to afford complete relief to such Party cannot be joined in the judicial reference proceeding, including, but not limited to, any Declarant Party (collectively, a "Necessary Party"), or (ii) the enforcement of the provisions of this Article IV, Section 3(a)(7) would impair the insurance coverage of a Party or a Declarant Party for any claim arising out of the Dispute that would otherwise provide coverage for such claim. If a Party determines that it cannot join all Necessary Parties or that its insurance

coverage would be impaired with respect to the Dispute, or if Declarant is advised by a Declarant Party that it contends its insurance coverage will be impaired by enforcement of this Article IV, Section 6, such Party may elect not to participate in the judicial reference proceeding. If a Party so elects not to participate in the judicial reference proceeding, such Party will provide notice to Claimant(s) and the other Parties to the judicial reference proceeding that the Dispute will not be resolved by judicial reference. In such circumstances, the other Parties may seek a determination of the Party's right not to participate by way of a motion under California Code of Civil Procedure Sections 638, 641 through 645.1, or any successor statutes thereto. If a determination is made as a result of such a motion that a Party is not required to participate in the judicial reference proceeding, unless the remaining Parties agree otherwise, the Dispute shall not be resolved by judicial reference and the Claimant(s) may commence an action with respect to the subject Dispute in an appropriate court of law. In the event that Claimant(s) are permitted to commence legal proceedings as provided herein, subsections (ii) through (vi) and subsections (viii) through (xiv) of this Article IV, Section 3(a)(7)(iv) will not apply in such legal proceeding, provided that the legal proceeding shall be tried by a judge and not a jury and Claimant(s) and all parties shall waive their rights to a jury (unless all parties to such proceeding mutually consent otherwise) and agree that the waiver of punitive damages set forth in Article IV, Section 3(a)(7)(iv)(G) below shall be applicable in such proceeding, as described in subparagraph (v) below.

(B) Place. The proceedings shall be heard in the county in which the Development is located.

(C) Referee. The referee shall be an attorney or retired judge with experience in relevant real estate matters. The referee shall not have any relationship to the parties to the Dispute or interest in the Development. The parties to the Dispute participating in the judicial reference proceeding shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. Any dispute regarding the selection of the referee shall be promptly resolved by the judge to whom the matter is assigned, or if there is none, to the presiding judge of the Superior Court of the County in which the Development is located, who shall select the referee.

(D) Commencement and Timing of Proceeding. The referee shall promptly commence the proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.

(E) Pre-hearing Conferences. The referee may require one or more pre-hearing conferences.

(F) Discovery. The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the Development, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in Article IV, Section 3(a)(7)(ii) above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(G) Limitation on Remedies; Prohibition on the Award of Punitive Damages. The referee shall not have the power to award punitive damages. In addition, as further provided below, the right to punitive damages is waived. The referee shall have the power to grant all other legal and equitable remedies and award compensatory damages in the judicial reference proceeding, as described in subparagraph (v) below.

(H) Motions. The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of any entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee as provided herein, any provisional remedies are sought by the parties to the Dispute, such relief may be sought in the Superior Court of the County in which the Development is located.

(I) Rules of Law. The referee shall apply the laws of the State of California except as expressly provided herein, including the California Evidence Code, unless expressly waived by all parties to the judicial reference proceeding.

(J) Record. A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals.

(K) Statement of Decision. The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as a decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the Dispute had been tried by the court.

(L) Post-hearing Motions. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(M) Appeals. The decision of the referee shall be subject to appeal in the same manner as if the Dispute had been tried by the court.

(v) Agreement to Dispute Resolution; Waivers of Jury Trial And Award of Punitive Damages. DECLARANT AND BY ACCEPTING THE DEED FOR THE ASSOCIATION COMMON AREA OR A LOT, AS THE CASE MAY BE, THE ASSOCIATION AND EACH OWNER AGREE TO HAVE ANY DISPUTE RESOLVED ACCORDING TO THE PROVISIONS OF THIS ARTICLE IV, SECTION 3(a)(7) AND WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE ANY DISPUTE (IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION. SUCH PARTIES ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL DISPUTES AS PROVIDED IN THIS SECTION, THEY WILL NOT HAVE ANY RIGHT TO HAVE SUCH DISPUTES TRIED BEFORE A JURY. THE PARTIES FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE DAMAGES RELATING TO SUCH DISPUTES THEREBY GIVING UP ANY RIGHTS SUCH PARTIES MAY POSSESS TO SUCH REMEDIES.

(vi) Use of Proceeds to Repair - Generally. It is Declarant's intention that the Project will be a first-class, residential development and that each Owner's dwelling will be free of construction defects. If an Owner or the Association should claim that a construction defect exists with respect to an Owner's home or the Common Area, the parties agree as follows:

(A) Use of Proceeds by Owner. Any proceeds awarded to an Owner arising from a Dispute whether by settlement, award or otherwise, must be applied only to curing the condition, design or construction of an Owner's home which is the basis of the Dispute.

(B) Use of Proceeds by the Association. In the event the Association receives, on its own behalf or for the benefit of the Owners, any proceeds as a result of any construction defect or other claims brought by the Association relating to repair or maintenance obligations of the Association, then the Association shall apply such proceeds first for the purpose of repairing such defects or replacing reserve funds previously utilized by the Association to cause such repairs and then to the costs of such litigation. To the extent such proceeds are insufficient to repair such defects or to replace reserve funds previously utilized by the Association, within thirty (30) days following the receipt of the proceeds, the Board of Directors shall be obligated to approve a special assessment equal to the amount of the insufficient proceeds which shall be immediately levied against the Development. The Board of Directors shall thereafter diligently pursue completion of the repairs, if such has not already occurred, which in any case shall be completed no later than nine (9) months following the receipt of such proceeds.

(vii) Civil Code Sections 1368.4 and 1375. Nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Section 1368.4, and any successor statutes or laws. If the claim is subject to the provisions of Civil Code Section 1375 as it may be amended from time to time, compliance with the procedures of Civil Code Sections 1375(b), (d) and (e) shall satisfy the requirements of Article IV, Sections 3(a)(7)(i) and 3(a)(7)(ii).

(viii) Exceptions to Mediation and Reference: Statutes of Limitation. The procedures set forth in this Article IV, Section 3(a)(7) shall apply only to Disputes and shall not apply to any action taken by the Association against Seller, or any owner for delinquent assessments, which shall be covered by Article IV, Section 3(a)(7), or in any action involving any bond covered by the provisions of Article IV, Section 3(b)(7). Furthermore, nothing in this Article IV, Section 3(a)(7) shall be considered to toll, stay, reduce or extend any applicable statutes of limitation; provided, however, that the Declarant Parties, Association or any owner shall be entitled to commence a legal action which in the good faith determination of such Party(ies) is necessary to preserve their rights under any applicable statute of limitations, provided that such party shall take no further steps in prosecuting the action until it has complied with the procedures described in Article IV, Sections 3(a)(7)(iii) and (iv).

(ix) Initiation of Action By Board. The decision to initiate any action against Declarant pursuant to California Civil Code Section 895 et. seq. (and any successor legislation) shall be made by a majority vote of the Lot Owner Directors (as such term is defined in the Bylaws) and the Declarant Directors shall have no right to vote on such decision.

(8) Delegation of Powers. The Association acting by and through the Board shall have the authority to delegate its powers, duties and responsibilities to committees, officers or employees, including a professional managing agent. The Association shall initially retain Eskaton Properties, Incorporated, a California non-profit public benefit corporation ("EPI") by a separate written agreement to provide management of the Development ("Management Agreement"), including but not limited to the operation, maintenance and replacement of: (a) the Common Area; (b) the exterior of the dwellings located on the Lots; and (c) the landscaping located on the Lots; and (d) to provide those services and programs more particularly described on **Exhibit "C,"** attached hereto and incorporated herein by reference. The initial term of the Management Agreement will terminate five (5) years from the date of the first occupancy of an Eskaton Unit or Condominium, and the Management Agreement provides for automatic extensions of three (3) years each thereafter. Provided however, at least six (6) months prior to the expiration of either the initial term or any extended term of the Management Agreement, the Members other than Declarant may prevent the automatic extension of the Management Agreement, without cause, by a vote of two-thirds (2/3) of such Members. Notwithstanding the foregoing, if at any time during the term of the Management Agreement, EPI is deemed to be in material default of its obligations under the Management Agreement, the Management Agreement shall terminate.

Any action to terminate the Management Agreement shall be ineffective unless:

(i) The termination of the Management Agreement shall be approved by two-thirds (2/3) of the Class A Members at a regular or special meeting of the Association.

(ii) A notice shall be sent by mail by prepaid, first-class, or registered mail to the most recent address of EPI setting forth the facts constituting the material default of the Management Agreement. Such notice shall be sent at least sixty (60) days before the proposed effective date of the termination.

(iii) EPI shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held not fewer than thirty (30) days before the effective date of the proposed termination. The hearing will be held by a special Member judicial committee composed of not fewer than three Members appointed by Members of the Board who are not representatives of Eskaton. The notice to EPI shall state the date, time, and place of the hearing on the proposed termination of the Management Agreement.

(iv) Following the hearing, the judicial committee shall decide whether or not EPI is in material breach of the Management Agreement and if the Management Agreement should be terminated.

(v) In the event that EPI shall correct an alleged breach of the Management Agreement prior to the hearing date, or if such correction can not be completed by the hearing date but EPI has commenced and is diligently pursuing correction of such breach, the Board shall discontinue the proceedings.

(9) Association Rules.

(A) **Rule Making Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of

general application to the Owners ("Association Rules"). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area; (ii) architectural control and the rules of the Architectural Review Committee under Article XV, below (iii) regulation of pet ownership, parking, signs, collection and disposal of refuse and other matters subject to regulation and restriction under Article III, above; (iv) collection of delinquent Assessments; (v) minimum standards of maintenance of landscaping or other improvements on any Lot or Condominium; (vi) the conduct of disciplinary proceedings in accordance with Article IV, Section 3(a)(2), (vii) and any other subject or matter within the jurisdiction of the Association as provided in this Declaration. Once the authority to appoint members of the Architectural Review Committee is vested solely in the Board, the Association Rules shall also include the Architectural Rules.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Association Rule and the provisions of any other Governing Document, the conflicting provisions contained in the other Governing Document shall prevail. All Association Rules shall be adopted, amended and repealed (as the case may be) in good faith and in substantial compliance with this Declaration and California Civil Code Sections 1357.100 through 1357.150.

(B) Distribution of Rules. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner.

(C) Adoption and Amendment of Rules.

(i) Requirement of Prior Notice to the Members of Certain Operating Rules or Amendments Thereto. California Civil Code Section 1357.100 defines an "Operating Rule" as an Association Rule or regulation that applies generally to the management and operation of the Development or to the conduct of the business and affairs of the Association. That Civil Code Section further defines a "Rule Change" as any adoption, amendment, or repeal of an Operating Rule by the Board. Civil Code Section 1357.120 identifies five types of Operating Rules (and Rule Changes involving such Operating Rules) that must first be provided to the members in writing at least thirty (30) days prior to the Board taking action to implement the Rule Change. The notice must include the text of the proposed Rule Change and a description of the purpose and effect of the proposed Rule Change. This requirement of prior notice to the Members applies only to Operating Rules that relate to one or more of the following subjects:

- (a) Use of the Common Areas of the Development;
- (b) Use of any Lot or Condominium in the Development (including Architectural Rules);
- (c) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties;
- (d) Any standards for delinquent assessment payment plans;

(e) Any procedures adopted by the Association for resolution of assessment disputes.

(f) Any procedures for reviewing and approving or disapproving a proposed physical change to an Owner's Lot or Condominium, from and after the time when the Association is solely responsible for appointing all members of the Architectural Review Committee; and

(g) Any procedures for the conduct of elections.

Specifically excluded by Civil Code Section 1357.120 from the requirement of prior notice to Members are the following actions of the Board, regardless of whether those actions may be construed as being Association Rules or "Operating Rules", as defined in the Civil Code: (i) any Rule Change that the Board adopts to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association (such "emergency rules" can be adopted and remain in effect for up to one hundred twenty (120) days); (ii) decisions regarding maintenance of the Common Areas; (iii) a decision on a specific matter that is not intended to apply to all Members, generally; (iv) establishing the amount of an assessment; (v) adoption of a Rule Change that is required by law (if the Board of Directors has no discretion regarding the substantive effect of the Rule Change); and (vi) issuance of a document that merely repeats existing law or the Governing Documents.

With respect solely to Operating Rules and/or Rule Changes listed in subparagraphs (a) through (e), of this paragraph (C), Civil Code Section 1357.140 gives Members owning five percent or more of the Lots, Condominiums and Eskaton Units in the Development the right to demand that a special meeting of the Members be called to reverse a proposed Rule Change, so long as the request for the special meeting is delivered to the Association not more than thirty (30) days after the Members are given notice of the Rule Change. If a proper and timely demand for a special meeting to vote to rescind an Operating Rule or Rule Change is tendered to the Association, the Board shall establish the date, time and location of the meeting and provide notice thereof to the Members in accordance with Corporations Code Section 7511(c).

So long as a quorum of the Members is present at any such meeting, the Rule Change can be reversed on the affirmative vote of a majority of a quorum of the Members, with each Member having one vote on the matter for each Lot, Condominium or Eskaton Unit owned. If the Members vote to reverse an Operating rule or a Rule Change, the Board may not take action to readopt the Operating Rule or Rule Change for a period of one year after the date of the special meeting where reversal of the Operating Rule or Rule Change was approved; provided, however, that this provision is not intended to preclude the Board from adopting a different Operating Rule or Rule Change on the same subject as the Rule Change that was successfully reversed. As soon as possible following the close of voting on any proposal to reverse an Operating Rule or Rule Change, but not more than fifteen (15) days after the close of voting, the Board shall provide notice to each Member of the results of the Member vote by personal delivery or first-class mail.

(ii) Minimum Content for Election Rules. Civil Code Section 1363.03 requires associations to adopt rules regarding the conduct of elections that do all of the following:

(a) Ensure that any candidate or member advocating a point of view is provided access to Association media, newsletters, or Internet Web sites during a campaign so long as the access is reasonably related to that election, equal access shall be provided to all candidates and members advocating a point of view (whether or not endorsed by the Board). The Association may not edit or redact any content from these campaign communications, but may include a statement specifying that the candidate or Member, and not the Association, is responsible for that content.

(b) Ensure access to the Common Area meeting space, if any exists, during a campaign, at no cost, to all candidates, including those who are not incumbents, and to all Members advocating a point of view (whether or not endorsed by the Board) so long as use of the space is for a purpose that is reasonably related to the election.

(c) Specify the qualifications for candidates for election to the Board and any other elected position, and procedures for the nomination of candidates. A nomination or election procedure shall not be deemed reasonable if it disallows any Member of the Association from nominating himself or herself for election to the Board.

(d) Specify the qualifications for voting, the voting power of each membership, the authenticity, validity, and effect of proxies, and the voting period for elections, including the times at which polls will open and close.

(e) Specify a method of selecting one or three inspectors of election by the Board.

(iii) Adoption of Other Association Rules. Except as provided in this subparagraph (C), with respect to certain Operating Rules and Rule Changes that must first be distributed to the Members, any other Association Rules may be adopted or amended from time to time by majority vote of the Board; provided, however, that no Association Rule or amendment thereto shall be adopted by the Board until at least thirty (30) days after the proposed rule or rule amendment has been distributed in writing to each Member, along with a description of the purpose and effect of the proposed Association Rule or amendment thereto. The notice describing the proposed rule or amendment shall also set forth the date, time and location of the Board meeting at which action on the proposal is scheduled to be taken. Any duly adopted rule or amendment to the Association Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to the Owners by mail or personal delivery.

(iv) Prohibition on Adoption of Certain Rules. In accordance with Civil Code Section 1368.1, any rule or regulation of an association that arbitrarily or unreasonably restricts an Owner's ability to market his or her Lot or Condominium is void. Without limiting the foregoing, in no event shall the Association be entitled to impose an assessment or fee in connection with the marketing of an Owner's Lot or Condominium in an amount that exceeds the Association's actual and direct costs.

(b) **Duties of the Association.** In addition to the powers delegated to it by the Articles or in the Bylaws, and without limiting the generality thereof, the Association acting by and through the Board, or by and through persons or entities described in Paragraph (a)(3) above, if applicable, shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following duties:

(1) **Operation and Maintenance of Common Area.** Operate, repair, replace, maintain and otherwise manage or provide for the operation, repair, replacement, maintenance and management of the Common Area, including but not limited to the streets, parking areas, drive aisles, storm drainage system, facilities, improvements, landscaping and irrigation systems for the Common Area landscaping, fire suppression systems, and all other property acquired by the Association, including personal property. Recycled water shall be used to irrigate landscape area along the frontage of Blue Oaks Boulevard, Diamond Creek Boulevard and Parkside Way. The City's responsibility for the irrigation system for the Common Area where recycled water is used will end at the City right of way and meter at backflow assembly.

(2) **Maintenance and Repair of Landscaping.** Water, plant, cut, remove, and otherwise care for the landscaping installed by the Association on each of the Lots, but not on the parcel upon which the Eskaton Lodge is located.

(3) **Maintenance and Repair of Exteriors.** Paint, repair, replace, or otherwise maintain good condition and repair each roof, gutter, downspout, and exterior building surface (other than a glass surface) of the residences located on the Lots. The Association's obligation to repair, replace and maintain exteriors of the residences shall include: painting the exterior surfaces of the residences, repairing and replacing the roofs, siding and gutters of the residences, periodic cleaning of the gutters of the residences and repair and replacement of light fixtures. The Association's duties to repair, replace and maintain shall not include any obligation to clean or replace windows or window casings, replace light bulbs, repair or replace doors, locks or door hardware. The Association shall have no obligation under this Article III, Section 3(b)(3) to maintain the Condominiums, unless the Association enters into a Maintenance Services Agreement with the Condominium Association to do so.

(4) **Maintenance and Repair of Meandering Sidewalks.** Maintain, repair, and replace, as necessary, the meandering sidewalks that are located within the open yard areas of certain Lots within the Development.

(5) **Standards and Cost.** The standards of landscaping and exterior maintenance shall be determined by the Association. The cost of general landscaping and exterior maintenance for all Lots shall be included in the annual budget and levied as a regular assessment against all Lots. The cost of any additional landscaping and exterior maintenance that the Association determines is necessary for a particular Lot shall be charged to that or those Lot in the month in which performed. Unless it is otherwise specified by the Association, the charge shall be paid by the Owner to the Association thirty (30) calendar days after the charge is made. If an Owner fails to pay the charge, the Association may take any action it considers appropriate to enforce collection, and shall be entitled to recover any costs incurred in connection with such action, including reasonable attorneys' fees, and interest at the rate of ten percent (10%) per annum on the unpaid charge from the due date through the date of payment. Notwithstanding the foregoing, the Association shall not be obligated to repair damage to the exterior of residences or the landscaping occasioned by the by the negligent or intentional act or omission of the Owner.

(6) **Services and Programs.** Provide those services and programs more particularly described in **Exhibit "C,"** which shall ultimately include an emergency response system for each Lot and Eskaton Unit, shuttle services, special events, fitness and health care programs. The Board shall have the authority to determine when such services and programs will be implemented and the level that such services and programs will be provided.

(7) **Taxes and Assessments.** Pay all real and personal property taxes and assessments and all other taxes levied against the Common Area, or personal property owned by the Association, or against the Association, if any. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes.

(8) **Water and Other Utilities.** Acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, and gas and other necessary utility services for the Common Area and for Lots when the Lots are not separately billed therefor. The term of any contract to supply any of the listed services shall not exceed one (1) year or, if the supplier is a regulated public utility, the shortest term for which the supplier will contract at the applicable regulated rate.

(9) **Insurance.** Obtain from reputable insurance companies, and maintain in effect, the insurance described in Article VIII hereof.

(10) **Enforcement of Restrictions and Rules.** Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles and Bylaws, and the Association Rules and Board resolutions.

(11) **Enforcement of Bonded Obligations.** When the California Real Estate Commissioner issues a final subdivision public report ("Public Report") for the Development, if any of the Common Area improvements in the Development have not been completed, and if the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of a commitment of the Declarant or its successors or assigns to complete such Common Area improvements, then 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 sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the Bond. However, 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 action to enforce the obligations under the Bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. If the Board fails to consider and vote on the action to enforce the obligations under the Bond, or if the Board decides not to initiate action to enforce the obligations under the Bond, after request therefor by those representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Members for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the Bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days or more than forty-five (45) days after receipt by the Board of said petition and by giving written notice to all Owners entitled to vote in the manner provided in this

Declaration or in the Bylaws for notices of special meetings of Members of the Association. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote, in favor of taking action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and Board shall then implement this decision by initiating and pursuing appropriate action in the name of the Association.

(12) Acquisition of Property. 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.

(13) Loans. Borrow money, and only with the assent (by vote or written consent) of three-fourths (3/4) of the Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debt incurred.

(14) Dedication. Dedicate, sell or transfer all or any portion 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 has been signed by three-fourths (3/4) of the Members, agreeing to such dedication, sale or transfer.

(15) Easements. To grant easements pursuant to Article II, Section 5 of this Declaration.

(c) Limitations on Authority of Board. Except with the 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 Members constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association, the Board shall not take any of the following actions:

(1) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

(2) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or

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

(i) The Management Agreement described in Article IV, Section 3(a)(8).

(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 (3) years duration provided that the policy permits for 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 ten percent (10%) or more.

(v) Agreements for cable television services and equipment or satellite dish television services and equipment of a term not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(vi) Except for the Management Agreement described in Article IV, Section 3(a)(8), a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days' written notice of termination to the other party.

(4) Pay compensation to Members of the Board or to officers of the Association for services performed in the conduct of the Association's business. However, the Board may cause a Member of the Board or an officer to be reimbursed for reasonable expenses incurred in carrying on the business of the Association.

(5) Fill a vacancy on the Board created by the removal of a Member of the Board.

4. Limitation on Liability of Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and Reserve Accounts, repair and maintenance of Common Areas and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result

of the tortious act or omission of a volunteer director or volunteer officer of the Association shall recover damages from such director or officer if all of the following conditions are satisfied:

- (1) The director or officer owns no more than two Lots;
- (2) The act or omission was performed within the scope of the volunteer director's or officer's Association duties;
- (3) The act or omission was performed in good faith;
- (4) The act or omission was not willful, wanton, or grossly negligent;
- (5) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability insurance with coverage of at least ONE MILLION DOLLARS (\$1,000,000.00).

The payment of actual expenses incurred by a director or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer director or officer for the purposes of this section. The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code Section 1365.7. In the event said Civil Code Section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

5. Financial Statements of the Association. The following financial and related information shall be regularly prepared and distributed by the Board to all Members of the Association:

(a) A pro forma operating budget for the immediately ensuing fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year:

- (1) Estimated revenue and expenses on an accrual basis.
- (2) A summary of the Association's reserves based upon the most recent 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:
 - (i) The current estimated replacement cost, estimated remaining life and estimated useful life of each major component.
 - (ii) As of the end of the fiscal year for which the study is prepared:
 - (A) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain major components.
 - (B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.

(iii) The percentage that accumulated cash reserves actually set aside is of the current estimate of cash reserves necessary.

(3) 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.

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

(b) A balance sheet as of the accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of an interest in the Development, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the subdivision interest and the name of the entity assessed.

(c) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year:

(1) A balance sheet as of the end of the fiscal year.

(2) An operating (income) statement for the fiscal year.

(3) A statement of changes in financial position for the fiscal year.

(4) For any fiscal year in which the gross income to the Association exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(d) If the report referred to in Article IV, Section 5(c)(4) is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review. In lieu of the distribution of the pro forma operating budget required by Article IV, Section 5(a), the Board may elect to distribute a summary of the statements to all Members of the Association with a written notice that the budget is available at the business office of the Association or at another suitable location within the boundaries of the Development and that copies will be provided upon request and at the expense of the Association. If any Member requests copies of the pro forma operating budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Members shall be in at least 10-point boldface type on the front page of the summary of the statements.

(e) In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against Members' subdivision interests.

(f) A summary of the Association's general liability policy that states all of the following:

(1) The name of the insurer.

(2) The policy limits of the insurance.

(3) If an insurance agent, as defined in Section 1621 of the California Insurance Code, an insurance broker, as defined in Section 1623 of the California Insurance Code, or an agent of an insurance agent or insurance broker has assisted the Association in the development of the general liability policy limits and if the recommendations of the insurance agent or insurance broker were followed.

(4) The insurance deductibles.

(5) The person or entity that is responsible for paying the insurance deductible in the event of loss.

(6) Whether or not the insurance coverage extends to the real property improvements to the separate interests.

(g) A summary of the Association's earthquake and flood insurance policy, if one has been issued, that states all of the following:

(1) The name of the insurer.

(2) The policy limits of the insurance.

(3) The insurance deductibles.

(4) The person or entity that is responsible for paying the insurance deductible in the event of loss.

(h) A summary of the liability coverage policy for the director and officers of the Association that lists all of the following:

- (1) The name of the insurer.
- (2) The limits of the insurance.

(i) Notwithstanding subdivisions (f), (g) and (h), the Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies have been canceled and not immediately replaced. If the Association renews any of the policies or a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Association shall notify its Members of that fact in the next available mailing to all Members pursuant to Section 5016 of the California Corporations Code.

(j) To the extent that the information to be disclosed pursuant to subdivisions (f), (g) and (h) is specified in the insurance policy declaration page, the Association may meet the requirements of those subdivisions by making copies of that page and distributing it to all its Members.

Copies of such balance sheet, operating statement, pro forma operating statement, and audited annual report, if such report is audited, for the Association shall be mailed, upon written request, within a reasonable time to FHA, FNMA, FHLMC, VA or to any mortgagee which has an interest or prospective interest in the Development.

6. Review of Financial Statements. The Board shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's operating accounts to be made and review the same.

(b) Cause a current reconciliation of the Association's Reserve Accounts to be made and review the same.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the most current account statements prepared by the financial institution where the Association has its operating and Reserve Accounts.

(e) Review an income and expense statement for the Association's operating and Reserve Accounts.

7. Withdrawal of Funds. Withdrawal of funds from the Association's Reserve Account shall require the signatures of either:

(a) Two Members of the Board; or

(b) One Member of the Board and an officer of the Association who is not also a Member of the Board.

8. Reserve Funds.

(a) The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Common Area which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, 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 (1) year of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and upon making a finding supported by documentation that a temporary delay would be in the best interests of the Development, temporarily delay the restoration for such time as the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the Reserve Account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. Such a special assessment shall be subject to the limitation imposed by California Civil Code Section 1366. 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 California Corporations Code, and of the availability of an accounting of those expenses. 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.

(b) At least once every three (3) years the Board shall cause a study of the Reserve Account Requirements of the Development to be conducted if the current replacement value of the major components of Common Area which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half ($\frac{1}{2}$) of the gross budget of the Association for any fiscal year excluding 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.

(c) The study required by this Section shall at minimum include:

(1) Identification of the major components of Common Area 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 thirty (30) years.

(2) Identification of the probable remaining useful life of the components identified in Article IV, Section 8(c)(1) as of the date of the study.

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Article IV, Section 8(c)(1) during and at the end of its useful life.

(4) 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.

(5) A reserve funding plan that indicates how the Association plans to fund the contribution identified in subparagraph (4) above to meet the Association's obligation for the repair and replacement of all major components with an expected remaining life of thirty (30) years or less, not including those components that the Board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the Board of Directors at an open meeting before the membership of the Association as described in Civil Code Section 1363.05. If the Board of Directors determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the Board that is consistent with the procedure described in Civil Code Section 1366.

(d) As used in this section, "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 of Common Area which the Association is obligated to maintain.

(e) As used in this section, "Reserve Account Requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components of Common Area which the Association is obligated to maintain.

9. Inspection of Association Books and Records.

(a) Commencing not later than ninety (90) days after the close of escrow of the first interest in the Development, copies of the documents listed below, as soon as readily obtainable, shall 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 below shall apply to any documents obtained by Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of: (i) the conveyance of the last Lot, Condominium or Eskaton Unit covered by a subdivision public report issued by the California Department of Real Estate; or (ii) three (3) years after the expiration of the most recent public report, on the Development:

(1) The recorded subdivision map or maps for the Development.

(2) The deeds and easements executed by Declarant conveying the Common Area or other interest to the Association, to the extent applicable.

(3) The recorded covenants, conditions and restrictions for the Development, including all amendments and annexations thereto.

(4) The Association's filed Articles of Incorporation, if any, and all amendments thereto.

(5) The Association's Bylaws and all amendments thereto.

(6) All architectural guidelines and all other rules regulating the use of an Owner's interest in the Development or use of the Common Area which have been promulgated by the Association.

(7) The plans approved by the local agency or county where the Development 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 that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

(8) All notice of completion certificates issued for Common Area improvements (other than residential structures).

(9) Any bond or other security device in which the Association is the beneficiary.

(10) Any written warranty being transferred to the Association for Common Area equipment, fixtures or improvements.

(11) Any insurance policy procured for the benefit of the Association, its governing board or the Common Area.

(12) Any lease or contract to which the Association is a party.

(13) 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.

(14) Any instrument referred to in Business and Professions Code Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of Members.

(b) Commencing not later than ninety (90) days after the annexation of additional Phases to the Development, copies of those documents listed under subdivision (a) which are applicable to that Phase, shall, as soon as 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 all documents obtained by 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 subdivision public report or (ii) three (3) years after the expiration of the most recent public report, on the subdivision.

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

(d) 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 thirty (30) days of the meeting. The minutes, proposed minutes, or summary of the minutes shall be distributed to any Member upon request and upon reimbursement of the Association's costs in making that distribution.

(e) Members shall be notified in writing at the time that the pro forma budget described in Article IV, Section 5(a) of the Declaration, and required by California Civil Code Section 1365 is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

(f) The Board shall establish by resolution reasonable rules with respect to:

(1) Notice to be given to the custodian of the records of the Association by the Member, representative or Mortgagee desiring to make an inspection.

(2) Hours and days of the week when an inspection may be made.

(3) Payment of the cost of reproducing copies of documents requested by a Member or by a representative or Mortgagee.

(g) Every director of the Board shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director of the Board includes the right to make extracts and copies of documents.

10. Transfer of Lots or Condominiums.

(a) Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide an Owner with a copy of:

(i) the Governing Documents;

(ii) the most recent financial statement;

(iii) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Lot or Condominium which are unpaid on the date of the statement, and any monetary fines or penalties levied upon the Owner's Lot or Condominium and unpaid as of the date of the Statement. Such statement shall also include true information on late charges, interest and costs of collection which, as of the date of the

statement, are or may be made a lien upon the Owner's Lot or Condominium, pursuant to Civil Code Sections 1367 and 1367.1;

(iv) a copy or a summary of any notice previously sent to the Owner pursuant to Civil Code Section 1363(h), that sets forth any alleged violations of the Governing Documents that remain unresolved at the time of the request; and

(v) a statement disclosing any change in the Association's current regular and special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(b) Within ten (10) days of the mailing or delivery of a request for the information described in subparagraph 10(a), above, the Association shall provide the Owner with copies of the requested items. The items that the Association is obligated to provide pursuant to this subparagraph 10(a) may be maintained in electronic form and requesting parties shall have the option of receiving them by electronic transmission or machine readable storage media if the Association maintains these items in electronic form. The Association may charge a reasonable fee for these serve based upon the Association's actual cost to procure, prepare, and reproduce the requested items.

(c) The provisions of this subparagraph 10, except for those provisions relating to the furnishing of a statement, shall not apply to any Owner who is subject to the requirements of California Business and Professions Code Section 11018.1 (i.e., the obligation to provide prospective purchasers with a California Department of Real Estate Public Report in connection with the sale of a Lot).

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

1. Membership.

(a) **Qualifications.** Each Owner of a Lot or Condominium, and Eskaton, as the Owner of the Eskaton Units, shall be a Member of the Association. If a Lot or Condominium is owned by more than one person, each such person shall be a Member of the Association. Each Owner, including Declarant, shall hold one membership in the Association for each Lot, Condominium and each Eskaton Unit owned. Ownership of a Lot, Condominium or Eskaton Unit shall be the sole qualification for and entitlement to membership in the Association. Each Owner shall remain a Member of the Association until such time as his ownership or ownership interest in all Lots, Condominiums and Eskaton Units in the Development ceases for any reason, at which time his membership in the Association shall automatically cease. A Member is not intended to include (i) persons or entities who hold an interest in a Lot, Condominium or Eskaton Unit merely as security for performance of an obligation, (ii) contract purchasers not qualifying as Owners under the definition contained in Article I hereof, or (iii) trustees under any instrument securing performance of an obligation.

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

(c) Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Lots, Condominiums or Eskaton Units shall be appurtenant to each such Lot, Condominium or Eskaton Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon a transfer of title to each such Lot, Condominium or Eskaton Unit and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot, Condominium or Eskaton Unit shall operate automatically to transfer the membership rights in the Association appurtenant thereto to the new Owner thereof except that the transferee thereof may be obligated to pay a reasonable fee to the Association for transfer of a certificate evidencing membership in the Association as set forth in the Bylaws.

2. Voting.

(a) Number of Votes. The Association shall have two (2) classes of voting membership, which rights shall not vest until assessments against those interests have been levied by the Association.

Class A: Class A Members are all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot or Condominium in which such class Member owns an interest. However, when more than one Class A Member owns an interest in a Lot or Condominium, the vote for such Lot or Condominium shall be exercised as they themselves determine, but in no case shall more than one (1) vote be cast with respect to any one Lot or Condominium.

Class B: The Class B Members shall be Eskaton and Lakemont who shall be entitled to vote as follows: Voting shall be the same as for Class A memberships, except that Class B Members may triple their votes for each Lot, Condominium, Eskaton Unit or Eskaton Certified Senior Friendly Unit owned. The Class B membership shall cease and be converted to Class A membership on the fifth (5th) anniversary of the close of escrow of the first Lot or Condominium for the most recent phase of the Development.

As long as two classes of Members in the Association exist, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by fifty-one percent (51%) of both classes of Members, except as provided in Article V, Section 3 of this Declaration.

(b) Joint Owner Votes. The voting rights for each Lot, Condominium or Eskaton Unit may not be cast on a fractional basis. In the event that only one joint Owner of a Lot, Condominium or Eskaton Unit votes on a particular matter, such act shall bind all joint Owners with respect to such matter. If more than one joint Owner votes on a particular matter, the act of the majority of such joint Owners shall bind all as to such matter. In the event that a majority of the joint owners of a Lot, Condominium or Eskaton Unit are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit same as to the matter in question. If any Owner or Owners cast the voting rights of a particular Lot, Condominium or Eskaton Unit as hereinabove set forth, it will thereafter be conclusively presumed for all purposes that they were

acting with the authority and consent of all other Owners of the same Lot, Condominium or Eskaton Unit.

3. Limitations on Declarant's Voting Power. Except for the section entitled "Enforcement of Bonded Obligations," as provided for in this Declaration, the Bylaws, and the Articles of Incorporation, no section which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Lots, Condominiums or Eskaton Units which the Declarant owns. For all action which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant, such approval may be obtained as follows:

(a) As long as two classes of Members in the Association exist, the vote or written assent of a bare majority of the Class B voting power as well as the vote or written assent of a prescribed majority of the Class A voting power; or

(b) After the conversion of Class B to Class A shares, the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of a prescribed majority of the total voting power of Members other than the Declarant.

ARTICLE VI

ASSESSMENTS

1. Agreement to Pay. The Declarant, for each Lot, Condominium or Eskaton Unit owned by it in the Development which is expressly made subject to assessment as set forth in this Declaration, hereby covenants and agrees, and each Owner of a Lot, Condominium or Eskaton Unit by his acceptance of a deed or upon the recordation of a contract of sale therefor, whether or not it is so expressed in such deed or contract of sale, is deemed to covenant and agree, for each Lot, Condominium or Eskaton Unit owned, to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration. In accordance with Civil Code Section 1366.1, the Association shall not impose or collect an assessment or fee that exceeds the amount necessary to defray the costs for which the Assessment or fee is levied.

2. Personal Obligations. Each such assessment or installment thereof, together with any late charge, interest thereon, collection costs and reasonable attorneys fees, shall also be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment thereof, became due and payable. In the event more than one person or entity was the Owner of a Lot, Condominium or Eskaton Unit, the personal obligation to pay such assessment, or installment thereof, respecting such Lot, Condominium or Eskaton Unit shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments thereof, and such other sums, shall not pass to an Owner's successors in interest unless expressly assumed by them. No Owner of a Lot, Condominium or Eskaton Unit may exempt themselves from payment of assessments, or installments thereof, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, their Lot, Condominium or Eskaton Unit.

3. **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members of the Association, the improvement, replacement, repair, operation and maintenance of the Common Area, and the performance of the duties of the Association and the Members as set forth in this Declaration. Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the Common Area as provided in Section 8 of Article IV.

4. **Assessments.**

(a) **Regular Assessments.** Until January 1 of the year immediately following the close of escrow on the sale of the first Lot or Condominium in the Development, the maximum regular annual assessment per Lot shall be such amount as is set forth in the Development budget approved by the Department of Real Estate, which amount shall be prorated based on the number of months remaining before January 1 of such year. Thereafter, the Board shall determine and fix the amount of the maximum annual assessment against each Lot, Condominium Unit, or Eskaton Unit, not less than thirty (30) nor more than ninety (90) days prior to the beginning of the Association's fiscal year.

(b) **Special Assessments.** If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, costs of services and programs described in Exhibit "C," costs of maintenance, new construction, reconstruction to the extent the same is not covered by the provisions for reconstruction assessments herein), or unexpected maintenance or repairs the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board it shall become a special assessment. Provided however, that any portion of a special assessment which would pay for any item of expense normally covered by that year's regular assessments, when combined with the increase of that year's regular annual assessments shall not exceed more than twenty percent (20%) of the regular annual assessments for the immediately preceding fiscal year. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot, Condominium and Eskaton Unit. Unless exempt from federal or state income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied, or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

(c) **Cost Center Assessment Component.** Whenever it is determined by the Declarant that a Cost Center should be designated to fairly allocate the expenses incurred or to be incurred by the Association to operate, maintain, repair and replace a particular Common Area Improvement(s) or maintenance areas (the "Cost Center Assessment Component"), each Lot or Condominium within a designated Cost Center shall be allocated an equal share of the Cost Center Assessment Component of the Association's Common Expenses chargeable to the Cost Center. Reserves attributable to the Cost Center Budget must be separately identified and may not be commingled with the reserve elements of the General Assessment Component. Separate accounting methods shall be used for the funds that are collected and expensed on behalf of a Cost Center, and for annual review and disclosure of Cost Center Reserves and its reserve study. The use of Cost Center Budget monies is restricted and documentation shall be required to

disclose such use for any purpose other than as intended by this Declaration. The Association shall have the power and authority to designate Lots, Condominiums and Common Areas within the Development as Cost Centers for purposes of expense accounting and the equitable allocation of regular assessments. A Cost Center is likely to be designated when one of the following occurs: (i) the maintenance or use of a particular improvement or maintenance area within the designated Cost Center is fully or partially restricted to Owners of Lots or Condominiums located within the area designated a "Cost Center," or (ii) when certain Owners of Lots or Condominiums within a designated Cost Center are receiving services from the Association that are in addition to, or significantly greater than the services provided to other Owners or residents. Ordinarily, a Cost Center shall be established whenever it is reasonable to anticipate that any Owner or group of Owners will derive as much as ten percent (10%) more than Owners in general in the value of a common service(s) supplied by the Association. It is contemplated that the Lots and Condominiums owned by Lakemont will comprise Cost Center No. 1 of the Association. Cost Center No. 1 shall provide for the maintenance and repair obligations described in Article IV, Section 3(b)(3). The Assessments applicable to Cost Center No. 1 shall be allocated equally among the Lots and Condominiums owned by Lakemont.

(d) Notice of Increase in Assessments. The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

(e) Annual and Special Assessment Increases.

(1) Prior to imposing any increase in either regular or special assessments, the Board must do both of the following:

(A) Prepare and distribute to all Members a copy of the operating budget not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year, which operating budget shall include:

(i) The estimated revenue and expenses on an accrual basis.

(ii) A summary of the Association's reserves based upon the most recent 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: (a) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component; (b) the current estimate of the amount of cash reserves necessary, and the current amount of accumulated cash reserves actually set aside, to repair, replace, restore, or maintain major components, as of the end of the fiscal year; and (c) the percentage that such actual reserves bear to such necessary reserves.

(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.

(iv) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain;

(B) If required by subparagraph (e)(2) below, obtain the approval of Owners constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with subsection (e) below.

(2) Notwithstanding Section 4(e)(1) above, the Board may not impose a regular annual assessment which is more than twenty percent (20%) greater than the regular annual assessment for the immediately preceding fiscal year (except for the first fiscal year of the Association if it should be less than twelve months) without the approval by vote or written consent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association, nor may the Board impose any special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year in which a special assessment is levied without approval of the Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association. The required affirmative vote of the Members pursuant to this subparagraph (2) shall be approval of Members constituting a quorum casting a majority of the votes at an election of the Association conducted in accordance with the election procedures set forth in Section 4.4 of the Association Bylaws.

(3) The restrictions imposed upon the Board pursuant to Article VI, Sections 4(b) and 4(e)(2) and 4(d)(2) concerning maximum percentage increase of annual and special assessments shall not apply to assessments for the following purposes:

(A) Addressing emergency situations. An emergency situation is any one of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Development or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. However, prior to the imposition or collection of an assessment under this subdivision, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

(f) **Vacant Lot Assessment.** Notwithstanding any other provision of this Declaration or the Bylaws which may be or appear to be contrary, Declarant and other Owners shall be temporarily exempted from the payment of that portion of regular and special assessments assessed against Lots or Condominiums which do not include a structural improvement completed for human occupancy ("Vacant Lots or Condominiums"), for the purpose of defraying expenses

attributable to the existence and the use of structural improvements including, without limitation, expenses attributable to roof replacement, landscape and exterior maintenance, walkway and exterior lighting, refuse disposal, insurance, cable television, irrigation and domestic water. Such exemption shall continue for each such Lot until the earliest of the following events:

- (1) A notice of completion of the structural improvements has been recorded;
- (2) Occupation or use of the dwellings; or
- (3) Completion of all elements of the residential structures which the Association is obliged to maintain.

Such temporary partial exemption shall not deprive Declarant of any voting rights with respect to the Lots to which the exemption applies. Except for the provisions in this Article VI, Section 4(f) permitting Declarant a temporary exemption from a portion of the regular and special assessments assessed against Vacant Lots or Condominiums, Declarant shall be fully responsible to pay to the Association each and every other portion of the regular and special assessments assessed against said Vacant Lots or Condominiums.

Declarant and any other Owner of a Lot or Condominium shall be exempt 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. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

- (i) A notice of completion of the common facility has been recorded; or
- (ii) The common facility has been placed into use.

Declarant and any other Owner of a Lot shall be exempt from the payment of that portion of any assessment which is for the purpose of defraying expenses directly attributable to those services and programs described in **Exhibit "C,"** until such time as said services and programs are offered to the Owners of the Lots and residents of the Eskaton Units.

5. Rate of Assessment. Regular and special assessments shall be fixed at an equal rate for all Lots, Condominiums and Eskaton Units.

6. Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year. However, the initial regular assessment period for each Phase of Lots and Eskaton Units shall commence on: (i) the first day of the month following the first sale of a Lot or Condominium in that Phase; and (ii) the first day of the month following the first occupancy by a resident of an Eskaton Unit in that Phase and shall terminate on December 31 of the year in which the initial conveyance is made or occupancy occurs. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection.

7. **Notice and Assessment Installment Due Dates.** A single ten (10) day prior written notice of each annual regular assessment and each special assessment shall be given to any Owner of every Lot, Condominium and Eskaton Unit subject to assessment in which the due dates for the payments of installments shall be specified. As provided herein the due dates for the payment of installments shall be the first day of each month unless some other due date is established by the Board. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. Any delinquent assessment shall be subject to a late charge equal to an amount which shall not exceed ten percent (10%) of the delinquent assessment or TEN DOLLARS (\$10.00), whichever is greater.

8. **Estoppel Certificate.** The Board or manager, on not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not, to the knowledge of the Association, a particular Owner is in default in paying assessments as to their Lot, Condominium or Eskaton Unit under the provisions of this Declaration and further stating the dates to which installments of assessments, regular or special, have been paid as to such Lot, Condominium or Eskaton Unit. Any such certificate may be relied on by any prospective purchaser or Mortgagee of the Lot, Condominium or Eskaton Unit, but reliance on such certificate may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

9. **Limitations on Association's Authority to Assign or Pledge Assessment Obligations.** The Association may not voluntarily assign or pledge its right to collect payments or assessments, or to enforce or foreclosure a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association. However, the restrictions imposed by this subparagraph (9) shall not restrict the right or ability of the Association to assign any unpaid obligations to a former Member to a third party for purposes of collection.

ARTICLE VII

COLLECTION OF ASSESSMENTS: LIENS

1. **Right to Enforce.** The right to collect and enforce assessments is hereby vested in the Board acting by and on behalf of the Association. The Board or its authorized representative, including the manager, if any, may enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Article VII, Section 2 hereof to enforce the lien rights created hereby. A suit to recover a money judgment for unpaid assessments together with all other amounts described in Sections 2 and 7 of Article VI hereof may be maintained without foreclosing or waiving said lien rights.

2. **Collection of Assessments; Enforcement of Liens.** Installments of regular, special, and special individual assessments shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board. When an assessment becomes delinquent, the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent assessments, subject to the limitations imposed by California Civil Code

Sections 1366(c) and 1366.1 or comparable successor statutes. Once an assessment becomes delinquent, the Association may elect to pursue one or both of the following remedies:

(a) Enforcement of An Owner's Personal Obligation to Pay Assessments.

The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in subparagraph (b), below.

(b) Imposition and Enforcement of Assessment Lien and Limitations Thereon. Except as otherwise provided in subparagraph (b)(9), below, with respect to the limitation on the imposition of liens for special assessments, the Association may impose a lien against the Owner's Lot, Condominium or Eskaton Unit for the amount of the delinquent assessment or assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

(1) Issuance of Delinquency Notice; Contents. At least thirty (30) days prior to recording a lien upon the Owner's Lot, Condominium or Eskaton Unit to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) 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 Lot, Condominium or Eskaton 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 LOT, CONDOMINIUM OR ESKATON UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) 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, any late charges, and interest, if any.

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

(D) The right of the notified Owner to request a meeting with the Board as provided in subparagraph (4), below.

(E) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program pursuant to Civil Code Section 1363.810 et seq.

(F) The right of the noticed Member to request alternative dispute resolution with a neutral third party pursuant to Civil Code Section 1369.510 et seq. before the Association may initiate foreclosure against the Owner's Lot, Condominium or Eskaton Unit, except

that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure, rather than a non-judicial foreclosure.

(2) Application of Payments. Any payments made by the Owner toward the delinquent assessment shall first be applied to the assessments that are owed at the time the payment is made; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges 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 the payment on behalf of the Association. The Association shall provide its Members with a mailing address for overnight payment of assessments.

(3) Pre-Lien Offer to Meet and Confer with the Owner. Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code Section 1363.810 et seq.

(4) Rights of Owners to Propose Payment Plans. An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Lot, Condominium or Eskaton Unit to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan.

(5) Association Assessment Lien Rights. Except as provided in subparagraph (9), below (relating to special assessments), the amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code Section 1366 shall be a lien on the Owner's Lot, Condominium or Eskaton Unit from and after the time the Association causes to be recorded in the Office of the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Lot, Condominium or Eskaton Unit against which the assessment and other sums are levied, the name of the record owner of the Owner's Lot, Condominium or Eskaton Unit against which the lien is imposed. The itemized statement of the charges owed by the Owner that is required by subparagraph (b)(i)(B), of this Article VII, Section 2 shall be recorded together with the Notice of Delinquent Assessment. The decision to record a lien for delinquent assessments shall be made only by the Board of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an open meeting and the vote shall be recorded in the minutes of the meeting.

In order for the lien to be imposed by non-judicial foreclosure as provided in subparagraph (7), below, 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 or if no one is designated, by the president of the Association. A copy of the recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Lot, Condominium or Eskaton Unit in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation. Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices, including Notices of Delinquent Assessments, required by Civil Code Section 1367.1 to the secondary address that is specified.

(6) Priority of Assessment Liens. A lien created pursuant to subparagraph (v), above or subparagraph (9), below, shall be prior to all other liens recorded against the Owner's Lot, Condominium or Eskaton Unit subsequent to the Notice of Delinquent Assessment, except as otherwise expressly herein provided.

(7) Enforcement of Assessment Liens. Subject to the limitations of this Article VI, Section 2, and in particular this subparagraph (vii), following the recording of a Notice of Delinquent Assessment, the Association's 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 the 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.

The following specific limitations shall apply to the pursuit of foreclosure remedies:

(i) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board in an executive session and shall record the vote in the minutes of the next meeting of the Board that is open to attendance by the Members. The Board shall maintain the confidentiality of the Owner or Owners of the Lot, Condominium or Eskaton Unit by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least thirty (30) days prior to any public sale of the Lot, Condominium or Eskaton Unit in question.

(ii) Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's meet and confer program that is required by Civil Code Section 1363.810 et seq. or alternate dispute resolution with a neutral third party pursuant to Civil Code Section 1369.510 et seq. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate judicial foreclosure, rather than non-judicial foreclosure.

(iii) If the Board votes to commence foreclosure proceedings to collect delinquent assessments pursuant to this subparagraph (7), the Board shall provide notice

of that decision by personal service to an Owner of the Lot or Eskaton Unit who occupies the Residence on the Lot, Condominium or Eskaton Unit or to the Owner's legal representative. If the Owner does not occupy the Residence and Lot, Condominium or Eskaton Unit that are the subject of the foreclosure proceeding, the Board shall provide written notice to the Owner by first-class mail, postage prepaid, at the most current address for the Owner that is shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's Lot, Condominium or Eskaton Unit may be treated as the Owner's mailing address.

(iv) Debts for regular or special assessments may not be collected through the use of judicial or non-judicial foreclosure remedies until the delinquent assessment amount, exclusive of any accelerated assessments, late charges, fees, costs of collection, attorney's fees, and interest, equals or exceeds ONE THOUSAND EIGHT HUNDRED DOLLARS (\$1,800.00) or the assessments are more than twelve (12) months delinquent. Delinquent assessments in a smaller amount may not be collected through the use of foreclosure remedies, but may be collected through the use of any of the following other means: (aa) a civil action in small claims court; (bb) by recording a lien on the Owner's Lot, Condominium or Eskaton Unit (subject to the restrictions on foreclosure of that lien); or (cc) any other manner provided by law, other than judicial or non-judicial foreclosure. If the Association elects to record a lien for delinquent assessments, subparagraphs (b)(iii) and (b)(v), above shall continue to apply. The limitations on the use of foreclosure remedies set forth in this subparagraph (B) do not apply to assessment collection actions against the Declarant in its capacity as an Owner when the Declarant's assessment obligations are delinquent.

(8) Foreclosed Owner's Rights of Redemption. A non-judicial foreclosure by the Association of an Owner's interest in his or her Lot, Condominium or Eskaton Unit to collect a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the Lot or Eskaton Unit may be redeemed from a foreclosure sale under this subparagraph (8) (which reflects Civil Code Section 1367.4(c)(4)) ends ninety (90) days after the sale.

(9) Limitation on Authority to Use Lien and Foreclosure Remedies to Collect Special Individual Assessments. For so long as any Lots, Condominiums or Eskaton Units within the Development are being sold under authority of a Department of Real Estate Public Report, a special individual assessment or other monetary charge imposed by the Association: (A) 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 (B) as a disciplinary measure for failure of a Member to comply with the Governing Documents (except for reasonable late payment penalties, interest, and other reasonable costs of collection authorized by Civil Code Section 1366) may not be characterized nor treated as an assessment that may become a lien against the Owner's Lot, Condominium or Eskaton Unit enforceable by the sale of the interest under Civil Code Sections 2924, 2924b and 2924c.

Once the Association is no longer subject to the regulatory jurisdiction of the Department of Real Estate, the following categories of special individual assessments may be collected through the use of lien and foreclosure remedies in accordance with subparagraphs (5) through (8), above: (A) special individual assessments or other monetary charges imposed by the Association as a means of reimbursing the Association for costs incurred in the repair of damage to Common Areas for which the Member or the Member's guests or tenants were responsible; and (B) special

individual assessments imposed to recover late charges, reasonable costs of collection and interest assessed in accordance with Civil Code Section 1366(e).

(10) Obligation to Record Lien Releases. If it is determined that a lien previously recorded against a Lot, Condominium or Eskaton Unit was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, 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 with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If the determination that the lien was recorded in error is the result of dispute resolution meet and confer proceedings conducted pursuant to Civil Code Section 1363.810 or alternative dispute resolution with a neutral third-party pursuant to Civil Code Section 1369.510, the Association shall also be obligated to promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the issuance of the notices prescribed by Civil Code Section 1367.1, and costs of recording the lien release and all costs incurred in the mediation or alternative dispute resolution process.

In addition, within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, 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 a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(11) Effect of Failure to Adhere to Lien Restrictions. If the Association fails to comply with the procedures set forth in this subparagraph prior to recording a lien, the Association shall recommence the required notice process prior to recording a lien. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner.

The provisions of this subparagraph are intended to comply with the requirements of Civil Code Sections 1367.1, 1367.4 and 1367.5, as in effect on January 1, 2007. If these sections of the Civil Code are amended or modified in the future in a way that is binding on the Association and causes this Section to be in conflict with applicable law, the provisions of this subparagraph automatically shall be amended or modified in the same manner by action of the Board without necessity of approval of the amendment by the Members so long as all Members are given a copy of the recorded amendment and the decision to approve the amendment is made at a duly noticed open meeting of the Board.

3. Intentionally Deleted.

4. Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article VII, the benefit of any homestead or exemption laws of the State of California in effect at the time any assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

5. Transfer of Lot by Sale or Foreclosure. Sale or transfer of any Lot, Condominium or Eskaton Unit shall not affect the assessment lien. However, the sale or transfer of any Lot, Condominium or Eskaton Unit pursuant to the foreclosure of a Mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the Mortgage). No sale or transfer shall relieve such Lot,

Condominium or Eskaton Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Where the Mortgagee of a Mortgage of record or other purchaser of a Lot, Condominium or Eskaton Unit obtains title to the same as a result of foreclosure of any such Mortgage, such acquired of title, his successor and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Lot, Condominium or Eskaton Unit which became due prior to the acquisition of title to such Lot, Condominium or Eskaton Unit by such acquirer. No sale or transfer shall relieve such Lot, Condominium or Eskaton Unit from liability for any assessments thereafter becoming due or from the lien thereof. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots, Condominiums and Eskaton Units including such acquirer, his successors and assigns.

In a voluntary conveyance of a Lot, Condominium or Eskaton Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot, Condominium or Eskaton Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in the statement provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such assessment.

6. Right of Association to Bid at Foreclosure Sale. The Association, acting on behalf of the Owners, shall have the power to bid for the Lot, Condominium or Eskaton Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Lot, Condominium or Eskaton Unit is owned by the Association, following foreclosure:

(a) No right to vote shall be exercised on behalf of the Lot, Condominium or Eskaton Unit;

(b) No assessment shall be assessed or levied on the Lot, Condominium or Eskaton Unit; and

(c) Each other Lot, Condominium and Eskaton Unit shall be charged, in addition to its usual assessments its proportionate share of the assessment that would have been charged to such Lot, Condominium or Eskaton Unit had it not been acquired by the Association as a result of foreclosure.

After acquiring title to the Lot, Condominium or Eskaton Unit at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Lot, Condominium or Eskaton Unit which deed shall be binding upon the Owners, successors, and all other parties.

ARTICLE VIII

INSURANCE

1. **Liability Insurance.** The Association shall obtain and maintain in force comprehensive public liability insurance insuring the Association, any manager, the Declarant and the Owners and occupants of Lots, Condominiums and Eskaton Units, and their respective family members, guests and invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area, any commercial spaces, and any public ways and including if obtainable, a cross-liability or severability of interest indorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than THREE MILLION DOLLARS (\$3,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily required to be covered by institutional Mortgagees with respect to projects similar in construction, location, and use.

2. **Fire and Extended Coverage Insurance.** The Association shall not be obligated to obtain or to maintain any fire and/or extended coverage insurance on individual Lots, Condominiums or Eskaton Units, or any improvements thereon, and any such fire and/or extended coverage insurance shall be procured and maintained by the Owner of any Lot, Condominium or Eskaton Unit, or the improvements thereon or in the case of any Condominium Project, by the Project's Condominium Association. The Association shall obtain and maintain a master or blanket policy of fire insurance for the full replacement value of all of the improvements within the Common Area. The form, content, and term of the policy and its endorsements and issuing company must be satisfactory to all holders, insurers or guarantors of any Mortgages. If more than one institutional Mortgagee has a loan of record against a Lot, Condominium or Eskaton Unit in the Development, the policy and endorsement shall meet the maximum standards of the various institutional Mortgagees represented in the Development. The policy shall contain an agreed amount indorsement or its equivalent, an increased cost of construction indorsement or a contingent liability from operation of building laws indorsement or their equivalent, and extended coverage indorsement, vandalism, malicious mischief coverage, and a special form indorsement. The policy shall name as insured the Association, the Owners, and Declarant, as long as Declarant is the Owner of any Lot or Eskaton Unit, and all Mortgagees as their respective interests may appear, and may contain a loss payable indorsement in favor of the trustee described hereinafter. The Condominium Association shall maintain insurance coverage on the Condominium Units as provided in the Condominium Declaration.

3. **Trustee.** All insurance proceeds payable under Section 2 above shall 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, or branch thereof, located in the County in which the Development is located that has agreed in writing to accept such trust. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for herein.

4. **Other Insurance.** The Board may and, if required by any Mortgagee, shall purchase and maintain in force: (a) demolition insurance in adequate amounts to cover demolition of the Common Area in the event of total or partial destruction and a decision not to rebuild; (b) workmen's compensation insurance, to the extent that the same shall be required by law, for all employees or uninsured contractors of the Development; (c) fidelity bonds or insurance, insurance on personal property owned by the Association; (d) officers and director liability coverage in a minimum amount of ONE MILLION DOLLARS (\$1,000,000.00), if the Board determines in its discretion such coverage is available at a reasonable costs; and (e) such other insurance, as it deems necessary or as is required by any Mortgagee.

5. **Owner's Insurance.** An Owner may carry such personal liability, casualty, and other insurance respecting his Lot, Condominium or Eskaton Unit as he may desire; provided, however, any such policy shall include a waiver of subrogation clause.

6. **Mortgage Clause, Etc.** All policies of hazard insurance obtained pursuant to this Declaration shall contain or have attached the standard Mortgage clause commonly accepted by institutional Mortgage investors in this county. Said clause shall be properly endorsed and shall provide that the insurance carrier shall notify the named Mortgagee at least ten (10) days in advance of any reduction, material modification, or cancellation of the policy. Said policies shall also include agreed amount and inflation guard indorsements if available.

7. **Review of Policies.** The Board shall review annually the various insurance policies required by this Declaration, and shall verify the adequacy of the monetary limits required herein. A summary of the Association's various insurance policies shall be distributed not less than thirty (30) days nor more than ninety (90) days preceding the beginning of the fiscal year in compliance with Civil Code Section 1365(e).

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

1. **Common Facilities; Bids and Determination of Available Insurance Proceeds.** In the event any Common Facilities are ever damaged or destroyed, then, and in such event as soon as practicable thereafter, the Board of Directors shall: (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work; and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

2. **Common Facilities; Sufficient Insurance Proceeds.** Subject to the provisions of Section 9.1 hereof, if, in the event of damage to or destruction of any portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored to substantially the same condition in which they existed prior to the loss; provided, however, that in the event of a total destruction of the Common Facility, the Association shall not be obligated to restore the facility to its prior appearance and condition if, in the Board's opinion, architectural or design modifications to the Facilities will result in providing the

Members with an improved facility available for substantially the same use and enjoyment as the destroyed facility.

3. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding Association Special Assessment Authority. In the event that any Common Facility is totally or substantially damaged or destroyed or, if, in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient in an amount exceeding five percent (5%) of the Association's budgeted gross expenses for the year in which the loss occurs, so as to require a Special Assessment to cover the estimated cost of repair, reconstruction and restoration, then the proposal for imposition of the Special Assessment shall be presented to the owners for approval in accordance with Sections 4.3 and 4.8, above. The proposition shall be presented to the Owners in a form which permits them to choose between: (a) funding the Special Assessment to repair, reconstruct and restore the damaged or destroyed Common Facilities and specially assess all Owners for such additional funds as may be needed for such purpose; or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities, but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their first mortgagees may determine.

4. Damage or Destruction of Residences.

(a) **Obligation to Rebuild or Clear Damaged Structures.** If all or any portion of any residence or other Lot Improvement is damaged or destroyed by fire or other casualty, it shall be the duty of the Lot Owner to rebuild, repair or reconstruct the damaged or destroyed residence or other improvement in a manner which will restore the Improvement substantially to its appearance and condition immediately prior to the casualty. If structural improvements other than a residence, garage or fence are damaged or destroyed and the Owner prefers not to rebuild the improvement, the Owner shall clear his or her Lot of all damaged or destroyed materials and return the affected area to an attractive appearance.

(b) **Architectural Control Committee Approval.** Any Owner whose residence or other structural improvements have been damaged or destroyed shall apply to the Architectural Control Committee for approval of plans for the reconstruction, rebuilding, or repair of the damaged or destroyed residence or structure. Application for such approval shall be made in writing, together with full and complete plans, specifications, working drawing and elevations showing the proposed reconstruction and the end result thereof. The Architectural Control Committee shall grant such approval only if the design proposed by the Owner satisfies the requirements for approval set forth in Article XV, Section 4.

(c) **Time Limitation for Reconstruction or Removal.** The Owner or Owners of any damaged residence(s) and the Architectural Control Committee shall be obligated to proceed with all due diligence hereunder to remove damaged structures (or portions thereof), prepare and process reconstruction plans and specifications and complete the repair and restoration work. At a minimum, whenever Owners are required to prepare and submit repair or reconstruction plans to the Architectural Control Committee, said submittal shall be made within sixty (60) days following the event and reconstruction shall commence within thirty (30) days following receipt of approval from the Committee. Reconstruction shall be completed within six (6) months following receipt of

Committee approval. For good cause (including, without limitation, delays caused by inclement weather or the processing of insurance claims) the Architectural Control Committee may waive or extend any of the deadlines imposed by this subparagraph (c).

5. Damage or Destruction of Condominium Units or Project Buildings. In the event that a Condominium Project is annexed to the Development and any Unit in the Project is damaged or destroyed, or if any building in the project containing Units, garages, or other improvements is damaged or destroyed, the responsibilities of the Condominium Association and the Unit Owners to take action in response to the event of major damage or destruction shall be governed by the Condominium Declaration.

ARTICLE X

CONDEMNATION

1. Common Area Awards. In the event that any action for condemnation of all or a portion of the Common Area brought by any governmental agency having the right of eminent domain, the award for such taking shall be payable as hereinafter set forth.

2. Distribution of Proceeds of Sale. Upon a sale occurring as described in Section 1 hereof, the proceeds resulting therefrom shall be distributed to the Owner or Owners and their Mortgagees of each Lot, Condominium and Eskaton Unit as their respective interests may appear proportionately in accordance with the fair market value of each such Lot, Condominium and Eskaton Unit at the time of taking as determined by an independent appraisal by a qualified real estate appraiser, such appraisal to be at the expense of the Association. In the event of a disagreement regarding the distribution as determined by the appraiser, within ninety (90) days after the proceeds of sale become available for distribution, the matter shall be submitted to arbitration under the rules of the American Arbitration Association.

3. Distribution of Condemnation Award. In the event the Common Area, or such portion thereof, is not sold but is instead taken, the judgment of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees, as their interests may appear. In the event of the occurrence of a disagreement within ninety (90) days after the proceeds of the sale become available for distribution, the matter shall be submitted to arbitration under the rules of the American Arbitration Association.

ARTICLE XI

NON-SEVERABILITY OF COMPONENT INTERESTS IN COMMON AREA

1. Prohibition Against Severance. An Owner shall not be entitled to sever his Lot, Condominium or Eskaton Unit from his membership in the Association, and shall not be entitled to sever his Lot, Condominium or Eskaton Unit and his membership from his undivided interest in the Common Area. None of the component interests can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any attempt so to do shall be null and void and of no effect.

2. **Conveyances.** After the initial sales of the Lots, any conveyance of a Lot, Condominium or Eskaton Unit, or of the component interest in the Common Area, by the Owner of the Lot, Condominium or Eskaton Unit, shall be presumed to convey the entire Lot, Condominium or Eskaton Unit and component interest in the Common Area. However, nothing contained in this section shall preclude the Owner of any Lot, Condominium or Eskaton Unit from creating a co-tenancy or joint tenancy in the ownership of the Lot, Condominium or Eskaton Unit with any other person or persons.

ARTICLE XII

TERM OF DECLARATION

1. **Term of Declaration.** This Declaration shall run with the land, and shall continue in full force and effect for a period of fifty (50) years from and after the date on which this Declaration is executed. Thereafter, this Declaration and all covenants, conditions, restrictions and other provisions herein contained shall be in full force and effect for successive ten (10) year intervals unless terminated by an instrument executed by the then Owners of not less than two-thirds (2/3) of the total number of Lots, Condominiums and Eskaton Units in the Development, which instrument shall be recorded in the office of the County Recorder. The "then Owners" referred to in the preceding sentence shall be those purchasers who are Owners of Lots, Condominiums and Eskaton Units at the beginning of each successive ten (10) year interval.

ARTICLE XIII

PROTECTION OF MORTGAGEES

1. **Effect of Breach.** No breach of any provisions of these covenants, conditions and restrictions 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.

2. **Notices to Mortgagees of Record.** A holder, insurer or guarantor of any Mortgage, upon written request to the Association, identifying its name and address and the Lot or Condominium number or address shall be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or any Lot or Condominium in which there is a Mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Lot or Condominium subject to a Mortgage held, insured or guaranteed by such eligible holder or eligible insurer or guarantor, or a default by an Owner of a Lot or Condominium of any other obligation required by this Declaration, which remains uncured for a period of sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Declaration.

3. Inapplicability of Right of First Refusal. The Declaration, Articles, and the Bylaws contain no provisions creating a "right of first refusal" or similar restrictions, and an Owner may transfer his Lot or Condominium free of any such right or restriction, but should any such rights or restrictions be created in the future, any Mortgagee who obtains title to a Lot or Condominium pursuant to the remedies provided in the Mortgage, or foreclosure of Mortgage, or deed (or assignment) in lieu of foreclosure, or sells, or leases a Lot or Condominium acquired by the Mortgage, will be exempt from "the right of first refusal" or similar rights or restrictions contained in this Declaration or Articles or Bylaws of the Association, or any amendments thereto.

4. Foreclosure. If any Lot, Condominium or Eskaton Unit is encumbered by a Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of such Mortgage. On foreclosure of the Mortgage or the acceptance of a deed in lieu thereof (such events being hereinafter referred to as "Events of Foreclosure"), the lien for assessments, or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Lot, Condominium or Eskaton Unit free of the lien for assessments or installments, that has accrued up to the time of the Events of Foreclosure. On taking title to the Lot, Condominium or Eskaton Unit, the foreclosure-purchaser shall only be obligated to pay assessments for their charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot, Condominium or Eskaton Unit. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided hereinabove.

5. Action after Condemnation or Destruction.

(a) Any restoration or repair of the Development after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications, unless the approval of the holders, insurers or guarantors, of the Mortgages on Lots, Condominiums or Eskaton Units to which at least fifty-one percent (51%) of the votes of Lots, Condominiums and Eskaton Units subject to Mortgages held by such holders, insurers, or guarantors are allocated, is obtained.

(b) Any election to terminate the Development after substantial destruction or a substantial taking in condemnation of the Development must require the approval of the holders, insurers, or guarantors of the Mortgages on Lots, Condominiums and Eskaton Units to which at least fifty-one percent (51%) of the votes of Lots, Condominiums and Eskaton Units subject to Mortgages held by such holders, insurers, or guarantors, are allocated, is obtained.

6. Inspection of Documents, Books and Records. The Association shall be required to make available for inspection and copying by any Owners and lenders, and by holders, insurers or guarantors of any Mortgages, current copies of this Declaration, the Bylaws, other rules concerning the Development, the books, records and the annual report (as provided in Article IV, Section 5) of the Association; and any membership register, books of account, and minutes of the Members, the Board and committees of the Board, at any reasonable time and for a purpose reasonably related to his interest in the Development, at the office of the Association or such other place within the Development as the Board prescribes.

(a) The Board shall establish by resolution reasonable rules with respect to:

(1) Notice to be given to the custodian of the records of the Association by the Owner, lender, holder, insurer or guarantor of any Mortgage desiring to make an inspection.

(2) Hours and days of the week when an inspection may be made.

(3) Payments of the cost of reproducing copies of documents requested by the Owner, lender, holder, insurer or guarantor, except as hereinafter provided.

(b) Every director of the Association 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.

(c) If the Development contains fifty (50) or more Lots, Condominiums and Eskaton Units, any holder, insurer or guarantor of a Mortgage shall be entitled upon written request, to a reviewed annual report for the immediately preceding fiscal year, free of charge to the party so requesting.

(d) If the Development contains less than fifty (50) Lots, Condominiums and Eskaton Units, the holders of fifty-one percent (51%) or more of Mortgages shall be, upon written request, entitled to have such a reviewed annual report for the preceding fiscal year prepared at their expense if one is not otherwise available.

7. Reserve for Replacement. Association assessments, dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

8. Taxes and Liens on Individual Lots / Condominiums / Eskaton Units. All taxes, assessments and charges which become liens prior to the Mortgage under local law shall relate only to the individual Lots, Condominiums or Eskaton Units and not to the Development as a whole.

9. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any Mortgage that encumbers all or a portion of the Development or any Lot, Condominium or Eskaton Unit made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligations or priority of such Mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

10. Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party shall have priority over any right of institutional Mortgagees of Lots, Condominiums or Eskaton Units pursuant to their mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots, Condominiums, Eskaton Units or Common Area. Any provisions to the contrary in this Declaration or in the Bylaws or other documents relating to the Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional Mortgagees naming the Mortgagees, as their interests may appear.

11. Common Area. Subject to the provisions of this Declaration, all Common Area, except the maintenance facilities, shall be available for use by Owners. All such Common Area shall be owned in fee by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners or by the Association.

12. Payments by Mortgagees. Mortgagees of Lots, Condominiums and Eskaton Units may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee separate written agreement embodying the provision of this Article XIII, Section 12.

13. Non-Curable Breach. Any Mortgagee who acquires title to a Lot, Condominium or Eskaton Unit by foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

14. Loan to Facilitate. Any Mortgage given to secure a loan to facilitate the resale of a Lot, Condominium or Eskaton Unit after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article XIII.

15. Appearance at Meetings. Because of its financial interest in the Development, any Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of a remedial proceedings or assessments.

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

17. Amendment. The provisions of this Article XIII, Section 17, shall apply so long as KeyBank National Association, a national banking association ("KeyBank") or Roseville Diamond Creek LP, a Delaware limited partnership ("RDC"), holds a Mortgage encumbering any Lot or Condominium in the Development. The prior written consent of KeyBank and RDC shall be required to make any material amendment to this Declaration. As used in this Article XIII, Section 17, the term "any material amendment" is defined to mean amendments to provisions of this Declaration governing the following subjects:

- (a) The purpose for which the Development can be used;
- (b) Voting;
- (c) Assessments, assessment liens or subordination of assessment liens;

- (d) Reserves for maintenance, repair and replacement of Common Area;
- (e) Responsibility for maintenance, repair and replacement of the several portions of the Development;
- (f) Insurance or fidelity bonds;
- (g) Rebuilding or reconstruction of Common Area and improvements thereon, in the event of damage or destruction;
- (h) Rights to use of the Common Area;
- (i) Except as expressly herein provided, the expansion or contraction of the Development or the addition, annexation or withdrawal of property to or from the Development;
- (j) Boundaries of any Lot;
- (k) The interest in the Common Area;
- (l) The convertibility of Lots into Common Area or of Common Area into Lots;
- (m) Leasing of Lots;
- (n) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot in the Development; and
- (o) Any provision, which by its terms, is specifically for the benefit of holders, insurers or guarantors or any Mortgages, or specifically confers rights on Mortgagees.

ARTICLE XIV

AMENDMENT

1. Amendment Prior to Close of First Sale. Prior to the recordation of the first sale of a Lot or Condominium in the Development to a purchaser other than Declarant, the Declaration and any amendments thereto may (subject to the approval of the California Department of Real Estate) be amended or revoked in any respect by the execution by both Eskaton and Lakemont of an instrument amending or revoking same, which instrument shall make appropriate reference to this Declaration and any amendment thereto and which instrument shall be acknowledged and recorded in the office of the County Recorder.

2. Amendment After Close of First Sale. After the recordation of the first sale of a Lot or Condominium in the Development to a purchaser other than Declarant, this Declaration can be amended or revoked only with the vote or written assent of the holders of not less than fifty-one percent (51%) of the voting rights of the Members of the Association. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of the Association in order to take affirmative or negative action under such provision, the same percentage of

Members shall be required to amend or revoke such provision. If the consent or approval of Mortgagees or any other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the recordation of such first sale shall be evidenced by an instrument certified by the secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder. Any amendment or revocation of a provision in this Declaration that was required as a condition to approval of the Map, shall require the approval of the City attorney.

(a) **Other Required Approvals.**

(1) **Mortgagee Approvals.** Any amendments affecting the provisions listed in Article XIII above, require Mortgagee approval in accordance with that section.

(2) **Declarant Approval of Certain Amendments.** The following provisions of this Declaration may only be amended with the prior written consent of Declarant so long as Declarant owns the Eskaton Units in the Development: Article I, Section 14; Article II, Section 2(c) and Section 6; Article III, Section 3 and Section 6; Article IV, Section 3(a)(7); Article IV, Section 3(a)(8); Article IV, Section 3(b)(10); and Article XVII, Section 14.

3. **Business and Professions Code Section 11018.7.** All amendments or revocations of this Declaration shall comply with the provisions of Section 11018.7 of the California Business and Professions Code to the extent such section is applicable thereto.

4. **Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid as to anyone relying thereon in good faith.

ARTICLE XV

ARCHITECTURAL CONTROL

1. **Architectural Control.** No improvement or structure of any kind shall be commenced, erected, painted or maintained upon any Lot, nor shall any alteration or improvement of any kind be made thereto unless and until the same has been approved in writing by the Architectural Control Committee (sometimes hereafter referred to as the "Committee"). Due to the integrated architectural design, the size of the Lots and the density of the overall development it is anticipated that few, if any improvements or structure will be approved by the Committee, which approval shall be granted or not in the Committee's sole and absolute discretion. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repair in accordance with Declarant's original plans and specifications. No permission or approval shall be required for the improvements or landscaping Eskaton constructs, installs, repairs or replaces on the Eskaton Lot.

No new landscaping or substantial re-landscaping of yards visible from the street or from the Common Area shall be undertaken by any Owner of a Lot unless and until the plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Committee.

An Owner of a Lot or Condominium shall notify the Association at least five (5) days prior to commencement of any repair or improvement to the Owner's residence, and the Association may make reasonable arrangements for such matters as location of any construction equipment and dumpsters, parking of construction vehicles, and hours of construction to minimize the inconvenience to other Owners.

2. Architectural Control Committee. The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) Members. Eskaton may appoint all of the original Members of the Committee and all replacements until the first (1st) anniversary of the issuance of a final public report for the project. Thereafter, Eskaton reserves to itself the power to appoint a majority of the Members to the Committee. Members appointed to the Committee by the Eskaton need not be Members of the Association. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any Member of the Committee, the successor shall be appointed by remaining Members of the Committee which shall have full authority to designate such a successor. Neither the Members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant thereto.

3. Architectural Control Committee Rules. The Committee may, from time to time, adopt amend and repeal by majority vote, rules and regulations, to be known as "Architectural Control Committee Rules" which interpret or implement the provisions of Article XV hereof, which rules and regulations shall be subject to the approval of the Board. Such rules and regulations may be amended or repealed at any time by the vote of a majority of the voting power of the Association. In accordance with Civil Code Section 1378, the Architectural Rules shall include fair, reasonable, and expeditious procedures for the processing of improvement applications by the Committee and those procedures shall provide for prompt deadlines and state the maximum time that the Committee has to respond to an application or a request for reconsideration by the Board of Directors pursuant to Section 7, below.

4. Basis for Approval of Improvements. When a proposed improvement is submitted to the Architectural Control Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, exercised in good faith, makes the following findings regarding the proposed project:

(a) The Owner's plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans are submitted to the Committee;

(b) The improvement will be in harmony with the external design of other structures and/or landscaping within the Development;

(c) The improvement, as a result of its appearance, location or anticipated use, will not interfere with the reasonable enjoyment of any other Owner of his or her property; and

(d) The proposed improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development and with the overall plan and scheme of development within the Development.

While it is recognized that the Architectural Control Committee's determination will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith and shall consider such factors as the quality of workmanship and materials proposed for the Improvement project, the harmony of its exterior design, finished materials and color with that of other existing structures, the proposed location of the Improvement in relation to the Common Areas and other existing structures and the impact, if any, that the improvement will have or may have on the structural integrity of the Lot or Condominium or adjacent Lots or Condominiums. The Committee shall also be entitled to determine that a proposed improvement or component thereof is unacceptable when proposed with respect to a particular Lot or Condominium, even if the same or a similar improvement/component has previously been approved for use at another location if factors such as drainage, topography or visibility from roads, Common Areas or other Lots or Condominiums, noise or prior adverse experience with the product or design militate against erection of the improvement or use of a particular component of the proposed improvement at the site involved in the Owner's submittal. A decision on a proposed improvement project may not violate any governing provision of law (including, without limitation, the California Fair Employment and Housing Act) or a building code or other applicable law governing land use or public safety.

In approving a request for construction of an improvement, the Architectural Control Committee may condition approval upon the adoption of modifications in the Owner's plans and specifications or observance of restrictions as to location, noise abatement or similar mitigating conditions applicable to the Improvement. A decision on a proposed improvement project shall be in writing. If a proposed project is not approved, the Committee's written decision shall include both an explanation of why the proposed change or project was disapproved and a description of the procedure for reconsideration of the Committee's decision by the Board (once the Committee is under the exclusive control of the Association).

5. Waiver. The approval by the Committee of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under this Declaration shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

6. Liability. Neither the Committee nor any Member thereof shall be liable to the Association, or to any Member, Owner or other person or body for any damage, loss or prejudice suffered or claimed on account of (a) the approval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications or (c) the development of any property within the Development provided, however, that such Committee Member has, with the actual knowledge possessed by him acted in good faith. Without in any way limiting the generality of the foregoing, the Committee, or any Member thereof, shall consult with the Board of the Association, if requested, with respect to any plans, drawings or specifications, of any other proposal submitted to the Committee.

7. **Reconsideration by the Board of Directors.** Once the Architectural Control Committee is a Committee that is appointed solely by the Board of Directors, appeals from decisions of the Committee may be made to the Board of Directors which may elect, in its discretion, to hear the appeal or, in the alternative, to affirm the decision of the Committee. The Association Rules shall contain procedures to hear, process and decide appeals pursuant to this section.

ARTICLE XVI

ANNEXATION OF ADDITIONAL PROPERTY

1. **Annexation.** Additional property may be annexed to the Development only as specified in the following subparagraphs:

(a) **Lakemont's Annexation Rights.** Lakemont may, but shall not be required to, annex all or any portion of the property described in Exhibit "B-1" to the Development at any time without the vote or approval of any other Owners or the Association. The annexation of any such property by Lakemont shall be effected by recordation in the Official Records of Placer County of a Declaration of Annexation which shall include the following information:

(1) **Legal Description of the Annexed Property.** A legal description of the property included in the annexed property, separately identifying Lots or Condominiums and any Common Areas;

(2) **Statement Regarding Commencement of Assessments.** The Declaration of Annexation shall provide for a specified date on which Assessments shall commence for Lots or Condominiums in the annexed Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot or Condominium in the annexed Phase is conveyed to an Owner;

(3) **Application of Equitable Servitudes.** A statement that all of the covenants, conditions and restrictions of this Declaration shall apply to property within the annexed Phase in the same manner as if the annexed property was originally covered by this Declaration; provided, however, that additional or revised covenants, conditions and restrictions applicable to the annexed property (collectively, "Supplemental Restrictions"), may be imposed when, in the sole discretion of the Declarant, it is deemed necessary or appropriate and to impose Supplemental Restrictions in order to reflect differences in the nature, design or use of the residences, Condominiums or other improvements that are intended to be constructed in the annexed Phase.

(4) **Lakemont shall have recorded a Declaration of Annexation reviewed and reasonably approved by Eskaton describing the property to be annexed and providing for such additional covenants, conditions and restrictions on such annexed property as may be necessary to include such property in the Development and specifying that all of the covenants, conditions and restrictions of the Declaration shall apply to such annexed property in the same manner as if it were originally covered by the Declaration as part of the Development. No Declaration of Annexation shall discriminate between some Owners of such property and other Owners of any other property within the Development, except as otherwise provided herein. No such amendment, addition,**

change or deletion shall alter or change the general common plan or scheme created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan or such covenants and servitudes to be uniformly applicable to all portions of the Development, including those portions added thereto by annexation.

(5) Lakemont shall be obligated to pay to the Association an appropriate amount for certain reserves which may arise out of the use and occupancy of the residences located on Lots or Condominiums within such annexed property which are under a rental program in effect for a period of at least one (1) year from the date of the close of escrow of the first sale of a Lot or Condominium in the annexed property.

Notwithstanding the foregoing, Supplemental Restrictions may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by the City of Roseville as a condition of Subdivision Map approval (without the consent of the City) or revoke, modify or add to the covenants, conditions and restrictions imposed by this Declaration with respect any portion of the Real Property that have been subjected to this Declaration prior to the annexed Phase. If Supplemental Restrictions are considered necessary or appropriate for a particular Phase, they may be set forth either in the Declaration of Annexation or in a separate Supplemental Declaration that is recorded in the Official Records of the County of Placer in accordance with subparagraph (c), below.

(b) **Eskaton's Annexation Rights.** Eskaton may, but shall not be required to, annex all or any portion of the Eskaton Units described in Exhibit "B-2" to the Development at any time without the vote or approval of any other Owners or the Association. The annexation of any such property by Eskaton shall be effected by the fulfillment of the following procedures:

(1) Eskaton shall have recorded a Declaration of Annexation describing the Eskaton Units and the Eskaton Certified Senior Friendly Unit to be annexed and providing for such additional covenants, conditions and restrictions on such annexed Eskaton Units and the Eskaton Certified Senior Friendly Unit as may be necessary to include such property in the Development and specifying that all of the covenants, conditions and restrictions of the Declaration shall apply to such annexed Eskaton Units and the Eskaton Certified Senior Friendly Unit in the same manner as if it were originally covered by the Declaration as part of the Development. No Declaration of Annexation shall in any event revoke, modify or add to the limitations, restrictions and covenants established by this Declaration nor shall it discriminate between some Owners of such property and other Owners of any other property within the Development, except as otherwise provided herein. No such amendment, addition, change or deletion shall alter or change the general common plan or scheme created by this Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan or such covenants and servitudes to be uniformly applicable to all portions of the Development, including those portions added thereto by annexation.

(c) **Supplemental Declarations.** During the course of developing the Real Property, it may become necessary or appropriate for the Declarant to Record a Supplemental Declaration. Recordation of Supplemental Declarations by the Declarant is hereby approved.

(1) Content of Supplemental Declarations. Any Supplemental Declaration shall describe the Annexed Property to which it is to apply, recite that the Supplemental Declaration is being Recorded pursuant to the authority conferred by this subparagraph (c) and may include, without limitation:

(i) Description of Common Areas and Common Facilities. A description of any Common Areas (including all exclusive use common areas, as that term is defined in Section 1351(i) of the California Civil Code) and Common Facilities within the Annexed Property;

(ii) Specification of Property Use Restrictions Applicable to the Annexed Property. The addition or modification of property use restrictions and minimum improvement standards for improvement projects that are applicable solely to the Lots or Condominium Units (and any Improvements constructed thereon) within the Annexed Property;

(iii) Separate Design Review. A separate architectural control committee to perform design review and approval functions described in the Supplemental Declaration with respect to Improvement projects on Lots or Units in the Annexed Property (if different from those described in Article XVI, above) or to perform the functions described in Article XVI, above, in lieu of the Architectural Control Committee constituted in accordance with that Article. If a particular Lot or Unit is affected by a Supplemental Declaration that establishes a separate architectural control committee, that committee shall have jurisdiction over the initial design and construction of any Improvements proposed for construction on such Lot or within such Unit, as well as subsequent changes in exterior design or appearance; provided, however, that the Supplemental Declaration can provide that the committee's determination must also be ratified by the Master Association's Architectural Control Committee.

(iv) Establishment of Sub-Association(s). A Supplemental Declaration may provide for the establishment of a Sub-Association, to be comprised of Owners of Condominium Units within the Condominium Project that is to be constructed on the Annexed Property; and

(v) Designation of Cost Centers. A Supplemental Declaration may designate one or more Cost Centers within the Annexed Property by including the information described in Article VI, Section 4(c), above.

(d) Eskaton Certified Senior Friendly Unit. If Eskaton annexes the Eskaton Certified Senior Friendly Unit to the Development, said unit shall be treated as an Eskaton Unit for maintenance purposes for so long as a tenant occupies the Eskaton Certified Senior Friendly Unit. If a "separate interest," as said term is defined in California Civil Code Section 1351(i), is created and the Eskaton Certified Senior Friendly Unit is sold to a third party, said unit shall be treated as a Lot for maintenance purposes, as described in Article IV, Section 3(b)(2) and (3), upon the sale of the Eskaton Certified Senior Friendly Unit. At such time as the Eskaton Certified Senior Friendly Unit is either leased or sold to a third party, said unit shall be entitled to voting rights pursuant to Article V hereof, and the Owner of said unit shall commence paying assessments in an amount equal to the Eskaton Units, if the Eskaton Certified Senior Friendly Unit is leased, or in an amount equal to the Lots, if said unit is sold. The assessments for the Eskaton Certified Senior Friendly

Unit shall commence on the first (1st) day of the first (1st) month following the date said unit is occupied by a tenant or is sold to an Owner.

(e) **Rights and Obligations of Owners.** After the required annexation procedures are fulfilled, all Owners in the Development shall be entitled to use of all the Common Area, in the Development, including the Common Area, in such annexed property, subject to the provisions of the Declaration, and Owners of such annexed property shall thereupon be subject to the Declaration and be entitled to membership in the Association. After each annexation, the assessments shall be reassessed with the annexed property being assessed for a proportionate share of the total expenses of the Development on the same basis as the other property in the Development.

(f) **Other Annexation of Property.** Additional property adjacent to the Development which does not qualify for annexation pursuant to the terms of subparagraph (1) above may be annexed to the Development upon the written vote or consent of not less than two-thirds (2/3) of the total votes of the Association, along with the written consent of the Owner of such property and upon fulfillment of procedures by the Owner of such property substantially similar to those set forth in subparagraph (a) above.

ARTICLE XVII

GENERAL PROVISIONS

1. **Headings.** The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
2. **Severability.** The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions or provisions hereof shall not invalidate any other provisions hereof.
3. **Cumulative Remedies.** Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.
4. **Violations as Nuisance.** Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any Owner, any Member of the Board or the Association.
5. **Discrimination.** No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of their Lot, Condominium or Eskaton Unit on the basis of race, sex, color, creed, religion, marital status, national origin, or ancestry.
6. **Access to Books.** Any Owner may, at any reasonable time and upon reasonable notice to the Board, at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

7. **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose as set forth in the Declaration herein. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

8. **Disclosure and Notification in Connection with Sale of Lot or Condominium.** Prior to the consummation of the sale of any Lot or Condominium under circumstances whereby the transferee becomes an Owner thereof, the seller shall provide to the proposed buyer a copy of the Declaration, the Articles of Incorporation and Bylaws of the Association, and any amendments thereto, and shall advise the buyer that the Development is a "senior only" project. Concurrently with the consummation of the sale of any Lot or Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth the name of the transferee and their Mortgagee and transferor, the street address of the Lot or Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Board. Notices shall be deemed received twenty-four (24) hours after mailing if mailed to the transferee, or to his transferor if the Board has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram.

9. **Number; Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

10. **Exhibits.** Any and all exhibits attached hereto shall be deemed made a part hereof and incorporated by reference herein.

11. **Easements Reserved and Granted.** Any and all easements referred to herein shall be deemed reserved or granted by reference to this Declaration in a deed to any Lot or Condominium.

12. **Binding Effect.** This Declaration shall inure to the benefit of and be binding upon the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, lessees, successors and assigns of the Owners.

13. **Unsegregated Real Estate Taxes.** Until such time as real estate taxes have been segregated by the County Assessor, such taxes shall be paid by the respective Owners of Lots or Condominiums. In connection with such payment, the proportionate share of such taxes for a particular Lot or Condominium shall be determined by dividing the initial sales price or offered initial sales price of such Lots or Condominiums by the total initial sales prices and offered initial sales prices of all Lots or Condominiums within the Development (the term "offered initial sales price" being the price at which an unsold Lot or Condominium is then being offered for sale by Declarant).

14. Trademark; Trade Name Protection. Eskaton Village Roseville, a California non-profit, public benefit corporation, and its successors and assigns ("Eskaton"), is the owner or licensee of the rights in certain trademarks, including but not limited to, all rights in the names Eskaton and Eskaton-Certified Home Program (the "Marks"). Neither the Association nor its directors, officers or Members have any license to use or other interest in the Marks; provided, however, the Eskaton Village Roseville Homeowners Association and its Members may identify the Development as "Eskaton Village Roseville" or "Eskaton" until such time as Eskaton, in its sole discretion, determine otherwise with respect to the use of any Marks that Eskaton owns. In the event that Eskaton, in its sole discretion, provides written notice to the Association (which notice shall be deemed to be notice to each of its Members) that it shall not longer be entitled to use the Mark or Marks identified in said notice, and shall:

(a) immediately remove all signs, displays or other references containing the Mark from the Development, and from any off-site location to the extent the sign refers to the Development;

(b) immediately destroy all stationery, descriptive literature or printed or written matter bearing the Marks;

(c) immediately cease and desist from using the Mark(s) (or any other variation thereof) orally or in writing in referring to the Association or the Development; and

(d) take immediate action to effect changes to the documents of the Association reflecting the Mark(s) to eliminate the use of such Mark(s) as soon as possible, but in any event, within three (3) months of the date of notice.

The provisions of this section may be enforced by any remedy at law or equity, including mandatory and/or prohibitory injunctions, and by accepting a deed in which this Declaration is deemed to be incorporated by reference, each Member acknowledges that in the event of non-performance of any of the above described restrictions, Eskaton's remedies at law shall be Marks.

15. Conflicting Provisions. Eskaton Lodge is a Residential Care Facility for the Elderly, as said term is defined in California Health and Safety Code Section 1569 et seq., as amended from time to time, commonly known as the "California Residential Care Facilities for the Elderly Act" or the "Act." In the event of any conflict between the provisions of the Governing Documents and the Act, the conflicting provision in the Act shall prevail.

16. Attorney's Fees. In any action by the Association or any Owner to enforce, by any proceeding at law or in equity, any or all of the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the prevailing party shall be entitled to recover reasonable costs and attorney's fees as determined by the court.


17. **Counterparts.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Declarant has executed this instrument as of this 13TH day of July, 2007.

ESKATON:

ESKATON VILLAGE ROSEVILLE,
a California non-profit, public benefit
corporation

Dated: July 13, 2007.



By: TREVOR HAMMOND
Its: C.O.O.

LAKEMONT:

LAKEMONT VILLAGE ROSEVILLE, LLC,
a Delaware limited liability company

Dated: July 13, 2007.

By: Lakemont Homes, Inc.,
a California corporation
Its: Manager


By: Steve Thnglum
Its: Vice President

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
County of Sacramento) ss.

On July 13, 2007 before me, Monica Sandgathe, Notary
Name and Title of Officer-(e.g., "Jane Doe, Notary Public")

personally appeared Trevor Hammond
Name of Signer

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Monica Sandgathe
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

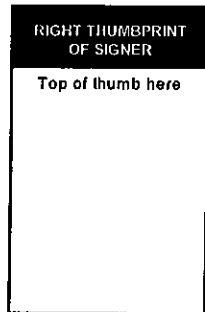
Signer Other Than Named Above: _____

Capacity Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer - Title(s): _____
- Partner Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer is Representing: _____



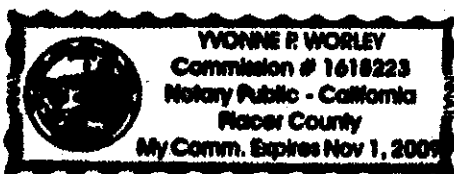
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
) ss.
County of Placer)

On July 13, 2007 before me, Yvonne P. Worley, Notary Public
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Steve Thinglum
Name of Signer

- personally known to me
 proved to me on the basis of satisfactory evidence



to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Yvonne P. Worley
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer Other Than Named Above: _____

Capacity Claimed by Signer

Signer's Name: _____

- Individual
 Corporate Officer - Title(s): _____
 Partner Limited General
 Attorney-in-Fact
 Trustee
 Guardian or Conservator
 Other: _____

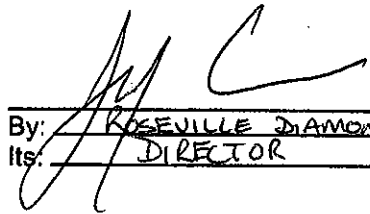
RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

CONSENT OF LIENHOLDER AND SUBORDINATION OF LIEN

The undersigned beneficiary under that certain Deed of Trust recorded in the official records of PLACER County, California, in Book N/A, at Page N/A, Document No. 2005 0169851, does hereby consent to all the provisions contained in the attached Declaration of Covenants, Conditions and Restrictions, and agrees that the lien of said Deed of Trust shall be subordinate and subject to said Declaration and any proper amendments thereto.

Dated: July 16, 2007.


By: ROSEVILLE DIAMOND CREEK LP
Its: DIRECTOR

SUBORDINATION AND CONSENT

HOUSING CAPITAL COMPANY, a Minnesota partnership ("Lender") as Beneficiary under the deed of trust dated December 5, 2005 ("A&D Deed of Trust") executed by O'BRIEN AT SUISUN, LLC, a California limited liability company, "Trustor", and recorded on December 20, 2005, as Instrument No. 2005-0169849; and that certain deed of trust dated March 21, 2007 ("Construction Deed of Trust") executed by O'BRIEN AT SUISUN, LLC, a California limited liability company, "Trustor", and recorded on April 13, 2007, as Instrument No. 2007-0037087-00, both in the Official Records of the County of Placer, State of California, hereby subordinates the lien of the A&D Deed of Trust and the lien of the Construction Deed of Trust to the lien of the Declaration of Covenants, Conditions and Restrictions for Eskaton Village Roseville Homeowners Association dated July of 2007 ("CCR'S") to which this Subordination and Consent is attached to the same extent and with the same force and effect as though the CCR'S had been executed and recorded prior to the execution and recordation of the A&D Deed of Trust and the Construction Deed of Trust.

Dated: July 17, 2007

LENDER:

HOUSING CAPITAL COMPANY, A MINNESOTA PARTNERSHIP

BY: DFP Financial, Inc., a California partnership
ITS: Managing General Partner

BY: *Loni Armaz*
Loni Armaz
ITS: Vice President

EXHIBIT "A"

**PHASE I
REAL PROPERTY**

PARCEL ONE:

Lots 1 through 10, inclusive, Lots 36 through 41, inclusive, and Common Area Lots "F" and "K" as shown on that certain Map entitled "Eskaton Village – Phase One" filed for record in the Office of the Recorder of the County of Placer, State of California on September 8, 2006 in Book "BB" of Maps, Page 28.

PARCEL TWO:

Parcel "B" as shown on Parcel Map Sub. No. 000028 filed for record in the Office of the Recorder of the County of Placer, State of California on March 31, 2006 Book 32 of Parcel Maps, Page 154.

EXHIBIT "B-1"

ANNEXABLE PROPERTY

PARCEL ONE:

Lots 11 through 35, inclusive; 42 through 81, inclusive, Lots 90 through 94, inclusive, and Lots A, B, C, D, G, H, I, J, and L as shown on that certain Map entitled "Eskaton Village – Phase One" filed for record in the Office of the Recorder of the County of Placer, State of California on September 8, 2006 in Book "BB" of Maps, Page 28.

EXCEPTING FROM LOT "L" ABOVE all that portion lying within the Map of "Eskaton Village – Phase Three" filed for record April 3, 2007 in Book "BB" of Maps, Page 62, Placer County Records.

PARCEL TWO:

Lots 82 through 89, inclusive, Lots 95 through 177, inclusive, and Lots L, M, N, O and P, as shown on the Map of "Eskaton Village – Phase Three" filed for record April 3, 2007 in Book "BB" of Maps, Page 62, Placer County Records.

EXHIBIT "B-2"

Lot A, as shown on that certain Final Map, filed in Book DB of Maps at page 28, in the Office of the Placer County Recorder.

Exhibit "C"

ESKATON

Senior Residences and Services

ESKATON VILLAGE ROSEVILLE SERVICES FOR HOMEOWNERS¹ SEPTEMBER 2006

Services Included in the Homeowners Association Monthly Fee:

- Grounds maintenance
- Street, curb and gutter maintenance
- Exterior home maintenance
- Emergency response system
- Staff onsite 24 hours/day
- Community center operation and maintenance
- Use of community center pool, spa, exercise equipment, etc.
- Wellness and fitness classes²
- Onsite shuttle service within set hours

Optional services (fee-for-service):

- Interior home maintenance
- Dining at the Lodge
- Home-delivered meals from the Lodge
- Take-out meals from the Lodge
- Scheduled offsite van transportation
- Individual, escorted transportation for shopping, appointments, etc.
- Scheduled light housekeeping
- Scheduled window washing (exterior & interior)
- Bed and bath linen service
- Dietitian consultation
- Personal trainer
- In-home licensed nursing care
- In-home licensed therapy (physical, occupational, speech)
- In-home personal care (assistance with bathing, dressing, grooming, etc.)
- In-home social companionship
- Furniture moving, picture hanging, installing shelves, hanging curtains, etc.
- Grocery shopping, gift shopping, package mailing, library, etc.
- Dry cleaning delivery and pick-up
- Laundry assistance (using homeowner's washer & dryer)
- Wrapping gifts
- Writing letters and cards
- Arranging appointments (medical, legal, personal, etc.)
- Waiting for installers or deliveries
- Organizing garages, closets, cupboards
- Taking car for oil change, repairs, etc.
- Assisting with patio gardening

¹ The availability of specific services will vary depending on building construction. For example, grounds maintenance and exterior home maintenance will be available from the point of home occupancy; availability of other services may be dependent on Community Center opening (e.g. exercise classes) and Lodge opening (e.g. food services).

² Additional fees may be charged to the participants classes for which special instructors are hired.