

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

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

Luce, Forward, Hamilton & Scripps LLP
121 Spear Street, Suite 200
San Francisco, CA 94105
Attn: Cathy L. Croshaw



Sacramento County Recording
Craig A Kramer, Clerk/Recorder
BOOK **20060324** PAGE **1676**

Check Number 36785
Friday, MAR 24, 2006 3:16:25 PM
Ttl Pd \$282.00 Nbr-0004206233

KDL/24/1-92

SPACE ABOVE FOR RECORDER'S USE ONLY

AMENDED AND RESTATED

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SUNDANCE**

SECTION 17.4 OF THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT. YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS ON THESE OR OTHER PROVISIONS OF THIS DECLARATION.

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 RECITALS	1
1.1 Property Owned By Declarant	1
1.2 Right To Annex.....	1
1.3 Original Declaration.....	1
1.4 Nature Of Project	1
1.5 Description Of Project	2
ARTICLE 2 DEFINITIONS	2
2.1 Additional Charges	2
2.2 Additional Property.....	2
2.3 Annexation.....	3
2.4 Architectural Committee.....	3
2.5 Architectural Guidelines	3
2.6 Articles.....	3
2.7 Assigned Garages.....	3
2.8 Assigned Parking Spaces	3
2.9 Association.....	3
2.10 Association Maintenance Manual.....	3
2.11 Association Property.....	3
2.12 Association Rules.....	3
2.13 Board	3
2.14 Budget	3
2.15 Building Envelope.....	4
2.16 Bylaws.....	4
2.17 Capital Improvement Assessments	4
2.18 Common Area	4
2.19 Common Expenses.....	4
2.20 Condominium.....	5
2.21 Condominium Building	5
2.22 Condominium Plan	5
2.23 County.....	5
2.24 Declarant	5
2.25 Declaration.....	6
2.26 DRE.....	6
2.27 Eligible Holder	6
2.28 Enforcement Assessments.....	6
2.29 Exclusive Use Easement or Exclusive Use Easement Area	6
2.30 Exclusive Use Balcony Areas.....	6
2.31 Exclusive Use Patio Areas	6
2.32 Final Map	6
2.33 First Mortgage.....	6
2.34 First Mortgagee	6

2.35	Fiscal Year	7
2.36	Governing Documents	7
2.37	Improvements	7
2.38	Institutional Mortgage	7
2.39	Invitee	7
2.40	Maintenance Responsibility Chart	7
2.41	Maintenance Obligations	7
2.42	Member	8
2.43	Model Home Purposes	8
2.44	Model Home Units	8
2.45	Module	8
2.46	Mortgage	8
2.47	Mortgagee	8
2.48	MMRP Agreement	8
2.49	Notice and Hearing	8
2.50	Operating Rules	8
2.51	Owner	8
2.52	Owner Maintenance Manual	8
2.53	Parking Spaces	8
2.54	Person	9
2.55	Phase	9
2.56	Private Streets	9
2.57	Project	9
2.58	Property	9
2.59	Public Report	9
2.60	Regular Assessments	9
2.61	Residential Unit	9
2.62	Special Assessments	10
2.63	Supplementary Condominium Plan	10
2.64	Supplementary Declaration	10
2.65	Utility Facilities	10
2.66	Voting Power	10
ARTICLE 3 OWNERSHIP AND EASEMENTS		10
3.1	Ownership Of Condominium	10
3.2	No Separate Conveyance	11
3.3	Delegation of Use	11
3.4	Easements	11
3.5	Light, Air and View	13
3.6	Right of Access	13
3.7	Parking and Garage	13
ARTICLE 4 THE ASSOCIATION		15
4.1	The Organization	15
4.2	Association Action; Board of Directors and Officers; Members' Approval	15

4.3	Powers of the Association.....	15
4.4	Duties of the Association.....	17
4.5	Limitations on Authority of Board	20
4.6	Contracts	21
4.7	Personal Liability	21
ARTICLE 5 MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION		22
5.1	Membership	22
5.2	Number of Votes	23
ARTICLE 6 ASSESSMENTS		24
6.1	Creation of Lien and Personal Obligation for Assessments	24
6.2	Purpose of Assessments	24
6.3	Regular Assessments.....	24
6.4	Special Assessments	25
6.5	Capital Improvement Assessment.....	26
6.6	Enforcement Assessments.....	26
6.7	Changes to Assessments	26
6.8	Uniform Rate of Assessment	28
6.9	Date of Commencement of Regular Assessments; Due Dates	28
6.10	Notice and Assessment Installment Due Dates	28
6.11	Estoppel Certificate.....	28
6.12	Collection of Assessments, Liens	29
6.13	Additional Charges	31
6.14	Waiver of Exemptions	31
6.15	Subordination of Lien to First Mortgages.....	31
6.16	No Offsets	32
6.17	Personal Liability of Owner	32
6.18	Transfer of Property.....	32
6.19	Failure to Fix Assessments	32
6.20	Property Exempt from Assessments	32
ARTICLE 7 USE RESTRICTIONS.....		33
7.1	Residential Use	33
7.2	Commercial Use.....	33
7.3	Rental of Residential Units	33
7.4	Time Sharing.....	33
7.5	Animals	34
7.6	Antenna Restrictions.....	34
7.7	Signs and Displays	35
7.8	Parking and Vehicular Restriction.....	35
7.9	Mechanic's Liens	36
7.10	Installations.	36
7.11	Trash Disposal, Pickup and Recycling	38
7.12	View Impairment	38

7.13	Offensive Conduct, Nuisances	38
7.14	Sound Attenuation	38
7.15	Window Coverings	39
7.16	Drainage and Erosion Control.....	39
7.17	Rights of Disabled.....	39
7.18	Compliance with Requirements Regarding Project Storm Water Pollution.....	39
7.19	Indemnification.....	40
7.20	Post Tension Slabs	41
7.21	Compliance with Laws, Etc	41
ARTICLE 8 MAINTENANCE		41
8.1	Maintenance Obligations of Owners	41
8.2	No Alterations	42
8.3	Owner's Failure to Maintain	42
8.4	Maintenance Obligations of Association.....	42
8.5	Damage By Owners	43
8.6	Water Meters.....	43
8.7	Future Construction	44
8.8	Inspection of the Project	44
ARTICLE 9 ARCHITECTURAL REVIEW		45
9.1	Non-Applicability to Declarant.....	45
9.2	Amendments	45
9.3	Scope.....	45
9.4	Architectural Guidelines	45
9.5	Approval of Plans and Specifications	45
9.6	Inspection and Correction of Work.....	46
9.7	Government Regulations.....	47
9.8	Diligence in Construction	47
9.9	Fee for Review	47
9.10	Interpretation.....	47
9.11	Waiver.....	47
9.12	Estoppel Certificate.....	47
9.13	Liability.....	48
9.14	Variances.....	48
9.15	Appointment of Architectural Committee	48
9.16	Compensation.....	49
ARTICLE 10 DEVELOPMENT RIGHTS		49
10.1	Limitations of Restrictions.....	49
10.2	Rights of Access and Completion of Construction.....	49
10.3	Size and Appearance of Project	50
10.4	Marketing Rights.....	50
10.5	Alterations to Map	51
10.6	Title Rights.....	51

10.7	Power of Attorney.....	51
10.8	Amendment	52
ARTICLE 11 INSURANCE.....		52
11.1	Liability Insurance	52
11.2	Property Insurance	52
11.3	Individual Insurance.....	53
11.4	Fidelity Bond	54
11.5	Worker's Compensation Insurance	54
11.6	Officers and Directors Omissions Insurance	54
11.7	Other Insurance	54
11.8	Copies of Policies.....	54
11.9	Review of Insurance.....	55
11.10	Board's Authority to Revise Insurance Coverage	55
11.11	Adjustment of Losses.....	55
11.12	Distribution to Mortgagees	55
11.13	Compliance with Federal Regulations	55
ARTICLE 12 DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION.....		56
12.1	Restoration Defined	56
12.2	Insured Casualty.....	56
12.3	Restoration Proceeds.....	56
12.4	Rebuilding Contract	58
12.5	Insurance Trustee	58
12.6	Authority to Effect Changes	58
12.7	Minor Repair and Reconstruction.....	59
12.8	Condemnation of Common Area or Association Property	59
12.9	Condemnation of a Residential Unit.....	60
ARTICLE 13 PARTITION AND SEVERABILITY OF INTERESTS		60
13.1	Partition.....	60
13.2	Suspension	60
13.3	Partition.....	60
13.4	Distribution of Proceeds.....	61
13.5	Power of Attorney.....	61
13.6	Prohibition Against Severance.....	61
13.7	Conveyances	62
ARTICLE 14 RIGHTS OF MORTGAGEES		62
14.1	Conflict.....	62
14.2	Liability for Unpaid Assessments	62
14.3	Payment of Taxes and Insurance	62
14.4	Notice to Eligible Holders.....	62
14.5	Reserve Fund	63
14.6	Inspection of Books and Records	63

14.7	Financial Statements	63
14.8	Voting Rights of Mortgagees	64
14.9	Actions Requiring Eligible Holder Approval	64
14.10	Votes for Termination of Project	64
14.11	Condemnation or Destruction	65
14.12	Self-Management	65
14.13	Mortgagee Protection	65
14.14	Subordination	65
14.15	Distribution of Insurance and Condemnation Proceeds	65
14.16	Voting Rights on Default	65
14.17	Foreclosure	65
14.18	Non-Curable Breach	66
14.19	Loan to Facilitate	66
14.20	Appearance at Meetings	66
14.21	Right to Furnish Information	66
14.22	Inapplicability of Right of First Refusal to Mortgagee	66
14.23	Multiple Mortgages	66
ARTICLE 15 AMENDMENTS		66
15.1	Amendment Before the Close of First Sale	66
15.2	Amendments After the Close of First Sale	67
15.3	Further Approvals Regarding Amendments	68
15.4	Conflict with ARTICLE 14 or Other Provisions of this Declaration	68
15.5	Business and Professions Code Section 11018.7	69
15.6	Reliance on Amendments	69
15.7	Mergers or Consolidations	69
ARTICLE 16 ANNEXATION OF ADDITIONAL PROPERTY		69
16.1	Annexation	69
16.2	Annexation Without Approval	69
16.3	Covenants Running with the Land	70
16.4	Supplementary Declaration	70
16.5	Supplementary Condominium Plans	70
16.6	Association Property	71
16.7	Rights and Obligations of Owners	71
16.8	Mergers or Consolidations	71
16.9	De-Annexation	71
ARTICLE 17 ENFORCEMENT		71
17.1	Term	71
17.2	Enforcement and Nonwaiver	72
17.3	Notice of Actions Against Declarant	72
17.4	Alternative Dispute Resolution	72

ARTICLE 18 GENERAL PROVISIONS	77
18.1 Headings	77
18.2 Severability	77
18.3 Cumulative Remedies	77
18.4 Violations as Nuisance.....	77
18.5 No Racial Restriction.....	77
18.6 Access to Books.....	77
18.7 Liberal Construction	77
18.8 Notification of Sale of Condominium	77
18.9 Number, Gender.....	78
18.10 Exhibits	78
18.11 Binding Effect.....	78
18.12 Easements Reserved and Granted	78

||

EXHIBITS

EXHIBIT "A"	LEGAL DESCRIPTION OF THE PROPERTY
EXHIBIT "B"	LEGAL DESCRIPTION OF ADDITIONAL PROPERTY
EXHIBIT "C"	MAINTENANCE RESPONSIBILITY CHART

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNDANCE

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SUNDANCE ("**Declaration**") is made this 22nd day of March, 2006 by D.R. HORTON, INC. – SACRAMENTO, a California corporation ("**Declarant**") with reference to the facts set forth below.

ARTICLE 1 RECITALS

1.1 **Property Owned By Declarant.** Declarant is the owner (as defined below) in fee simple of the real property (the "**Property**") situated in an unincorporated area of the County of Sacramento, State of California, more particularly described on **Exhibit "A"** attached hereto and incorporated herein.

1.2 **Right To Annex.** Declarant may add all or any of the real property described in **Exhibit "B"** attached hereto and incorporated herein ("**Additional Property**") and may record additional Condominium Plans with respect thereto, and said Additional Property so annexed will thereupon be subject to this Declaration and become a part of the Property.

1.3 **Original Declaration.** The Property is subject to that certain Declaration of Covenants, Conditions and Restrictions of Sundance, recorded on September 22, 2005 in Book 20050922 at Page 2319 in the Sacramento County Recorder's Office and that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions of Sundance, recorded on March 7, 2006 in Book 20060307 at Page 0595 in the Sacramento County Recorder's Office (collectively "**Original Declaration**"). Declarant, as the sole fee title owner of the Property, intends, by recordation of this Declaration, to amend, restate, terminate and supercede in its entirety the Original Declaration.

1.4 **Nature Of Project.** Declarant intends to establish a plan of condominium ownership and to develop the Property, including any Additional Property which may hereafter be annexed thereto, as a condominium project within the meaning of California Business and Professions Code Section 11004.5(c) and California Civil Code Section 1351(f), to conform with the provisions of the California Subdivided Lands Law (California Business and Professions Code Section 11000, et seq.) and to subject the Property to certain limitations, restrictions, conditions and covenants as hereinafter set forth, in accordance with the provisions of California Civil Code Sections 1350 et seq., or any successor statutes or laws. To that objective, Declarant desires and intends to impose on the Property certain mutually beneficial restrictions, limitations, easements, assessments and liens under a comprehensive plan of improvement and development for the benefit of all of the Owners, the Condominiums, Common Area and Association Property and the future Owners of said Condominiums, Common Area and Association Property.

1.5 **Description Of Project.** Declarant intends to develop the Project in three (3) Phases. If developed as planned, Declarant intends to develop forty-seven (47) Residential Units within the Project. Declarant makes no guarantee that the Project will be constructed as presently proposed. Owners of a Condominium in each Phase will receive title to a Residential Unit plus an undivided fractional interest as tenant in common to the Common Area located within the Building Envelope. In addition, each Owner of a Condominium will receive the exclusive right of use and occupancy of a portion of the Common Area and/or Association Property designated as an appurtenant Exclusive Use Easement, all as shown on the Condominium Plan covering that Phase. Each Owner of a Condominium will also receive an easement for ingress, egress and recreational use over the Common Area and/or Association Property of the Phase in which the Condominium is situated and within each other Phase, effective upon annexation and conveyance of the first Condominium in each such phase, subject to the terms of the Governing Documents. Each Condominium shall have appurtenant to it a membership in the Sundance Owners Association, a California nonprofit mutual benefit corporation ("Association").

DECLARATION

Declarant declares that the Property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Section 1350 *et seq.* or any successor statutes or laws for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the 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 Property, shall be enforceable equitable servitudes and shall be binding on and inure to the benefit of the successors-in-interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1354, and any successor statutes or laws.

ARTICLE 2 DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this Article shall, for all purposes of this Declaration, have the meanings herein specified.

2.1 **Additional Charges.** The term "Additional Charges" means costs, fees, charges and expenditures, including without limitation, attorneys' fees, late charges, interest, and recording and filing fees, actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 **Additional Property.** The term "Additional Property" means all of the real property described on **Exhibit "B"** attached hereto and incorporated herein.

2.3 **Annexation.** The term "Annexation" means the process by which the Additional Property may be made subject to this Declaration as set forth in the Article of this Declaration entitled "Annexation of Additional Property."

2.4 **Architectural Committee.** The term "Architectural Committee" means the committee which may be appointed by the Board pursuant to **ARTICLE 9** of this Declaration.

2.5 **Architectural Guidelines.** The term "Architectural Guidelines" means the design criteria adopted by the Board pursuant to the **ARTICLE 9** of this Declaration entitled "Architectural Review."

2.6 **Articles.** The term "Articles" means the Articles of Incorporation of the Association as they may from time to time be amended which are or shall be filed in the Office of the Secretary of State for the State of California.

2.7 **Assigned Garages.** The term "Assigned Garages" refers to the garages set forth in the records of the Association and identified on the Condominium Plan which are assigned to certain Owners as described in **Section 3.7** of this Declaration.

2.8 **Assigned Parking Spaces.** The term "Assigned Parking Spaces" refers to the parking spaces set forth in the records of the Association and identified on the Condominium Plan which are assigned to certain Owners as described in **Section 3.7** of this Declaration.

2.9 **Association.** The term "Association" means the Sundance Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns.

2.10 **Association Maintenance Manual.** The term "Association Maintenance Manual" refers to the manual which may be prepared by Declarant or its consultants and provided to the Association, specifying obligations for maintenance of the Association Property, Common Area and other areas to be maintained by the Association, as updated and amended from time to time.

2.11 **Association Property.** The term "Association Property" means all real property owned from time-to-time in fee title by the Association. The Association Property in the Project shall consist of the real property identified as Association Property on **Exhibit "A."** The Association Property in subsequent Phases shall be described in a Supplementary Declaration.

2.12 **Association Rules.** The term "Association Rules" means the rules and regulations adopted by the Board from time to time.

2.13 **Board.** The term "Board" means the board of directors of the Association.

2.14 **Budget.** The term "Budget" means the budget for the Association which sets forth all the Common Expenses to be allocated among all the Owners.

2.15 **Building Envelope.** The term "Building Envelope" means each area designated on the Condominium Plan as a "Building Envelope." Each Building Envelope is a three-dimensional shape, the lower and upper boundaries of which are shown in the Condominium Plan. The lateral boundaries of each Building Envelope are vertical planes which are also described and depicted in the Condominium Plan. The Building Envelope includes all land and Improvements (whether now or hereafter located) within its boundaries.

2.16 **Bylaws.** The term "Bylaws" means the bylaws of the Association, as they may be amended from time to time, which are or shall be adopted by the Board.

2.17 **Capital Improvement Assessments.** The term "Capital Improvement Assessments" means the assessments which are levied pursuant to the provisions of **ARTICLE 6** of this Declaration.

2.18 **Common Area .** The term "Common Area" means that certain area designated as "Common Area" on the Condominium Plan which is owned in undivided interests by the Owners of the Residential Units situated in the Building Envelope within which the Common Area is situated, as defined in this Declaration and as described on the Condominium Plan. The Common Area includes the bearing walls located within a Residential Unit and all structural components within a Residential Unit which may be required for the support of the building within which the Residential Units are located, except for the finished surfaces thereof. Any Utility Facilities serving more than one Residential Unit located in a plenum area (which is the Common Area between the ceilings of the Residential Units and the floor of the Residential Units above), inside of perimeter Common Area walls or ceilings or otherwise in an area designated as Common Area are a part of Common Area, as shown on the Condominium Plan.

2.19 **Common Expenses.** The term "Common Expenses" refers to the actual and estimated costs and expenses incurred or to be incurred by the Association, or the Board, including, but not limited to, the following:

2.19.1 maintenance, management, operation, repair and replacement of the Association Property, Common Area and any Improvements located thereon and any other portion of the Project required to be maintained by the Association under this Declaration;

2.19.2 due but unpaid assessments;

2.19.3 costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, architects and employees;

2.19.4 the costs of any utilities, trash pickup and disposal, landscaping, water and other services benefiting the Owners and their Residential Units to the extent such services are paid for by the Association;

2.19.5 the costs of fire, casualty, liability, worker's compensation and other insurance maintained by the Association;

2.19.6 reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents;

2.19.7 the costs of bonding of the members of the Board, and any professional managing agent or any other person handling the funds of the Association;

2.19.8 taxes paid by the Association;

2.19.9 amounts paid by the Association for the discharge of any lien or encumbrance levied against the Association Property, Common Area or portions thereof;

2.19.10 costs incurred by any committees of the Association; and

2.19.11 any other expenses incurred by the Association in connection with the operation and/or maintenance of the Association Property and Common Area, or in furtherance of the purposes or the discharge of any obligations imposed on the Association by the Governing Documents.

2.20 **Condominium**. The term "Condominium" means an estate in real property as defined in California Civil Code Section 1351(f), and any successor statutes or laws, consisting of an undivided interest as a tenant-in-common in all or any portion of the Common Area, together with a separate fee interest in a Residential Unit and any other separate interests in the Property as are described in this Declaration, the Condominium Plan or in the deed conveying the Condominium.

2.21 **Condominium Building**. The term "Condominium Building" refers to each building in which the Condominiums are located as shown on the Condominium Plan.

2.22 **Condominium Plan**. The term "Condominium Plan" means (i) the condominium plan recorded pursuant to California Civil Code Section 1351, and any amendments to the plan, (ii) any recorded Condominium Plan or Plans, including amendments thereto affecting any Phases which have been annexed pursuant to the provisions of this Declaration, and (iii) any Supplementary Condominium Plans (as defined below), recorded pursuant to the provisions of this Declaration.

2.23 **County**. The term "County" refers to the County of Sacramento, California.

2.24 **Declarant**. The term "Declarant" means D.R. HORTON, INC. — SACRAMENTO, a California corporation and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, excluding any Owners, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to all or any portion of the Project. For any successor or assignee of "Declarant" to be deemed a Declarant under the terms of this

Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.25 **Declaration**. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions of Sundance as said Declaration may from time to time be amended or supplemented.

2.26 **DRE**. The term "DRE" means the California Department of Real Estate.

2.27 **Eligible Holder**. The term "Eligible Holder" means any First Mortgagee who has given written notice to the Association specifying the name and address of the Condominium subject to the Mortgage and requesting written notice of any or all of the events specified in this Declaration.

2.28 **Enforcement Assessments**. The term "Enforcement Assessments" means the assessments which are levied pursuant to the provisions of **ARTICLE 6** of this Declaration.

2.29 **Exclusive Use Easement or Exclusive Use Easement Area**. The term "Exclusive Use Easement" or "Exclusive Use Easement Area" means those portions of the Common Area and/or Association Property over which exclusive easements are reserved for the benefit of certain Owners in accordance with California Civil Code Section 1351(i), described in this Declaration and the Condominium Plan. Exclusive Use Easements, if any, are granted to an Owner in such Owner's grant deed and are appurtenant to such Owner's Condominium.

2.30 **Exclusive Use Balcony Areas**. The term "Exclusive Use Balcony Areas" refers to those areas within the Common Area designated as such on the Condominium Plan over which exclusive easements have been reserved for the benefit of certain Owners for balcony purposes.

2.31 **Exclusive Use Patio Areas**. The term "Exclusive Use Patio Areas" refers to those areas within the Common Area designated as such on the Condominium Plan over which exclusive easements have been reserved for the benefit of certain Owners for patio purposes.

2.32 **Final Map**. The term "Final Map" means the final subdivision or parcel map covering the Project.

2.33 **First Mortgage**. The term "First Mortgage" means a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium in the Project.

2.34 **First Mortgagee**. The term "First Mortgagee" means the Mortgagee of a First Mortgage.

2.35 **Fiscal Year.** The term “Fiscal Year” means the fiscal accounting and reporting period of the Association selected by the Board.

2.36 **Governing Documents.** The term “Governing Documents” collectively means this Declaration, the Articles, Bylaws, Architectural Guidelines, the Association Rules and any Supplementary Declarations.

2.37 **Improvements.** The term “Improvements” means: (i) all buildings and structures and appurtenances thereto of every type and kind, including, but not limited to, residences and other buildings, walkways, trails, swimming pools and other recreational facilities, garages, sidewalks, walkways, fences, screening walls, block walls, retaining walls, awnings, balcony covers, stairs, decks, balconies, trellises, landscaping irrigation systems, the exterior surfaces of any visible structure, paintings, antennae, poles, signs, solar or wind powered energy systems or equipment and water softener, heater or air conditioning and heating fixtures or equipment; (ii) the grading, excavation, filling or similar disturbance to the surface of the land; and (iii) any change or alteration of any previously installed improvement, including any change of exterior appearance, color or texture.

2.38 **Institutional Mortgage.** The term “Institutional Mortgagee” means a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; or (iii) any Federal or State Agency.

2.39 **Invitee.** The term “Invitee” means any person whose presence within the Project is approved by or is at the request of a particular Owner, including, but not limited to, tenants and the family, guests, employees or licensees of Owners or tenants.

2.40 **Maintenance Responsibility Chart.** The term “Maintenance Responsibility Chart” refers to **Exhibit “C”** attached hereto and incorporated herein which designates the components of the Project to be maintained by the Association and the Owners, respectively. The Maintenance Responsibility Chart may be further modified or supplemented in a Supplementary Declaration.

2.41 **Maintenance Obligations.** The term “Maintenance Obligations” refers to the Association’s obligations and each Owner’s obligations to perform (i) all reasonable maintenance consistent with the terms of the Association Maintenance Manual and Owner Maintenance Manual, respectively, any maintenance obligations and schedules in any warranty offered by Declarant or any manufacturer, and any maintenance obligations and schedules otherwise provided to the Association or the Owners by Declarant or any manufacturer, as applicable; (ii) any commonly accepted maintenance practices intended to prolong the life of the materials and construction of the Association Property, Common Area and Residential Units, as applicable; and (iii) any maintenance obligations and requirements set forth in this Declaration, as updated and amended from time to time.

2.42 **Member.** The term "Member" means every person or entity who holds a membership in the Association.

2.43 **Model Home Purposes.** The term "Model Home Purposes" means that a Residential Unit is used solely for the purposes of marketing other Condominiums constructed by Declarant and such Residential Unit is not occupied or used for residential purposes.

2.44 **Model Home Units.** The term "Model Home Units" means those Residential Units within the Project which are initially used by Declarant for Model Home Purposes.

2.45 **Module.** The term "Module" means each module designated as "Phase A," "Phase B," and "Phase Z" on the Condominium Plans. Each Module is a three-dimensional portion of the Property and has been created pursuant to California Government Code Section 66427. The lower and upper boundaries of each Module are set forth in the Condominium Plans. The lateral boundaries of each Module are vertical planes which are also described and depicted in the Condominium Plans. The Module includes all land and Improvements (whether now or hereafter located within its boundaries).

2.46 **Mortgage.** The term "Mortgage" means a recorded mortgage or deed of trust encumbering a Condominium in the Project.

2.47 **Mortgagee.** The term "Mortgagee" means a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

2.48 **MMRP Agreement.** The term "MMRP Agreement" means the Agreement to Mitigation Monitoring and Reporting Program for Vintage Oaks Condominiums that applies to the Project.

2.49 **Notice and Hearing.** The term "Notice and Hearing" means the procedure which gives an Owner notice of an alleged violation of the Governing Documents and the opportunity for a hearing before the Board.

2.50 **Operating Rules.** The term "Operating Rules" refers to those Association Rules that constitute an operating rule under Civil Code Section 1357.100 et seq.

2.51 **Owner.** The term "Owner" means the record owner, whether one or more persons or entities, including Declarant, of any Condominium excluding those having such interest merely as security for the performance of an obligation.

2.52 **Owner Maintenance Manual.** The term "Owner Maintenance Manual" refers to the manual which may be prepared by Declarant or its consultants and provided to each Owner, specifying obligations for maintenance of the Residential Units by the Owners, as updated and amended from time to time.

2.53 **Parking Spaces.** The term "Parking Spaces" means those areas within the Association Property, designated for parking purposes, as shown on the Condominium Plans.

2.54 **Person**. The term "Person" means a natural individual or any legal entity recognized under California law. When the word "person" is not capitalized, the word refers only to natural persons.

2.55 **Phase**. The term "Phase" refers to that portion of the Property which is the subject of a separate Public Report issued by the DRE and which has been made subject hereto.

2.56 **Private Streets**. The term "Private Streets" means those streets, roads and drives and adjacent sidewalks within the Association Property, and related lighting, private drainage, sewage and water systems and other utility installations therein that are not maintained by a public agency or franchised utility within such streets, roads or sidewalks.

2.57 **Project**. The term "Project" means all of the Property together with all Improvements situated thereon.

2.58 **Property**. The term "Property" means all of the real property described in Exhibit "A" of this Declaration, and such Additional Property as may hereafter be brought within the jurisdiction of the Association.

2.59 **Public Report**. The term "Public Report" means the Final Subdivision Public Report issued by the DRE for a Phase in the Project.

2.60 **Regular Assessments**. The term "Regular Assessments" means the assessments which are levied pursuant to the provisions of **ARTICLE 6** of this Declaration.

2.61 **Residential Unit**. The term "Residential Unit" means the elements of a Condominium which are not owned in common with the other Owners of Condominiums in the Project, such Residential Units and their respective elements and boundaries being shown and particularly described in the Condominium Plan. The dimensions of a Residential Unit are measured from the unfinished floor, walls, ceiling, except as otherwise noted herein. The Residential Unit includes all Improvements situated within its boundaries, and includes, without limitation, (i) interior walls (except interior bearing walls), (ii) the interior undercoated surfaces of bearing walls and perimeter walls, floors and ceilings, (iii) any door or window including any sliding glass doors, (iv) appliances, cabinets, interior doors, and all electrical, heating, plumbing and other utility fixtures, (v) the openings and outlets of all Utility Facilities that are located partially within the Residential Unit and partially in the Common Area, such as electrical outlets, and that exclusively serve the Residential Unit, (vi) all Utility Facilities serving solely that Residential Unit, whether located in the Residential Unit or the Common Area, and (vii) the fire box of any fireplace located in the Residential Unit. The following are not part of any Residential Unit: bearing walls, columns, floors, roofs and foundations, and Utility Facilities that serve two or more Condominiums wherever located. Areas within a ceiling or wall space that contain Utility Facilities that serve two or more Condominiums are Common Area and not part of the Residential Unit. In interpreting deeds and plans, the then existing physical boundaries of a Residential Unit, whether in its original state or reconstructed in substantial conformance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the

boundaries expressed in the Condominium Plan or any other recorded document, regardless of settling or lateral movements of the building and regarding of minor variance between boundaries shown on the Condominium Plan or any other recorded document and those of the building.

2.62 **Special Assessments.** The term "Special Assessments" means the assessments which are levied pursuant to the provisions of **Section 6.4** of this Declaration.

2.63 **Supplementary Condominium Plan** The term "Supplementary Condominium Plan" means any Condominium Plan which supplements a previously recorded Condominium Plan and/or which is subsequently recorded to designate the boundaries of any Exclusive Use Easement Areas. A Supplementary Condominium Plan shall also include a Condominium Plan which is recorded by the Declarant (i) to correct technical errors in the originally recorded Condominium Plan, or (ii) after the completion of construction to show the actual "as-built" locations or dimensions of any component of the Project, which Supplemental Condominium Plan described in subsections (i) and (ii) above shall not require the consent of the Owners or the Association.

2.64 **Supplementary Declaration** The term "Supplementary Declaration" means those certain declarations of covenants, conditions and restrictions, or similar instruments, which may do any or all of the following: (a) annex all or a portion of the Additional Property and/or designate Condominiums as a Phase, (b) identify areas referenced in this Declaration to be maintained by the Association, (c) make such other complementary additions and/or modifications necessary to reflect the different character of the Additional Property, (d) impose additional covenants and restrictions on the Additional Property, and/or (e) make technical or minor corrections to the provisions of this Declaration or previously recorded supplementary declaration(s).

2.65 **Utility Facilities.** The term "Utility Facilities" means all utility facilities including intake and exhaust systems, storm and sanitary sewer systems, drainage systems, ducting systems for ventilation and utility services, domestic water systems, natural gas systems, heating and air conditioning systems, electrical systems, fire protection water and sprinkler systems, telephone systems, cable television systems, telecommunications systems, satellite communications systems, water systems, sump pumps, pool equipment, central utility services and all other utility systems and facilities reasonably necessary to service any Improvement situated in, on, over and under the Project.

2.66 **Voting Power.** The term "Voting Power" refers to the voting power of the Association set forth in **Section 5.2**.

ARTICLE 3 OWNERSHIP AND EASEMENTS

3.1 **Ownership Of Condominium.** Ownership of each Condominium within the Project shall include (a) fee title to a Residential Unit, (b) an undivided interest in the Common

Area located within the Building Envelope in which the Residential Unit is situated, as shown on the Condominium Plan and the deed to the Condominium, (c) a membership in the Association, and (d) subject to the terms of the Governing Documents, any exclusive or non-exclusive easement or easements appurtenant to such Condominium over the Common Area and/or Association Property as described in this Declaration, the Condominium Plan, and the deed to the Condominium.

3.2 **No Separate Conveyance.** The interest of each Owner in the use and benefit of the Common Area and Association Property shall be appurtenant to the Condominium owned by the Owner. No Condominium shall be conveyed by the Owner separately from the interest in the Common Area or the right to use the Association Property. Any conveyance of any Condominium shall automatically transfer the interest in the Common Area and the Owner's right to use the Association Property and Common Area as provided in this Declaration without the necessity of express reference in the instrument of conveyance.

3.3 **Delegation of Use.** Any Owner entitled to the right and easement of use and enjoyment of the Association Property and the Common Area may delegate such Owner's rights provided in this Declaration to use and enjoyment of the Association Property and the Common Area to his or her other tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoyment of the Association Property and the Common Area for so long as such delegation remains in effect, other than such access rights as are directly related to the Owner's rights and duties as landlord.

3.4 **Easements.** The ownership interests in the Common Area, Association Property and Residential Units, and each Owner's right of ingress and egress over the Common Area and Association Property described in this Article, are subject to the easements and the rights of the Association granted and reserved in this Declaration and the other Governing Documents. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners, the Condominiums, the Association, the Association Property, the Common Area, superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

3.4.1 **Declaration Subject to Easements.** Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration and the Project shall be subject to all easements and rights-of-way shown on the Condominium Plan, Final Map and all other easements of record.

3.4.2 **Utilities.** There are reserved and granted for the benefit of the Residential Units, the Association Property and the Common Area, over, under, across and through the Project, reciprocal, non-exclusive easements for the maintenance, repair and replacement of the Utility Facilities.

3.4.3 **Encroachment.** There are hereby reserved and granted for the benefit of the Residential Units, the Association Property and the Common Area, over, under, across and through the Project, reciprocal, non-exclusive easements for encroachment, support, maintenance, repair, occupancy and use of such portions of the Residential Units, Association Property and/or Common Area as are encroached upon, used or occupied as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building, structure, or other improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design. The non-exclusive easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

3.4.4 **Association Easement.** The Association shall have a non-exclusive easement over the Common Area for performing its duties and exercising its powers described in the Governing Documents, and for performing repairs or maintenance not performed by the Owner pursuant to the terms of this Declaration.

3.4.5 **Association Right of Entry.** The Association and the Association's agents shall have the right to enter upon the Residential Unit as set forth in **Section 4.3.4** of this Declaration.

3.4.6 **Easements for Association Property and Common Area.** Subject to the provisions of the Governing Documents, including the rights of the Association described below, every Owner shall have, for himself or herself and such Owner's Invitees, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and over the Association Property and Common Area.

(a) **Suspend Rights of Members.** The Association shall have the right, after Notice and Hearing, to temporarily suspend an Owner's rights as a Member pursuant to the terms of this Declaration, including the right to use any recreational facilities for a period not to exceed sixty (60) days, unless such rights are suspended for failure to pay assessments.

(b) **Dedicate or Grant Easements.** The Association shall have the right, without the consent of the Owners, to dedicate and/or grant easements over all or any portion of the Association Property and the Common Area.

(c) **Control Parking.** Subject to the provisions of this Declaration the Association shall have the right to control parking within the Project and to promulgate rules and regulations to control parking in a manner consistent with this Declaration; provided however, that the Declarant has reserved an easement over all of the unassigned Parking Spaces with the exclusive right to assign such Parking Spaces to Owners. Upon assignment by Declarant of a

Parking Space, any easements over the Common Area shall be subject to the rights of Owner to the Assigned Parking Spaces.

(d) **Limit Guests.** The Association shall have the right to limit, on a reasonable basis, the number of guests and tenants of the Owners using the recreational and other facilities situated within the Association Property and the Common Area.

3.4.7 **Easements for Drainage and Runoff.** Each Residential Unit shall have an easement for drainage through the established drainage pipes and facilities. Such easements shall be subject to the restrictions set forth in **Section 7.16** of this Declaration.

3.4.8 **Easement To Declarant.** Declarant shall have and hereby expressly reserves the easements necessary for Declarant and its agents, employees and independent contractors to exercise Declarant's rights set forth in **ARTICLE 10** of this Declaration and to perform its obligations under any warranty provided by Declarant to an Owner.

3.4.9 **Parking.** Declarant shall have and there is expressly reserved to Declarant all of the parking spaces on the Project with the exclusive right to assign such parking spaces to Owners and/or to license the use of such spaces to the Association.

3.4.10 **Compliance with MMRP Agreement.**

(a) There are reserved and granted for the benefit of the Association, over, under, across and through the Project, easements necessary for the Association to perform its obligations under the MMRP Agreement.

(b) There are reserved and granted for the benefit of the County, over, under, across and through the Project, easements necessary for the County to inspect and monitor compliance with the MMRP Agreement.

3.5 **Light, Air and View.** No Owner shall have an easement for light, air or view over the Residential Unit of another Owner and no diminution of light, air or view by any building or Improvement now existing or hereafter erected shall entitle the Owner or any Invitee to claim any easement for light, air or view within the Project.

3.6 **Right of Access.** Every Owner shall have the right to enjoy free and unobstructed passage between every such Owner's Residential Unit, through the Association Property and the Common Area to all publicly dedicated streets bordering the Project, subject to any restrictions imposed by any city, county or state and subject to any reservations in the deed, map and Governing Documents.

3.7 **Parking and Garage Parking and Garage Rights.** Declarant shall, so long as Declarant owns any portion of the Property and/or the Additional Property have the sole right to assign to Owners an exclusive right to use a Parking Space ("Assigned Parking Spaces") or garage ("Assigned Garages"). Each Owner shall be assigned either an Assigned Parking Space or an Assigned Garage. Declarant shall, upon assigning a Parking Space or Garage to an Owner of

a Residential Unit designate such assignment in the records of the Association. Upon assignment of an Assigned Parking Space or Assigned Garage to an Owner of a Residential Unit, such Owner shall have the exclusive right to the use of the Parking Space or Assigned Garage so assigned, subject to the rights of the Declarant and the Association set forth below. Upon such assignment by Declarant, the Association shall not have the right to change the location of such Assigned Parking Space or Assigned Garage, except as provided below. Upon conveyance of a Condominium by an Owner to another Owner, the parking rights or garage assigned to such Owner in the records of the Association shall automatically inure to the benefit of the new Owner. Upon conveyance of the last Condominium to an Owner by Declarant, the Declarant may assign to the Association any Parking Spaces or garages not previously assigned by Declarant for use by the Association for guest or Owner parking.

3.7.2 **Temporary Relocation Rights.** The rights assigned to the Owner of a Residential Unit to use or occupy an Assigned Parking Space or Assigned Garage shall be subject to the rights of the Declarant or the Association to temporarily relocate such Parking Space or Assigned Garage, upon reasonable notice, in order to accommodate any construction, maintenance or repairs of Improvements located within the Project. In such case, Declarant or the Association shall have the right to exchange the affected Parking Space or Assigned Garage for another available Parking Space or garage, if any. Each Owner hereby acknowledges that such activities of the Declarant or the Association may impair the use of such Owner's Assigned Parking Spaces or Assigned Garages and may constitute an inconvenience or nuisance to the Owners and each Owner hereby consents to such impairment, inconvenience or nuisance, and hereby releases the Declarant and the Association from any claims with respect to such matters.

3.7.3 **Relocation Based Upon Agreement of Owners.** If an Owner desires to exchange his or her Assigned Parking Space or Assigned Garage with another Owner, and both affected Owners voluntarily agree to the exchange, and provided the two Owners sign an agreement in a form prepared by the Association agreeing to the exchange, the Association may then change its records to reflect the exchange requested by the two Owners, as applicable. The Association shall retain in its records the written agreement of the two Owners. Upon the change to the records of the Association, then the new Assigned Parking Spaces or Assigned Garage shall inure to the benefit of the future Owners of such Residential Unit.

3.7.4 **Handicap Parking Spaces.** Certain Parking Spaces will be designated for use by handicapped persons ("Handicap Parking Spaces"). Such Handicap Parking Spaces may be assigned by Declarant to the Owners of particular Residential Units upon the initial sale of such Residential Units. Each Owner, by accepting a Handicap Parking Space, acknowledges that the Owner accepts the Parking Space subject to the rights of the Declarant and Association to make the changes described in this Section with or without the consent of such Owner. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles ("Handicap Status"). In no event shall the Declarant or the Association be held liable if the Declarant or the Association is unable to assign a Handicap Parking Space to a handicapped Owner because all designated Handicap Parking Spaces have previously been assigned to other Owners providing evidence of Handicap Status.

ARTICLE 4 THE ASSOCIATION

4.1 **The Organization.** The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California. On the conveyance of the first Condominium to an Owner under a Public Report, the Association shall be charged with the duties and invested with the powers set forth in the Governing Documents.

4.2 **Association Action; Board of Directors and Officers; Members' Approval.** Except as to matters requiring the approval of Members as set forth in the Governing Documents, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with the Governing Documents. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if (i) Members holding a majority of the total Voting Power consent to them in writing as provided in the Bylaws, (ii) such matters are approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws or, (iii) in certain situations set forth in **Section 4.4** of this Declaration, such matters as are approved in accordance with the procedures set forth in **Section 4.4**.

4.3 **Powers of the Association.** The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Governing Documents. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Governing Documents, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below. Notwithstanding the foregoing, the Association shall not undertake any of the activities described in **Section 4.5** below.

4.3.1 **Assessments.** The Association shall have the power to establish, fix, and levy assessments against the Owners and to enforce payment of such assessments, in accordance with the provisions of the Governing Documents.

4.3.2 **Right of Enforcement and Notice and Hearing.**

(a) **Enforcement Actions.** The Association in its own name and on its own behalf, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association can temporarily suspend the membership rights and privileges and/or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of the Governing Documents or Board resolutions.

(b) Notice Requirements. Before a decision to impose such a suspension or monetary penalties is reached by the Board, the aggrieved Owner shall be provided with an opportunity to be heard by the Board, orally or in writing, and shall be provided with at least fifteen (15) days prior written notice of such hearing or any such longer period as may be required under California Corporations Code Section 7341, or any successor statute or law. Additionally, the Board shall provide written notice of any sanctions to be imposed and the reasons for such sanctions, not more than fifteen (15) days following the Board action. For the purposes of this Subsection, notice shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner or sent by first class registered or certified mail, return receipt requested or overnight courier delivery and addressed to the Owner at the last address of the Owner shown on the Association's records, or any other method deemed reasonable by the Board for delivering notices.

4.3.3 Delegation of Powers, Professional Management. The Association can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent, subject to the requirements of the **Section 4.6** entitled "Contracts."

4.3.4 Right of Entry and Enforcement. Except in the case of emergencies in which case no prior notice need be given, the Board or any authorized representative thereof shall have the right, upon forty-eight (48) hours prior notice and during reasonable hours, to enter upon the exterior of any Residential Unit and the improvements thereon for the purpose of (i) construction, maintenance or emergency repair, (ii) enforcing the provisions of this Declaration for the benefit of the Common Area and Association Property, or (iii) maintaining and repairing the improvements located within said Residential Unit as provided in this Declaration. Such persons shall not be deemed guilty of trespass by reason of such entry.

4.3.5 Easements and Rights of Way. The Association, may grant and convey to any third party easements and licenses for use and rights of way in, on, over or under any Common Area and Association Property in accordance with the provisions of this Declaration.

4.3.6 Dedication. The Association may dedicate any of the Association Property to an appropriate public authority for public use as provided for in this Declaration.

4.3.7 Capital Improvements. Subject to the terms of this Declaration, the Association may approve the construction, installation or acquisition of a particular capital improvement to the Association Property.

4.3.8 Personal Property. The Association may acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise, subject to the limitations set forth in **Section 4.5.2.**

4.3.9 Enter Into Subsidy or Maintenance Agreements. The Association shall have the power to enter into maintenance or subsidy agreements with Declarant.

4.3.10 Contract for Goods and Services. The Association shall have the power to contract for goods and services for the benefit of the Project that are necessary for the Association to perform its duties and obligations hereunder, subject to the limitations set forth in **Section 4.5** below.

4.3.11 Borrow Funds. The Association shall have the right to borrow money to improve, repair or maintain the Common Area and Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessments collected thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the approval by written ballot of sixty-seven percent (67%) of each class of Members.

4.3.12 Rights Regarding Title Policies. If any title claims regarding the Association Property are made by any third party, the Association shall have the power to pursue such claims on any title insurance policy held by the Owners or the Association and each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Association Property.

4.3.13 Claims and Actions. Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle, release or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) any and all claims, causes of action, damages and suits for defects relating in any way to the design or construction of the Association Property, Common Area or any portion thereof, on behalf of all Owners; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 *et seq.*, and any successor statutes or laws, such that from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Association Property or the Common Area pursuant to Civil Code Section 895 *et seq.*, and any successor statutes or laws. The Association shall comply with such non-adversarial procedures in bringing any such claims or actions. Each Owner hereby agrees to designate such authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of any such claims.

4.4 Duties of the Association. In addition to the powers described above, and without limiting their generality, the Association, has the obligation to perform each of the duties set forth below.

4.4.1 Water, Trash and Other Utilities. The Association shall have the duty to acquire, provide and pay for water, trash collection, electricity for the Project and other services for the Association Property and the Common Area to the extent necessary. The Association shall have the responsibility to pay for electricity for the Assigned Garages.

4.4.2 Utility Suppliers. The Association shall have the duty to permit utility suppliers and other providers of any telecommunications or other services to use portions of the Common Area and Association Property reasonably necessary to the ongoing development and operation of the Project.

4.4.3 Maintenance of Project. The Association shall landscape, maintain and/or replace and repair the Common Area, Association Property, any offsite-areas required to be maintained by the Association, and any other portions of the Project described in **ARTICLE 8** pursuant to the provisions of this Declaration and the MMRP Agreement.

4.4.4 Members' Approval of Certain Actions. In the event that any claim or other actions brought by the Association against Declarant, including but not limited to claims brought under California Civil Code Section 895 *et seq.*, and any successor statutes or laws, involving allegations of construction defects relating to the Association Property or the Common Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938 and any successor statutes or laws, the Association shall not initiate a further action or arbitration proceeding under **Section 17.4** or otherwise without first obtaining the consent of the Owners other than Declarant constituting a majority of the Voting Power.

4.4.5 Association Rules. The Board shall adopt, amend and repeal the Association Rules as it deems reasonable. The Association Rules shall govern the Project. However, the Association Rules shall not be inconsistent with or materially alter any provisions of the Governing Documents. A copy of the Association Rules, as adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. In case of any conflict between any of the Association Rules and any other provisions of this Declaration, the conflicting Association Rule shall be deemed to be superseded by the provisions of the Governing Documents. Notwithstanding the foregoing, with regard to the Operating Rules, the Association shall comply with the requirements and procedures set forth in Civil Code Section 1357.100 *et seq.*

4.4.6 Insurance. The Association shall have the duty to obtain, from reputable insurance companies licensed to do business in California and maintain the insurance described in the Article hereof entitled "Insurance."

4.4.7 Notice Prior to Litigation. The Association shall notify all Owners of any litigation filed for or on behalf of the Association pursuant to the provisions of **Section 17.3** of this Declaration.

4.4.8 Financial Matters. The Association shall have the duty to prepare annual Budgets, reports, balance sheets and operating statements for the Association as required under the Governing Documents.

4.4.9 Use of Proceeds to Repair. If 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 or litigation brought by 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. Any excess proceeds shall be applied as determined by the Board, subject to any requirements established by the non-profit mutual benefit laws of the State of California and any other applicable laws.

4.4.10 Warranties. The Board shall comply with the terms of any warranty in favor of the Association for any equipment or facilities within the Association Property or Common Area. The Association acknowledges that certain warranties require the Association to maintain certain maintenance contracts in effect and, to the extent the Board discontinues such maintenance contracts, the effectiveness of the warranty may be impaired or eliminated.

4.4.11 Indemnification.

(a) For Association Representative. To the fullest extent authorized by law, the Association has the power and duty to indemnify Board members, Association officers, and all other Association committee members for all damages, pay all expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action brought because of performance of an act or omission within what such Person reasonably believed to be the scope of the Person's Association duties ("Official Act"). Board members, Association officers, and all other Association committee members are deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification.

(b) For Other Agents of the Association. To the fullest extent authorized by law, the Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act.

(c) Provided by Contract. The Association also has the power, but not the duty, to contract with any Person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

4.4.12 Maintenance Manuals. The Association shall maintain at the offices of the Association a copy of the Owner Maintenance Manual provided by Declarant to the Owners and

shall make available to every Owner upon request a copy of the Owner Maintenance Manual for the Owners' Residential Units. The Association shall have the right to charge the requesting Owner a fee for the copying of such Owner Maintenance Manual. The Association shall also comply with provisions of the Association Maintenance Manual provided by Declarant to the Association. The Board may, from time to time, make appropriate revisions to the Owner Maintenance Manual and the Association Maintenance Manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

4.5 **Limitations on Authority of Board.** The Board shall not take any of the actions listed below except with the vote or written consent of (a) a majority of the Members of each of Class A and Class B during the time the Class B voting structure set forth in **Section 5.2** of this Declaration is in effect; or (b) except with the vote at a meeting of the Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, of at least a majority of the Members of the Association including at least a majority of Association Members other than Declarant after conversion to a single Class A voting membership.

4.5.1 **Limit on Capital Improvements.** The Board shall not, without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Common Area and Association Property in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

4.5.2 **Limit on Sales of Association Property.** The Board shall not, without obtaining the consent of the Members as set forth above, 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.

4.5.3 **Limit on Compensation.** The Board shall not, without obtaining the consent of the Members as set forth above, pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association.

4.5.4 **Limit on Third Person Contracts.** The Board shall not, without obtaining the consent of the Members as set forth above, enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area and Association Property for a term longer than one (1) year with the following exceptions:

(a) 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;

(b) A prepaid casualty and/or liability insurance policy not to exceed three (3) years duration; provided that the policy permits for short-rate cancellation by the insured;

(c) 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 obligations upon ninety (90) days written notice of termination to the other party;

(d) A contract approved by the DRE; and

(e) Any maintenance agreement for the maintenance of any portion of the Association Property or Common Area which is required as a condition to the effectiveness of any warranty in favor of the Association.

4.5.5 Prohibited Functions.

(a) Property Manager. The Association Manager shall at all times be a professional manager operating as an independent contractor. The Association shall have the right to designate a portion of the Association Property for use as an on-site manager's office.

(b) Off-Site Nuisances. The Association shall not use any Association funds or resources to abate any annoyance or nuisance emanating from outside the physical boundaries of the Property.

(c) Political Activities. The Association shall not (i) participate in federal, state or local political activities or activities intended to influence a governmental action affecting areas outside the boundaries of the Property (e.g. endorsement or support of (A) legislative or administrative actions by a local governmental authority, (B) candidates for elected or appointed office, or (C) ballot proposals, or (ii) conduct, sponsor, participate in or expend funds or resources or any activity, campaign or event, including any social or political campaign, event or activity which is not directly and exclusively pertaining to the authorized activities of the Association. There shall be no amendment of this Section so long as Declarant, owns any portion of the Property or Additional Property.

4.6 Contracts. Any agreement for professional management of the Project, employment contract or lease of recreational or parking areas or facilities, or any agreement providing for services of the Declarant or any contract or lease, including franchises and licenses to which Declarant is a party, shall be for a term not to exceed one (1) year without the consent of a majority of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

4.7 Personal Liability. No member of the Board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent or

employee or consultant of Declarant (each a "Management Party"), shall be personally liable to any Owner, or to any other party, including the Association, for any error or omission of any Management Party if such person or entity has, on the basis of such information as may be possessed by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in California Civil Code Section 1365.7 and any successor statutes or laws, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two (2) Residential Units, and who, at the time of the act or omission, was a "volunteer" as defined in California Civil Code Section 1365.7 and successor statutes or laws, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of his or her Association duties, while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of California Civil Code Section 1365.7, or any successor statute or law, have been satisfied.

ARTICLE 5

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

5.1 Membership.

5.1.1 Qualifications. Each Owner of a Condominium which is subject to assessment, including Declarant, shall be a Member of the Association. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership interest in the Condominiums in the Project ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members.

5.1.2 Members' Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in the Governing Documents, as the same may from time to time be amended.

5.1.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest in it shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner. Declarant's Class C membership may not be transferred except to a successor to Declarant's rights to all or a portion of the Project. Transfer of Declarant's Class C membership shall be evidenced by the recordation in the Office of the County Recorder of an Assignment of Declarant's Rights which specifically assigns such Declarant's Class C membership rights.

5.1.4 Commencement of Voting Rights. An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Condominium as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the other Governing Documents.

5.2 Number of Votes. The Association shall have three (3) classes of voting membership:

5.2.1 Class A Members. Class A Members shall be all Owners, with the exception of Declarant (until the conversion of Declarant's Class B membership to a Class A membership as provided in Section 5.2.2 below), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

5.2.2 Class B Members. Class B Member(s) shall be Declarant who shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(a) On the second anniversary of the first close of escrow of a Condominium in a Phase covered by the most recently issued Public Report for any Phase of the Project; or

(b) The fourth anniversary of the first close of escrow of a Condominium covered by the original Public Report for the first Phase of the Project.

As long as Class B membership exists, except for the initiation of any claim under **Section 4.3.13** of this Declaration, 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 the appropriate percentage of Class A and Class B Members, except as set forth in **Section 4.4.4** of this Declaration entitled Members' Approval of Certain Actions. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

5.2.3 Class C Member. The Class C Member shall be Declarant (whether or not Declarant is an Owner). The Class C membership shall not be considered a part of the Voting Power of the Association and Declarant shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Board pursuant to the provisions set forth below. The Class C Member shall be solely entitled to elect a majority of the members of the Board until the day after the first annual meeting of the Members of the Association as further provided in the Bylaws; provided that during the initial three-year terms of the Board members elected by the Class C Member, the Class C Member shall be entitled to replace any

Member of the Board initially elected by Declarant using its Class C membership upon the death, resignation or removal of any such Board member.

5.2.4 Joint Owner Votes. The voting rights for each Condominium may not be cast on a fractional basis. If the joint Owners of a Condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Condominium, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Condominium. If more than one (1) person or entity exercises the voting rights for a particular Condominium, their votes shall not be counted and shall be deemed void.

ARTICLE 6 ASSESSMENTS

6.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Condominium owned within the Property, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments levied pursuant to the provisions of this Declaration. All assessments levied hereunder, together with interest, costs and reasonable attorneys' fees assessed hereunder, shall be a charge on the land and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to be effective upon recordation of a notice of delinquent assessments. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due and shall bind his heirs, devisees, personal representatives and assigns. Unlike the lien for non-delinquent assessments, the personal obligation for delinquent assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successive Owner (including a contract purchaser under an installment land contract) shall relieve any Owner against whose Condominium the lien was levied from personal liability for delinquent assessments. If more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment or installment respecting such Condominium shall be both joint and several.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to perform the obligations and duties of the Association, including, but not limited to, the improvement and maintenance of the Association Property and Common Area and for any other maintenance responsibilities of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Governing Documents. The Association shall not impose or collect any assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.3 Regular Assessments.

6.3.1 Payment of Regular Assessments. Regular Assessments for each Fiscal Year shall be established when the Board approves the Budget for that Fiscal Year, which Budget shall be prepared in accordance with the provisions of the Governing Documents. Regular Assessments shall be levied on a Fiscal Year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Declarant's obligation or subsidy for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by Declarant and the Association.

6.3.2 Budgeting. Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a Budget as described in the Article of the Bylaws entitled "Budget and Financial Statements," not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Fiscal Year or as otherwise required by law.

6.3.3 Restrictions for Tax Exemption. As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then the Board shall prepare its annual Budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status.

6.3.4 Assessments After Annexation

(a) Reallocation of Assessments. After conveyance of the first Condominium in a Phase, the assessments in the Budget shall be reallocated among all Condominiums in the Project, including those in the annexed Additional Property, in the same manner as described above.

(b) Revision of Budget. Notice of the new Regular Assessment to be levied against each Condominium in the Project shall be delivered by the Association to the Owners and Declarant within sixty (60) days after the close of escrow for the first Condominium sold in the new Phase.

6.4 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 construction, unexpected repairs or replacements of capital improvements on, damage and destruction or condemnation of, the Common Area, Association Property or any other areas which the Association is obligated to maintain, 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 and does not exceed five percent (5%) of the budgeted gross expenses of the Association, it shall become a Special Assessment; provided, however, that such limitation shall not apply to Special Assessments levied by the Board to replenish the Association's reserve account as provided in the Section of the Bylaws titled "Reserves". Except

for Special Assessments levied pursuant to the Section of the Bylaws titled "Reserves", any Special Assessment in excess of five percent (5%) of the budgeted gross expenses of the Association shall be subject to the limitations set forth in **Section 6.7** below. 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 Condominium. 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.

6.5 **Capital Improvement Assessment.** In addition to any other assessments provided for hereunder, the Association may levy a Capital Improvement Assessment for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement in accordance with the provisions of **Section 4.3.7**. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate. Increases in Capital Improvement Assessments shall be subject to the limitations set forth in **Section 6.7** below.

6.6 **Enforcement Assessments.** The Association may levy an Enforcement Assessment for the payment of any deductible amount payable under the Association's insurance policy against any Owner whose negligence or willful misconduct causes damage to the Association Property or the Common Area or any other areas which the Association is obligated to maintain or for the cost of bringing an Owner or his or her Condominium into compliance with the provisions of the Governing Documents, and/or any other charge designated an Enforcement Assessment in the Governing Documents, together with attorneys' fees, interest and other charges related thereto as provided in this Declaration. If the Association undertakes to provide materials or services which benefit individual Owners, then such Owners in accepting such materials or services agree that the costs thereof shall be an Enforcement Assessment. The Board shall have the authority to adopt a reasonable schedule of Enforcement Assessments for any violation of the Governing Documents. If, after Notice and Hearing as required by this Declaration and which satisfies Section 7341 of the California Corporations Code and any successor statutes or laws, the Owner fails to cure or continues such violation, the Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Assessment as herein provided for nonpayment of an assessment. A hearing committee may be established by the Board to administer the foregoing. Notwithstanding any other provision in this Declaration to the contrary, except as provided in **Section 6.12.1** of this Declaration, Enforcement Assessments are assessments but they may not become a lien against the Owner's Condominium that is enforceable by a power of sale under California Civil Code Sections 2924, 2924b and 2924c or any successor statutes or laws. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

6.7 **Changes to Assessments.**

6.7.1 Limitation on Assessments. From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, other than Declarant, the maximum annual Regular Assessment may not, except in the case of an Emergency (as hereinafter defined), be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year, without the consent of the Owners, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 *et seq.* and 7613 and any successor statutes or laws. For the purpose of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment plus any amount paid by the Declarant as a subsidy pursuant to any subsidy agreements, to the extent such subsidy payments offset any amount which would otherwise be paid by Owners as Regular Assessments. Any increases authorized under this Section shall not be imposed unless the Board has complied with the budgetary requirements set forth in **ARTICLE 9** of the Bylaws with respect to the Fiscal Year for which an assessment is being levied. The Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 1365.5 and any successor statutes or laws. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Owners of the Association and an Emergency shall mean any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain the Common Area, Association Property or any part of the Project which is the responsibility of the Association to maintain where a threat to personal safety on the Project is discovered; or
- (c) an extraordinary expense necessary to repair or maintain the Common Area and Association Property or any part of the Project for which the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the Budget required under this Declaration and the Bylaws and California Civil Code Section 1365 and any successor statutes or laws; provided, however, that prior to the imposition or collection of a Regular Assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense which is 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 Regular Assessment.

6.7.2 Notice to Owners. The Association shall provide notice by first class mail to the Owners of any increase in the Regular Assessments or Special Assessments of the Association, not less than thirty (30) days and not more than sixty (60) days prior to the increased assessment becoming due and payable.

6.8 **Uniform Rate of Assessment.** Regular and Special Assessments and Capital Improvements Assessments shall be fixed at a uniform rate for all Condominiums and may be collected on a monthly basis and shall be determined by dividing the amount of the assessment by the total number of Condominiums then within the Project and subject to assessment. Enforcement Assessments shall be levied directly to the individual Condominiums.

6.9 **Date of Commencement of Regular Assessments; Due Dates.** The Regular Assessments provided for herein shall commence as to all Condominiums in a Phase subject to this Declaration on the first day of the month following the conveyance of the first Condominium to an Owner under authority of a Public Report. As to any Additional Property which is thereafter annexed into the Project pursuant to a Supplementary Declaration, the Regular Assessments shall commence as to all of the Condominiums within such Phase upon the first day of the first month following the closing of the sale of the first Condominium in such Phase or such earlier date as may be selected by Declarant for the commencement of assessments in such Phase. In no event shall any sale or leaseback to Declarant of any Condominium in the Project being used as a model home, sales office, design center, construction office or similar purpose (collectively, a "Model Home") and which are not occupied by a homeowner cause the commencement of assessments in a Phase for which assessments have not otherwise commenced through a sale of a Residential Unit in such a Phase to an Owner who will occupy such Residential Unit. Notwithstanding the foregoing, Declarant may elect to commence to pay Regular Assessments on a Phase prior to the conveyance in such Phase to an Owner under a Public Report and, in such case, Declarant shall have the voting rights as to the Condominiums in such Phase pursuant to **Section 5.2.2** of this Declaration.

6.10 **Notice and Assessment Installment Due Dates.** A single ten (10) day prior written notice of each Special Assessment and Capital Improvement Assessment shall be given to each Owner. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the Board. Each installment of Regular Assessments, Special Assessments and Capital Improvement Assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge, interest charge to be set by the Board and reasonable costs of collection, including attorneys' fees, but which shall not, in any event, exceed the maximum rates permitted under California Civil Code Section 1366, or any successor statutes or laws.

6.11 **Estoppel Certificate.** The Board on not less than ten (10) 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 as to such Owner's Condominium 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 Condominium. Any such statement may be relied on by any prospective purchaser or Mortgagee of the Condominium, but reliance on such statement may not extend to any default not involving the payment of assessments of which the signer had no actual knowledge.

6.12 Collection of Assessments, Liens.

6.12.1 **Right to Enforce.** The right to collect and enforce assessments is vested in the Board acting for and on behalf of the Association. The Board or its authorized representative, can enforce the obligations of the Owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to **Section 6.12.6** enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other Additional Charges described in **Section 6.13** shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property and facilities for which the Member was allegedly responsible or in bringing the Member and his or her Residential Unit into compliance with the Governing Documents of the Association may not be characterized nor treated as an assessment which may become a lien against the Member's Residential Unit enforceable by a sale of the interest hereunder. The limitation in the preceding sentence however, does not apply to any Additional Charges.

6.12.2 **Notice of Assessments and Foreclosure.** The Association shall distribute a written notice regarding assessments and foreclosure as set forth in California Civil Code Section 1365.1 during the sixty (60) day period immediately preceding the beginning of the Association's Fiscal Year.

6.12.3 **Delinquent Assessments.** The Association shall comply with the requirements of California Civil Code Section 1367.1 and any successor statutes or laws when collecting delinquent assessments. The Board or its authorized representative must send to the delinquent Owner or Owners, at least thirty (30) days prior to the recordation of a lien against the delinquent Owner's Condominium (as set forth in **Section 6.12.4**), a written notice by certified mail, which notice shall contain all of the information specified in California Civil Code Section 1367.1 and any successor statutes or laws ("**Initial Notice**"). The delinquent Owner may dispute the debt noticed pursuant to the Initial Notice by submitting to the Board a written explanation of the reasons for the delinquent Owner's dispute ("**Owner Explanation**"). The Board shall respond to the Owner Explanation in writing to the delinquent Owner within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The delinquent Owner may submit a written request to the Board to meet with the Board to discuss a payment plan for the debt noticed in the Initial Notice. The Board shall meet with the delinquent Owner in executive session within the time frame set forth in California Civil Code Section 1367.1 and any successor laws or statutes. The Association shall provide the Owners the standards for payment plans if any exists.

6.12.4 **Creation of Lien.** If there is a delinquency in the payment of any assessment, or installment on a Condominium any amounts that are delinquent, together with the late charge described in California Civil Code Section 1366 and any successor statutes or laws, interest at the rate permitted in such Section, and all costs that are incurred by the Board or its

authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such Condominium upon the recordation in the Office of the County Recorder of a notice of delinquent assessment ("**Notice of Delinquent Assessment**") as provided in California Civil Code Section 1367.1 and any successor statutes or laws. After its recordation, the Notice of Delinquent Assessment shall be mailed to all Owners of record as provided in California Civil Code Section 1367.1 and any successor statutes or laws.

6.12.5 **Assignment.** The Association may not voluntarily assign or pledge the Association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party except where provided under California Civil Code Section 1367.1(g) and any successor statutes or laws.

6.12.6 **Notice of Default; Foreclosure.** The Board or its authorized representative can record a notice of default and can cause the Condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c and any successor statutes or laws, or through judicial foreclosure, and as provided in California Civil Code Section 1367.1 and any successor statutes or laws. However, as a condition precedent to the holding of any such sale under Section 2924c appropriate publication shall be made. In connection with any sale under Section 2924c the Board is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in California as trustee for purposes of conducting the sale. The fee of the trustee shall not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d. If (a) a delinquency is cured before sale, or before completing a judicial foreclosure, or (b) if it is determined that a lien previously recorded against a Condominium was recorded in error, the Board or its authorized representative, within the time frame set forth in California Civil Code Section 1367.1 and any successor statutes or laws, shall cause to be recorded in the office of the County Recorder a certificate setting forth the satisfaction or rescission of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent Owner. If the lien was satisfied, the Association shall provide the delinquent Owner a copy of the lien release or notice that the delinquent assessment has been satisfied and if the Association filed a rescission of the lien, then the Association shall provide such Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. Any payments made on delinquent assessments shall be applied in accordance with California Civil Code Section 1367.1 and any successor statutes or laws. On becoming delinquent in the payment of any assessments, or installments each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of Owner's Condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium and vote as an Owner of the Condominium.

6.12.7 **Payments Under Protest.** Notwithstanding any other provisions set forth in this **Section 6.12**, the Owners shall have the right to make certain payments under protest and

be entitled to alternative dispute resolution as provided in California Civil Code Sections 1354, 1366.3, 1367.1, and any successor statutes or laws, as provided in **Section 17.4**.

6.12.8 Payment of Assessments. Any payments of sums due under this Article shall first be applied to assessments owed, and only after assessments owed have been paid in full shall the payments be applied to the fees and costs of collections, attorney's fees, late charges or interest. If any Owner requests a receipt after payment of a delinquent assessment, the Association shall provide a receipt which sets forth the date of payment and the individual who received such payment.

6.13 Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay Additional Charges incurred or levied by the Board including such additional costs, fees, charges and expenditures as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent, subject to California Civil Code Section 1362.1(j) and any successor laws or statutes. Additional Charges shall include, but not be limited to, the following:

6.13.1 Attorneys' Fees. Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

6.13.2 Late Charges. A late charge in an amount to be fixed by the Board in accordance with Civil Code Section 1366, or any successor statute or law, to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law;

6.13.3 Costs of Suit. Costs of suit and court costs incurred as are allowed by the court;

6.13.4 Interest. Interest to the extent permitted by law; and

6.13.5 Other. Any such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

6.14 Waiver of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment, or installment, becomes delinquent or any lien is imposed.

6.15 Subordination of Lien to First Mortgages. When a Notice of Delinquent Assessment has been recorded, such assessment shall constitute a lien on such delinquent Owner's Condominium prior and superior to all other liens, except, (a) all taxes, (b) bonds, assessments and other levies which, by law, would be superior thereto, and (c) any First Mortgage now or hereafter placed upon any Condominium subject to assessment. The sale or

transfer of any Condominium pursuant to judicial or nonjudicial foreclosure (excluding a transfer by a deed in lieu of foreclosure) of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from any assessments thereafter becoming due or from the lien of any subsequent assessment. Where the Mortgagee of a First Mortgage or other purchaser of a Condominium obtains title to the same as a result of foreclosure (excluding a transfer by a deed in lieu of foreclosure), such acquiror of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium that became due prior to the acquisition of title to such Condominium by such acquiror, except for a share of such charges or assessments resulting from a reallocation of such charges or assessments which are made against all Condominiums.

6.16 **No Offsets.** All assessments shall be payable in the amounts specified by the particular assessment and no offsets against such amount shall be permitted for any reasons, including, without limitation, a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

6.17 **Personal Liability of Owner.** No Owner may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Condominium owned by him or her from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and facilities thereof, or by abandonment of such Owner's Condominium.

6.18 **Transfer of Property.** After transfer or sale of property within the Project, the selling Owner or Owners shall not be liable for any assessment levied on such Owner or Owner's Condominium after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall still be responsible for all assessments and charges levied on his or her property prior to any such transfer.

6.19 **Failure to Fix Assessments.** The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

6.20 **Property Exempt from Assessments.** The Association Property shall be exempt from the assessments, charges and liens created herein. Although no land or improvements devoted to dwelling use in the Project shall be exempt from assessments by the Association, Declarant and the Owners shall be exempt from paying any portion of Regular Assessments which is for the purpose of defraying expenses and reserves directly attributable to the existence of any Improvements on the Association Property which are not complete at the time assessments commence, which exemption shall be in effect only until the earlier to occur of the following: (i) a notice of completion for the subject Association Property has been recorded, or (ii) the Association Property has been placed into use.

ARTICLE 7 USE RESTRICTIONS

7.1 **Residential Use.** Residences shall be used for residential purposes only; provided, however, that any Residence may be used incidentally for the purpose of operating a home based small business if, and only if, (a) the business is operated solely within the Residence, (b) the business is limited to arts and crafts, the rendition of professional services, or other similar activities, (c) the business is operated by the Owner of the Residence whose principal residence is the Residence, by a tenant whose principal residence is the Residence or by a member of such Owner's or tenant's family whose principal residence is the Residence, (d) the operation of the business is permitted by, and is at all times in compliance with, all applicable laws, and (e) the operation of the business does not result in (i) the violation of any of the other provisions of this Declaration, (ii) any unreasonable increase in the flow of traffic within the Project, (iii) any odor, noise, or vibration outside of the Residence, or (iv) parking problems within the Project. No other use shall be allowed except as specifically permitted by local ordinance; provided, however, Declarant may use any of the Residences owned by Declarant as model homes, sales offices, construction offices or storage for the Project or for the sale of residences at any other community or project developed by Declarant during that period of time commencing when the Residences are first sold or offered for sale to the public and ending when (x) all the Residences in the Project are sold and conveyed by Declarant to separate owners thereof, or (y) seven (7) years after the first close of escrow of a Residence in the Project, whichever shall first occur.

7.2 **Commercial Use.** Except as otherwise provided in this Declaration, including without limitation **Section 7.1** above, no part of the Project shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

7.3 **Rental of Residential Units.** An Owner shall be entitled to rent the Condominium subject to the restrictions contained in this Declaration and any contractual agreement between Declarant and each original Owner for such Owner's Residential Unit. Any rental or lease agreement shall be in writing, shall provide that the lease is subject to the Governing Documents and shall provide that any failure to comply with any provisions of the Governing Documents, shall be a default under the terms of the rental or lease agreement. A copy of the rental or lease agreement shall, upon request, be provided to the Association. The Owners shall, at all times, be responsible for their tenant's or lessee's compliance with all of the provisions of this Declaration pursuant to the occupancy and use of the Condominium. A lessee shall have no obligation to the Association to pay assessments imposed by the Association nor shall any lessee have any voting rights in the Association. No Owner may lease such Owner's Condominium for hotel, motel or transient purposes. Any lease which is either for a period of fewer than thirty (30) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

7.4 **Time Sharing.** A Condominium may not be divided or conveyed on a time increment basis (commonly referred to as "time sharing") of measurable chronological periods.

The term "time sharing" as used herein shall be defined to include, but shall not be limited to, any agreement, plan, program or arrangement under which the right to use, occupy or possess the Condominium, Condominiums or any portion thereof in the Project rotates among various persons, either corporate partnership, individual or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like-kind use privileges, according to a fixed or floating interval or period of time sixty (60) consecutive calendar days or less.

7.5 **Animals**. No livestock or poultry shall be kept, maintained, or bred in any Condominium or elsewhere within the Project. Not more than a total of two (2) dogs (other than dogs which in the reasonable determination of the Board are determined to be a threat to the safety of the occupants of the Project, which shall not be allowed under any circumstances in the Project) or two (2) domestic cats, or a combination thereof (but not to exceed two (2) total) shall be permitted to be maintained in the Project, provided such animals are not kept, bred or raised for commercial purposes. Domestic reptiles, birds, rodents and fish shall be permitted so long as such animals are kept in the interior of a Residential Unit and are (a) kept as household pets, (b) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Residential Unit, (c) are not kept, bred or raised for commercial purposes or, as determined by the Board, in unreasonable numbers, and (d) do not constitute a nuisance or threat to the personal safety of other Owners and their Invitees in the Project. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of such pets. The Board shall specifically have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Board, after Notice and Hearing, is deemed by the Board to constitute a nuisance to any other Owner in the sole and exclusive opinion of the Board. Each person bringing or keeping a pet within the Project shall be absolutely liable to other Owners and their Invitees for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or by members of his or her family, his or her guests or Invitees. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Project or public street abutting or visible from the Property. Animals belonging to Owners or Invitees of any Owner must be kept within an enclosure or on a leash held by a person capable of controlling the animal when outside the Unit or Common Area.

7.6 **Antenna Restrictions**. No Owner shall install any antenna, satellite dish, or other over-the-air receiving device ("Antenna") (i) on any real property which such Owner is not entitled to exclusively use or control, as provided in Title 47 U.S.C. §§ 1 *et seq.*, 47 CFR § 1.4000 and any other applicable laws, rules and decisions promulgated with respect thereto and any successor statutes or laws ("collectively "Antenna Laws"), (ii) in a particular location if, in the Board's opinion, the installation, location or maintenance of such Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Board, or (iii) that is of a size larger than is permitted under the Antenna Laws. If an Owner is entitled to install an Antenna under the foregoing requirements, such Owner shall provide the Board with written notice that such Owner has installed or is about to install the Antenna. If an Owner desires to install an Antenna, other than as described in (i) through (iii) above, such Owner may do so only upon the prior approval of the Board pursuant to **ARTICLE 9**. The Board shall not impose or enforce any restrictions upon Antennae that are inconsistent with the Antenna Laws.

7.7 **Signs and Displays.** No sign, advertising device or other display of any kind shall be displayed in the Project, except for the following:

7.7.1 entry monuments, community identification signs, and traffic or parking control signs maintained by the Association;

7.7.2 for each Condominium, one (1) nameplate or similar Owner name or address identification which complies with the Architectural Guidelines;

7.7.3 for each Condominium, one (1) sign advertising the Condominium for sale or lease that complies with the following requirements, subject to Civil Code Sections 712 and 713:

(a) the sign is not larger than eighteen inches (18") by thirty inches (30") in size; and

(b) the sign is in compliance with the Architectural Guidelines or is otherwise authorized by the Board;

7.7.4 noncommercial signs permitted by Civil Code Section 1353.6; and

7.7.5 such other signs or displays authorized by the Board.

In addition to the foregoing, all signs must comply with all applicable laws. Notwithstanding the foregoing, Declarant shall have the right to display signs as set forth in **ARTICLE 10**.

7.8 **Parking and Vehicular Restriction**

7.8.1 **Authorized Vehicles.** The following vehicles are "Authorized Vehicles": standard passenger vehicles, including automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less and vehicles which are the principal source of transportation for an Owner. Authorized Vehicles may be parked in any portion of the Project intended for parking of motorized vehicles subject to **Sections 7.8.3 and 7.8.4** below; however, no Owner may park an Authorized Vehicle in a manner which the Association determines either restricts the passage of pedestrians or vehicles over streets, driveway, or sidewalks in the Project or extends beyond the limits of the space where the Authorized Vehicle is parked. The Association has the power to identify additional vehicles as Authorized Vehicles in the Association Rules to adapt this restriction to other types of vehicles.

7.8.2 **Prohibited Vehicles.** The following vehicles are "Prohibited Vehicles": (a) recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) (b) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks and limousines), (c) buses or vans designed to accommodate more than ten (10) people, (d) vehicles having more than two (2) axles, (e) trailers, (f) inoperable vehicles or parts of vehicles, (g) aircraft, (h) boats, (i) any vehicles or vehicular equipment deemed a nuisance by the

Board, and (j) any other vehicles not classified as an Authorized Vehicle. Prohibited Vehicles may not be parked, stored or kept within the Property or any Private Street within the Project except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Board.

7.8.3 General Restrictions. All Authorized Vehicles owned or operated by or within the control of an Owner and kept within the Project shall be parked in the Owner's Assigned Parking Space and/or Assigned Garage. There shall be no parking in the Project that obstructs free traffic flow, constitutes a nuisance, violates the Association Rules, or otherwise creates a safety hazard. The parking areas in the Property shall be used for parking Authorized Vehicles only and shall not be used for storage, living, recreational or business purposes except for storage in authorized Assigned Storage Spaces. No maintenance, repair, restoration, or construction of any vehicle shall be conducted on the Property.

7.8.4 Parking Regulations. The Board may establish additional regulations regarding parking areas not assigned to Condominiums, including designated "parking," "guest parking" and "no parking" areas. The Board may take all actions necessary to enforce all parking and vehicle use regulations for the Property, including removing violating vehicles from the Project pursuant to California Vehicle Code Section 22658.2 or other applicable laws.

7.8.5 Garage Use. The garages shall be used for parking vehicles only and shall not be converted for living, recreational activities, business or storage that would prevent the ability of an Owner, tenant or lessee to park the number of vehicles in the garage that the garage was designed for. Doors to garages shall be kept closed except during the removal or entry of vehicles therefrom or thereto. Each Owner shall ensure that any such garage accommodates at least the number of Authorized Vehicles for which it was originally constructed by Declarant.

7.8.6 Assigned Garages. The restrictions set forth in this subsection are in addition to the restrictions set forth in **Section 7.8.5** of this Declaration. Electricity and water facilities in the Assigned Garage may be left on for a reasonable time period, and shall not be left on for an extended period of time which may be further defined or restricted in the Rules and Regulations. No refrigerators, appliances or automobile recharging devices shall be plugged into an electric outlet, if any, inside of the Assigned Garages, unless approved by the Association. Small electric shop tools can be used inside such garages.

7.9 Mechanic's Liens. No Owner may cause or permit any mechanic's lien to be filed against the Project for labor or materials alleged to have been furnished or delivered to the Project or any Residential Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

7.10 Installations.

7.10.1 Generally. This Section does not apply to Improvements installed by Declarant.

7.10.2 Outside Installations. Unless installed by Declarant or approved by the Board, the following items are prohibited: (a) outside installations, including balcony covers, wiring, air conditioning equipment, water softeners, other machines and other Improvements, (b) Improvements to deck or balcony railings, and (c) other exterior additions or alterations to any Condominium.

7.10.3 Inside Installations. Nothing may be done in any Condominium or in, on or to the Association Property or Common Area which may impair the structural integrity of any building in the Project or which structurally alters any such building except as otherwise expressly provided in this Declaration. Portions of floors in upper level Residential Units may be constructed with sound control matting or other noise mitigation measures. Owners desiring to replace floor coverings in upper level Residential Units must obtain the prior written consent of the Board in order to ensure that the replacement flooring and its installation is compatible with the noise mitigation materials installed by Declarant.

7.10.4 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Project and there shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Easement Area, Association Property or Common Area.

7.10.5 Storage and Other Restrictions for Exclusive Use Areas. No Owner shall use any Exclusive Use Balcony Area for storage purposes, including, without limitation, the storage of bicycles. Unless installed by Declarant, all plants kept in the Exclusive Use Balcony shall be kept in pots or planters which do not allow water to drain outside of such pot or planter, and no vegetation shall be permitted to extend beyond the railings, walls and/or other boundaries of the Exclusive Use Areas, except as approved by the Board. The Board may require approval of any potted plants. No Owner shall change or alter the surface of any Exclusive Use Balcony without the consent of the Board.

7.10.6 Basketball Standards. No basketball standards or fixed sports apparatus shall be attached to any Condominium. The Association Rules may limit the use or placement of portable basketball apparatus.

7.10.7 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Residential Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Residential Unit(s). Further rules regarding exterior lighting may be promulgated by the Board. Some of the exterior lighting on Residential Units provides light to certain exterior portions of the Project and contains a photocell which will automatically control their operation. Such exterior lighting shall not be manually turned off and the photocell shall not be altered in any way by the Owners. The Owner shall maintain these fixtures and light bulbs, the electricity

supplied to them shall be metered and paid for by individual Owners. Further rules regarding exterior lighting may be promulgated by the Board.

7.10.8 **Vibrations.** No Owner shall install or use in its Residential Unit any fixtures or equipment which will cause unreasonable vibrations, noise or annoyance to the Owners of the other Residential Units.

7.11 **Trash Disposal, Pickup and Recycling.** No garbage, trash, rubbish, or other waste material shall be kept or permitted on the Project except in garbage cans, trash containers, dumpsters, or other waste receptacles located on the Project provided for the use of all Owners. All trash must be bagged or otherwise sealed before using any dumpster located in the Project. No odor shall emanate therefrom so as to be unreasonably unsanitary, unsightly, offensive or detrimental to the Owners in the Project. Under no circumstances may explosives, fireworks, or highly flammable materials such as gasoline, kerosene, oil, oil-based paints, or solvents, be disposed of in the dumpsters or anywhere else in the Project. Any and all costs incurred by the Association for the removal of combustible or toxic materials from the dumpsters shall be borne by the offending Owner at such Owner's sole cost and expense.

7.12 **View Impairment.** By accepting a deed to a Condominium, each Owner acknowledges that: (a) there are no protected views, and no Residential Unit is assured of the existence, quality or unobstructed continuation of any particular view and Declarant makes no representation or warranty that there are now, or will be in the future, any such views or that any view will impact the view or desirability of any Residential Unit, (b) any view from the Residential Unit is not intended as part of the value of the Residential Unit and is not guaranteed; and (c) any future development, construction, landscaping, growth of trees, or other installation of Improvements by Declarant or other Owners in the Project or of properties surrounding the Project may impair the view from any Residential Unit. There are no express or implied easements appurtenant to any Residential Unit for view purposes or for the passage of light and air over another Residential Unit, or any other property whatsoever consistent with the Architectural Guidelines and/or other Association Rules.

7.13 **Offensive Conduct, Nuisances.** No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be conducted within the Project. Nothing shall be done on or within the Project that may be or may become a nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of the Condominiums.

7.14 **Sound Attenuation.** In any multi-family dwelling, sound may be audible between Residential Units, particularly where the sound level of the source is sufficiently high and the background noise in an adjacent Residential Unit is very low. Each Owner shall endeavor to minimize any noise transmission from his or her Residential Unit, and shall comply with any of the rules and regulations set forth in the Association Rules which are designed to minimize noise transmission. To minimize the noise transmission from a Residential Unit, each Owner (other than Declarant) shall adhere to the following:

(a) No modifications shall be made to any Residential Unit which would result in a reduction in the minimum impact insulation class of the Residential Unit.

Speakers for music reproduction and television shall not be supported from or contact demising walls and shall be elevated from the floor by a proper acoustic platform. Noise from such speakers must be kept at a reasonable level so as not to interfere with other Owners' enjoyment of their Residential Units.

7.15 **Window Coverings.** Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of sixty (60) days from the date that a Residence is conveyed to an Owner by Declarant. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not conflict with the color scheme of the exterior wall surface of the Residence.

7.16 **Drainage and Erosion Control.** There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Board. For the purpose hereof, "established" drainage is defined as the drainage that exists at the time of the first close of escrow for the sale of a Condominium, or that which is shown on any plans approved by the Board. Each Owner shall regularly inspect and, if necessary, clean out any drainage facilities located within such Owner's Exclusive Use Areas. If such Owner fails to maintain such drainage as a result, imminent danger to person or property may result, then the Association shall have the right of access onto the Condominium for the purpose of clearing debris and other material so as to not impede the flow of water. This right of access shall be exercised only for the purpose of preventing damage to persons and property and the entering party ("Entering Party") shall use reasonable care so as to not cause any damage to the Condominium. The Owner shall reimburse the Association for any costs and expenses incurred in clearing such debris pursuant to the provisions of this Declaration.

7.17 **Rights of Disabled.** Subject to the provisions of ARTICLE 8 and ARTICLE 9, each Owner may modify his or her Residence and the route over the Association Property leading to the front door of his or her Residence, at his or her sole expense, to facilitate access to his or her Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law.

7.18 **Compliance with Requirements Regarding Project Storm Water Pollution.** Each Owner acknowledges that unlike the water in the sewer system in the Owner's Residence, which flows to wastewater treatment plans, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the County prohibit discharging anything other than natural

rain water into storm drainage systems, including gutters and streets which drain into storm drains. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, fertilizers, lawn clippings, yard waste, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any street, public or private, gutters, or into storm drains or storm water conveyance systems. The disposal of such pollutants and materials into a storm drain system may result in significant penalties and fines and such Owner may be responsible for any activities by Owner's contractors (e.g., painters, landscapers, etc.) who dispose of such pollutants from an Owner's Residential Unit or Exclusive Use Easement Area into a storm drain system. Use and disposal of pesticides, fungicides, herbicides, insecticides, fertilizers, and other such chemicals shall meet all requirements of any other governmental agencies having jurisdiction over the Property. All Owners within the Project and the Association are required to comply with such restrictions. Owners are encouraged to consult with the County, and other governmental authorities, concerning the proper disposal of any toxic or hazardous materials.

7.18.1 Storm Water Pollution Prevention Best Management Practices. To comply with the requirements of the County in connection with the storm water pollution prevention best management practices, each Owner and the Association agrees that it will, at all times, maintain all Improvements located within a Residential Unit, or in the case of the Association, within the Association Property, in a clean, safe and attractive condition, free and clear of any and all debris. All trash receptacles within Owner's Residential Unit shall be closed at all times except when disposing of trash. The Association and the Owners shall comply with all applicable Best Management Practices ("BMP") and perform all maintenance that may be imposed by any water quality management plan that may affect the Property. The costs of the Association's portion of such maintenance, if any, shall be treated as Common Expenses.

7.18.2 Liability to Declarant. So long as Declarant owns any Condominium, if an Owner or the Association is not in compliance with the provisions of this Section and, as a result, Declarant may incur any liability, Declarant shall have the right but not the obligation to enter upon the Residential Unit, Assigned Garages to correct such violation. Any Owner who violates the requirements of this Section and the Association shall indemnify, protect, defend and hold Declarant and Declarant's officers, directors, successors and assigns entirely free and harmless from and against any liabilities, penalties, costs, expenses and actions, including, without limitation, attorneys' fees and costs arising from or attributed to a violation of the provisions of this Section and shall within fifteen (15) days after request from Declarant, reimburse Declarant for any costs and expenses incurred by Declarant in correcting any violation by any Owner of this Section.

7.19 Indemnification. Each Owner shall be liable to the remaining Owners and the Association for any damage to the Project that may be sustained by reason of the negligence or willful misconduct of that Owner, or the Owner's Invitees. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, but only to the extent that any such damage is not covered by insurance proceeds received by the Association to indemnify each and every Owner and the Association, and to hold each other Owner and the Association harmless from, and to defend such Owner and the Association against, any claim of any person

for personal injury or property damage caused by the negligence or willful misconduct of such Owner and such Owner's Invitees, unless the injury or damage occurred by reason of the negligence or willful misconduct of any other Owner for the Association or is fully covered by insurance proceeds received by the Association. Upon demand by the Association, each Owner shall be responsible for the payment of any deductible amount payable under the Association's insurance policy as a result of any claims arising as a result of the negligent or willful misconduct of any other Owner or the Association.

7.20 **Post Tension Slabs.** The concrete slabs for the Condominium Buildings in the Project are reinforced with a grid of steel cables which were installed in the concrete and then tightened to create very high tension. This type of slab is commonly known as a "Post Tension Slab." Cutting into a Post Tension Slab for any reason (e.g. to install a floor safe, to remodel plumbing, etc.) is very hazardous and may result in serious damage to the Condominium and/or personal injury. By accepting a grant deed to a Condominium in the Project, each Owner specifically covenants and agrees that: (1) such Owner shall not cut into or otherwise tamper with the Post Tension Slab; (2) such Owner shall not knowingly permit or allow any person to cut into or tamper with the Post Tension Slab so long as such Owner owns any interest in the Residence; (3) such Owner shall disclose the existence of the Post Tension Slab to any tenant, lessee or subsequent purchaser of the Condominium; and (4) such Owner shall indemnify, protect, defend and hold Declarant and its respective officers, employees, contractors and agents, free and harmless from and against any and all claims, damages, losses, or other liability (including, without limitation, attorneys' fees) arising from any breach of this Section.

7.21 **Compliance with Laws, Etc.** Nothing shall be done or kept in any Residential Unit or in the Association Property or Common Area that might increase the rate of, or cause the cancellation of, insurance for the Project, or any portion of the Project. No Owner or the Association shall permit anything to be done or kept in his or her Residential Unit, Association Property or Common Area that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body, including any laws, ordinances or statutes pertaining to the use or storage of any hazardous, contaminated or toxic materials.

ARTICLE 8 MAINTENANCE

8.1 Maintenance Obligations of Owners.

8.1.1 **Maintenance of Condominiums.** Each Owner is responsible for the care and maintenance of those components of each Owner's Residential Unit and Exclusive Use Easement Area designated for maintenance by the Owner on the Maintenance Responsibility Chart.

(a) **Quality of Maintenance.** All such maintenance shall be performed in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof and to maintain the established system of

drainage and in compliance with all requirements of the Owner Maintenance Manual, the Maintenance Obligations in this Article, and the Maintenance Responsibility Chart.

(b) Standards of Maintenance. Any such maintenance, repair or replacement of any of the foregoing shall be in accordance with the obligations and schedules set forth in the Owner Maintenance Manual. Any maintenance, repair or replacement which is visible from outside of a Unit shall also be in conformance with the existing design, aesthetics and architecture of the Community and shall be approved by the Board. Maintenance of any Exclusive Use Common Areas by an Owner shall be conducted in such a manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof, protect the value thereof and to maintain the established system of drainage (as described below).

(c) Compliance with Maintenance Obligations. Each Owner acknowledges and agrees that each Owner is required to comply with all of the Maintenance Obligations and schedules set forth in the Owner Maintenance Manual and each Owner is further obligated to provide a copy of all documents describing Maintenance Obligations to any successor purchaser of such Owner's Condominium.

8.2 No Alterations. Subject to the provisions of **ARTICLE 9** no bearing walls, demising walls, ceilings, floors, other structural or utility bearing portions of the Condominium Buildings housing the Residential Units nor walls enclosing any Exclusive Use Easement Area may be pierced or otherwise altered or repaired without approval from the Board.

8.2.1 Alterations of Residential Units. No structural alterations to the interior of the Common Area surrounding any Residential Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any Owner without the prior written consent of the Board. No Owner shall at his expense or otherwise make any alterations or modifications to the exteriors of the buildings, fences, railings or walls situated within the Project without prior approval in accordance with **ARTICLE 9** consent.

8.3 Owner's Failure to Maintain. If an Owner fails to maintain the areas and items as provided above or make repairs thereto in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work or maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event the Owner fails to carry out such maintenance or repair within the period specified by the notice, the Board shall cause such work to be completed and shall assess the cost thereof to such Owner as an Enforcement Assessment in accordance with the procedures set forth in this Declaration.

8.4 Maintenance Obligations of Association. The Association is responsible for the care and maintenance of those components of the Project designated for maintenance by the Association on the Maintenance Responsibility Chart in accordance with the Maintenance Obligations. The Association shall keep such portions of the Project in good condition and

repair, provide for all necessary services and cause all acts to be done which may be necessary or proper to assure the maintenance of such areas.

8.4.1 Association's Compliance with Maintenance Obligations. The Association will comply with the Maintenance Obligations for the Association Property, Common Area and any other areas to be maintained by the Association in accordance with the requirements of the Association Maintenance Manual, the Maintenance Responsibility Chart and the MMRP Agreement.

8.4.2 Additional Items. The Association shall also be responsible for maintaining any Improvements that a majority of the Voting Power of the Association designates for maintenance by the Association.

8.4.3 Charges to Owners. All costs of maintenance, repairs and replacements for the Property and shall be paid for as Common Expenses as provided in this Declaration.

8.4.4 Termite Eradication. If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days notice, may require each Owner and occupants of the Owner's Residence to vacate such Residence to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Residence by such entry by the Association or by any person authorized by the Association shall be repaired by the Association as a Common Expense. All costs involved in operating the inspection and preventive program as well as repairing and replacing the Association Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms are a Common Expense.

8.5 Damage By Owners. Each Owner is liable to the Association for any damage to the Association Property if the damage is sustained due to the act of an Owner, or such Owner's guests, tenants or invitees, or any other persons deriving their right to use the Association Property from the Owner, or such Owner's respective family, tenants and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made on the Association's insurance, and (b) levy a Special Assessment equal to the cost of repairing the damage or any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described in this Declaration. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage shall be a Special Assessment against such Owner.

8.6 Water Meters. Each Owner, by acceptance of a deed, acknowledges that a public utility provider ("Service Provider") provides water and sewer service to the Project. The

Service Provider will prepare a bill based upon overall water usage through the Service Provider's water meters. The Association will be responsible for the payment of this bill to the Service Provider. Each Owner will be responsible for paying its share of such water bill in as a Common Expense.

8.7 **Future Construction.** Nothing in this Declaration shall limit the right of Declarant to complete construction of Improvements to the Association Property and to Condominiums owned by Declarant or to alter them or to construct additional Improvements as Declarant deems advisable before completion and sale of the entire Project.

8.8 **Inspection of the Project.** The Association shall regularly inspect, maintain and repair the Association Property and Common Area, including without limitation, the landscaping, drainage and irrigation systems serving or within the Association Property and Common Area. The Association shall comply with the requirements of any the Association Maintenance Manual. The Association shall also inspect for any misaligned sprinklers or blocked drainage systems which could cause water damage to the Project. The Association shall employ the services of such experts and consultants as are necessary to assist the Association in performing its duties hereunder and follow any recommendations contained in the Association Maintenance Manual. The inspections required to be conducted by the Board under this Article shall take place at least annually or as recommended in the Association Maintenance Manual. The inspectors shall provide written reports of their inspections to the Association and, if requested by the Declarant, to the Declarant promptly following completion thereof. If requested by Declarant, Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to Declarant (if not already provided by the inspector directly) so requested by Declarant and to the Members of the Association at the next meeting of the Members following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Association meeting. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspection require the inspection of any Residential Unit, there is hereby created a non-exclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days advance notice to the Owner, except in case of emergency. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

ARTICLE 9 ARCHITECTURAL REVIEW

9.1 **Non-Applicability to Declarant.** The provisions of this Article shall not apply to any Improvements installed by the Declarant, and the Board shall not have any rights of review or approval with respect thereto.

9.2 **Amendments.** Notwithstanding the Article of this Declaration entitled "Amendments," no amendment, verification or rescission of this Article may be made, nor shall Declarant, or any successor thereof, be prohibited from completing the construction of the Project prior to the conveyance by Declarant, or its successor, of the last Residential Unit without the (i) written consent of Declarant, and the (ii) recording of such consent in the Office of the County Recorder.

9.3 **Scope.** To the extent that an Owner is entitled under this Declaration to modify his or her Residential Unit in any manner following review and approval by the Board, no Improvements of any kind whatsoever shall be commenced, erected, placed or altered upon or around any Residential Unit until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color ("Plans and Specifications"), have been submitted to and approved in writing as to harmony of external design and location to surrounding structures and by the Board.

9.4 **Architectural Guidelines.** The Board may, from time to time and in accordance with Civil Code Section 1357.120, *et. seq.*, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Guidelines." The Architectural Guidelines shall interpret and implement the provisions hereof by setting forth the standards and procedures for Board review and guidelines for architectural design of Improvements, placement of Improvements, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Guidelines shall not be in derogation of the standards required by this Declaration.

9.5 **Approval of Plans and Specifications.** Any Owner proposing to construct Improvements shall first apply to the Board for approval by submission of Plans and Specifications and any other materials required by the Board. The decision of the Board shall be made in good faith, in accordance with any applicable Architectural Guidelines and consistent with any governing law, including but not limited to the Fair Employment and Housing Act of Division 3 of the Title 2 of the Government Code. The Board shall notify the Owner of its approval or disapproval of the proposed Improvements in writing within ninety (90) days of receipt of the Owner's application. If a proposed change is disapproved, the written decision shall include explanation of why the proposed change is disapproved within thirty (30) days of disapproval. The Owner shall be entitled to reconsideration of the decision by the Board at any open meeting of the Board, unless the initial decision was made at an open meeting of the Board.

9.5.1 **Approval of Solar Energy Systems.** Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5 and any successor statutes or

laws, shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

9.6 **Inspection and Correction of Work.** Inspection of work and correction of defects therein shall proceed as follows:

9.6.1 **Right of Inspection During Course of Construction.** The Board or its duly authorized representative may enter into any Residential Unit, from time to time, as provided below during the course of construction or installation of any Improvements for the purpose of inspecting the construction or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such noncompliance. The Board may not enter into a Residence without obtaining the prior permission of the Owner or occupant of such Residential Unit; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during daylight hours within forty-eight (48) hours of the request for entry.

9.6.2 **Notice of Completion.** Upon the completion of any Improvements for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Board.

9.6.3 **Inspection.** Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to enter into a Residential Unit (but not the interior of the Residence situated therein), as provided in **Section 9.6.1** above, to inspect the Improvements to determine whether they were constructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

9.6.4 **Non-Compliance.** If, upon the expiration of thirty (30) days from the date of notification of non-compliance, the Owner shall have failed to remedy such non-compliance, the Board, after affording the Owner Notice and Hearing, shall determine whether there is non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying Improvement or remedy the non-compliance and the Owner shall reimburse the

Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

9.6.5 **Failure to Notify.** If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the Improvements shall be deemed to be in accordance with said approved Plans and Specifications.

9.7 **Government Regulations.** If there is any conflict between the requirements or actions of the Board and the mandatory regulations, ordinances or rules of any governmental entity relating to the Property, the government regulations, ordinances or rules, to the extent that such regulations, ordinances or rules are more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the government regulations, ordinances or rules. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be satisfaction or compliance with any building permit process or other applicable statute or law, or governmental regulation, ordinance or rule or public utility requirements (hereinafter collectively referred to as "Additional Requirements") the responsibility for which shall lie solely with the Owner; provided, however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

9.8 **Diligence in Construction.** Upon approval by the Board of any Plans and Specifications, the Owner shall promptly commence construction of the Improvements and diligently pursue the same to completion.

9.9 **Fee for Review.** The Board shall have the right to establish a fee for the review and approval of Plans and Specifications that must be submitted to the Board pursuant to the provisions of this Article. The Board shall have the right to hire any engineer or other consultant, the opinion of which the Board deems necessary in connection with its review of any plans submitted by any Owner and such Owner shall be liable for payment of such engineer's and/or consultant's fee.

9.10 **Interpretation.** All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board, and its decision shall be final, binding and conclusive on all of the parties affected.

9.11 **Waiver.** The approval by the Board of any Plans and Specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar Plans and Specifications or matter subsequently submitted for approval.

9.12 **Estoppel Certificate.** Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by a

majority of its members, certifying (with respect to any Residential Unit of said Owner) that as of the date thereof, either: (a) all Improvements made and other work completed comply with this Declaration, or (b) such Improvements or work do not so comply, in which event the certificate shall also identify the non-complying Improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Residential Unit through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

9.13 **Liability.** Neither the Board, nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any Plans and Specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans and Specifications; (c) damage to the Project or any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to **Section 9.12**, whether or not the facts therein are correct; provided, however, that the Board member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Board, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any Plans and Specifications or any other proposal submitted to the Board.

9.14 **Variances.** The Board may authorize variances from compliance with any of the architectural provisions of this Declaration, including, without limitation, restrictions upon height, size, floor area or placement of Improvements or other similar restrictions, when circumstances such as topography, natural obstructions, aesthetic or environmental considerations may require. Such variances may be evidenced in writing, must be signed by at least two (2) members of the Board and shall become effective upon recordation in the Office of the County Recorder. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Residential Unit and particular provision hereof covered by the variance, nor shall it affect in anyway the Owner's obligation to comply with all governmental laws and regulations affecting its use of the Residential Unit, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the County or any other governmental authority.

9.15 **Appointment of Architectural Committee.** The Board shall have the right to delegate its review and approval rights under this **ARTICLE 9** to an Architectural Committee. If the Board so elects, the Architectural Committee shall consist of three (3) members. One (1) alternate member may be designated by the Board to act as a substitute on the Architectural Committee in the event of absence or disability of any member. In the event the Board appoints an Architectural Committee, all rights hereunder shall apply to the Architectural Committee and all references to the Board shall be deemed to refer to the Architectural Committee.

9.16 **Compensation**. The members of any Architectural Committee appointed by the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder, unless the Association retains a professional architect, engineer or designer as a member of the Architectural Committee for the purpose of providing professional services, in which event reasonable compensation for such member shall be approved by the Board.

ARTICLE 10 DEVELOPMENT RIGHTS

10.1 **Limitations of Restrictions**. Declarant is undertaking the work of developing Residential Units and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Residential Units is essential to the establishment and welfare of the Property and the Additional Property as a first-class condominium community. In order that the work may be completed, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

10.2 **Rights of Access and Completion of Construction**. Until the fifth (5th) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant, its agents, contractors and subcontractors shall have the rights set forth below.

10.2.1 **Access**. Declarant, its agents, contractors and subcontractors shall have the right to obtain reasonable access over and across the Common Area and Association Property of the Project or do within any Residential Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof.

10.2.2 **Construct Improvements**. Declarant, its agents, contractors and subcontractors shall have the right to erect, construct and maintain on the Common Area and Association Property of the Project or within any Residential Unit owned by it such structures or Improvements, including, but not limited to, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of interests in the Project by sale, lease or otherwise, as determined by Declarant in its sole discretion.

10.2.3 **Grant Easements**. Declarant, its agents, contractors and subcontractors shall have the right to establish and/or grant over and across said Common Area and Association Property such non-exclusive easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the County or any other political subdivision or public organization, or any public utility entity or cable television provider, for the purpose of constructing, erecting, operating and maintaining Improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, trails, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connection therewith; and (iii) public and private sewers, sewage disposal

systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area and Association Property shall be subject to any dedication stated in the Condominium Plan for the Project of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area and Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the County and the State and shall include the right of ingress and egress over the Common Area and Association Property by vehicles of the County and the State and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the County or the State for maintenance or operation of any of the Common Area and Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof as occasioned by the negligence or willful misconduct of the utility companies, the County, or the State of the Utility Facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area and Association Property by utility companies, the Common Area and Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The County furthermore is granted an easement across the Common Area, Association Property and any Private Streets for ingress and egress for use by emergency vehicles of the County.

10.3 **Size and Appearance of Project.** Declarant shall not be prevented from increasing or decreasing the number of Residential Units within the Project or from changing the exterior appearance of the Common Area and Association Property structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

10.4 **Marketing Rights.**

10.4.1 **General Rights.** Subject to the limitations of this Declaration, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Residential Units, Common Area and Association Property within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Residential Units in the Project or for the sale or disposition of the residences in any other communities or projects developed by Declarant; (ii) make reasonable use of the Common Area, Association Property and facilities for the sale of Residential Units; (iii) post signs, flags and banners in connection with its marketing; and (iv) conduct its business of disposing of Residential Units by sale, lease or otherwise.

10.4.2 **Agreement for Extended Use.** If following the fifth (5th) anniversary of the original issuance of a Public Report, Declarant requires exclusive use of any portion of the Common Area or Association Property in that Phase for marketing purposes, Declarant may use the Common Area or Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association

by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area, Association Property and any Residential Units owned by Declarant as an Owner.

10.5 **Alterations to Map.** At anytime within three (3) years from the date that the first Condominium in a Phase is conveyed to an Owner other than Declarant, the boundaries of any Condominium or Common Area in that Phase may be altered by a lot line adjustment or other change reflected on a subsequently recorded Record of Survey, parcel map, final map or amended final map, provided that the altered boundaries are approved by Declarant and all owners of the Property involved in the boundary adjustment (the Board, with respect to property owned by the Association). Any alteration approved by Declarant may make minor changes to the number of Condominiums in the Project. An alteration shall be effective upon recordation of the Record of Survey or map and, upon such recordation, the boundaries of the altered Association Property or Common Area shall be altered for purposes of this Declaration to conform to the boundaries as shown on the Record of Survey or map.

10.6 **Title Rights.** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its Annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies, to the City, to the County, to the State, or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

10.7 **Power of Attorney.** Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Additional Property, as his or her Attorney-in-Fact, for himself or herself and each of his or her Mortgagees, optionees, grantees, licensees, trustees, receivers, lessee, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his or her Attorney-in-Fact to prepare, execute, acknowledge and record any Condominium Plan or amendment to the Condominium Plan for all or any portion of the Property or Additional Property regardless of whether Declarant owns any interest in the property which is the subject of such Condominium Plan or amendment to such Condominium Plan. However, nothing set forth herein shall be deemed or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and recordation of a Condominium Plan or amendment to a Condominium Plan for all or any portion of the Property or Additional Property. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

10.8 **Amendment.** The provisions of this Article may not be amended without the consent of Declarant until all of the Additional Property has been annexed to the Project and all of the Residential Units in the Project owned by Declarant have been conveyed.

ARTICLE 11 INSURANCE

11.1 **Liability Insurance.** The Association shall obtain and maintain commercial general liability insurance (including coverage for medical payments) insuring the Association, the Board, any manager, the Declarant and the Owners and occupants of Residential Units, and their Invitees against any liability incident to the ownership or use of the Common Area and the Association Property and the performance by the Association of its duties under this Declaration. Such policy shall include, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000). Such insurance shall cover all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, property of others, and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

11.2 **Property Insurance.** The Association shall keep any Improvements in the Common Area and Association Property and certain components of the Residential Units described in **Section 11.2.1(b)** below to be maintained by the Association insured against loss by fire and the risks covered by a "Standard All-Risk of Loss or Perils" insurance policy under an extended coverage casualty policy in the amount of the maximum insurable replacement value thereof (except that there may be lower dollar limits for specified items as is customarily provided in property insurance policies) and (ii) all personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for Improvements in the Common Area and Association Property (excluding Residential Units) and personalty owned by the Association, shall be payable to the Association. In the event of any loss, damage or destruction to the Common Area and the Association Property, the Association shall cause the same to be replaced, repaired or rebuilt in accordance with the provisions of this Declaration.

11.2.1 **Description of Policy Coverages.** The policy shall cover the following real and personal property:

(a) **Common Area and Association Property.** All Improvements within the Common Area and Association Property, including buildings and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the Condominium Building and not located within a Residential Unit; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; and recreational facilities; but excluding land; foundations, excavations, and other items typically excluded from property insurance coverage;

(b) Residential Units. Interior walls and doors; ceiling, utility fixtures (including gas, electrical and plumbing); windows; cabinets; built-in appliances; heating and air-conditioning systems; water heaters, but excluding any personal property located in the Residential Unit or Exclusive Use Easement Area; and excluding any Improvements or upgrades to any of the foregoing installed by the Owner to the extent of any such Improvement or upgrade; and

(c) Landscaping. Lawn, trees, shrubs and plants located in the Common Area and Association Property.

11.2.2 Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.

11.2.3 Primary. The policy shall be primary and noncontributing with any other insurance policy covering the same loss.

11.2.4 Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable) inflation guard, ordinance or law, and replacement costs, and such other endorsements as the Board in its discretion shall elect.

11.2.5 Waiver of Subrogation. Except as provided in **Section 7.19** of this Declaration, all rights of subrogation between the Association and the Owners and their Invitees and First Mortgagees are waived. The insurance policies obtained by the Association shall include a waiver of all subrogation rights of the Association's insurer against any Owner and their Invitees and First Mortgagees; provided, however, that any failure to obtain such a waiver from the insurer shall not defeat or impair the foregoing waiver between the Association and the Owners and their Invitees and First Mortgagees set forth herein. Insurance proceeds for Improvements in the Common Area and Association Property and personalty owned by the Association shall be payable to the Association.

11.2.6 Additional Insureds. The policies shall name as insured the Association, the Owners and Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under **ARTICLE 10** of this Declaration. The management company of the Association, if requested by the Association, and all Mortgagees as their respective interests may appear (provided that the cost of the additional insured endorsement is paid by the Owner), and may contain a loss payable endorsement in favor of the Trustee (as defined below).

11.3 Individual Insurance. Each Owner shall maintain property insurance (but not including flood or earthquake insurance) against losses to personal property located within the Residential Unit or Exclusive Use Easement Areas, upgrades to the Improvements or Improvements installed by an Owner and to any upgrades or Improvements located within the Residential Unit or Exclusive Use Easement Areas (including landscaping Improvements) and liability insurance against any liability resulting from any injury or damage occurring within the

Residential Unit or Exclusive Use Easement Areas. In addition, an Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. The Association's insurance policies will not provide coverage against any of the foregoing. All Owners hereby waive all rights of subrogation against the Association and any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the Association and any first Mortgagee of a First Mortgage on the Owner's Condominium, provided, however, that a failure or inability of an Owner to obtain such a waiver shall not defeat or impair the waiver of subrogation rights between the Owners and the Association set forth herein. No Owner shall separately insure any property covered by the Association's property insurance policy as described above. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a Special Assessment against the Owner's Condominium to collect the amount of the diminution.

11.4 **Fidelity Bond.** The Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of the fidelity bond; provided, however, that the bond shall not be less than a sum equal to three (3) months aggregate of the Regular Assessments on all Residential Units plus reserve funds of the annual assessments naming the Association as obligee and insuring against loss by reason of the acts of the Board, officers and employees of the Association, and any management agent and its employees, whether or not such persons are compensated for their services.

11.5 **Worker's Compensation Insurance.** The Association shall maintain worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

11.6 **Officers and Directors Omissions Insurance.** The Association shall maintain a policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting their capacity as officers and directors. The limits of such insurance shall be not less than One Million Dollars for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of California Civil Code Section 1365.7.

11.7 **Other Insurance.** The Association shall maintain other types of insurance as the Board determines to be necessary to fully protect the interests of the Owners.

11.8 **Copies of Policies.** Copies of all such insurance policies of the Association (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at reasonable times. All such insurance policies shall (i) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association, and (ii) contain a waiver of subrogation by the insurer(s) against the Association and First Mortgagees, Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

11.9 **Review of Insurance.** The Board shall review the adequacy of all insurance maintained by the Association at least once every year. The review shall include a replacement cost appraisal of all insurable Association Property Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

11.10 **Board's Authority to Revise Insurance Coverage.** Subject to the provisions of **Section 11.1** and the requirements regarding insurance set forth in the Bylaws, the Board shall have the power and right to deviate from the insurance requirements contained in this **ARTICLE 11** in any manner that the Board, in its reasonable business discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this **ARTICLE 11**, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least thirty (30) days prior to the effective date of the reduction. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, the Association is unable to obtain any insurance required hereunder because the insurance is no longer available, or, if available, the insurance can be obtained only at a cost that the Board, in its sole discretion, determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums.

11.11 **Adjustment of Losses.** The Board is appointed attorney-in-fact by each Owner, to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to **Sections 11.1** and **11.2**. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

11.12 **Distribution to Mortgagees.** Any Mortgagee has the option to apply insurance proceeds payable directly to an Owner on account of a Condominium as provided in this Declaration in reduction of the obligation secured by the Mortgage of such Mortgagee.

11.13 **Compliance with Federal Regulations.** Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of the above is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA, and FHLMC as applicable. If the FNMA or FHLMC requirements conflict, the more stringent requirements shall be met.

**ARTICLE 12
DESTRUCTION OF
IMPROVEMENTS AND CONDEMNATION**

12.1 **Restoration Defined** As used in this **ARTICLE 12**, the term “restore” or “restoration” shall mean repairing, rebuilding or reconstructing damaged Improvements to substantially the same condition and appearance in which it existed prior to fire or other casualty damage.

12.2 **Insured Casualty**. If any Improvement required to be maintained by the Association is damaged or destroyed from a risk covered by the insurance required to be maintained by the Association, then the Association shall, to the extent permitted under existing laws, restore the Improvement to the same condition as it was in immediately prior to the damage or destruction. The Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association or an insurance trustee selected under the provisions of **Section 12.5**. Notwithstanding the foregoing, if the damage was caused by the negligence of an Owner or such Owner’s Invitees, the Association shall have the right to pursue such Owner pursuant to the provisions of **Section 7.19** of this Declaration.

12.3 **Restoration Proceeds**.

12.3.1 **Sufficient Proceeds**. The costs of restoration of the damaged Improvement shall be paid first from any insurance proceeds paid to the Association under existing insurance policies. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid into reserves and held for the benefit of the Association. If the insurance proceeds are insufficient to restore the damaged Improvement, the Board shall then add to the insurance proceeds all reserve account funds designated for the repair or replacement of the damaged Improvement. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored. If the aggregate amount of insurance proceeds and such reserve account funds are insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum amount permitted without the approval of the Members in accordance with the limitations set forth in this Declaration and by law. If the total funds then available are sufficient to restore the damaged Improvement, the Improvement shall be restored.

12.3.2 **Insufficient Proceeds**. If the total funds available to the Association are still insufficient to restore the damaged Improvement, then the Board first shall attempt to impose an additional Special Assessment pursuant to Subsection (a) below, and second to use a plan of alternative reconstruction pursuant to Subsection (b) below. If the Members do not approve such actions, then the entire building of which the damaged Improvement is a part shall be sold pursuant to Subsection (c) below.

(a) **Additional Special Assessment**. If the total funds available to restore the damaged Improvement as provided in **Section 12.3** are insufficient, then a meeting of

the Members shall be called for the purpose of approving a Special Assessment to make up all or a part of the deficiency ("Additional Special Assessment"). If the amount of the Additional Special Assessment approved by the Members, and the amounts available pursuant to **Section 12.3** above, are insufficient to restore the damaged Improvement, or if no Additional Special Assessment is approved, the Association shall consider a plan of alternative reconstruction in accordance with Subsection (b).

(b) Alternative Reconstruction. The Board shall consider and propose plans to reconstruct the damaged Improvement making use of whatever funds are available to it pursuant to **Section 12.3** and Subsection (a) above ("Alternative Reconstruction"). All proposals shall be presented to the Owners. If two-thirds of the Voting Power of the Owners whose Residential Units were materially damaged, as determined by the Association ("Affected Owners") and a majority of the Voting Power of the Members, including the Affected Owners, agree to any plan of Alternative Reconstruction, then the Board shall contract for the reconstruction of the damaged Improvement in accordance with the plan of Alternative Reconstruction making use of whatever funds are then available to it. If no plan of Alternative Reconstruction is agreed to, then the provisions of Subsection (c) shall apply.

(c) Sale of Building. If the damaged Improvement is part of a Condominium Building ("Damaged Building"), the damage renders one or more of the Condominiums uninhabitable, and the Improvements will not be restored in accordance with the provisions of Subsections (a) and (b) above, the Board, as the attorney-in-fact for each Owner of a Condominium in the Damaged Building, shall be empowered to sell the Damaged Building, including all Residential Units therein, in their then present condition, on terms to be determined by the Board, provided that the Board receives adequate assurances that the purchaser shall, and has the financial capability to: (i) restore the Damaged Building (either by renovation or removal and rebuilding), (ii) remove the Damaged Building (including foundations), grade the area, and appropriately landscape or otherwise improve the area, or (iii) perform any combination of the foregoing. Any work to be performed by the purchaser with respect to any of the foregoing shall be subject to the provisions of this **ARTICLE 12** and the provisions of this Declaration. In lieu of selling the Damaged Building to a third Person, the Association may purchase the Condominium Building on satisfaction of the following conditions:

(i) Members holding sixty-seven percent (67%) of the total Voting Power (including the votes allocated to the Condominiums within the Damaged Building) approve of the purchase;

(ii) the purchase price is the fair market value of the Damaged Building as of the date of sale as determined by an appraisal made by a qualified and independent real estate appraiser;

(iii) any special assessment needed to fund the purchase price shall be levied against all Condominiums, including the Condominiums within the Damaged Building;

(iv) the Association has an adequate source of funds to repair, renovate or rebuild all or a portion of the Damaged Building and to remove and appropriately landscape the remaining area. For this purpose, no Condominium that is being purchased shall be subject to any assessment intended to be used as a source of such funds.

(d) Distribution of Proceeds. The proceeds from the sale, together with the insurance proceeds received and any reserve funds allocated to the Damaged Building, after deducting therefrom the Association's sale expenses, including commissions, title and recording fees, and legal costs, shall be distributed among the Owners of Condominiums in the Damaged Building and their respective Mortgagees, in proportion to the respective fair market values of these Condominiums immediately prior to the date of the event causing the damage as determined by an independent appraisal made by a qualified real estate appraiser selected by the Board.

If a Damaged Building is removed and not restored so that the new building contains the same number of Condominiums as the removed building, the Board shall take appropriate steps to adjust the property interests of the remaining Condominium Owners and to effect such amendments as may be necessary to this Declaration, the Condominium Plan and the Map to reflect the revised property interests and other related changes.

12.4 Rebuilding Contract. If there is a determination to restore, the Board or its authorized representative shall obtain bids from at least two (2) licensed and reputable contractors and shall accept the restoration work from whomever the Board determines to be in the best interests of the Members. The Board shall have the authority to enter into a written contract with the contractor for such restoration, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. The Board shall take all steps necessary to assure the commencement and completion of authorized restoration at the earliest possible date. Such construction shall be commenced no later than one hundred eighty (180) days after the event requiring restoration and shall thereafter be diligently prosecuted to completion. Such restoration shall return the damaged Improvements to substantially the same condition and appearance in which it existed prior to the damage or destruction.

12.5 Insurance Trustee. All property insurance proceeds payable to the Association under the policy described in **Section 11.2**, subject to the rights of Mortgagees under **ARTICLE 14**, may be paid to a trustee as designated by the Board to be held and expended for the benefit of the Owners and Mortgagees, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the country in which the Project is located that agrees in writing to accept such trust. If restoration is authorized, the Association will have the duty to contract for such work as provided for in this Declaration.

12.6 Authority to Effect Changes. If any adjacent Residential Units or portion thereof are damaged or destroyed or in need of renovation or rehabilitation and the Residential Units are repaired or reconstructed, the Residential Unit may be repaired or reconstructed in a manner that alters the boundaries of such Residential Units or the adjacent Common Area or Association Property provided the following conditions are satisfied.

(i) the alteration has been approved by the Board, by the holders of any First Mortgages to the extent required herein and the Owners of the affected Residential Units;

(ii) the Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the affected Residential Units;

(iii) the alteration does not materially change the location of any Residential Unit or materially reduce the size of any Residential Unit without the consent of the Residential Unit Owner and the holders of any First Mortgages thereon. For purposes herein, a material reduction in the size of the Residential Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Residential Unit by more than 10% from that which was originally constructed by Declarant;

(iv) the Board has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Association Property;

(v) the Condominium Plan is amended to reflect the alteration to the Residential Units, Common Area and Association Property; and

(vi) easements for any encroachments created by such alterations are granted to the affected Owners by the Association.

Each Owner irrevocably appoints the Association as that Owner's attorney-in-fact (except for the Secretary, U.S. Department of Veterans Affairs) and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Residential Unit, Common Area or Association Property as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

12.7 Minor Repair and Reconstruction. The Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Ten Thousand Dollars (\$10,000.00). The Board is expressly empowered to levy a Special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described above (but without the consent or approval of Members, despite any contrary provisions in this Declaration).

12.8 Condemnation of Common Area or Association Property. If any portion of the Common Area or Association Property is taken by condemnation, eminent domain or any proceeding in lieu thereof, then the Owners of the Common Area or Association Property, and

their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to the provisions above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area or Association Property, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area or Association Property. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

12.9 **Condemnation of a Residential Unit.** In the event of any taking of a Condominium, the Owner (and such Owner's Mortgagees as their interests may appear) of the Condominium shall be entitled to receive the award for such taking and after acceptance thereof such Owner and such Owner's Mortgagee shall be divested of all further interest in the Condominium and membership in the Association if such Owner shall vacate such Owner's Residential Unit as a result of such taking. In such event said Owner shall grant his remaining interest in the Common Area appurtenant to the Residential Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

ARTICLE 13 PARTITION AND SEVERABILITY OF INTERESTS

13.1 **Partition** Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. The undivided interest in the Common Area described above may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration.

13.2 **Suspension** The right of partition is suspended pursuant to California Civil Code Section 1359 as to the Project. Nothing in this Declaration shall prevent partition or division of interest between joint or common owners of any Condominium.

13.3 **Partition** Notwithstanding the foregoing, judicial partition shall be permitted as set forth below.

13.3.1 **No Partition** There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total Voting Power of the Association and approval by Eligible Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total Voting Power of the Association and approval by Eligible Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Holders; or

(c) As allowed by California law, including Civil Code Section 1359, as the same may be amended from time to time.

An Eligible Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

13.4 **Distribution of Proceeds**. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition, or if not so specified, as their interests appear in proportion to the fair market value of the Residential Units at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such institute no longer exists, an appraiser of comparable experience.

13.5 **Power of Attorney**. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under California Civil Code Section 1359 or any successor statute or law. The power of attorney shall:

13.5.1 Be binding on all Owners, whether they assume the obligations under this Declaration or not;

13.5.2 Be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all Institutional Mortgagees; and

13.5.3 Be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

13.6 **Prohibition Against Severance**. An Owner shall not be entitled to sever such Owner's Residential Unit from his or her membership in the Association, and shall not be entitled to sever such Owner's Residential Unit and such Owner's membership from such

Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to such Owner's Residential Unit over the Common Area or Association Property from such Owner's Condominium, and any attempt to do so shall be void. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358 or any successor statute or law. Notwithstanding the foregoing, the suspension of such right of severability contained herein shall not extend beyond the period set forth in **Section 13.1** in which the right to partition the Project is suspended thereunder.

13.7 **Conveyances.** After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE 14 RIGHTS OF MORTGAGEES

14.1 **Conflict.** Notwithstanding any contrary provision contained elsewhere in the Governing Documents, the provisions of this Article shall control with respect to the rights and obligations of Mortgagees as specified herein.

14.2 **Liability for Unpaid Assessments.** Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

14.3 **Payment of Taxes and Insurance.** All taxes, assessments and charges that may become a lien prior to the lien of any First Mortgagee shall be levied only to the individual condominium and not the Project as a whole. Institutional Mortgagees may, jointly or singly, pay taxes or other charges that are in default and that may or have become a charge against any Common Area or Association Property or Improvements situated thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area or Association Property. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

14.4 **Notice to Eligible Holders.** An Eligible Holder is entitled to timely written notice of the following events:

14.4.1 Any condemnation loss or casualty loss that affects either a material portion of the Project or the Residential Unit on which the Eligible Holder holds a First Mortgage;

14.4.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium that is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

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

14.4.4 Any proposal to take any action specified in this Article or in the Article hereof entitled "Destruction of Improvements and Condemnation;"

14.4.5 Any default by the Owner-Mortgagor of a Condominium that is subject to a First Mortgage held by the Eligible Holder in the performance of his or her obligations under this Declaration or the Bylaws which is not cured within sixty (60) days; or

14.4.6 Any proposed action that requires the consent of a specified percentage of the Eligible Holders.

14.5 **Reserve Fund.** The Association shall maintain as a reserve fund a reserve account fund sufficient to pay for maintenance, repair and periodic replacement of the Common Area and Association Property Improvements that the Association is obligated to maintain. In no event may the reserve fund be used to fund any legal expenses or expert witness fees for any litigation without the consent of ninety percent (90%) of the Owners and their First Mortgagees. This reserve fund shall be funded by Regular Assessments of Owners that are payable in installments rather than by Special Assessment except in the case of an Emergency as defined in **Section 6.7.1**; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration. Notwithstanding anything to the contrary set forth herein, funds from the reserve account fund shall not be used to pay for costs associated with the initiation, defense, settlement or intervention in mediation, arbitration, judicial or administrative proceedings or any other type of legal action.

14.6 **Inspection of Books and Records.** Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Governing Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

14.7 **Financial Statements.** The Association, at its expense, shall prepare an audited financial statement for the immediately preceding Fiscal Year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee or Eligible Holder.

14.8 **Voting Rights of Mortgagees.** For purpose of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

14.9 **Actions Requiring Eligible Holder Approval.** Unless at least sixty-seven percent (67%) of the Eligible Holders and sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission, seek to abandon or terminate the Project;
- (b) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Condominiums and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Project by the Association and Owners shall not be deemed a transfer within the meaning of this Section);
- (c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Residential Units, the exterior maintenance of Residential Units, or the upkeep of lawns, plantings or other landscaping in the Project;
- (d) By act or omission change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;
- (e) Partition or subdivide a Condominium;
- (f) Fail to maintain fire and extended coverage insurance on insurable portions of the Common Area or Association Property on a maximum insurance replacement value basis in an amount not less than one hundred percent (100%) of the insurable value based on current replacement cost; and
- (g) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of such property and Improvements.

14.10 **Votes for Termination of Project.** Any election to terminate the legal status of the Project as a Condominium project shall require:

14.10.1 The approval of at least fifty-one percent (51%) of the Eligible Holders and sixty-seven percent (67%) of the total Voting Power of the Association if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

14.10.2 The approval of sixty-seven percent (67%) of the total Voting Power of the Association and sixty-seven percent (67%) of the Eligible Holders, if **Section 14.10.1** is not applicable.

14.11 **Condemnation or Destruction.** In the event a portion of the Project is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of this Declaration and the original plans and specifications for the Project unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

14.12 **Self-Management.** The vote or approval by written ballot of sixty-seven percent (67%) of the total Voting Power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Holder at any time.

14.13 **Mortgagee Protection.** A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Condominium in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Condominium if the Condominium is acquired by foreclosure, trustee's sale or otherwise.

14.14 **Subordination.** The lien of the assessments, including interest, costs (including attorneys' fees), and late charges subject to the limitations of California Civil Code Section 1367, and any successor statutes or laws, provided for herein shall be subordinate to the lien of any First Mortgage with respect to any Condominiums. Sale or transfer of any Condominiums shall not affect the assessment lien.

14.15 **Distribution of Insurance and Condemnation Proceeds.** No Owner, or any other party, shall have priority over any right of Institutional Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominiums, Common Area or Association Property. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project 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.

14.16 **Voting Rights on Default.** In case of default by any Owner in any payment due under the terms of any Institutional Mortgage encumbering such Owner's Condominium, or the promissory note secured by the Mortgage, the Mortgagee or his representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can exercise the voting rights of such defaulting Owner attributable to such Condominium at any regular or special meeting of the Members held during such time as such default may continue.

14.17 **Foreclosure.** If any Condominium is encumbered by a First 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 affect or impair the lien of the First Mortgage. On foreclosure of the Mortgage, 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 Condominium free of the lien for assessments, or installments, that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium. The subsequently accrued 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 in this Section.

14.18 **Non-Curable Breach.** Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or that is not practical or feasible to cure.

14.19 **Loan to Facilitate.** Any Mortgage given to secure a loan to facilitate the resale of a Condominium 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.

14.20 **Appearance at Meetings.** Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote except as may be provided for herein) 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 remedial proceedings or assessments.

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

14.22 **Inapplicability of Right of First Refusal to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Condominium, whether voluntary or involuntary, to a Mortgagee that acquires title to or Ownership of the Condominium pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed or assignment in lieu of foreclosure.

14.23 **Multiple Mortgages.** To the extent any voting rights under this **ARTICLE 14** are granted to any Mortgagees and such Mortgagee holds multiple Mortgages, then such Mortgagee shall have a vote for each Condominium received by the Mortgagee.

ARTICLE 15 AMENDMENTS

15.1 **Amendment Before the Close of First Sale.** Before the close of the first sale of a Residential Unit to a purchaser other than Declarant, this Declaration and any amendments to it

may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder.

15.2 Amendments After the Close of First Sale. Except as may otherwise be stated in this Declaration, after the close of the first sale of a Residential Unit in the Project to an Owner other than Declarant and during the period of time prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time provided that the vote or approval by written ballot of at least fifty-one percent (51%) of the Voting Power of each class of Members of the Association has been obtained. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time, provided that the vote or approval by written ballot of at least (a) fifty-one percent (51%) of the total Voting Power of the Association and (b) at least fifty-one percent (51%) of the Voting Power of the Members of the Association, other than Declarant, has been obtained. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the Certificate of Amendment, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording with the Office of the County Recorder. In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of fifty-one percent (51%) of the Eligible Holders (based on one vote for each Mortgage owned) and sixty-seven percent (67%) of the Voting Power of each class of Members (or sixty-seven percent (67%) of the Owners) shall also be required. "Material Amendment" shall mean, for the purposes of this **Section 15.2**, any amendments to provisions of this Declaration governing any of the following subjects:

15.2.1 The fundamental purpose for which the Project was created (such as a change from residential use to a different use);

15.2.2 Assessments, collection of assessments, assessment liens and subordination thereof;

15.2.3 The reserve for repair and replacement of the Common Area and Association Property;

15.2.4 Property maintenance obligations;

15.2.5 Casualty and liability, or hazard insurance or fidelity bond requirements;

15.2.6 Reconstruction in the event of damage or destruction;

15.2.7 Rights to use the Common Area and Association Property;

15.2.8 Reallocation or conveyance of any interests in the Common Area;

15.2.9 Voting;

15.2.10 Any provision that, by its terms, is specifically for the benefit of Eligible Holders, or specifically confers rights on Eligible Holders

15.2.11 Expansion or contraction of the Project or the addition, or withdrawal of property to or from the Project, other than the addition or deletion of the Additional Property, the redefinition of Residential Unit boundaries or the conversion of a Residential Unit or Residential Units into Common Area or Association Property; and

15.2.12 Imposition of any restriction on any Owner's right to lease, sell or transfer his Residential Unit.

Anything herein stated to the contrary notwithstanding, no amendment to provisions contained in Sections 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5, 15.2.6, 15.2.8, 15.2.9, 15.2.10, 15.2.11 and 15.2.12 may be made to this Declaration without the prior written consent of sixty-seven percent (67%) or more of the Eligible Holders (based upon (1) vote for each such Eligible Holder). Any Eligible Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or 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 close 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.

15.3 **Further Approvals Regarding Amendments.** Notwithstanding anything to the contrary contained in this Declaration, Sections 2.10, 2.5, 2.6, 4.3.13, 4.4.4, 4.4.7, 4.4.10, 5.1.3, 5.2.3, 8.1.1(c), 8.4.1, 17.3 and 17.4 of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) ninety percent (90%) of the Voting Power of the Members of the Association other than Declarant, and (b) at least ninety percent (90%) of the Mortgagees.

15.4 **Conflict with ARTICLE 14 or Other Provisions of this Declaration.** To the extent any provisions of this Article conflict with the provisions of ARTICLE 14 or any other

provision of this Declaration except those contained in **Section 15.2**, the provisions of **ARTICLE 14** or the other provisions shall control.

15.5 **Business and Professions Code Section 11018.7.** All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 and any successor statutes or laws, to the extent such Section is applicable.

15.6 **Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

15.7 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Project, together with the covenants and restrictions established upon any other property as one plan.

ANNEXATION OF ADDITIONAL PROPERTY

16.1 **Annexation.** Any of the Additional Property described in **Exhibit "B"** may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article. Declarant intends to sequentially develop the Additional Property on a phased basis. However, Declarant may elect not to develop all or any part of such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order or develop such real property as a separate project. Although Declarant shall have the ability to annex the Additional Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of the Additional Property, and the Additional Property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded.

16.2 **Annexation Without Approval.** All or any part of the Additional Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that:

16.2.1 The proposed Annexation will not result in a substantial and material overburdening of the common interests of the then existing Owners;

16.2.2 No proposed Annexation will cause a substantial increase in assessments against existing Owners which was not disclosed in the Public Reports under which pre-existing Owners purchased their interests;

16.2.3 For each Residential Unit in the Project to be annexed for which a rental program has been in effect by the Owner for a period of at least one (1) year as of the date of closing of the escrow for the first sale of a Residential Unit in the annexed Phase, the Owner shall pay to the Association, before or concurrently with the first close of escrow for the sale of a Residential Unit within the annexed Phase, an amount for each month or portion thereof during which the Residential Unit was occupied under such rental program that shall be established by the Board for reserves for replacement or deferred maintenance of Common Area and Association Property Improvements necessitated by or arising out of the use and occupancy of the Residential Units under the rental program;

16.2.4 Before Annexation pursuant to this Section of any of the Additional Property that is being developed as a phased FHA and/or VA project, plans for the development of the Additional Property must be submitted to FHA and/or the VA as applicable, and FHA and/or VA as applicable, must determine that such plans are in accordance with the previously approved general plan and so advise Declarant; and

16.2.5 Each Supplementary Declaration effecting the Annexation contemplated under this Section must be executed by Declarant.

For purposes of this Section, the issuance of a Public Report by the DRE shall conclusively be deemed to be satisfaction of the criteria set forth above.

16.3 **Covenants Running with the Land.** Declarant may transfer all or any portion of the Property or the Additional Property to a builder under a grant deed wherein Declarant reserves the right to annex such property and subject it to this Declaration. The restriction on the Additional Property wherein it may be made subject to this Declaration upon the recordation of a Supplementary Declaration is hereby declared to be an equitable servitude upon the Additional Property in favor of the subject Property and any other real property owned by Declarant in the vicinity of the Project and shall run with the land and be binding on and inure to the benefit of all parties having or acquiring any right, title or interest, in such real property.

16.4 **Supplementary Declaration.** A Supplementary Declaration may be recorded by Declarant without the consent of any Owner to (a) annex all or a portion of the Additional Property and/or designate Condominiums as a Phase, (b) identify areas referenced in this Declaration to be maintained by the Association, (c) make such other complementary additions and/or modifications necessary to reflect the different character of the Additional Property, (d) impose additional covenants and restrictions on the Additional Property, and/or (e) make technical or minor corrections to the provisions of this Declaration or previously recorded supplementary declaration(s).

16.5 **Supplementary Condominium Plans.** A Supplementary Declaration may be recorded by Declarant, without the consent of any Owner to (a) supplement a previously recorded Condominium Plan and/or which is subsequently recorded to designate the boundaries of any Exclusive Use Easement Areas; (b) to correct technical errors in the originally recorded Condominium Plan, or (c) after the completion of construction to show the actual "as-built"

locations or dimensions of any component of the Project, which Supplemental Condominium Plan described in subsections (a) and (b) above shall not require the consent of the Owners or the Association.

16.6 **Association Property.** Any portion of the property being annexed that is intended or required to be Association Property shall be conveyed to the Association prior to the close of the first sale of any Residential Unit in the annexed property to an Owner, other than the Declarant.

16.7 **Rights and Obligations of Owners.** After the required annexation procedures are fulfilled, all Owners in the Project shall be entitled to the use of any Association Property in such Additional Property, subject to the provisions of this Declaration, and Owners of such Property shall thereupon be subject to this Declaration. After each Annexation, the Assessments shall be assessed in accordance with the provisions set forth in **Section 6.3.4** of this Declaration.

16.8 **Mergers or Consolidations.** Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, right and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration within the Project, together with the covenants and restrictions established upon any other property as one plan.

16.9 **De-Annexation.** Declarant may delete all or any portion of the annexed land from the coverage of this Declaration and rescind any Supplementary Declaration, provided that (a) Declarant is the sole Owner of all of the real property described in the Supplementary Declaration to be rescinded or obtains the consent of the fee title Owner of the real property to be de-annexed, (b) Declarant has not exercised any Association vote as an Owner of any portion of the real property to be de-annexed, and (c) Assessments have not commenced with respect to any portion of the real property to be de-annexed. Such deletion shall be effective upon the recordation of a written instrument signed by Declarant, in the same manner as the Supplementary Declaration to be rescinded was recorded.

ARTICLE 17 ENFORCEMENT

17.1 **Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members AND THEIR First Mortgagees has been recorded, at least one (1) year prior to the end of any such

period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

17.2 Enforcement and Nonwaiver.

17.2.1 Rights of Enforcement of Governing Documents. The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all covenants, conditions, and restrictions, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such covenants, conditions or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of the Association, Declarant or any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

17.2.2 Procedure for Enforcement. Notwithstanding anything to the contrary set forth in **Section 17.2.1**, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the provisions of California Civil Code Section 1354, 1363.810, *et seq.*, 1368.3, *et seq.* and 1369.510, *et seq.* and any successor statute or law. The Board shall annually provide to the Members a summary of the provisions of California Civil Code Section 1354, 1363.810, *et seq.* and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1365. The exception for disputes related to Association assessments set forth in Section 1369.520(d) shall not apply to disputes between an Member and the Association regarding assessments imposed by the Association, if the Member chooses to pay in full the Association all of the assessments as specified in California Civil Code Section 1366.3 and any successor statutes or laws.

17.3 Notice of Actions Against Declarant. Subject to the provisions of **Section 17.4** hereof, the Association shall comply with the provisions of Civil Code Section 1368.4, Civil Code Sections 910 through 938, and any successor statutes or laws, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Association Property or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Section 1368.4 and/or Civil Code Sections 910 through 938, as applicable, and any successor statutes or laws.

17.4 Alternative Dispute Resolution. The purpose of this Section is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between

Owner or the Association and Declarant after the close of escrow concerning the Property (individually referenced to herein as "Dispute" and collectively as "Disputes"). Initially, Declarant will attempt to resolve any Dispute asserted by an Owner or the Association of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, the parties will proceed to mediation, according to the procedures set forth below. If the matter is not resolved by the mediation process, it will be decided through the arbitration procedure as set forth below. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THIS PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. BY EXECUTING THIS DECLARATION AND BY EXECUTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY, DECLARANT, EACH OWNER AND THE ASSOCIATION AGREE TO BE BOUND BY THE PROVISIONS OF THIS SECTION.**

17.4.1 Mediation. Subject to the provisions of **Section 17.4.2(h)** below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by the Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation

17.4.2 Arbitration

(a) Agreement to Arbitrate. If a Dispute is not resolved through mediation, the Association, each Owner and Declarant shall resolve such exclusively through binding arbitration in the county in which the Property is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of the nature of the relief sought.

(b) Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator or by the appeal arbitrators), if applicable.

(c) Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the JAMS rules ("JAMS Rules") then applicable to the claims presented, as supplemented by this Section. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the rules of JAMS Rules.

(d) Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and either a retired judge or a member or former member of the California State Bar with at least 15 years experience as a practicing lawyer.

(e) Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(f) Expenses. All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If the Declarant is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse the Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant. Each party shall bear its own attorneys' fees and costs.

(g) Venue. The venue of the arbitration shall be in the County where the Project is located unless the parties agree in writing to another location.

(h) Preliminary Procedures. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claims or Disputes pursuant to California Civil Code Section 895 et. seq. as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code Section 910 through 938, prior to the initiation of any arbitration or small claims court proceeding against Declarant. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.4, 1375, 1375.05 or 1375.1.

(i) Participation by Other Parties. The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

(j) Rules of Law. The arbitrator must follow California substantive law (including statutes of limitations) but strict conformity with the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privilege and work product. The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(k) Attorneys' Fees and Costs. Each party shall bear its own attorneys fees and costs (including expert witness costs) in the arbitration.

17.4.3 Additional Rules Applicable To Certain Cases. In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$250,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

(a) Qualifications of Arbitrator. In addition to the requirements of **Section 17.4.2(d)** above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court.

(b) Rules of Law. The California Evidence Code shall apply.

(c) Written Decision. Within thirty (30) days after the hearing is closed, the arbitrator must issue a written decision. If either Owner or Declarant requests it, the arbitrator must issue a reasoned award.

17.4.4 Procedure for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of Owner, the Association or Declarant exceeds \$500,000 in value, Owner, the Association and Declarant hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure and govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(a) Right of Appeal. There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(b) Appellate Panel. An appeal shall be decided by one (1) neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(c) Issues on Appeal. The only issues that may be considered on appeal are: (1) the award of money was excessive; (2) the award of money was insufficient; (3) the arbitrator awarded non-monetary relief that was inappropriate; (4) a party who received non-monetary relief should have received other or additional relief. A majority of the appeal arbitrators may affirm the arbitration award or make any alternative award they find to be just, but they must not reject the arbitrator's decisions (a) that a particular party is entitled to relief of some nature or amount or (b) that a particular party is responsible to provide relief of some nature or amount.

(d) Expenses and Costs on Appeal. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided in **Section 17.4.4(b)** above. The party who files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of their determination award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards Of Procedural Fairness, include the non-prevailing party(ies) pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant in the award of costs on appeal.

(e) New Evidence. The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Dispute.

17.4.5 Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §1, et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions of this Agreement.

17.4.6 AGREEMENT TO ARBITRATE.

BY EXECUTING THIS DECLARATION, DECLARANT, AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION AGREE TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND ASSOCIATION, OWNER AND DECLARANT ARE GIVING UP ANY RIGHTS DECLARANT, OWNER AND THE ASSOCIATION MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT, OWNER AND ASSOCIATION ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 17.4. IF DECLARANT, ANY OWNER OR THE ASSOCIATION REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

17.4.7 Final and Binding Award. The decision of the arbitrator or, if an appeal is heard, the decision of the appeal arbitrators, shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

17.4.8 Severability. In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of this **Section 17.4** is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this **Section 17.4** shall be conducted under the remaining enforceable terms of this **Section 17.4**.

17.4.9 Application of Award. Any proceeds awarded to the Association arising from any Dispute by settlement, award or otherwise shall be applied in accordance with the provisions of **Section 4.4.9** of this Declaration.

ARTICLE 18 GENERAL PROVISIONS

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

18.2 **Severability**. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions of it shall not invalidate any other provisions. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Declaration shall other portion of this Declaration shall become illegal, null, void, against public policy, or otherwise unenforceable, for any reason, the remaining parties of this Declaration shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

18.3 **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.

18.4 **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, the manager, or the Association.

18.5 **No Racial Restriction**. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his or her Residential Unit on the basis of race, sex, color or creed.

18.6 **Access to Books**. Declarant may, at any reasonable time and upon reasonable notice to the Board or manager, cause an audit or inspection to be made of the books and financial records of the Association.

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

18.8 **Notification of Sale of Condominium**. Concurrently with the consummation of the sale of any 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 his or her Mortgagee and transferor, the common address of the 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 or the manager 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 forty-eight (48) hours after mailing if mailed to the transferee, or to his or her 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 overnight courier or upon delivery if delivered personally to any occupant of a Condominium over the age of twelve (12) years.

18.9 **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.

18.10 **Exhibits.** All exhibits referred to in this Declaration are attached to this Declaration and incorporated by reference.

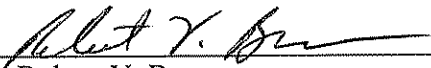
18.11 **Binding Effect.** This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the Owners.

18.12 **Easements Reserved and Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in the first deed by Declarant to any Condominium.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the date set forth above.

DECLARANT:

D.R. HORTON, INC. – SACRAMENTO, a
California corporation

By: 
Name: Robert V. Brennan
Its: Assistant Secretary

By: _____
Name: _____
Its: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

On 3/22/06 before me, Michelle Vossen a notary public,
Robert V. Brennan personally appeared
personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person whose name(s) are/is subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Michelle Vossen

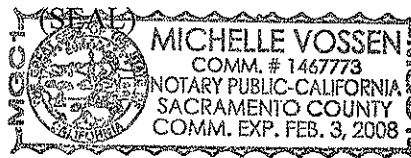


EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

PROPERTY:

PHASE A LOCATED WITHIN PARCEL A, AS SHOWN ON THE MAP OF PROSPECT PROPERTIES, INC., RECORDED AUGUST 18, 1972 IN BOOK 7 OF PARCEL MAPS, PAGE 24, IN THE OFFICIAL RECORDS IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND AS FURTHER SHOWN ON THAT CERTAIN CONDOMINIUM PLAN OF SUNDANCE, PHASE A RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SACRAMENTO COUNTY ON SEPTEMBER 22, 2005, IN BOOK 20050922, AT PAGE 2318 ("CONDOMINIUM PLAN").

ASSOCIATION PROPERTY:

PHASE A LOCATED WITHIN PARCEL A, AS SHOWN ON THE MAP OF PROSPECT PROPERTIES, INC., RECORDED AUGUST 18, 1972 IN BOOK 7 OF PARCEL MAPS, PAGE 24, IN THE OFFICIAL RECORDS IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND AS FURTHER SHOWN ON THE CONDOMINIUM PLAN, EXCEPTING THEREFROM, THE RESIDENTIAL UNITS AND COMMON AREA IN PHASE A AS SHOWN ON THE CONDOMINIUM PLAN.

EXHIBIT "B"

LEGAL DESCRIPTION OF ADDITIONAL PROPERTY

PROPERTY:

PHASE Z LOCATED WITHIN PARCEL A, AS SHOWN ON THE MAP OF PROSPECT PROPERTIES, INC., RECORDED AUGUST 18, 1972 IN BOOK 7 OF PARCEL MAPS, PAGE 24, IN THE OFFICIAL RECORDS IN THE COUNTY OF SACRAMENTO, STATE OF CALIFORNIA, AND AS FURTHER SHOWN ON THE CONDOMINIUM PLAN.

EXHIBIT "C"

Maintenance Responsibility Exhibit

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The interior of the Residential Unit including, without limitation, all appliances, cabinets, plumbing fixtures and all other items within the Residential Unit whether free-standing or built in	O	O	O	O	O	O (if applicable)	N/A
Utility Facilities and equipment which exclusively service the Residential Unit whether located in the Residential Unit, the Common Area or the Association Property; Assigned Garages.	N/A	O	O	O	N/A	N/A	N/A
Windows enclosing a Residential Unit, including metal frames, tracks and exterior screens of glass doors and windows	O	O	O	O	A (exterior of the window frame only)	N/A	N/A
Doors (including without limitation the garage door) enclosing an Owner's Residential Unit	O (interior) A (exterior)	A	A	A	O to paint interior A to paint exterior	N/A	N/A

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
The Exclusive Use Balcony Areas (excluding any Improvements located within such areas and excluding any fencing surrounding such areas)	O	A	A	N/A	A	A	A (if applicable)
Walls and railings surrounding Exclusive Use Balcony Areas	O	O	A	A	A	N/A	N/A
Exterior fixtures including light fixtures, photocells, and light bulbs not servicing the balcony, and front entry of the Residential Unit	A	A	A	A	A	N/A	N/A
Established system of drainage within the Owner's Exclusive Use Easement Areas	O	O	O	O	N/A	N/A	N/A
All Common Area including without limitation, roof, structural components, bearing walls, foundations, except for any Exclusive Use Easement Areas as provided herein	A	A	A	A	A	A	A

Each Owner is responsible for the maintenance, repair and replacement of all elements of the Residential Unit, except as otherwise set forth below or in the Governing Documents. The Association is responsible for all of the maintenance, repair and replacement of the Association Property and the Common Area. Notwithstanding the foregoing, in the event of a casualty, the Association shall repair and replace all items covered by the Association's insurance. The Owner Maintenance Manual and the Association Maintenance Manual may also expand on the scope of the maintenance responsibilities set forth below.

IMPROVEMENT	MAINTENANCE OBLIGATION & RESPONSIBLE PARTY						
	Clean	Maintain	Repair	Replace	Paint	Resurface	Repave
Association Property such as Private Streets, landscaping, open spaces situated within the Association Property, except for any Exclusive Use Easement Areas as provided herein.	A	A	A	A	A	A	A
All Utility Facilities, including the electricity in the Assigned Garages serving two or more Condominiums, and all private Utility Facilities whether located in the Association Property or Common Area	N/A	A	A	A	N/A	N/A	N/A
Walls and railings on Association Property that do not enclose a Residential Unit's Exclusive Use Easement Area	A	A	A	A	A	N/A	N/A
Offsite Maintenance Areas	A	A	A	A	A (if applicable)	A (if applicable)	A (if applicable)
Pool, Cabana	A	A	A	A	A	A	A
Cluster mailboxes (excluding locks on individual mailboxes).	N/A	A	A	A	A	A	N/A