

RECEIPT FOR DOCUMENTS

Attached are the following documents for 785 Taft, Albany Vista Condos:

DOCUMENT	# of PAGES
1. CC&Rs	99
2. Albany Vista HOA Budget	2
3. Articles of Declaration	4

The undersigned acknowledge receipts of all of the above documents.

Please submit signed with offer.

Buyer: _____ Date: _____

Buyer: _____ Date: _____

Seller: _____

DocuSigned by:

Andy Goldberg

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_____ Date: 6/17/2019

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RESTATED AND AMENDED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ALBANY HILL CONDOMINIUMS, ALBANY, CALIFORNIA
a Condominium Project

THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT.
YOU MUST READ THE ARBITRATION PROVISION CAREFULLY AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

IF THIS DOCUMENT CONTAINS ANY RESTRICTION BASED ON RACE, COLOR, RELIGION, SEX, GENDER, GENDER IDENTITY, GENDER EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, NATIONAL ORIGIN, ANCESTRY, FAMILIAL STATUS, SOURCE OF INCOME (AS DEFINED IN SUBDIVISION (P) OF SECTION 12955 OF THE GOVERNMENT CODE), DISABILITY, OR GENETIC INFORMATION, 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.

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OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
ALBANY HILL CONDOMINIUMS, ALBANY, CALIFORNIA,
a condominium project

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RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR ALBANY HILL CONDOMINIUMS, ALBANY, CALIFORNIA,
a Condominium Project

Recitals:

THIS RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 3rd day of June 2019, by Albany Hills, LLC, a California limited liability company, ("Declarant"), with reference to the following facts:

- A. **Property Description.** Declarant owns fee title to all that certain real property located in the City of Albany, the County of Alameda, California, commonly known as 785 Taft Street (the "Property"), as more particularly described on the Tract Map entitled, "Tract Map 4187" which Tract Map was filed on the 28th day of July, 1981, in Book 126 of Maps, pages 22-23, in the office of the Recorder of Alameda County, California.
- B. **Subdivision.** Declarant intends to improve said real property by constructing infrastructure improvements, utilities and structures containing thirteen (13) residential Units. Declarant intends to create a "condominium project," as defined in California Civil Code ("Civil Code") § 4125 and to subdivide the Property as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Civil Code § 783 pursuant to a Condominium Plan described herein, and to impose on the Property mutually beneficial restrictions under a general plan of improvement created pursuant to the provisions of the Davis-Stirling Common Interest Development Act (Civil Code §§ 4000 *et seq.*) for the benefit of all of the condominiums and the owners thereof as described herein.
- C. **Upon completion of construction of improvements in the Project,** Declarant intends to sell and convey Condominium estates to Owners, subject to the provisions of this Declaration.
- D. **Owner's Interest.** The Owner of a Condominium will receive a separate interest in an individual Unit and an undivided interest in common in a portion of the Common Area. Each Unit shall have appurtenant to it a membership in the Albany Hill Condominiums Homeowners Association, a nonprofit mutual benefit corporation.
- E. **General Plan of Improvement.** Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all the Condominiums and the Owners thereof. The easements, restrictions, reservations, rights, covenants, conditions and equitable servitudes set forth herein will run with and burden the Project and will be binding on all persons or entities having or acquiring any interest in the Project, including the Declarant and the Owners, and their heirs, successors in interest and assignees, may be enforced by Declarant, any Owner or the Association.
- F. **Supersedes and Amends Prior Declaration.** Declarant intends by this document to supersede and amend in its entirety that certain Declaration of Covenants, Conditions and Restrictions of Albany Hill Condominiums dated December 9, 1981 and recorded December 10, 1981 as Instrument No. 81-205582 in the Official Records of Alameda County.

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

A. Definitions.

- 1.1. "Architectural Review Committee" means the committee established by the Board of Directors pursuant to Section 11.2 below.
- 1.2. "Articles" means the Association's Articles of Incorporation, as the same may from time to time be amended.
- 1.3. "Assessment" means any Regular, Special or Reimbursement Charges made or assessed by the Association against an Owner and his or her Unit in accordance with the provisions of Article V of this Declaration.
- 1.4. "Assessment Lien" means the lien defined in section 5.1.
- 1.5. "Association" means the Albany Hill Condominiums Homeowners Association, a nonprofit mutual benefit corporation and its successors and assigns.
- 1.6. "Board" or "Board of Directors" means the governing body of the Association.
- 1.7. "Budget" means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.
- 1.8. "Bylaws" means the Association's Bylaws, as the same may from time to time be amended.
- 1.9. "City" means the City of Albany, a municipal corporation.
- 1.10. "Common Area" means all of the Property, as defined below, that is not included within any Unit, as described in Civil Code § 4095(a) Common Area includes, without limitation: Land within the Property; all areas of the Property that lie beyond the boundaries of the Units, including; trees, shrubs and all other landscaping and groundcover; planter boxes (except those contained within a Unit); outdoor lighting; trash and refuse facilities; balconies, fire protection system and fire extinguishers, irrigation systems and related equipment (except those servicing only a single Unit); fences and retaining walls, perimeter walls, gates (and their related mechanical equipment), sidewalks, walkways; driveways; mailboxes; any vehicle electrical charging conduits and related equipment; high speed internet connections installations and related equipment that provide service to more than a single Unit; entry systems; the Project structures and improvements (except for the Units); utility rooms, lobbies, shafts and chases, skylights, and corridors; railings, stairs (not contained within a Unit), handrails, landings; bearing walls, columns, girders, subfloors, roofs, slabs and foundations; gutters, downspouts, storm drains, swales, reservoirs, hot water heaters (except those contained within a Unit), tanks, aqua stores, boilers, pumps, sump pumps, motors, shafts, ducts, flues and chutes and other central service equipment; conduits, pipes, sewer lines, plumbing, wires, electrical switch gear, intercom system, and other utility installations, wherever located, that service more than one Unit (except the outlets thereof when located within and servicing only a single Unit, and utility installations located entirely within a Unit, required to provide power, light, telephone, gas, water, sewerage, and drainage to only a single Unit); exterior and interior

fire sprinklers and sprinkler pipes, if any. Public utilities and those utility wires, lines and equipment or facilities exclusively serving or located within a Unit are not part of the Common Area. As more particularly described in Section 2.2.3 below, portions of the Common Area are designated as Exclusive Use Common Area, as defined in Section 1.26 below, whose use and enjoyment are restricted to the Owners and occupants of the Units adjacent to such Exclusive Use Common Area.

- 1.11. "Common Expenses" means the actual and estimated expenses of operating and maintaining the Common Area and any Unit that the Association owns and is required to maintain, and all sums designated as Common Expenses by or pursuant to the Governing Documents.
- 1.12. "Common Funds" means funds derived from all Regular Assessment or Special Assessment levied by the Association against an Owner and his or her Unit in accordance with Article V of this Declaration.
- 1.13. "Common Interest" means the proportionate undivided interest in the Common Area that is a part of each Condominium as set forth in this Declaration.
- 1.14. "Condominium" means an estate in real property as defined in Civil Code §§ 783 and 4125(b), consisting of (a) a separate fee interest in a Unit, (b) an undivided interest in common in the Common Area, and (c) any exclusive or nonexclusive right or rights of entry or possession, easement or easements appurtenant to such Unit over the Common Area or other areas of the Project as described in this Declaration, the Condominium Plan, and/or the deed to a Unit.
- 1.15. "Condominium Plan" means the three-dimensional plans of the Condominiums to be built on the Property and any recorded amendments thereto that identifies the Common Area and each separate interest pursuant to Civil Code §4285. A copy of the Condominium Plan is attached as Exhibit A.
- 1.16. "County" means the County of Alameda.
- 1.17. "Declarant" means the original developer of the Project, Albany Hills, LLC, a California limited liability company, and all its successors or assigns that expressly assume the rights and duties of the Declarant hereunder, in a recorded written document or by operation of law.
- 1.18. "Declaration" means this Restated and Amended Declaration, as amended or supplemented from time to time.
- 1.19. "Design Guidelines" means the rules or guidelines setting forth procedures and standards for submission of plans for Architectural Review Committee approval.
- 1.20. "Director" means any person elected or appointed to the Board in accordance with Article V of the Bylaws.
- 1.21. "DRE" means the California Department of Real Estate and any department or agency of the California state government that succeeds to the DRE's functions.
- 1.22. "Eligible Mortgages" means Mortgages held by "Eligible Mortgage Holders."

- 1.23. "Eligible Mortgage Holder" means a First Lender who has requested notice of certain matters from the Association in accordance with section 12.1.3.
- 1.24. "Eligible Insurer or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Section 12.1.3.
- 1.25. "Exclusive Use Common Area" means those portions of the Common Area whose use and enjoyment are restricted to the Owners and occupants of the Units adjacent to such Exclusive Use Common Area as shown on the Condominium Plan and more completely described in Section 2.2.3.
- 1.26. "First Lender" means any person, entity, bank, savings and loan association, insurance company, or other financial institution holding a recorded First Mortgage on any Unit.
- 1.27. "First Mortgage" means any recorded Mortgage (made in good faith and for value) on a Unit with first priority over other Mortgages encumbering the Unit.
- 1.28. "Foreclosure" means the legal process by which a Unit owned by an Owner who is in default under a Mortgage is sold pursuant to California Civil Code § 2924a *et seq.* or sale by the Court pursuant to California Code of Civil Procedure § 725a *et seq.* and any other applicable laws.
- 1.29. "Governing Documents" means this Declaration, the exhibits attached hereto, together with the other basic documents used to create and govern the Project, including, the Map, the Articles, the Bylaws, and Rules adopted by the Board or the Association, each as they may from time to time be amended.
- 1.30. "Hazardous Materials" means (i) Any hazardous or toxic wastes, materials or substances, and other pollutants or contaminants, which are or become regulated by all applicable local, state and federal laws, including, but not limited to, 42 U.S.C. 6901 *et seq.*, 42 U.S.C. 9601 *et seq.*, and California Health and Safety Codes Sections 25100 *et seq.*, and 25300 *et seq.*; (ii) petroleum and petroleum based products; (iii) asbestos; (iv) polychlorinated biphenyls; and (v) radioactive materials.
- 1.31. "Maintenance Guidelines" means recommendations and suggestions for maintenance of Project improvements.
- 1.32. "Maintenance Manual" means the document containing the maintenance procedures and requirements applicable to the Common Area improvements.
- 1.33. "Major Components" means those elements of the Project, including, without limitation, structural elements, machinery and equipment, that the Association is obligated to maintain as provided in Civil Code §5500(b).
- 1.34. "Managing Agent" means the professional manager or management company employed by the Association.

- 1.35. "Member" means every person or entity that is an Owner entitled to membership in the Association as provided in this Declaration. A "Voting Member" means every person designated as such in accordance with Section 4.2.2 below.
- 1.36. "Mortgage" includes a deed of trust and a mortgage encumbering a Condominium.
- 1.37. "Mortgagee" includes any mortgagee under a mortgage and a beneficiary under a deed of trust. An "institutional Mortgagee" means any bank or savings and loan association chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, an insurance company, or any private or public agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation engaged in secondary transactions with respect to real estate loans.
- 1.38. "Notice of Delinquent Assessment" means a notice of delinquent assessment filed by the Association for a delinquent Assessment pursuant to section 5.1.2.
- 1.39. "Operating Rules" means the rules and regulations adopted by the Association's Board of Directors regulating the use of the Common Area (as defined above), and in accordance with Civil Code Section 5105, the qualification of candidates for the Board of Directors, access to Association media, newsletters, or websites and any Common Area meeting space, if any, by Members and candidates for election to the Board of Directors, and the qualifications for voting by, the voting power, and proxies of Members, and the voting period for elections to the Board, as the same may from time to time be amended.
- 1.40. "Owner" or "Owners" means the record holder of title of a Unit, including the Declarant. This shall include any person or entity having a fee simple title to any Unit, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Unit is sold under a contract of sale and the contract of sale is recorded, the purchaser, rather than the fee owner, shall be considered the "Owner" from and after the date the Association receives written notice of the recorded contract.
- 1.41. "Person" or "person" means a natural person, a corporation, limited liability company, a partnership, trustee, or other legal entity.
- 1.42. "Project" means the Common Area and Units that has been (i) developed and improved, (ii) divided into Condominiums by recordation of one or more Condominium Plan, and (iii) made subject to this Declaration.
- 1.43. "Property" means 785 Taft Street, Albany, California and the Units therein, as more particularly described in the Recitals and depicted on the Tract Map.
- 1.44. "Public Report" means the official document and permit issued pursuant to the Subdivided Lands Act (Business & Professions Code §§ 11000 *et seq.*) by the State of California Bureau of Real Estate authorizing the offering of the Units for sale to the public.
- 1.45. "Regular Assessment" means any Assessment levied on an Owner and his or her Unit in accordance with Section 5.3 below.

- 1.46. "Reimbursement Charge" means a charge levied by the Board against an Owner to reimburse the Association for costs and expenses incurred in bringing the Owner and/or his or her Unit into compliance with the provisions of this Declaration, determined and levied pursuant to the provisions of this Declaration.
- 1.47. "Reserves or Reserve Funds" means that portion of the Common Expenses collected as part of the Regular Assessments levied against the Units in the Project allocated (i) for the future repair and replacement of, or additions to, the Major Components which the Association is obligated to maintain pursuant to this Declaration, including reserves for replacement of structural elements and mechanical equipment or other facilities maintained by the Association; and (ii) to cover the deductible amounts of any insurance policies maintained by the Association.
- 1.48. "Special Assessment" means any Assessment levied on an Owner and his or her Unit in accordance with Section 5.4 below.
- 1.49. "Tract Map" means the tract map described above in Recital paragraph A.
- 1.50. "Unit" means a separate interest in space and includes the spatial elements of a Condominium that are not owned in common with other Owners of Condominiums in the Project. The Units and their respective elements and boundaries are described in Section 2.2.1 below and shown and particularly described in the Condominium Plan, in the deeds conveying the Condominiums to Owners and in this Declaration. Each separate interest in space shall include all air located within the boundaries of such space and shall include all real property improvements now located or hereafter constructed within the boundaries of such space, including, without limitation, entranceways, windows, outlets and utility lines, except utility lines that are located within easements for public utility or other purposes shown on the Tract Map and which are dedicated to the City or County or utility lines which are owned by a public utility or are otherwise described herein as part of the Common Area or are located within the Common Area. Units shall be subject to the easements, servitudes or rights in favor of Declarant, individual Owners, all Owners, the Association, the City, the County, any municipal corporation or special district, public utility companies or other persons, entities or governmental agencies as shown or described on the Map, on the Condominium Plan, in this Declaration or as specifically granted or reserved in a deed conveying a Condominium or in an instrument creating such easement, servitude or right. Whenever reference is made to a Unit in this Declaration, in any Condominium Plan, in any deed or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including all of its component elements.

Each Unit is identified on the Condominium Plan by a separate letter or number combination preceded by the word "Unit."

- 1.51. "Utility Facilities" means those elements of the Project defined in section 7.1.
- 1.52. "Voting power" means those Members who are eligible to vote for the election of Directors or with respect to any other matter, issue, or proposal properly presented to the Members for approval at the time determination of voting power is made all as described in Section 4.2 of this Declaration.

B. Interpretations.

1.53 **General Rules:** This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for creating and operating a condominium development and maintaining the Common Area. As used in this Declaration, the singular includes the plural and the plural the singular. The masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

1.54 **Articles, Sections and Exhibits:** The Article and Section headings have been inserted for convenience only and may not be considered in resolving questions of interpretation or construction. Unless otherwise indicated, any references in this Declaration to articles, sections or exhibits are to Articles, Sections and Exhibits of this Declaration. Exhibits "A" and "B" attached to this Declaration are incorporated herein by this reference.

1.55 **Priorities and Inconsistencies:** If there are conflicts or inconsistencies between this Declaration and the Articles, Bylaws and Rules, or Condominium Plan, then the provisions of this Declaration shall prevail.

1.56 **Severability:** The provisions of this Declaration are independent and severable. A determination of invalidity or partial invalidity or unenforceability of any one provision of this Declaration by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions of this Declaration.

1.57 **Statutory References:** All references made in this Declaration to statutes are to those statutes as currently in effect or to subsequently enacted replacement statutes.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 Description of Project.

The Project is a condominium project within the meaning of Civil Code § 4125. The Project is a residential use project and contains two (2) residential buildings containing a total of thirteen (13) Units, open space, and other amenities. Reference is made to the Condominium Plan for further details. Ownership of each Condominium within the Project shall include a Unit, an undivided interest in the Common Area (which undivided interest shall be specified in the deed from the Declarant to each Owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration), a Membership in the Association, and any exclusive or non-exclusive easements, servitudes or rights of use appurtenant to such Unit or Condominium over the Common Area or other Units as described in this Declaration or the deed to the Condominium. All Owners, including the Declarant as an Owner of unsold Condominiums, shall have and enjoy all the rights of an Owner and shall be subject to all the duties of an Owner under this Declaration, the Articles, the Bylaws, the Operating Rules and Board resolutions, and, in addition Declarant shall have the rights of Class A membership in the Association, as described in Section 4.2.3. All other rights of Declarant hereunder are independent of Declarant's status as an Owner of unsold Condominiums

2.2 Division of Property.

The Property is divided as follows:

2.2.1 Units. Each Unit as separately shown, numbered and designated in the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the joists, studs and beams of the perimeter walls, floors, ceilings, skylights, windows, window frames, doors and door frames and trim, of each Unit. Bearing walls located within the interior of a Unit are part of the Common Area, not part of the Unit, except for the surfaces thereof, including lath and plaster, paint, wallpaper and the like. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of, including, without limitation: Any appliances, hot water heaters, space heaters, air conditioning units, furnace, washer, dryer, cabinetry and lighting fixtures, thermostats, regulators, and controls located within such Unit. The air conditioning and/or heat pump equipment serving a Unit and located in the Unit, if any, is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Owner. Each Unit includes both the portions of the building so described and the airspace so encompassed.

Each Unit includes nonexclusive easements for ingress and egress, and support, and exclusive rights of use over portions of the Common Area.

A Unit does not include those areas and things that are defined as "Common Area" in Section 1.11 above or other interests in real property that are less than estates in real property, such as exclusive or nonexclusive rights of entry or possession or easements. In interpreting deeds and plans, the then existing physical boundaries of a Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building containing such Unit and regardless of minor variance between boundaries shown on the plan or deed, and those of such building.

2.2.2 Common Area. The remainder of the Property constitutes and shall be referred to herein as "Common Area," and includes, without limitation, all the elements set forth in Section 1.11 above. Each Owner shall have, as appurtenant to his or her Unit, an equal percentage of undivided interest in the Common Area. Each Condominium includes a Unit and such undivided Common Interest in the Common Area. Each Unit shall have appurtenant to it, nonexclusive easements for use, enjoyment, ingress, egress and support in, to and through the Common Area subject to the rights of each Owner in the Exclusive Use Common Area appurtenant to that Owner's Unit. The Common Interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all the Owners affected, as expressed in an amended Declaration. Such undivided Common Interest cannot be separated from the Unit to which it is appurtenant, and any conveyance or transfer of the Unit includes the undivided Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Unit. Subject to this Declaration and the Rules, each Owner of a Unit and the family members, tenants, guest, and employees of each Owner may have access to and use of the Common Area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Condominium Owners, subject further to the rights of each Owner in any Exclusive Use Common Area appurtenant to that Owner's Unit. No personal property, including without limitation, bicycles, or furniture, shall be placed or stored in the Common Area, other than Exclusive Use Common Area, without the written consent of the Association.

2.2.3 Exclusive Use Common Area. The following described portions of the Common Area, referred to as "Exclusive Use Common Areas," are set aside and allocated for the exclusive use of the Owner of the Unit to which they are attached or assigned as shown on the Condominium Plan and described on the Grant Deed, and are appurtenant to that Unit:

(a) each balcony designated by the letter "B" followed on the Condominium Plan by the number/ or letter of the corresponding Unit; and

(b) each parking space designated by the letters "PS" on the Condominium Plan followed by the number or letter of the corresponding Unit.

In addition, the following areas or items are "Exclusive Use Common Areas" appurtenant to the Units in which they are located or attached:

(c) Internal and external wiring and plumbing pipes and conduits designed to serve a single Unit, and

(d) The air conditioning and/or heat pump equipment serving a Unit and located in the Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Owner.

Except as provided in this Declaration, no other portion of the Common Area shall be Exclusive Use Common Area.

Parking spaces shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or non-mobile vehicles of any description. The Board may establish Rules from time to time for the parking of vehicles.

2.3 No Separate Conveyance of Undivided Interests.

The foregoing interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed, except as herein set forth, and Declarant, its successors, assigns and grantees covenant and agree that the interests in the Common Area and the Units conveyed therewith, shall not be separately conveyed, and each such interest shall be deemed to be conveyed together even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

2.4 Rights of Entry and Use.

The Units and Common Area (including Exclusive Use Common Area) shall be subject to the following rights of entry and use, except as described in Section 2.2.2 above:

2.4.1 Non-exclusive rights of each Owner for ingress, egress and support through the Common Area, and use of the Common Area as provided in Sections 2.2.2 and 2.2.3.

2.4.2 The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration, the Bylaws, or Rules provided that the Owner has received thirty (30) days written notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association.

2.4.3 The access rights of the Association to maintain, repair or replace improvements or property located in the Common Area as described in Section 3.2.16, and to enter any Unit to perform the Association's duties under this Declaration.

2.4.4 The rights of the Owners, the Association, and the Declarant to install, maintain, repair or replace utilities as described in Article VI.

2.4.5 The encroachment easements described in Section 9.3.

2.4.6 The rights of Owners to make improvements or alterations authorized by California Civil Code § 4760, subject to the provisions of Article XII to the extent applicable.

2.5 Utility and Other Common Area Easements.

2.5.1 Power to Grant Easements; Reserved Rights of Declarant and Board over Common Area.

The Board or Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Units in the Project, but in no event later than the fifth anniversary of the issuance of the original final Public Report for the Project by the DRE) shall have the power and the right in the name of the Association and all of the Owners as their attorney-in-fact to grant, convey or otherwise transfer to any Owner or any other Person fee title, easements, leasehold estates, exclusive use easements or rights, or licenses, rights-of-way and/or dedications in, on, over or under the Common Area in order to: (a) construct, erect, operate, maintain or replace lines, cables, wires, conduits or other devices for electricity, cable television, Internet services, fiber optics, telecommunication equipment, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any similar public or quasi-public improvements or facilities; (b) accommodate any encroachment that in the sole discretion of the Board or Declarant does not unreasonably interfere with the use and enjoyment of the Common Area; or (c) accomplish any other purpose that in the sole discretion of the Board or Declarant is in the interest of the Association and its Members and does not unreasonably interfere with the use enjoyment of the Common Area. Each Owner in accepting a deed to a Unit expressly consents to such action and authorizes and appoints the Association and Declarant (as long as Declarant owns twenty-five percent (25%) or more of the Units in the Project, but in no event later than the fifth anniversary of the issuance of the original final Public Report for the Project by the DRE) as attorney-in-fact of such Owner to execute and deliver all documents and interests to accomplish the action, including, but not limited to, grant deeds, easements, and lot-line adjustments. Notwithstanding anything herein to the contrary, in no event shall the Board or Declarant take any action authorized hereunder that would permanently and unreasonably interfere with the use, occupancy and enjoyment by any Owner of his or her Unit or any Exclusive Use Common Area without the prior written consent of that Owner. Furthermore, the conveyance of fee title to any portion of the Common Area as authorized in this Section 2.2.5 (other than conveyances made as a part of lot-line adjustments) shall require the consent of a majority of the total voting power of the Association other than Declarant and such consent of the Mortgagees as may be required by Section 12.1.

2.5.2 Utilities and Maintenance.

- (a) Utilities Serving Units. Each Owner, at the Owner's expense, shall have the right to install, maintain, repair and replace telephone, gas, electric, water, sewer, cable television or other utility lines, pipes, conduits or connections from the nearest junction box, main, lateral or other source located in or across the Common Area to and into the Owner's Unit, as originally installed by Declarant or as installed or replaced by the public utility supplier or other licensed professional in accordance with applicable building codes and

standards for utility installation and connection established by the Architectural Committee. The Association shall allow aboveground or underground access to the person performing the installation, repair or replacement, including if necessary, the right to excavate portions of the Common Area not improved with structures, provided such portions of the Common Area are restored to their original condition by the person performing the installation, repair or replacement. If no other economical method of installation or replacement is practical, the Association shall allow such installation, repair or replacement to be made upon the exterior surface of a building, provided that the installation, repair or replacement is as unobtrusive as possible and appropriate measures are taken to cover or otherwise conform to the design and architecture of the exterior surface of the building.

- (b) Maintenance and Construction. Easements over, under and through the Project, including soffits and utility chases within Units, if any, for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Map, and as may be hereafter required or needed to service the Project, are reserved by Declarant and its successors and assigns, until the completion of construction of the Project and sale of the Units under authority of a final Public Report, and thereafter are reserved by and for the benefit of the Association and its Members, together with the right to grant and transfer the same. The easements shall be in favor of Declarant, and its successors and assigns, and in favor of the Association.
- (c) The location of the Utility Facilities described in this Section, and the location of the easements to accommodate such Utility Facilities, shall be set forth in the final "as-built" plans for the Project. As used in this Declaration, the term "as-built" plans shall mean and refer to the drawings indicating the precise locations of utility runs, elevator shafts, etc., which drawings are prepared to show the final as-built locations thereof to the extent they deviate from or were not shown on prior plans.
- (d) In case of any variance between the Condominium Plan and the final "as-built" plans with respect to the locations of said Utility Facilities, the "as-built" plans shall be determinative as to the location of said Utility Facilities, and hence, the location of the easements to accommodate such Utility Facilities.

2.5.3 Minor Encroachments. If any portion of the Common Area landscaping or improvements, including, without limitation any perimeter wall or fence, retaining wall, side yard or rear yard walls or fence, or any footings, pilasters or posts related thereto, encroaches on any Unit or if any soffit, eave, downspout or architectural details comprising a portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement or right of use exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements or rights of use. However, in no event shall a valid easement or right of use exist in favor of an Owner if the encroachment occurred due to willful misconduct of the Owner or resulted from the Owner's noncompliance with any provision of this Declaration. If any structure is partially or totally destroyed and then rebuilt and any encroachment on the Common Area or any Unit results, a valid easement or right of use exists for such encroachment and for the maintenance of it so long as it remains, and all Units and the Common Area are made subject to such easements and rights of use.

2.5.4 Drainage Easements. Each Unit and the Common Area is hereby declared to be subject to an easement appurtenant, servitude or right in favor of the Association and all Owners, and the same is hereby granted by Declarant, for drainage and surface water runoff from any other Unit or the Common Area from which water emanates in accordance with any drainage or surface water runoff patterns resulting from grading of the Project or installation of drainage facilities as part of the construction or any reconstruction of the Project in accordance with grading and drainage facilities plans approved or required by the City, the County or by any other governmental body having jurisdiction. Each Unit through which an underground or other drainage device or pipe was installed for purposes of carrying away surface water or rain water from the Common Area or from any other Unit as part of the construction or reconstruction of the Project is hereby declared to be subject to an easement appurtenant, servitude or right in favor of the Owner of such other Unit or, in the case of the Common Area, in favor of the Association, and the same is hereby granted by Declarant, for purposes of installing, maintaining, repairing and replacing such drainage device or pipe, together with the right to enter the Unit subject to the easement, servitude or right to service, clean, repair or replace such drainage device or pipe, including the right to excavate in order to obtain access thereto.

2.5.5 Rain Gutter and Downspout Easements. Each Unit is hereby declared to be subject to an easement appurtenant, servitude or right in favor of the Association and Owners of adjoining or affected Units, and the same is hereby granted by Declarant, for purposes of installing, maintaining, repairing and replacing rain gutters and connecting downspouts, as originally installed by Declarant or as approved by the Architectural Committee, together with the right of the Association and of the adjoining or affected Owners to enter the Unit subject to the easement to service, clean, repair or replace such gutters or downspouts.

2.5.6 Association Easement for Performance of Duties. Each Unit is hereby declared to be subject to an easement in favor of the Association on, in, over and under such Unit, including the right of ingress to and egress from such Unit, for the purpose of performing any of the Association duties under Section 3.2.3 and for the purpose of constructing, installing, operating, maintaining and repairing air conditioning, plumbing, electrical, heating, gas, sewer and water ducting, laterals, lines, wires, pipes and other conduits, equipment and systems located within or serving the Common Area or serving other Units.

2.5.7 Parking Spaces. There is reserved for the benefit of each Unit and its Owner, a right for the exclusive use, possession and enjoyment of the balcony and parking spaces identified on the Condominium Plan. The parking space identified on the Condominium Plan by the letters "PS" and the corresponding Unit number/letter described on the Grant Deed for each Unit. The parking space rights of exclusive use if any of an Owner and his or her Unit, if any, shall be designated on the Grant Deed conveying each Unit to its Owner. All exclusive rights of use to Exclusive Use Common Area are subject to the right of the Association to enter in and upon such Exclusive Use Common Area for maintaining and repairing the same and for enforcing the terms of this Declaration in accordance with this Declaration.

2.5.8 Ingress and Egress. There is reserved for the benefit of each Unit, a nonexclusive easement appurtenant to each Unit over and across the Common Area for ingress, egress, use and enjoyment of the Common Area subject to the limitations contained in this Declaration.

2.5.9 Support. A nonexclusive right is granted to the Owners for the vertical/and lateral support of their Units, and every part thereof, through the load-bearing structural portion of the Common Area.

2.5.10 Other Easements. Each Unit and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all easements, dedications and rights-of-way granted or reserved in, on, over and under the Property and each Unit and Common Area as shown on the Condominium Plan.

2.5.11 Miscellaneous Easements. Each Unit is hereby declared to be subject to an easement appurtenant, servitude or right in favor of all Owners, the Association and any supplier of utility or other facilities, equipment or services to the Project, and the same is hereby granted by Declarant, to construct, maintain, repair and replace electrical transformers, fire hydrants, street lights, Common Area water, electric and gas mains and meters, mailboxes and other improvements and all connections thereto, all as originally constructed or installed by Declarant, or by the suppliers of such utilities or other facilities, equipment or services, in accordance with plans and specifications therefor approved and on file with the City, the County or other governmental body having jurisdiction or thereafter approved as to location and type by the Architectural Committee.

2.5.12. Delegation of Use; Contract Purchasers; Tenants. Any Owner may delegate the Owner's rights of use and enjoyment in the Project, including any recreational facilities, to the members of the Owner's family, the Owner's guests, and invitees, and to such other persons as may be permitted by the Bylaws and the Operating Rules, subject, however, to compliance by such delegatee with the provisions of this Declaration, the Bylaws or the Operating Rules. However, if an Owner has sold a Condominium to a contract purchaser or rented it to a tenant, the Owner, members of the Owner's family, the Owner's guests and invitees, shall not be entitled to use and enjoy the recreational facilities of the Project while possession of the Owner's Unit is held by such contract purchaser or tenant, unless the Owner resides in another Unit in the Project. Instead, the contract purchaser or tenant, while in possession of such Unit, shall be entitled to use and enjoy the recreational facilities of the Project and can delegate the rights of use and enjoyment in the same manner as if the contract purchaser or tenant were an Owner during the period of the contract purchaser's or tenant's possession. Each Owner shall notify the secretary of the Association of the names of any contract purchasers or tenants of the Owner's Condominium, which notification shall be made pursuant to and shall be subject to the provisions of Section 15.18. Each Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment in the Project and the relationship that each such person bears to the Owner, contract purchaser or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No delegation of rights of use and enjoyment by an Owner shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or other monetary obligations to the Association or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a lessee, tenant or contract purchaser of a Condominium shall be subject to, shall incorporate by reference, and shall require performance by the lessee, tenant or contract purchaser of, all covenants, conditions and restrictions contained herein, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any lessee, tenant or contract purchaser of an Owner, as well as against the Owner, for non-performance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

2.5.13 All Easements Part of Common Plan.

Whenever any easements are reserved or created or are to be reserved or created in this Declaration, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement. Easements referred to in this Declaration that are created

by Grant Deeds after the date of this Declaration shall be part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

2.6 Partition Prohibited.

2.6.1 Suspension. Except as expressly provided herein, an Owner shall have no right to partition or divide the Owner's ownership of the Common Area. Partition of the entire Project, including the Common Area, can be had pursuant to California Civil Code, Section 4610 on a showing that the conditions to such partition sale as stated in Section 10.1.2 (relating to damage or destruction) or in Section 10.9 (relating to condemnation) have been met or upon a showing that one of the conditions described in California Civil Code, Section 4610 have been met. Nothing in this Declaration shall prevent partition of a co-tenancy in a Condominium. No Unit may be partitioned or subdivided without the prior written approval of the Mortgagees of such Unit.

2.6.2 Distribution of Proceeds. Proceeds or property resulting from a partition sale of Common Area shall be distributed to and among all Owners and their Mortgagees, as their interests may appear, in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums in the Project, determined as provided in Section 10.8 or 10.9, but as of a date immediately prior to the event giving rise to the partition of the Common Area.

2.6.3 Power of Attorney. The Association, pursuant to Section 15.16, acting as attorney in fact for the Owners, may sell the entire Project, and execute deeds and conveyances thereto, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Section 10.1.2 of this Declaration.

2.7 Prohibition Against Severance.

An Owner shall not be entitled to sever the Unit in any Condominium from the Owner's Membership in the Association, and shall not be entitled to sever the Unit and the Membership from the 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 easement or right appurtenant to the Owner's Unit over the Common Area from the Owner's Condominium, and any attempt to do so shall be void. The suspension of such right of severance will not extend beyond the period set forth in Section 2.6 respecting the suspension of an Owner's right of partition. It is intended hereby to restrict severability pursuant to California Civil Code, Section 4610.

ARTICLE III ASSOCIATION; DUTIES AND POWERS

3.1 Association; Action by Board.

The Association shall be a nonprofit mutual benefit corporation formed under the laws of the State of California. It shall manage and administer the Project in accordance with the provisions of the Governing Documents and shall have the rights and shall perform the duties as described in the Governing Documents. Except as to matters requiring the approval of Owners, as set forth in the Governing Documents, the affairs of the Association shall be conducted by the

Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 3.2.4 below.

3.2 Powers and Duties of the Association.

The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, as now in effect or as hereinafter amended or replaced, subject only to such limitations on the exercise of its powers as are set forth in the Governing Documents. It shall have the power to do any lawful thing required or permitted to be done under the Governing Documents and necessary, proper or incidental to the exercise of the express powers or duties of the Association or for the peace, health, comfort, safety and general welfare of the Owners. The duties and powers of the Association shall include, but are not limited to, the following:

3.2.1 Assessments.

The Association may fix and levy Assessments against the Owners in the amount necessary for the purposes for which they are levied and collect and enforce payment of such Assessments in accordance with the provisions of Article V below.

3.2.2 Operating Rules.

The Association may, from time to time, adopt reasonable Operating Rules not inconsistent with this Declaration relating to the use of the Common Area and facilities owned or controlled by the Association and the conduct of the Owners and their families, guests and tenants with respect to the Project and the other Owners. The Association shall furnish each Owner with a copy of each proposed Rule at least fifteen (15) days prior to the Association's adoption of such Rule and with copies of all Operating Rules adopted by the Association. The Operating Rules shall be binding on all Owners, the Owners families, guests, tenants and employees, and all such persons shall comply with the Operating Rules.

3.2.3 Right of Enforcement.

(a) By Action or Alternative Dispute Resolution. The Association in its own name and on its own behalf, or on behalf of any Owner who consents or in whose name an action is authorized to be prosecuted under this Declaration, can commence and maintain actions to collect monetary obligations, for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or of the Articles or Bylaws, or of the Association Rules or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of those provisions. Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the filing of a civil action by the Association solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than Association assessments, not in excess of ten thousand dollars (\$10,000), related to the enforcement of this Declaration, the Articles, the Bylaws or the Association Rules, the Association and the Owner or Owners against whom the civil action is to be filed shall endeavor to submit the matter in dispute to a form of alternative dispute resolution such as mediation or arbitration in accordance with the provisions and procedures set forth in California Civil Code Section 5975. In all other cases, the Association is authorized, but not required, to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings, such as mediation, binding arbitration, or non-binding arbitration proceedings. Notwithstanding the foregoing, any controversy, claim or dispute between

the Declarant, on the one hand, and the Association (including any officer, director, employee or agent of the Association), or any Owner, on the other hand, arising out of or relating to this Declaration, or the breach thereof, or to the Project or any Condominium, shall be subject to the arbitration provisions set forth in Section 14.

(b) **Recordation of Notice of Violation of Declaration.** Upon any violation of a provision of this Declaration or the Articles, Bylaws, Association Rules, or Board resolutions by an Owner relating to the use, occupancy or physical condition of the Owner's Unit, the Board may authorize the recording of a notice of violation to impart constructive notice to any subsequent purchaser, successor in interest or Mortgagee of the existence and nature of the violation. The notice of violation shall state the legal description of the Owner's Condominium and the name of the Owner as reflected in the recorded deed to the Condominium and shall describe the violation and any action required to be taken by the Owner to cure or correct the violation. The notice of violation shall be signed by the President of the Association or by a person authorized by resolution of the Board. The notice of violation shall not be recorded unless and until the Association or its authorized representative has delivered to the violating Owner or Owners, not less than fifteen (15) days before the recordation of the notice of violation, a written notice of intent to file a notice of violation and a demand for cure or correction, and unless the violation has not been cured within said fifteen (15) day period. If the Association files an action or obtains a judgment relating to any such violation, the Board may also authorize the recording of a notice of pendency of action or an abstract of judgment. Upon cure of the violation, dismissal of the action or satisfaction of the judgment, the Board shall record a notice of cure, dismissal or satisfaction of judgment.

(c) **Additional Remedies.** In addition to its remedies under Sections 3.2.3(a) and (b), the Association can suspend the voting rights, can suspend use privileges of the Common Area or can assess monetary penalties against any Owner or other person entitled to exercise such rights or privileges for any violation of this Declaration or the Articles, Bylaws, Association Rules, or Board resolutions. However, any suspension of use privileges cannot exceed a period of thirty (30) days for any one violation (except that if such suspension is due to the failure to pay assessments, the suspension may continue until payment is made), and any monetary penalty cannot exceed the amount necessary to compensate the Association or other Owners for loss or expense resulting from such violation, and no suspension or penalty can be imposed unless accomplished in the manner provided for in Section 3.2.3(d) of this Declaration.

(d) **Notice and Hearing.** In addition to any notice given to an Owner or Owners as provided in Section 3.2.3(c), when the Board is to meet to consider or impose discipline upon an Owner, the Board shall notify the Owner in writing, by either personal delivery or first class mail, at least ten (10) days prior to the meeting. The notice shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which the Owner may be disciplined, and a statement that the Owner has a right to attend and may address the Board at the meeting. If requested by the Owner being disciplined, the Board shall meet in executive session and the Owner shall have the right to address the Board during its executive session rather than during its open session. If the Board imposes discipline on an Owner, the Board shall give written notice to the Owner of the disciplinary action, by either personal delivery or first class mail, within fifteen (15) days following the action. A disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Section.

(e) **Schedule of Monetary Penalties.** Prior to exercising its power to assess monetary penalties or adopting a policy imposing any monetary penalty, including any fee, on any Owner for a violation of the Declaration, the Articles, the Bylaws or the Association Rules, including any monetary penalty relating to the activities of a guest or invitee of a Owner, the Board

shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Owner discipline contained in this Declaration and in the Bylaws, if applicable. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

(f)- Limitation on Enforcement Remedies. Except for the remedies expressly provided in this Section 3.2.3, or as a result of a judgment or decree of a court or a decision arising out of arbitration or mediation or a foreclosure or sale under a power of sale based on the failure of the Owner to pay assessments duly levied by the Association as provided hereinafter, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium if the Owner does not comply with provisions of this Declaration or of the Articles or Bylaws or the Association Rules or Board resolutions.

(g) Notice to Mortgagees. If an Owner fails to cure a default within sixty (60) days after written notice to that Owner, the Association shall give the notice required in Section 12.1.2 to the Mortgagee of record.

3.2.4 Sanctions.

(a) In addition to any other enforcement rights described in the Governing Documents, or authorized by law, and subject to any restrictions on the Association's enforcement rights imposed by the Governing Documents or any applicable laws, including the due process requirements under Section 3.2.4(b) of this Declaration, the Association may take any of the following actions against any person or entity whose act or failure to act violates any provision of the Governing Documents:

(i) Impose monetary penalties on an Owner, including late charges and interest, provided, however, that except in the case of a monetary penalties for late payment of any Assessments and/or charges to reimburse the Association for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments, 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 Common Area for which the Member was allegedly responsible or in bringing the Member and his Unit into compliance with the Governing Documents may not be characterized as an Assessment which may become a lien against the Member's Unit enforceable by a sale of the Unit in accordance with the provisions of Sections 5650, 5700-5740, 2924, 2924(b) and 2924(c) of the Civil Code.

(ii) Suspend a Member's voting rights in the Association;

(iii) Suspend an Owner's privileges for the Common Area, except that suspension of such privileges shall not deny an Owner reasonable access to his or her Unit; and

(iv) Commence a legal action for declaratory relief, injunctive relief, or damages, or any combination of the foregoing.

(b) The determination of whether to impose any of the sanctions set forth in subsection (a) shall be within the sole discretion of the Association. Before the Association may

impose any of such sanctions on an Owner for a breach of any of the provisions of the Governing Documents, the Board must act in good faith and must satisfy each of the following requirements:

(i) The Owner shall be given written notice regarding the sanctions to be imposed and the reasons for the imposition of such sanctions at least fifteen (15) days before such sanctions are to take effect; and

(ii) The Owner shall be given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the sanctions.

(c) Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association, in its sole discretion, may resolve or settle any dispute to which it is a party, including any legal action, on its own behalf and under such terms and conditions as it considers appropriate.

(d) The Association may take more than one of the foregoing enforcement actions against any violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty (30) days (unless the suspension is for delinquent Assessments) and no monetary penalty shall exceed that permitted by Civil Code § 5600(b), and that the procedures for notice and hearing for such action by the Association shall comply with the requirements of Civil Code Section 4820.

(e) Notwithstanding any provision of any of the Governing Documents to the contrary, the Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Unit on account of the failure by such Owner to comply with provisions of the Governing Documents or of duly enacted rules of operation for the Common Area except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay Assessments duly levied by the Association.

3.2.5 Manager. The Association may employ a manager or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' notice.

So long as any Mortgage that is a lien on a Unit is insured or guaranteed by the Federal Housing Administration, the Association shall not employ a management agent nor enter into a management contract nor undertake "self-management" until such time as the Federal Housing Commissioner has approved in writing the proposed management agent, and, if required, the form of management agreement or other management arrangement.

3.2.6 Maintenance. The Association shall manage and maintain in first class condition and repair the Common Area in accordance with Section 6.1 below and shall clean, maintain and repair all Exclusive Use Common Areas, if not properly cleaned, maintained, or repaired by an Owner pursuant to Section 6.2 below. Subject to the provisions of Section 5.12 below, the Association may levy a Reimbursement Assessment against any Owner that has an

exclusive right of use over any Exclusive Use Common Area on which the Association performs such cleaning, maintenance or repair, to reimburse the Association for any costs incurred therein. The Association shall create and maintain a reserve fund out of Regular Assessments for the replacement of all elements of the Common Area.

3.2.7 Contracts. The Board shall have the power to contract for goods and/or services for the Common Area, for the Units, or for the Association, subject to limitations set forth in the Bylaws, or elsewhere in this Declaration.

3.2.8 Insurance. The Association shall obtain and maintain the policies of insurance described in Article X below.

3.2.9 Furnishing Utilities. The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, and other necessary utility services for the Common Area and the Units to the extent such services are not separately billed.

3.2.10 Discharge of Liens. The Association shall discharge any lien or encumbrance against the Common Area or any Unit the Association is required to maintain and repair that, in the opinion of the Association, may constitute a lien against the Common Area and assess a Reimbursement Assessment for all expenses incurred by the Association against the individual Owner responsible for the attachment of such lien or encumbrance to the Common Area.

3.2.11 Payment of Association Expenses. The Association shall pay all taxes and assessments that are or could become a lien against the Common Area and expenses and obligations incurred by it in the conduct of its business, including without limitation, legal, accounting and management services necessary and proper for the maintenance and operation of the Common Area or the enforcement of the Governing Documents.

3.2.12 Preparation and Distribution of Financial Statements, Reports, and Copies of Governing Documents. Not less than thirty (30) nor more than ninety (90) days before the beginning of each fiscal year, the Association shall prepare and distribute the following documents:

(a) A pro forma operating budget, which shall include all the following:

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

(2) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 5560 of the Civil Code, based only on assets held in cash or cash equivalents, which shall be printed in boldface type and include all the following:

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

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to the Association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). Instead of complying with the requirements set forth in this clause, the Association may include in the review a statement containing all the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) of subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(D) The current deficiency in reserve funding expressed on a per unit basis. The figure shall be calculated by subtracting the amount determined for purposes of clause (ii) of subparagraph (B) from the amount determined for purposes of clause (i) of subparagraph (B) and then dividing the result by the number of separate interests within the Association, except that if assessments vary by the size or type of ownership interest, then the Association shall calculate the current deficiency in a manner that reflects the variation.

(3) A statement as to all the following:

(A) Whether the Board has determined to defer or not undertake repairs or replacement of any Major Component with a remaining life of 30 years or less, including a justification for the deferral or decision not to undertake the repairs or replacement.

(B) Whether the Board, consistent with the reserve funding plan adopted pursuant to Section 5560 of the Civil Code, has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor. If so, the statement shall also set out the estimated amount, commencement date, and duration of the Assessment.

(C) The mechanism or mechanisms by which the Board will fund reserves to repair or replace major components, including assessments, borrowing, use of other assets, deferral of selected replacements or repairs, or alternative mechanisms.

(D) Whether the Association has any outstanding loans with an original term of more than one year, including the payee, interest rate, amount outstanding, annual payment, and when the loan is scheduled to be retired.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those Major Components that the Association is obligated to maintain. The report shall include, but need not be limited to, reserve calculations made using the formula described in paragraph (4) of Section 5570 of the Civil Code, and may not assume a rate of return on cash reserves in excess of two percent (2%) above the discount rate published by the Federal Reserve Bank of San Francisco at the time the calculation was made. The summary of the Association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

Notwithstanding a contrary provision in the Governing Documents, a copy of the operating

budget shall be annually distributed not less than 30 days nor more than 90 days prior to the beginning of the Association's fiscal year.

Instead of the distribution of the pro forma operating budget required by subdivision (a), the Board may elect to distribute a summary of the pro forma operating budget to all Members with a written notice that the pro forma operating budget is available at the business office of the Association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the Association. If any Member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(b) A summary of the reserve funding plan adopted by the Board, as specified in Section 5550(b)(5) of the Civil Code. The summary shall include notice to members that the full reserve study plan is available upon request, and the Association shall provide the full reserve plan to any member upon request.

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

(d) A statement describing the Association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its Assessments against the Members shall be annually delivered to the Members not less than 30 days nor more than 90 days immediately preceding the beginning of the Association's fiscal year.

(e) (1) A summary of the Association's property, general liability, earthquake, flood, and fidelity insurance policies, which shall be distributed not less than 30 days nor more than 90 days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer, (B) the type of insurance, (C) the policy limits of the insurance, and (D) the amount of deductibles, if any.

(2) The Association shall, as soon as reasonably practicable, notify the Members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in paragraph (1), the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all Members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at

least 10-point boldface type, the following statement:

"THIS SUMMARY OF THE ASSOCIATION'S POLICIES OF INSURANCE PROVIDES ONLY CERTAIN INFORMATION, AS REQUIRED BY SECTION 5300 OF THE CIVIL CODE, AND SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR THE COMPLETE POLICY TERMS AND CONDITIONS CONTAINED IN THE ACTUAL POLICIES OF INSURANCE. ANY MEMBER MAY, UPON REQUEST AND PROVISION OF REASONABLE NOTICE, REVIEW THE ASSOCIATION'S INSURANCE POLICIES AND, UPON REQUEST AND PAYMENT OF REASONABLE DUPLICATION CHARGES, OBTAIN COPIES OF THOSE POLICIES. ALTHOUGH THE ASSOCIATION MAINTAINS THE POLICIES OF INSURANCE SPECIFIED IN THIS SUMMARY, THE ASSOCIATION'S POLICIES OF INSURANCE MAY NOT COVER YOUR PROPERTY, INCLUDING PERSONAL PROPERTY OR, REAL PROPERTY IMPROVEMENTS TO OR AROUND YOUR DWELLING, OR PERSONAL INJURIES OR OTHER LOSSES THAT OCCUR WITHIN OR AROUND YOUR DWELLING. EVEN IF A LOSS IS COVERED, YOU MAY NEVERTHELESS BE RESPONSIBLE FOR PAYING ALL OR A PORTION OF ANY DEDUCTIBLE THAT APPLIES. ASSOCIATION MEMBERS SHOULD CONSULT WITH THEIR INDIVIDUAL INSURANCE BROKER OR AGENT FOR APPROPRIATE ADDITIONAL COVERAGE."

(f) Any information required to be reported under Corporations Code §8322 requiring the disclosure of certain transactions in excess of Fifty Thousand Dollars (\$50,000.00) per year between the Association and any Director or officer of the Association and indemnifications and advances to officers or Directors in excess of Ten Thousand Dollars (\$10,000.00) per year.

(g) In conjunction with the delivery of the operating budget summary described in subsection 3.2.11(a) above, an annual summary of the alternative dispute resolution provisions of Civil Code § 5975, in the manner specified in Civil Code §5975(i) , and (ii) a copy or summary of Civil Code § 5925 *et seq.* along with the following statement: "Failure of a member of the Association to comply with the alternative dispute resolution requirements of § 5930 of the Civil Code may result in the loss of your right to sue the Association or another member of the Association regarding enforcement of the Governing Documents or the applicable law."

(h) A summary of requirements for Association approval of physical changes to property. The summary shall describe the types of changes that require Association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

(i) Notice to the Owners of their right to submit a secondary mailing address to the Association for the receipt of notices and reports from the Association.

The Association may impose a fee to provide these materials that is not to exceed the Association's reasonable costs in preparing and reproducing the materials. Any and all of the foregoing reports, disclosures and notices may be delivered by the Association to Owners by electronic means if the recipient has agreed to that method of delivery in accordance with Civil Code § 4040.

3.2.13 Review of Accounts. On no less than a quarterly basis, the Board shall:

- (a) Review a current reconciliation of the Association's operating accounts;
- (b) Review a current reconciliation of the Association's reserve accounts;
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(d) Review the Association's latest account statements prepared by the financial institution(s) with whom the operating and reserve accounts are lodged; and

(e) Review the Association's income and expense statement for the operating and reserve accounts.

(f) Issue a statement to all Members regarding whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

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

(a) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than 30 years.

(b) Identification of the probable remaining useful life of the components identified in paragraph (a) above as of the date of the study.

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in paragraph (a) above during and at the end of their useful life.

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in paragraph (a) above during and at the end of their useful life, after subtracting total reserve funds as of the date of the study.

(e) As used in this section, "reserve accounts" means both (i) Monies that the Board has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and (ii) the funds received and not yet expended or disposed from either a compensatory damage award or settlement to an Association from any person or entity for injuries to property, real or personal, arising from any construction or design defects. These funds shall be separately itemized from funds described in subsection (i) above.

3.2.15 Easements. The Association shall have authority, by document signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article II, where necessary for ramps, utilities, communications services, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Units, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.

3.2.16 Access. For the purpose of performing construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common, and/or to perform maintenance work that an Owner has failed to perform as provided in Section 6.2, the Association's agents or employees shall have the right, after reasonable notice (not less than seventy-two (72) hours except in emergencies) to the Owner of the Unit in which maintenance work has not been performed, to enter any such Unit or to enter any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused by such entry shall be repaired by the Board at the expense of the Association.

3.2.17 Loans. The Board shall have the power to borrow money, and, only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the Members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

3.2.18 Security. The Board shall have the power (but not the obligation) to contract for security service for the Common Area. Notwithstanding the foregoing, if the Association elects to provide any security services or systems, neither the Association nor the Board shall be deemed to have made any representation or warranty to any Owner, nor the tenants or invitees of any Owner, nor to any other Person using the facilities or Improvements within the Project regarding security or safety. Each Owner shall be responsible for the security and safety of Persons who occupy or use the Unit owned by the respective Owner. The Association shall not be subject to any claims or liability in connection with the provision of any security service or security system, or the failure to provide any security service or security system, within any portion of the Project.

3.2.19 Appointment of Trustee. The Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce Assessment Liens by sale as provided in Section 5.1.2 and California Civil Code § 5700.

3.2.20 Litigation/Arbitration. Subject to compliance with Section 5975 of the Civil Code, the Board of Directors has authority to institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to (a) enforcement of the Governing Documents, (b) damage to the Common Area, (c) damage to the separate interests which the Association is obligated to maintain or repair, or (d) damage to any Unit which arises out of, or is integrally related to, damage to the Common Area or Units that the Association is obligated to maintain or repair. The Board of Directors has authority to enter into a contingent fee contract with an attorney in a matter involving alleged design or construction defects in the Project, only as to the facilities or improvements the Association is responsible for maintaining as provided herein, and then only after getting the vote at a duly noticed and properly held membership meeting, of a majority of a quorum of the Members other than Declarant.

If, and to the extent that, there is any inconsistency between this Section 3.2.20 and applicable provisions of the California Civil Code and/or the California Code of Civil Procedure pertaining to the commencement of an action by the Association for construction defect litigation, the applicable provisions of the California statutes shall control.

3.2.21 Other Powers. In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code § 7140.

3.2.22 Common Area Improvements. The Board shall have the authority and power to demolish, remove and reconstruct any and all improvements on or over or under the Common Area in a manner not inconsistent with this Declaration, and to construct, improve and repair improvements that are appropriate for the use and benefit of the Members of the Association, provided that the Board shall not include in any Regular Assessment or Special Assessments the cost of any new capital improvement which exceeds Five Thousand Dollars (\$5,000) in cost to be expended in any one calendar year, unless fifty-one percent (51%) or more of the voting power of the Association previously shall have approved said expenditure.

3.2.23 Property Inspections. The Association shall cause inspections of the Common Area and the separate interests which the Association is obligated to maintain or repair to be routinely made in conjunction with the Association's manager. The Board shall engage professionals to conduct inspection of these components of the Project if the Board or the Association's manager deem that such inspection by professionals, such as an architect, a civil engineer, structural engineer, landscape architect or other such professional is warranted. Inspections shall be made at least yearly and, for appropriate items or events, more often. For a period of ten (10) years after the date of the last Close of Escrow in the Project, the Board shall also furnish to Declarant: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area separate interests which the Association is obligated to maintain or repair that is inspected, within thirty (30) days after completion of the inspection; and (b) the most recent inspection report for any portion of the Project, within ten (10) days after the Association's receipt thereof.

3.2.24 Granting Rights. The power to grant exclusive or non-exclusive easements, licenses, rights of way or fee interests in the Common Area, to the extent any such grant is reasonably required: (a) for utilities and facilities to serve the Common Area and the Units; (b) for purposes of conformity with the as-built location of improvements installed or authorized by Declarant or the Association; (c) in connection with any lawful lot line adjustment; or (d) for other purposes consistent with the intended use of the Project. This power includes the right to create and convey Exclusive Use Common Areas. The Association may de-annex any real property from the encumbrance of this Declaration in connection with any lawful lot line adjustment.

3.2.25 Annual Reports.

(a) Along with the operating budget described in Section 3.2.11(a), the Association shall annually distribute to the Members the following:

(i) Dispute Resolution Reminder containing (i) a description of the Association's internal dispute resolution process (Article X below), and (ii) a copy or summary of Civil Code §5925 *et seq.* along with the following statement "Failure of a member of the Association to comply with the alternative dispute resolution requirements of §5930 of the Civil Code may result in the loss of your right to sue the Association or another member of the Association regarding enforcement of the Governing Documents or the applicable law."

(ii) Insurance Summary. A summary of the information regarding the Association's insurance coverage for property damage, general liability, earthquake (if any) and flood (if any), in compliance with Civil Code §5300(b)(9) *et seq.*

(iii) Assessment and Foreclosure Policy. The notices required by Civil Code Sections 5730 and 4040(b) relating to collections, foreclosures, payment plans, and Association meetings regarding these matters.

(iv) Alteration Approval Policy. A summary of requirements for Association approval of physical changes to the Property. The summary shall describe the types of changes that require Association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

(v) Secondary Address Notice. Notify the Owners of their right to submit a secondary address to the Association, pursuant to Section 12.2 and Civil Code §4040(b).

(vi) Summary of Reserve Funding Plan. Along with the operating budget, the Association shall distribute a summary of the Reserve Funding Plan described in Section 4.2 below and a notice that the full Reserve Funding Plan is available upon request to any Owner.

(b) Within one hundred and twenty (120) days after the close of the fiscal year, the Association shall prepare and distribute to each Owner an annual report for the previous year which includes an operating statement, a year-end balance sheet, and a statement of changes in financial position from the close of the prior year. The annual report shall mention that the statements were prepared without audit from the books and records of the Association.

(c) All such reports, disclosures and notices may be delivered by electronic means if the recipient has agreed to that method of delivery; any such consent shall be in compliance with Corporations Code § 20.

3.3 Commencement of Association's Duties and Powers.

Until incorporation of the Association and the closing of the first sale of a Unit in the Project, all duties and powers of the Association as described in this Declaration, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. After the date of incorporation of the Association and the closing of the first sale of a Unit in the Project, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability for those duties and powers except with respect to all Common Area improvements which have not been completed prior to the close of escrow on the first sale of the a Unit in the Project, and where the Association is obligee under a bond or other arrangement for the completion of such Common Area improvements.

3.4 Inspection of Books and Records.

3.4.1 Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register, books of account, and minutes from any meeting of the Owners, the Board, or any committee of the Board to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Any Owner may, at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association. Access shall be provided at any reasonable time at the office of the Association. The Board shall establish rules regarding the notice an Owner must give to the custodian of the records or the Board to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges to be imposed by the Association for copying records requested by an Owner.

3.4.2 Any member of the Board may at any reasonable time inspect, copy, or

make extracts of any Association records and inspect the physical property owned or controlled by the Association. Such Association records, including any "enhanced Association records" (as defined in Civil Code section 5210 shall be available for inspection and copying in the Association's business office for the time periods and within the timeframes provided in Section 5210 of the Civil Code for inspection and copying by any Director or Owner, or the Director's or Owner's designated representative. The requesting Member shall be responsible for (a) the direct and actual cost of copying requested documents, and (b) an amount not to exceed ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced Association records as provided in Section 5210(d) of the Civil Code. The Association shall inform the requesting Member of all the estimated costs, and the Member shall agree to pay those costs, before retrieving the requested documents.

3.4.3 Requesting Members shall have the option of receiving specifically identified records by electronic transmission or machine-readable storage media so long as those records can be transmitted in a redacted format that does not allow the records to be altered. The cost of duplication shall be limited to the direct cost of producing the copy of a record in that electronic format. The Association may deliver specifically identified records by electronic transmission or machine-readable storage media so long as those records can be transmitted in a redacted format that prevents the records from being altered.

3.4.4 Association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a Member's interest as a Member.

3.5 Action on Behalf of the Association.

Notwithstanding any provision of this Declaration to the contrary, any Owner may act on behalf of the Association to enforce the mandatory provisions of this Declaration without an affirmative authorization or vote by the Association. An affirmative vote of the Association shall be required for any action by or on behalf of the Association that does not involve the enforcement of a mandatory provision of this Declaration, except where otherwise expressly provided.

3.6 Limitations on Personal Liability.

3.6.1 Officers and Directors. No member of the Board, or of any committee of the Association, or any officer of the Association, or Declarant or any employee, agent or representative of Declarant, when acting in his, her or its capacity as a director, officer or committee member of the Association, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by him, her or it, acted in good faith and in a manner such person or entity reasonably believed to be in the best interests of the association or the Owners, without willful or intentional misconduct, except to the extent the damage, loss or prejudice suffered or claimed is fully covered by insurance or the member of the Board or committee, officer, Declarant or employee, agent or representative is fully indemnified under the Bylaws. In addition, no volunteer member of the Board or volunteer officer of the Association shall be personally liable in excess of available insurance coverage to any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, as a result of the tortious act or omission of the volunteer member of the Board or volunteer officer that was committed or omitted in his or her capacity as volunteer director or volunteer officer of the

Association, if all of the criteria set forth in California Civil Code, Section 5800, are met and the conditions to applicability of such section are satisfied.

3.6.2 Ownership of Common Area. No Owner, solely by reason of an ownership interest in the Common Area, shall be personally liable to any person who suffers injury or damage, including, but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss, arising out of use of the Common Area, so long as (i) the Association, directly or through a managing agent, manages and maintains the Common Area and (ii) the Association maintains and has in effect at the time the act or omission occurs and at the time a claim is made a general liability insurance policy that provides minimum coverage against claims for injury or damage arising out of use of the Common Area. As used in this Section 3.6.2, the term "minimum coverage" shall mean either a minimum of \$2,000,000, if the Project consists of one hundred (100) or fewer condominiums, or a minimum of \$3,000,000, if the Project consists of more than one hundred (100) condominiums.

3.6.3 No Effect on Liability of Association. Nothing in this Section 3.6 shall be construed (i) to limit or expand the liability of the Association for its negligent, willful or intentional act or omission or for any negligent, willful or intentional act or omission of an officer or director of the Association, or (ii) to limit or expand the liability of any Owner whose negligent, willful or intentional act or omission directly contributes to the injury or damage of any person arising out of use of the Common Area, or (iii) to limit the obligation of Owners to pay assessments to the Association in connection with any injury or damage claim arising out of use of the Common Area that exceeds the limits of available insurance.

3.7 Meetings of Owners and Notice; Specially Elected Director.

3.7.1 Organizational Meeting. An organizational meeting or action by written consent in lieu thereof shall occur as soon as practicable after incorporation of the Association, and the directors selected then shall hold office until the first annual meeting. All offices of the Board of Directors shall be filled at the organizational meeting or by such written consent.

3.7.2 First Meeting of Owners. The first meeting of Owners shall be held within forty-five (45) days after the closing of the sale of the Condominium that represents the fifty-first (51st) percentile interest authorized for sale under the first Final Subdivision Public Report issued for the Project by the DRE, but in no case later than six (6) months after the closing and recording of the sale of the first Condominium.

3.7.3 Regular and Special Meetings of Owners; Notice; Quorum; Adjournment. A regular annual meeting of Owners shall be held once in each calendar year at a time and place within the Project as prescribed in the Bylaws or as selected by the Board. Special meetings may be called as provided for in the Bylaws. Notice of all Owners' meetings, regular or special, shall be given by regular mail or personal delivery to all Owners and to any Mortgagee who has requested in writing that such notice be sent to it and shall be given not less than ten (10) days nor more than ninety (90) days before the time of the meeting and shall set forth the place, date, and hour of the meeting, and the nature of the business to be undertaken. Each Owner shall have the right to speak at any Owners' meeting or meeting of the Board, other than an executive session of the Board, subject to any reasonable time limit established by the Board. Any Mortgagee, through its designated representative, shall be entitled to attend any meeting of Owners but shall not be entitled to vote at the meeting. Unless a greater or lesser percentage is expressly required under this Declaration or in the Bylaws, the presence at any meeting in person or by proxy of Owners entitled to cast at least fifty percent (50%) of the total votes of all Owners shall constitute a

quorum. If any meeting cannot be held because a quorum is not present, Owners representing a majority of the votes present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the date the original meeting was called. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for regular meetings. At the adjourned meeting, the quorum requirements shall be as provided in the Bylaws. Any meeting of Owners at which a quorum is present may be adjourned for any reason to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time of such meeting by Owners representing a majority of the votes present in person or by proxy.

3.7.4 Specially Elected Director. So long as a majority of the voting power of the Association resides in the Declarant, or as long as there are two outstanding classes of Membership in the Association, the election of twenty percent (20%) of the directors (the "specially elected directors") shall be determined at a special election held immediately before the regular election of directors (except in the case of the election of a specially elected director following removal, death or resignation of his or her predecessor). At the duly constituted meeting of Owners, nominations for the specially elected director shall be made from the floor. When nominations have been closed, the special election shall take place. Declarant shall not have the right to participate in or vote in such special election (although Declarant or Declarant's representatives may be present), and the candidates receiving the highest number of votes up to the number of specially elected directors to be elected shall be deemed to be the specially elected directors, and their term shall be the same as that of any other director. Unless Owners (excluding Declarant) holding a majority of all voting rights (excluding any voting rights held by Declarant) assent by vote or written consent, such specially elected directors cannot be removed. In case of the death, resignation, or removal of a specially elected director, his or her successor shall be elected at a special meeting of Owners, and the provisions set forth in this Section respecting the election of a specially elected director shall apply as to the election of a successor. Except as otherwise provided in this Declaration, the provisions of this Declaration and of the Articles and Bylaws applicable to directors, including their election and removal, shall apply to a specially elected director.

3.8 Association Books and Records.

The Declarant shall deliver to the Association, at the office of the Association or at such other place as the Board prescribes, copies of the documents listed below as soon as readily obtainable, but commencing no later than ninety (90) days after the close of escrow of the first Condominium. The obligation to deliver the documents listed below shall apply to any documents obtained by the Declarant no matter when obtained, provided, however, that such obligation shall terminate upon the earlier of (i) the conveyance of the last Condominium covered by a subdivision public report or (ii) three (3) years after the expiration of the most recent Final Subdivision Public Report issued for the Project by the DRE:

3.8.1 The recorded Map.

3.8.2 The Condominium Plan.

3.8.3 The deeds, including easement deeds, if any, executed by Declarant conveying the Common Area or other interest to the Association, to the extent applicable.

3.8.4 The recorded Declaration, including all amendments and supplements thereto.

3.8.5 The Articles and Bylaws and all amendments thereto.

3.8.6 The Operating Rules and any Common Area Maintenance Standards, Owner Maintenance Standards or architectural guidelines regulating the use of an Owner's Unit or the use of the Common Area, which have been approved by the Board.

3.8.7 The plans approved by the county or city where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.

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

3.8.9 Any bond or other security device under which the Association is the beneficiary.

3.8.10 Any written warranties being transferred to the Association for Common Area equipment, fixtures or improvements.

3.8.11 Any insurance policy procured for the benefit of the Association, the Board, the Common Area or the Owners.

3.8.12 Any lease or contract to which the Association is a party.

3.8.13 The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the Owners, of the Board and of any committees of the Board.

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

3.9 Copies of Governing Documents and Financial Statements; Delinquency Statement.

Upon written request of an Owner, Mortgagee, or prospective purchaser (evidenced by a copy of a signed agreement of purchase or by a copy of signed escrow instructions), the Association, within ten (10) days of the receipt of the request or within such earlier time as may be required by law, shall provide the Owner, Mortgagee or prospective purchaser with a copy of (i) the Declaration, the Articles, the Bylaws and the Operating Rules; (ii) the most recent financial statements of the Association distributed pursuant to Section 3.2.12 of this Declaration; and (iii) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Condominium which are unpaid as of the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Condominium. The Association may charge the requesting Owner, Mortgagee or prospective purchaser a fee for the services described in this Section 4.7, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items. Any such statement may be relied upon by any Owner, Mortgagee or prospective

purchaser 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.

ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING

4.1 Membership.

The Owner of a Unit shall automatically, upon becoming the Owner of the Unit, be a Member of the Association, and shall remain a Member of the Association until the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws. Except as provided in Section 4.1.2 below, no Owner may resign his or her membership.

4.1.1 Membership is appurtenant to the Owner's Unit and may not be transferred apart from the ownership of a Unit. Any transfer of title to a Unit (except a transfer solely as security for a loan) automatically transfers the membership to the transferee. Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Unit. A Mortgagee does not have membership rights until it obtains title to the Unit by Foreclosure or deed in lieu of Foreclosure.

4.1.2 On any transfer of title to an Owner's Unit, including a transfer on the death of an Owner, membership passes automatically with title to the transferee. Any attempt to make a prohibited transfer shall be void. On notice of a transfer, the Association shall record the transfer on its books.

4.2 Voting.

4.2.1 Except as otherwise provided in Section 4.1 of the Bylaws, each Unit shall have one (1) vote in the Association. If there is more than one Owner of any Unit, all Owners shall be Members, but only one vote shall be allocated to each Unit. The vote cast by the Member designated as the "Voting Member," as provided in subsection 4.2.2 below, shall be conclusively presumed to be the vote cast by all Owners of the Unit for which the vote was cast.

4.2.2 When more than one person owns a Unit, the record Owners of such Unit shall designate a "Voting Member" in writing to the secretary of the Association. Such designation shall be revocable at any time by written notice to the secretary of the Association by any of the record Owners of such Unit or by the death or judicially-declared incompetence of the designated Voting Member. Where no Voting Member of a Unit has been designated, or where such designation has been revoked as provided in this subsection, the vote for such Unit shall be exercised as the majority of the co-owners of the Unit agree. No vote shall be cast for any Unit where there is no designated Voting Member and the majority of the co-owners of such Unit cannot agree on a vote.

4.2.3 Except as required by law or as otherwise provided in the Governing Documents, all matters requiring the approval of the Owners shall be deemed approved if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, (a) while two voting classes exist by a majority of the Class A Members total voting power and a majority of the Class B voting power total voting power, either in person or by proxy, or if approved by written ballot in the absence of a meeting, in accordance with the provisions, if any, of

the Bylaws duly permitting the use of a written ballot; and (b) in the case where a single voting class exists after conversion of Class B votes to Class A votes by the vote or written assent of a majority of the total voting power of the Association as well as the vote or written assent of a majority of the total voting power of Members other than the Declarant.

The Class B Owner shall be the Declarant who shall be entitled to three (3) votes for each Condominium owned in the Project. The Class B Membership shall cease and shall be converted irreversibly to Class A Membership on the first to occur of the following events:

(a) When the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the second anniversary of the original issuance of the final subdivision public report for the Project by the DRE.

ARTICLE V ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Unit within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed for that Unit, whether or not it shall be so expressed in such deed, covenants and agrees:

5.1.1 To pay Regular Assessments, Special Assessments, and Reimbursement Charges to the Association as established in this Declaration; and

5.1.2 To allow the Association to enforce any Assessment Lien established under this Declaration by non-judicial proceedings under a power of sale in accordance with Civil Code section 5710 or by any other means authorized by law.

The Regular and Special Assessments, including Reimbursement Charges, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a charge on the Unit and shall be a continuing Assessment Lien upon the Unit against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Delinquent Assessment. Each Assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to his successors in title unless expressly assumed by them. No Owner shall be exempt from liability for payment of Assessments by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of the Owner's Unit. No transfer of a Unit as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the former beneficiary of the first encumbrance or another person, from liability for any Assessments thereafter becoming due or from the lien thereof.

The interest of any Owner in the amounts paid pursuant to any Assessment upon the transfer of ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such Assessments after paying all amounts properly charged against such Assessments shall be distributed to the then Owners on the same pro rata basis on which the Assessments were collected.

5.2 Purpose of Assessments.

The Assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the Owners and other residents in the Project and to enable the Association to perform its obligations under this Declaration.

5.3 Regular Assessments.

The Board shall establish and levy Regular Assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Regular Assessments shall be made for a one-year period and collected in monthly installments.

The Regular Assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either be members of the Board or one officer who is not a member of the Board and a member of the Board shall be required to withdraw monies from the reserve account.

5.3.1 Determination of Regular Assessments.

(a) Until January 1 of the year immediately following the conveyance of separate title to a Unit to any Owner, the Regular Assessments shall be the amount determined in the budget submitted to and accepted by the DRE. On or before the first business day of the first month following the conveyance of separate title to a Unit to any Owner the Association shall prepare and distribute to each Owner a pro forma operating budget, estimating the total expenditures to be paid from the operating account, including a reasonable reserve for contingencies and replacement of Common Area improvements for the remainder of the fiscal year. The Association shall assess the total of such charges to all Owners as the Regular Assessments.

(b) The Association shall prepare and distribute to each Owner at least forty-five (45) and not more than sixty (60) days prior to the beginning of each subsequent fiscal year, a copy of a pro forma operating budget described in Section 3.2.11(a) above. The Association shall assess the total of such charges to all Owners as the Regular Assessments. All funds budgeted, allocated, assessed and collected for contingencies, deferred maintenance and replacement of Common Area improvements shall be designated and subsequently used solely for such specific purpose or for litigation or other legal proceeding in furtherance of such purpose. During the 60-day period immediately preceding the beginning of each fiscal year the Association shall distribute the written notice regarding assessments and foreclosures described in Civil Code section 5730(a) to each Member.

(c) The Association shall prepare and distribute to each Owner within one hundred twenty (120) days after the end of each fiscal year, the annual report described in Section 3.2.11(a) above. If such accounting shows a cash surplus exists in the operating account, the Owners shall vote as to whether to refund all or part of such surplus or as to whether such surplus shall be carried over to any future assessment periods to reduce any future Assessments.

(d) The Association may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Association's Regular Assessment for the preceding fiscal year

without the vote or written consent of a majority of all the Voting Members. If the Association fails to establish the Regular Assessments for any fiscal year, the Regular Assessment for such fiscal year shall be the same as the Regular Assessment for the preceding fiscal year.

5.3.2 Determination of Reserves. The Board shall at least once every three (3) years, cause a study to be conducted of the reserve account requirements for the Project's major improvements which the Association is required to maintain, repair or replace. The study shall include at a minimum: (a) Identification of the Major Components that the Association is obligated to repair, replace, restore, or maintain that, as of the date of the study, have a remaining useful life of less than 30 years; (b) Identification of the probable remaining useful life of the components identified in subsection (a) as of the date of the study; (c) An estimate of the cost of repair, replacement, restoration, or maintenance of the components identified in subsection (a); (d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain the components identified in subsection (a) during and at the end of their useful life, after subtracting total reserve funds as of the date of the study; and (e) A reserve funding plan that indicates how the Association plans to fund the contribution identified in subsection (d) to meet the Association's obligation for the repair and replacement of all major components with an expected remaining life of 30 years or less, not including those components that the board has determined will not be replaced or repaired. The plan shall include a schedule of the date and amount of any change in regular or special assessments that would be needed to sufficiently fund the reserve funding plan. The plan shall be adopted by the Board at an open meeting before the Members as described in Section 5560(b) of the Civil Code. If the Board determines that an assessment increase is necessary to fund the reserve funding plan, any increase shall be approved in a separate action of the board that is consistent with the procedure described in Section 5605 of the Civil Code.

5.3.3 Reserve Funds Expenditure Limits. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's operating account to meet short-term cash-flow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Section 4920. The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a Special Assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Section. This Special Assessment is subject to the limitation imposed by Section 5.5 below.

5.4 Special Assessments.

In any fiscal year, the Association may levy a Special Assessment if, at any time, the Regular Assessment for a fiscal year is insufficient in amount due to extraordinary expenses not contemplated and which could not have been reasonably foreseen by the Association in preparing and distributing the budget pursuant to Section 5.3.1 above. The Association may not impose

Special Assessments that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written consent of a majority of all the Voting Members.

5.5 Restrictions on Increases in Regular Assessments or Special Assessments.

5.5.1 Approval of Members for Certain Assessments. Except as provided in Section 5.5.2, without having first obtained the approval of such action by the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present, the Board may not: (a) impose a Regular Assessment on any Unit which is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year; or (b) levy a Special Assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. For purposes of this Section 5.5.1, a "quorum" means Members constituting at least fifty percent (50%) of the Members of the Association. Any meeting of the Association for purposes of complying with this Section 5.5.1 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and § 7613 of the California Corporations Code. The right of the Board to increase Regular Assessments by up to twenty percent (20%) over the Regular Assessment for the immediately preceding fiscal year is subject to the Board having complied with the provisions of California Civil Code § 5605(b), which provisions are set forth in Section 12.1.1 of the Bylaws or having obtained the approval of such increase by the Members in the manner set forth above in this Section 5.5.1. Prior to approving any increase in Assessments, the Association must comply with the provisions of California Civil Code Section 5600.

5.5.2 Increases for Emergency Purposes. Notwithstanding the limitations on Assessment increases contained in Sections 5.3.1(d) and 5.5.1 above, the Association may increase Regular Assessments and impose Special Assessments to address emergency situations pursuant to California Civil Code Section 5610. For purposes of this Section 5.5, an emergency situation is any 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 where a threat to personal safety is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Common Area that could not have been reasonably foreseen by the Association in preparing and distributing the budget pursuant to Section 5.3.1, above.

5.5.3 Notice and Quorum for Any Action Authorized Under Section 5.5. Any action authorized under Section 5.5, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be personally delivered or mailed to all Members not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code §7513.

5.6 Date of Commencement of Regular Assessment; Due Dates.

The Regular Assessments provided for in this Declaration shall commence as to all Units covered by this Declaration on the first day of the month following the first conveyance of a Unit to an individual Owner under authority of a Public Report. The first Assessment shall be adjusted according to the number of months remaining in the calendar year.

Subject to the provisions of Section 5.3 and 5.5 hereof, the Board of Directors shall use its best efforts to fix the amount of the Regular Assessment against each Unit and send written notice thereof to every Owner at least forty-five (45) days in advance of each Regular Assessment period, provided that failure to comply with the foregoing shall not affect the validity of any Assessment levied by the Board. Regular Assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating that the Assessments on a specified Unit have been paid. Such a certificate shall be conclusive evidence of such payment.

Notwithstanding any provision of this Declaration to the contrary, the Declarant and any other owner of a subdivision interest shall be exempted from the payment of that portion of any Assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. Any exemption from the payment of Assessments attributed to common facilities shall be in effect only until the earliest of the following events: (a) a notice of completion of the common facility has been recorded or (b) the common facility has been placed into use.

5.7 Notice of Assessment Increases.

The Association shall provide written notice to all Owners of any increase in Regular Assessments or Special Assessments not less than thirty (30) nor more than sixty (60) days before such increased Assessments shall become due.

5.8 Division of Assessments.

Both Regular Assessments and Special Assessments shall be levied against each Owner according to the ratio of the number of Units owned by the Owner and the shall be levied equally among the Units, except that the portion of such Assessments specially allocated to meet the cost of insurance, exterior maintenance and exterior painting, and roof reserves, and any commonly metered domestic water, gas or electricity shall be levied among the Units in the proportion that the square footage of living space of each Unit bears to the square footage of all the Units subject to the Declaration as determined by the plans prepared by Declarant and set forth in the budget submitted to the DRE, and as set forth in Exhibit "B".

Regular Assessments shall be collected on a monthly basis unless the Board directs otherwise. Special Assessments may be collected in one (1) payment or periodically as the Board shall direct.

Reimbursement Charges levied against a particular Unit to reimburse the Association for costs incurred in bringing the Owner of the Unit into compliance with the Governing Documents shall not be subject to these allocation provisions.

5.9 Bank Accounts; Checks.

5.9.1 The operating portion of all Regular and Special Assessments collected or received by the Association and any interest or late charges collected or received by the Association shall be promptly deposited in a federally-insured checking, savings or money market account in a bank or savings and loan association selected by the Owners that has offices in the City. Such account shall be designated as the "operating account." Disbursements from the operating account shall be for the general need of the Project including, but not limited to, maintenance, repairs, betterments, wages and any other operating expenses for the Project. The Board may maintain any other accounts it deems necessary to carry out its purposes. All Association books of account shall be maintained in accordance with generally accepted accounting principles.

5.9.2 All checks or demands for money and notes of the Association shall be signed by the president and treasurer of the Association, or by such other officer or officers or such other person or persons as the Board may from time to time designate. Notwithstanding the foregoing, the signature of two (2) Directors or an officer of the Association and a Director that is not an officer shall be required for any withdrawal of funds from any Association's reserve account.

5.10 Nonpayment of Assessments.

5.10.1 Any Assessment shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date. The Association shall impose a late charge on all delinquent payments equal to the greater of (a) ten percent (10%) of the delinquent Assessment or (b) Ten Dollars (\$10.00). Interest shall also accrue on the delinquent Assessment at the rate of twelve percent (12%) per annum commencing thirty (30) days after the Assessment is due through the date full payment is received by the Association.

5.10.2 Transfer of Unit by Sale or Foreclosure. Sale or transfer of any Unit shall not affect the Assessment Lien. However, the sale of any Unit pursuant to Foreclosure of a First Mortgage shall extinguish the Assessment Lien of any Assessments on that Unit (including attorneys' fees, late charges, or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for Assessment Liens as to which a Notice of Delinquent Assessments has been recorded prior to the Mortgage). No amendment of the preceding sentence may be made without the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the Eligible Mortgage Holders holding First Mortgages on Units comprising fifty-one percent (51%) of the Units subject to First Mortgages. No sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof.

The unpaid share of such Assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such acquirer, his successors or assigns.

If a Unit is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Unit through and including the date of the transfer. The grantee shall be entitled to a statement from the Association, dated as of the date of transfer, setting forth the amount of the unpaid Assessments against the Unit to be transferred and the Unit shall not be subject to a lien for unpaid Assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any Assessments that become due after the date of the transfer.

5.11 Enforcement. If an Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid

and past due Assessment, or may impose an Assessment Lien on the Unit owned by Owner pursuant to the provisions of Civil Code § 5650 as described in this Section 5.11 below.

5.11.1 In the event the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, may not collect that debt through judicial or non-judicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(a) By a civil action in small claims court, pursuant to Chapter 5.5 (commencing with Section 114.110) of Title 1 of the Code of Civil Procedure. If the Association chooses to proceed by an action in small claims court, and prevails, it may enforce the judgment as permitted under Article 8 (commencing with Section 114.810) of Title 1 of the Code of Civil Procedure. The amount that may be recovered in small claims court to collect upon a debt for delinquent Assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(i) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(ii) In the discretion of the court, an additional amount to that described in subparagraph (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(b) By recording a lien on the owner's separate interest upon which the Association may not foreclose until the amount of the delinquent Assessments secured by the lien, exclusive of any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred dollars (\$1,800) or the Assessments secured by the lien are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, shall offer the Owner and, if so requested by the owner, participate in dispute resolution as set forth in Part 5, Chapter 10 (commencing with Section 5900) of the Civil Code.

(c) Any other manner provided by law, except for judicial or non-judicial foreclosure.

5.11.2 In the event the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any Assessments secured by the lien that are more than 12 months delinquent, may use judicial or non-judicial foreclosure subject to the following conditions:

(a) Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program required in Part 5, Chapter 10 (commencing with Section 5900 of Chapter 10 or alternative dispute resolution as set forth in Article 3 (commencing with Section 5925)). The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly recorded shall be made only by the Board and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the owner or owners. A board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(c) The Board shall provide notice by personal service in accordance with the manner of service of summons in Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure to an Owner who occupies the separate interest or to the Owner's legal representative, if the Board votes to foreclose upon the separate interest. The Board shall provide written notice to an Owner who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's separate interest may be treated as the Owner's mailing address.

(d) A non-judicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale. In addition to the requirements of Civil Code Section 2924f, a notice of sale in connection with an Association's foreclosure of a separate interest shall include a statement that the property is being sold subject to the right of redemption created in Civil Code section 5720.

(e) Suit to recover a money judgment for unpaid Assessments and attorneys' fees, shall be maintainable without foreclosing or waiving the lien securing the same. The Association shall distribute the written notice described in subdivision (b) of Civil Code § 5660 entitled "Notice Assessments and Foreclosure" to each Member during the 60-day period immediately preceding the beginning of the Association's fiscal year. The notice is to be printed in at least 12-point type.

5.11.3 Statement of Charges. At least 30 days prior to the Association recording an Assessment Lien upon a Unit, the Association shall notify the owner of record pursuant to Civil Code § 5660 in writing by certified mail of the following:

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

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

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

(d) The right to request a meeting with the Board as provided by Civil Code § 5660(d).

(e) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program required in Article 2 (commencing with Section 5900) of Chapter 10 of the Civil Code.

(f) The right to request alternative dispute resolution with a neutral third party pursuant to Article 3 (commencing with Section 5925) of Chapter 10 of the Civil Code before the Association may initiate foreclosure against the owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

Note: Any payments made by the Owner toward the debt shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorneys' fees, late charges, or interest. When an Owner makes a payment, the owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

The Association need not accept any tender of a partial payment of an Assessment and all costs and attorneys' fees attributable thereto. Acceptance of any such tender does not waive the Association's right to demand and receive full payment.

The provisions of this Section 5.11 are intended to comply with the requirements of Civil Code Section 5660. If these Sections are amended or rescinded in any manner the provisions of this Section 5.11 automatically shall be amended or rescinded in the same manner. Civil Code Section 5660 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

5.11.4 Right to Request Meeting. As provided in Civil Code § 5660(d), an Owner may dispute the debt noticed pursuant to Section 5.11.1, above, submitting to the Board a written explanation of the reasons for his or her dispute. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the explanation, if the explanation is mailed within fifteen (15) days of the postmark of the notice. The Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to Section 5.11.1, above. The Board shall provide the Owner the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner.

5.11.5 Notice of Delinquent Assessment. After compliance with the provisions of Civil Code § 5660, the Association may record a Notice of Delinquent Assessment and establish an Assessment Lien against the Unit of the delinquent Owner prior and superior to all other liens recorded subsequent to the Notice of Delinquent Assessment, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage of record recorded prior to the Notice of Delinquent Assessment. The Notice of Delinquent Assessment shall state the amount of the Assessment, collection costs, attorneys' fees, late charges and interest, a description of the Unit against which the Assessment and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer

of the Association and shall be mailed in the manner set forth in Civil Code § 2924b to all record owners of the Unit no later than ten (10) days after recordation.

Within twenty-one (21) days after payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder in which the Notice of Delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

5.11.6 Enforcement of Assessment Lien. Thirty (30) days following the recordation of the Notice of Delinquent Assessment, the Assessment Lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to California Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§ 2924, 2924b, 2924c, 2924f, 2924g, 2924h and 2924j of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes thereto, or in any other manner permitted by law. The fees of a trustee may not exceed the amounts prescribed in Civil Code §§ 2924c and 2924d. Nothing in this Declaration shall preclude the Association from bringing an action directly against an Owner for breach of the personal obligation to pay Assessments.

The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at Foreclosure sale, and to acquire and hold, lease, mortgage and convey the Unit. If the purchase of a Unit would result in a five percent (5%) or greater increase in Assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of Members other than Declarant. During the period a Unit is owned by the Association, following Foreclosure:

- (a) no right to vote shall be exercised on behalf of the Unit;
- (b) no Assessment shall be assessed or levied on the Unit; and
- (c) each other Unit shall be charged, in addition to its usual Assessment, its share of the Assessment that would have been charged to such Unit had it not been acquired by the Association as a result of Foreclosure.

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

5.12 Reimbursement Charges; Fines and Penalties.

The Board may levy a Reimbursement Charge against a Member to reimburse the Association for any of the following reasons:

5.12.1 The damage or destruction of any portion of the Common Area by the willful misconduct or negligent act or omission of any Owner, any member of the Owner's family, or any Owner's guest, tenant, licensee or invitee which necessitates the Association to repair or replace such portion of the Common Area.

5.12.2 An Owner and/or an Owner's Unit fails to comply with any provision of the Governing Documents which necessitates that the Association take any action to gain the compliance of the Owner and/or the Owner's Unit.

5.12.3 A Condominium is maintained in such a manner as to become a nuisance, fire or safety hazard for any reason that necessitates the Association to enter the Condominium and correct the offensive or hazardous condition.

Any Reimbursement Charges levied in accordance with this Section 5.12 shall be limited to the amount required to reimburse the Association for the actual costs and expenses incurred and the amounts incurred to enforce the Associations rights under this Declaration as are then permitted by law. Reimbursement Charges shall be payable when directed by the Board after written notice to the Owners. If an Owner disputes a Reimbursement Charge, the Owner may request a hearing before the Board. Except as hereinafter provided, Reimbursement Charges, fines and penalties for violation of this Declaration or the Rules are not "Assessments," and are not enforceable by an Assessment Lien, but are enforceable by court proceedings. If Civil Code Section 5650 is amended to permit fines and penalties imposed by the Association for violation of this Declaration as a disciplinary measure for failure of an Owner to comply with this Declaration or the Rules to be enforceable by Assessment Lien, then this provision shall be deemed amended to conform to any such amendment of Civil Code Section 5650.

5.13 Unallocated Taxes.

In the event any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of Article V and, if necessary, a Special Assessment may be levied against the Units in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

5.14 Estoppel Certificates.

5.14.1 Within ten (10) days of the mailing or delivery of a written request by an Owner, the Board shall provide the Owner with a written statement containing the following information: (a) whether, to the knowledge of the Association the Owner's Unit is in violation of any of the provisions of the Governing Documents; (b) the amount of Regular and Special Assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (c) the amount of any delinquent Assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Unit as provided by the Governing Documents. The Association may charge an Owner a fee to recover its reasonable costs in preparing the statement.

5.14.2 Any prospective purchaser or mortgagee of the Owner's Unit may rely on the information in this written statement, provided that reliance may not extend to any violation of the Governing Documents of which the Association does not have actual knowledge.

ARTICLE VI MAINTENANCE

6.1 Common Area Maintenance.

6.1.1 The Association shall maintain, repair, replace (when necessary), restore, operate and manage the Common Area and all facilities (including Utility Facilities to the extent described in Section 7.1), improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association, provided that each Owner shall maintain the Exclusive Use Common Area appurtenant to that Owner's Unit as required by Section 6.2. The Association shall maintain everything it is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget, and in conformance with any Maintenance Guidelines and Maintenance Manual. Unless specifically provided in any Maintenance Guidelines or Maintenance Manual, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Property and the improvements thereon.

(a) Maintenance shall include, without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including, without limitation, exterior doors, other than the hardware thereon, parking spaces, elevators, hallways, stairwells, landscaping, including irrigation systems and Common Area lighting.

(b) The Association shall cause inspections of the Common Area and the separate interests which the Association is obligated to maintain or repair to be routinely made in conjunction with the Association's manager. The Board shall engage professionals to conduct inspection of these components of the Project if the Board or the Association's manager deem that such inspection by professionals, such as an architect, a civil engineer, structural engineer, landscape architect or other such professional is warranted. Inspections shall be made at least yearly and, for appropriate items or events, more often. For a period of ten (10) years after the date of the last Close of Escrow in the Project, the Board shall also furnish to Declarant: (a) the report of each inspection performed for the Board, whenever such inspection is performed and for whatever portion of the Common Area separate interests which the Association is obligated to maintain or repair that is inspected, within thirty (30) days after completion of the inspection; and (b) the most recent inspection report for any portion of the Project, within ten (10) days after the Association's receipt thereof.

(c) The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his guests, tenants or invitees or the Owner's pets, except if the repair is covered by the insurance carried by the Association, the Association shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. If the Owner fails to make such payment, then the Association may make such payment and shall charge the responsible Owner a Reimbursement Charge for reimbursement of such payment, which charge shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate allowed by law) until paid in full. Any repairs arising out of or caused by the willful or negligent act of an Owner, or his guests, tenants or invitees, or the Owner's pets, the cost of which is not covered by insurance carried by the Association, shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof as a Reimbursement Charge to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to notice and a hearing as provided in the Bylaws before any charge may be imposed.

(d) The Association shall have the Common Area periodically inspected for wood-destroying pests and organisms, or other pests, and shall take appropriate corrective measures therefor. The Association shall have the authority to require the temporary removal of occupants of a Unit as may be necessary in connection with the treatment of wood-destroying pests or organisms, or other pests, pursuant to the procedures described in Civil Code § 4785 or any successor statute thereto. The costs of any temporary relocation shall be borne by each Owner of a Unit who is required to temporarily relocate.

(e) Landscaping shall include regular fertilization, irrigation, pruning, and other prudent garden management practice necessary to promote a healthy weed-free environment for optimum plant growth. The Association shall remove and replace all dying or dead vegetation. The Association shall take appropriate steps to maintain the irrigation of the landscaping and to prevent damage resulting from misdirected and/or excessive watering.

(f) The Association shall be responsible for the periodic maintenance, testing, repair and replacement of any built-in fire detection and protection equipment and devices wherever located on the Project (including any interior sprinklers but excluding smoke detectors located inside the Units). Each Owner shall immediately notify the Association of any problems with any sprinkler heads located in the Owner's Unit. Maintenance shall include periodic testing of such equipment. The fire sprinkler system is a loop system that serves the entire Project.

(g) In order to reduce the presence of mold, fungi, spores, pollens and other botanical substances, or other allergens (collectively "Mold"), within the Common Area, the Association shall inspect the Common Area improvements not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the improvements, and for the presence of Mold. If any water leaks and/or Mold are detected, the Association shall immediately take appropriate corrective steps to repair the leak, and/or remove the Mold and to maintain proper ventilation within enclosed areas, and to maintain humidity levels to reduce the risk of Mold growth, and shall periodically inspect the irrigation system to ensure proper watering, and to correct any leaks and/or misdirected or excessive watering, and periodically inspect the ground surface around the foundations to ensure that no water is pooling around or within the foundations, and shall maintain rain gutters in a clean and proper operating condition at all times, and take such other prudent steps as may be appropriate to prevent Mold growth, or eliminate any existing Mold.

(h) Each Owner and occupant shall fully cooperate with the agents of the Association in the performance of the Association's maintenance and repair obligations described above. Such cooperation shall include, but is not limited to, immediate notification to the Board or its managing agent of any maintenance or repair problems for which the Association is responsible and access to the Owner or occupant's Unit and Exclusive Use Common Area as may be necessary to inspect and, if appropriate, to perform any necessary maintenance or repairs.

(i) In the event of any water leak or overflow from any Unit that damages any Common Area or other Unit, the Owner and occupants of the Unit that is the source of the water leak or overflow (the "Responsible Owner") shall cooperate with the Association in the inspection and correction of the problem. Cooperation shall include access to the Unit to inspect and to correct the problem and/or repair any damage. The Responsible Owner shall reimburse the Association for its repair cost to the extent the cost is not paid through insurance maintained by the Association, and the Association may levy a Reimbursement Charge to recover the cost. If the damage may be covered by insurance maintained by the Association, the

Association shall submit an appropriate claim. Any deductible amount shall be paid by the Responsible Owner.

If a Unit Owner becomes aware of any potential problems or issues with respect to the Common Area improvements, including, but not limited to, those listed in this Section 6.1.1, and particularly any water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Common Area improvements.

The Association, and its agents, may enter any Unit whenever such entry is necessary to perform any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such Unit as possible, and only upon at least seventy-two (72) hours' prior written notice to the Owner, except in the case of an emergency.

6.1.2 The Association shall not be responsible for any maintenance, repairs or replacements of the Common Area caused by the willful or negligent acts or omissions of any Owner, or such Owner's family, guests or tenants, the cost of which is not covered by insurance. If the repair is covered by the insurance carried by the Association it shall be responsible for making the repairs, and the responsible Owner shall pay any deductible pursuant to the insurance policy. The maintenance, repair or replacement of such excluded items shall be the responsibility of the Owner responsible for the harm. If the responsible Owner fails to maintain, repair or replace such excluded items, or pay any costs described in this subsection, the Association shall do the maintenance, make the repairs or replacements, or pay such costs and may levy a Reimbursement Assessment for the cost thereof against the responsible Owner.

6.1.3 The Association, and its agents, may enter any Unit whenever such entry is necessary to perform any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner of such Unit as possible, and only upon at least seventy-two (72) hours' prior written notice to the Owner, except in the case of an emergency.

6.2 Exclusive Use Common Area Maintenance.

Each Owner granted the use of any Exclusive Use Common Area shall have the exclusive obligation, at his or her sole expense, to keep and maintain such area and the improvements therein including, balconies, and windows and Unit doors in good repair and in a neat, clean, orderly and attractive manner. No Owner shall build, place or cause to be built or placed within or upon any Exclusive Use Common Area any permanent structure without the prior vote or written consent of the Association. Each Owner shall be responsible for maintaining, cleaning and repairing all windows, and doors and landscaping, contained within the perimeter of his or her Exclusive Use Common Area.

6.3 Maintenance of Units.

6.3.1 Each Owner shall have the exclusive obligation, at his or her sole expense, to maintain and repair his or her Unit in a clean, sanitary and attractive condition. An Owner's obligations shall include all interior Unit maintenance, painting, cleaning and repairing, including, the interior surfaces of the ceilings, floors and perimeter walls of such Unit and the bearing walls located within such Unit, and maintaining all utility lines, pipes and conduits that serve his or her Unit. Each Owner shall be responsible for maintaining, cleaning and repairing all windows, skylights, and doors contained within the perimeter of his or her Unit. Each Owner shall have the

exclusive right to substitute new finished surfaces for the finished surfaces then existing on such ceilings, floors and walls, provided that such replacement surfaces do not adversely affect the structural integrity of the Unit or the building such Unit is located in, and that all replacement surfaces conform to all applicable ordinances, building codes, and regulations, including, without limitation, those governing sound suppression. Each Owner shall have the exclusive right to maintain, repair, paint, finish, alter, substitute, add or remove any fixtures attached to such ceilings, floors and walls. This Section 6.3 shall not be construed as permitting any interference with or damage to the structural integrity of the building containing any Unit.

6.3.2 In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens within the Unit (collectively "Mold"), Owners shall perform each of the following steps: (a) inspect the Unit (both exterior and interior) not less frequently than once each quarter to check for water leaks or other breaches of the watertight integrity of the Unit and for the presence of Mold; (b) if any water leaks and/or Mold are detected, immediately take appropriate corrective steps to repair the leak and/or remove the Mold; (c) maintain proper ventilation (particularly in bathrooms) and humidity levels to reduce the risk of Mold growth; (d) periodically inspect refrigerator condensation pans, air conditioners (if applicable), and any other water-retaining appliances for the presence of Mold; (e) avoid carpeting or similar types of floor covering in bathrooms that may be conducive to Mold growth; (f) replace heating and air conditioning filters not less frequently than quarterly or as recommended by the manufacturer; and (g) take such other prudent steps as may be appropriate to prevent Mold growth or eliminate any existing Mold. In addition to the foregoing, each Owner shall comply with each of the following in performing the Owner's maintenance obligations: (i) the Guidelines described in Section 6.3.1; and (ii) commonly-accepted homeowners' maintenance obligations.

6.3.3 In addition, each Owner shall have the responsibility to make all inspections required by the National Home Maintenance Manual published by the Building Standards Institute, Sacramento, CA. If an Owner believes that there may be a defect in the Project or in their unit, that Owner shall give notice to the Association and to Declarant within sixty days of discovery of the purported defect, in order to allow Declarant an opportunity to investigate and, if appropriate, make repairs.

6.3.4 Notwithstanding the foregoing, if, during any period of time that the Federal National Mortgage Association ("FNMA") is a First Mortgagee or Owner within the Property, the FNMA requirements for condominium projects require that any of the foregoing obligations of an Owner be performed by the Association, the Association shall perform such obligations, except to the extent any such performance by the Association has been waived in writing by FNMA. The Owners for whom any such obligations are performed by the Association shall reimburse the Association for the costs of such performance within thirty days after the Association has furnished a statement for such costs. The Association shall have the right to delegate any of its obligations under this Section 6.3 to any person or entity.

6.3.5 If a Unit Owner becomes aware of any potential problems or issues with respect to the Owner's Unit improvements, including, but not limited to, any water leaks or potential water leaks, the Owner shall promptly notify the Board of the Project's manager regarding such problems or issues with respect to the Common Area improvements.

ARTICLE VII UTILITIES

7.1 Owners Rights and Duties.

Except as otherwise provided in this Declaration, the rights and duties of the Owners with respect to sanitary sewer, water, drainage, electric, gas, television receiving, telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows:

7.1.1 Whenever Utility Facilities are installed within the Property, which Utility Facilities or any portion thereof lie in or upon Units owned by an Owner other than the Owner of a Unit served by such utility facilities, the Owners of the Units served by such Utility Facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Units or to have the utility companies enter upon the Units in or upon which such Utility Facilities, or any portion thereof, lie, to repair, replace and generally maintain them as and when necessary.

7.1.2 Whenever Utility Facilities that serve more than one Unit are installed within the Property, the Owner of each Unit served by said Utility Facilities shall be entitled to the full use and enjoyment of such portions of such Utility Facilities as service his or her Unit.

7.1.3 The gas and water to each Unit shall be under a separate meter and each Owner shall be responsible for paying his or her own utility bills. The water to the Project shall be under a single meter and the Association shall levy and collect from the Owner of each Unit the amount required to pay all such bills in full and promptly.

7.1.4 In the event of a dispute between Owners with respect to the repair or rebuilding of Utility Facilities, or with respect to the sharing of the cost of those facilities, then, upon written request of one (1) Owner addressed to the other Owner(s), the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unresolved, to binding arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, or any successor rules, or to any other generally recognized system of alternative dispute resolution. The decision of the arbitrator(s) shall be final and conclusive on the parties, and judgment on the decision may be entered in any court having jurisdiction.

7.2 Association's Duties.

The Association shall maintain all Utility Facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in Section 6.2. The Association shall pay all charges for utilities supplied to the Common Area except those metered or charged separately to the Units.

7.3 Garbage and Refuse Disposal; Recycling.

All rubbish, trash recycling materials and garbage shall be regularly removed from the Units, and shall not be allowed to accumulate therein. Trash, garbage, recycling materials and other waste shall only be kept in sanitary containers in the Common Area as designated by the Association. All space and equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No Hazardous Materials shall be disposed of within the Project by dumping in the chutes, garbage containers or down the drains, or otherwise. All recycling and solid waste shall be confined to approved receptacles and enclosures.

ARTICLE VIII USE RESTRICTIONS AND GUIDELINES

8.1 Plan of Development; Applicability; Effect.

Declarant has created the Project as a residential development and, in furtherance of its, and every other future Owners' interests, has in this Declaration established a general plan for the Project as a condominium project. The Property is subject to guidelines and restrictions governing land use, individual conduct, and uses of or actions upon the Property as provided in this Article VIII. This Declaration and any Operating Rules the Association may adopt, in accordance with Section 3.2.2, establish affirmative and negative covenants, easements, and restrictions (the "Use Guidelines and Restrictions").

All provisions of this Declaration and of any Operating Rules shall also apply to all occupants, tenants, guests and invitees of any Unit. Any lease of any Unit shall provide that the tenants and all occupants of the leased Unit shall be bound by the terms of this Declaration and the Operating Rules.

Declarant has promulgated the Project's general plan of development to protect the quality of life and collective interests of all Owners, the aesthetics and environment within the Project, and the vitality and sense of community within the Project all subject to the Association's ability to respond to changes in circumstances, conditions, needs, and desires with the Project.

Declarant has prepared initial Use Guidelines and Restrictions that contain general provisions applicable to the Project, as set forth below in Section 8.5. Based upon these initial Use Guidelines and Restrictions, the Association shall adopt the initial Operating Rules at its initial organizational meeting or as soon as possible by the written consent of all Members.

8.2 Association Power.

Subject to the terms of this Article VIII, the Association shall implement and manage the Use Guidelines and Restrictions through the Operating Rules that adopt, modify, cancel, limit, create exceptions to, or expand the Use Guidelines and Restrictions. Each Association Rule shall become effective unless disapproved in writing by a majority of the Voting Members.

The Association shall have all powers necessary and proper, subject to its exercise of sound business judgment and reasonableness, to effect the powers contained in this Section 8.2. All Operating Rules shall comply with the applicable provisions contained in Civil Code sections 4340 through 4370.

8.3 Owners' Acknowledgment.

All Owners are subject to the Use Guidelines and Restrictions and are given notice that (a) their ability to use their privately-owned property is limited thereby, and (b) the Association may add, delete, modify, create exceptions to, or amend the Use Guidelines and Restrictions in accordance with Sections 8.2 and 15.4 of this Declaration. Each Owner by acceptance of a deed acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by these provisions and that the Use Guidelines and Restrictions and Operating Rules may change from time to time.

8.4 Rights of Owners.

Except as may be specifically set forth in Section 8.5, the Association may not adopt any Rule in violation of the following provisions:

8.4.1 Similarly situated Owners and occupants shall be treated similarly.

8.4.2 The rights of Owners and occupants to display political signs and symbols and religious and holiday signs, symbols, and decorations in or on their Units of the kinds normally displayed in or outside of residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners and occupants.

8.4.3 No Rule shall interfere with the freedom of occupants of any Units to determine the composition of their households, except that the Association shall have the power to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Common Area, including parking.

8.4.4 No Rule shall interfere with the activities carried on within the confines of Units, except that the Association may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants, guests or invitees of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Units, that block the views from other Units, or that create an unreasonable source of annoyance.

8.4.5 No rule prohibiting the keeping of ordinary household pets shall be adopted. The Association may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and occupants, including regulations requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Units and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

8.4.6 Except as permitted by Section 2.2.2, the initial allocation of financial burdens and rights to use Common Area among the various Units shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who abuse the Common Area, violate Operating Rules or this Declaration or fail to pay Assessments. This provision does not affect the right to increase the amounts of Assessments as provided in Article V.

8.4.7 No Association Rule shall prohibit transfer (including leasing) of any Unit, or require consent of the Association for transfer of any Unit, for any period greater than one hundred eighty (180) days. The Association shall not impose any fee relating to document preparation or changes to the Association's records on transfer of any Unit greater than an amount reasonably based on the costs to the Association of the transfer.

8.4.8 If any Association Rule would otherwise require Owners to dispose of personal property that they owned at the time they acquired their Units, such Association Rule shall not apply to any such Owners.

8.5 Initial Use Guidelines and Restrictions.

8.5.1 Association Maintenance.

(a) Common Areas and Buildings. The Association shall be responsible for the maintenance and repair of the Common Area and any improvements or landscaping thereon, and including the recreational facilities, fire hydrants, streets, street lights, sidewalks, electrical transformers, water, electric, telephone, cable television and gas mains and meters and other improvements serving the Common Areas or all or a group of Owners collectively. The Association shall also be responsible for the maintenance and repair of the structural components, exterior surfaces (except glass, doors and other Owner maintenance items) and roof of the building included within each Unit, and all other facilities, amenities and entry monuments, fences, perimeter walls, walls abutting or fronting public streets, retaining walls, improvements, slopes, landscaping, trees, private driveways, private streets, roadways, parking facilities, public area or street lighting, drainage devices or facilities, sewer mains, manifolds and connections, water, gas, telephone, cable television or electrical supply lines, and any property acquired by or subject to the control of the Association, including personal property.

(b) Drainage Channel Debris. The Association shall remove and dispose all debris collected in the v-shaped drainage channel or swale located behind the retaining wall constructed along that portion of the northern perimeter of the Project which abuts the adjacent hills. Such removal and disposal shall take place annually, during the month of September.

(c) Standards; Annual Review. In performing or causing to be performed its maintenance duties under this Section 8.5, or as elsewhere required under this Declaration, the Association shall comply with the Common Area Maintenance Standards and the Board shall authorize and the Association shall hire one or more independent contractors or consultants to review annually and to report in writing on the performance of the Association's maintenance duties, including a report of any indicated failure by the Association to follow the Common Area Maintenance Standards, and any recommendations for changes to maintenance procedures, purchase of equipment or services, or amendments to the Common Area Maintenance Standards. The Board shall refer the written report to the Architectural Committee for its recommendation and the Board shall implement the recommendations of the Architectural Committee.

8.5.2 Common Area. No Owner shall remove, alter or injure in any way any portion of the Common Area, including but not limited to, all improvements thereto and personal property located thereon, or any shrubs, trees, grass, plants or other landscaping placed upon the Common Area by Declarant or by the Association. No Owner shall affix any improvements or personal property, including, but not limited to, basketball hoops, onto the Common Area.

8.5.3 Permitted Uses of Condominiums.

(a) Residential Unit Use. No Residential Unit shall be occupied and used except for residential purposes by the Owners, their tenants under a rental agreement or lease of not less than six (6) months' duration, and social guests, and no trade or business shall be conducted in any such Unit, except that Unit may be used as a combined residence and executive or professional office by the Owner or occupant thereof, so long as such use: (a) does not interfere with the quiet enjoyment by other Owners of Units; (b) does not include visiting clients; (c) business activities take place solely inside the Unit; (d) does not generate in-person visits by suppliers or clientele; (e) complies with all laws, regulations and ordinances applicable to the Property, including zoning, health and licensing requirements; (f) otherwise complies with the Declaration and is consistent with the residential character of the Property; (g) no signs, logos, billboards, or other advertising materials or devices are displayed in the windows of the Unit, or on exterior of the Building, or on any Common Area, to advertise the activity; (h) the existence or operation of the business is not apparent or detectable outside the Unit by sight, sound or

odor; and (i) the business does not increase the liability or casualty insurance obligation or premium of the Association. Declarant, its successors or assigns, may use any Unit or Units in the Project owned by Declarant for a model home site or sites and display and sales/construction office during construction and until the last Unit is sold by Declarant, or until three (3) years from the date of closing of the first sale in the Project, whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

No Unit or any portion of any Unit in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time-sharing agreement, plan, program or arrangement, including, without limitation, any so-called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Units or any portion of the Units 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 of twenty-five (25) consecutive calendar days or less. This Section shall not be construed to limit the personal use of any Unit or any portion of the Unit by any Owner or his or her social or familial guests.

The number of residents, unless applicable law provides otherwise, shall be limited as follows: No more than two (2) persons per bedroom in any Unit shall be permitted as permanent residents. (A "permanent resident" means any person residing in a Unit more than sixty (60) days out of any twelve (12) consecutive month period, provided, that one (1) person shall be allowed in addition to the maximum number of permanent residents otherwise permitted in each Unit.

No health care facilities operating as a business or charity shall be permitted in the Project, unless permitted by law or ordinance that preempts this restriction.

No family day care center shall be permitted within the Project except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any such day care facility shall comply with all local and state laws regarding the licensing and operating of a day care center and, in addition, shall:

- (1) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center;
- (2) Defend, indemnify and hold the Association harmless from any liability arising out of the existence and operation of the day care center;
- (3) Abide by and comply with all Association Operating Rules;
- (4) Supervise and be completely responsible for children at all times while they are within the project;
- (5) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

8.5.4 Unit Signs. Subject to Civil Code §§ 712, 713 and 4710(a) and (c), no signs shall be displayed to the public view on any Unit or on any other portion of the Project, except noncommercial signs may be displayed within a Unit that are approved by the Board or a committee appointed by the Board, that conform to the Rules regarding signs, and that conform to the requirements of State law, and applicable local ordinances. "For Sale" or "For Rent" or "For Exchange" signs shall be allowed to be displayed within areas of the Project that are designated in the Rules regarding such signs, and that conform to the requirements of State law, and applicable local ordinances, provided the design, dimensions and locations are reasonable. An Owner or his or her agent may display one (1) such For Sale or For Rent or For Exchange sign within his or her Unit and one sign in the Common Area advertising directions to the Owner's Unit which is for sale, rent, or exchange, provided the design, dimensions and locations are reasonable and comply with the Rules regarding signs, and comply with the requirements of State law, and applicable local ordinances. These restrictions on display of signs apply to signs that are visible from the exterior of a Unit, and are not intended to restrict signs that may be seen only from within the Unit in which the sign(s) is displayed.

8.5.5 Animals. Except as provided in this Declaration and permitted by the Rules, no animals of any kind shall be raised, bred, or kept in any Unit, or on any other portion of the Project. Trained dogs used for assistance by visually impaired, hearing impaired or physically handicapped persons may be kept by an occupant or invitee of an Owner. Owners, their tenants or other occupants of Units may keep no more than two (2) dogs, or two (2) cats, or one (1) dog and one (1) cat, within a Unit, and may keep a reasonable number of other ordinary household pets and fish that are kept in cages or aquariums, provided that no such dogs, cats or other animal or fish may kept, bred, or maintained for any commercial purposes. All pets shall be kept under reasonable control at all times. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No Owner shall allow his dog to enter the Common Area except on a leash. After making a reasonable attempt to notify the Owner, the Association or any Owner may cause any pet found within the Common Area in violation of the Rules of the Board or this Declaration to be removed by the Association (or any Owner) to a pound or animal shelter under the jurisdiction of the City or County by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the pet. Owners shall prevent their pets from soiling all portions of the Common Area and shall promptly clean up any waste left by their pets. Owners shall be fully responsible for any damage caused by their pets.

Owners shall use reasonable efforts to prevent any animal within their Unit from making disturbing noises that can be heard from any other Unit between the hours of 10:00 PM to 7:00 AM. An Owner in violation of this Section may be deemed to be permitting, or causing a serious annoyance or nuisance to any other Owner. The Board, after notice and a hearing, may require the permanent removal of any animal that the Board determines to be a danger to the health and safety of any occupant in the Project, or otherwise to be a nuisance within the Project. The Board may find that an animal is a nuisance if the animal or its owner continue to violate the Rules regulating pets after receipt by the Owner of a written demand from the Board to comply with the Rules.

Owners are required to inform the Association of the type of breed of pet upon commencement of occupancy and provide the Association with proof of rabies vaccination. In no event shall any Owner authorize, bring or keep within the Unit: (a) any Akita, Chow, Pit Bull, Rottweiler, Doberman Pinscher, Mastiff, Canaria Presa, or any other breed known as a "fighting breed" or any dog being a mix thereof; or (b) any snakes, pigs, large lizards, spiders, rats or vermin.

8.5.6 Antenna Restrictions: No Person may install on the exterior of a Condominium Building any antenna or over-the-air receiving device, except for an "Authorized Antenna" that is not prohibited under Section 8.5.4(c), without the prior written approval of the Architectural Control Committee. The use and installation of an Authorized Antenna in the Project is subject to applicable law and regulation and the following:

(a) Definition. An Authorized Antenna is: (i) an antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter; or (ii) an antenna designed to receive video programming service, including multi-channel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement; (iii) an antenna designed to receive television broadcast signals; or (iv) an antenna used to receive and transmit fixed wireless signals or broadband service. An Authorized Antenna may be mounted on a mast to reach the height needed to receive an acceptable quality signal, subject to local governmental agency permitting requirements for safety purposes.

(b) Restrictions on Installation. Subject to applicable law and regulation, an Authorized Antenna may be installed indoors or on the Exclusive Use Common Area balcony in a manner that minimized the visibility of the device from the other Units and adjacent real property. The foregoing locations are hereby deemed "preferred installation locations." The Architectural Control Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna as part of its Design Guidelines in order to minimize visibility of the Authorized Antenna from other Units. Such restrictions may designate one or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations) or screening vegetation or other improvements. However, no restriction imposed hereunder or by the Committee may: (i) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna; (ii) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna; or preclude acceptable quality reception.

(c) Prohibitions on Installation. Subject to Civil Code Section 4725, the Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Committee. The Committee may also prohibit an Owner from installing an Authorized Antenna on any real property which the Owner does not own or is not entitled to exclusively use or control under the Governing Documents, including any exterior wall of the Building, balcony railings, and the roof of the Condominium Building. The Committee also has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna above.

(d) Review after Installation. The Committee may review the location and installation of an Authorized Antenna after it is installed. After its review, the Committee may require that the Authorized Antenna be moved to a preferred location (if one has been designated) for safety reasons or to comply with reasonable restrictions subject to this Section and applicable law.

(e) Restatement of Applicable Law. This Section is intended to be a restatement of the authority granted to the Committee under the law. All amendments, modifications, restatements and interpretations of the law applicable to the installation, use or

maintenance of an antenna or other over-the-air receiving device shall be interpreted to amend, modify, restate or interpret this Section.

8.5.7 Right to Lease.

(a) Any Owner who wishes to lease his Unit must meet each of the following requirements, and the lease will be subject to these requirements whether they are included within the lease or not:

(i) all leases must be in writing;

(ii) the lease must be for the entire Unit and not merely parts of the Unit, unless the Owner remains in occupancy;

(iii) all leases shall be subject in all respects to provisions of the Declaration, the Bylaws, and all Rules adopted by the Board;

(iv) all Owners who lease their Units shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenants' family occupying such Units and shall provide the Secretary of the Association with a complete copy of the lease. All Owners leasing their Unit shall promptly notify the Secretary of the Association of the address and telephone number where such Owner can be reached;

(v) no Owner shall lease his Unit for a period of less than thirty (30) days.

(b) Any failure of a tenant to comply with the Declaration, Bylaws, and Operating Rules, shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

(c) If any tenant is in violation of the provisions of the Declaration, Bylaws, or Rules of the Association, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Declaration, the Bylaws of the Association, or the Rules of the Association, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which the Association has, If permitted by present or future law, the Association may recover all its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.

(d) The Association shall give the tenant and the Owner notice in writing of the nature of the violation of the Declaration and/or Rules, and twenty (20) days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

(e) Each Owner shall provide a copy of the Declaration, Bylaws and all Rules of the Association to each tenant of his or her Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws and the Rules of the Association.

8.5.8 Window Coverings. All drapes, curtains, shutters, blinds or other window coverings visible from the street or Common Areas shall be beige, white, or off-white in color or lined in beige, white, or off-white, or, as the case may be, of colors, materials and patterns which are approved by the Board or the Architectural Control Committee.

8.5.9 Clothes Lines. There shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry or other such items over exterior railings shall be allowed.

8.5.10 Power Equipment and Motor Vehicle Maintenance. No power equipment, hobby shops, or motor vehicle maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. All hazardous waste shall be disposed of properly by each Owner.

8.5.11 Liability of Owners for Damage to Common Area. The Owner of each Unit shall be liable to the Association for all damage to the Common Area or improvements to the extent described in Section 6.1.1.

8.5.12 Basketball Standards and Sports Apparatus. No basketball apparatus or fixed sport apparatus shall be attached to the exterior surface of any portion of the Common Area nor shall any portable apparatus be used for playing basketball or other sports in the Project.

8.5.13 Flags, Pennants, Banners, Etc. There shall be no exhibiting, flying or hanging of any flags, pennants, banners, kites, towels, etc., from any area of the Project (except the Declarant's sales office) that would be visible from the street, Common Area, or the other Units, except in conformance with Rules adopted by the Board or the Architectural Control Committee, and for flags, banners and signs that are expressly permitted by statute. The Association may adopt Rules regarding the display of flags, banners and signs provided that such Rules shall be consistent with the then applicable laws.

8.5.15 Activities Causing Increase in Insurance Rates. Nothing shall be done or kept in any Unit or in any improvements constructed in any Unit, or in the Common Area, which will increase any applicable rate of insurance or which will result in the cancellation of insurance on any Unit or any part of the Common Area, or which would be in violation of any law.

8.5.15 Common Area Use.

- (a) Except as expressly provided in this Section 8.5.15, no equipment, materials, or possessions or other personal property may be stored, grown, or displayed in the Common Area, including laundry room and balconies, either temporarily or permanently, that is not approved in advance by the Architectural Control Committee.
- (b) Notwithstanding any provision of this Declaration to the contrary, the Association shall regulate, allocate and assign the use of all Common Area storage spaces, including, at least, assigning one (1) storage space

to each Unit for use exclusively by the Owner or the tenants of such Owner during the period such Owner owns a Unit.

8.5.16 Owner's Right and Obligation to Maintain and Repair.

(a) Except for those portions of the Project which the Association is required to maintain and repair, each Unit Owner shall, at his sole cost and expense, maintain and repair the Unit, keeping the same in good condition. Each Owner shall be responsible for and bear the cost of maintenance, repair and replacement of the following items within such Owner's Unit: interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wall paper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, smoke detectors, and any and all other appliances of any nature whatsoever; heating, ventilating and air conditioning equipment servicing such Unit (provided, however, that such equipment located in part outside such Unit shall be maintained by the Association); exterior and interior door hardware, gaskets and seals, interior doors; cabinets, light bulbs; plumbing and other fixtures of any nature whatsoever; "built-in" features; and decorative features, fireplaces, if any, and any furniture and furnishings. Each Owner shall maintain, repair and replace any smoke detectors located in the Owner's Unit. Each Owner shall keep the Exclusive Use Common Area appurtenant to the Owner's Unit in a clean and neat condition at all times and shall maintain the landscaping in any such areas.

(b) Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit.

(c) In the event the Owner fails to carry out the maintenance described in this Section 8.5.14 after written notice thereof from the Association, the Board may, following notice and hearing as provided in the Bylaws, cause such work to be done and the cost of the work shall immediately be paid by such Owner to the Association as a Reimbursement Charge, and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

8.5.17 Floor Coverings. No alteration or replacement of the floor covering materials originally installed in the Units shall be permitted except with the consent of the Board or Architectural Control Committee.

8.5.18 Fire Restrictions. No Owner or other resident of the Project may store any flammable materials on any Exclusive Use Common Area balcony. Further, no exterior fires of any kind, including those contained in barbecue grills, shall be permitted in any Unit or on any Exclusive Use Common Area balcony. Nothing may be done in any Unit or in, on or to the Common Area that may impair or alter fire sprinklers within the Units or their source of water.

8.5.19 Rights of Disabled. Subject to Section 11.1, each Owner may modify his Unit and the route over the Common Area leading to the front door of his Unit, at his sole expense, to facilitate access to his Unit 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 § 4760 or any other applicable law.

8.5.20 Smoking Restrictions. Smoking of any and all combustible materials, including tobacco and marijuana, shall not be permitted in any Unit, or enclosed Common Area, including any hallways or elevators, at any time, except as provided by law.

8.5.21 Moving In/Out and Contractor Rules. The Board may adopt Rules regulating the moving of property in and out of a Unit and means of ingress and egress to and from the Unit. The Rules may include, but are not limited to, Rules regarding the times during which moving in or out may occur, coordination of two or more moves occurring within the same time period, protection for the elevator cabs, disposal of moving boxes, and the posting of collateral or security to pay for damage to the Common Area. In addition, the Board may adopt Rules regulating any construction work performed within a Unit, including remodeling or upgrading. The Rules may include, but are not limited to, Rules regarding construction times, protection for the elevator cabs, disposal and storage of construction materials and equipment, construction access routes, and the posting of collateral or security to pay for any damage to the Common Area.

8.5.22 Nuisance. No Owner, or such Owner's family, invitees, guests or tenants, may permit or suffer any activity to be conducted or any object, material or substance to be kept in any portion of the Project which will (a) obstruct or interfere with the rights of other Owners, (b) annoy other Owners by unreasonable noise, smell or otherwise, (c) be noxious, harmful or unreasonably offensive to other Owners, (d) be a violation of any governmental ordinance, statute, rule or regulation, or (e) increase the premium rate or cause the cancellation or non-renewal of any policy of insurance on any portion of the Project.

8.5.23 Use by Declarant. Notwithstanding the foregoing, so long as Declarant has the right to use Units, Common Area for models, sales office and construction offices pursuant to Section 3.1 of this Declaration, Declarant shall have the right to use and to improve the Common Area as a temporary parking area, to use any unassigned or guest parking areas for sales or construction activity parking, and to maintain trailers or temporary structures within the Project for uses incidental to the initial construction and marketing of the Project, provided that such use does not unreasonably interfere with any Owner's use of the Common Area. Such trailers or structures shall be promptly removed upon completion of all construction and all sales activity.

8.5.24 Indemnification. Each Owner shall be liable to the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct or negligence of the Owner, members of the Owner's family, and the contract purchasers, tenants, guests and invitees of the Owner, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association or liability insurance covering the Owner, members of the Owner's family, or the contract purchasers, tenants, guests or invitees of the Owner. Each Owner, by acceptance of the deed to the Owner's Condominium, agrees to indemnify each and every other Owner and the Association, and to hold them harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Unit of the indemnifying Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or the indemnified Owners or (ii) that the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or person temporarily visiting his or her Unit.

8.5.25 Enforcement by Suit. The failure of any Owner to comply with any provision of this Declaration, the Articles, Bylaws, Operating Rules, Board resolution or Architectural Committee decision shall give rise to a cause of action in the Association and any aggrieved Owner for the recovery of damages or for injunctive relief, or both. Any enforcement action by the Association against an Owner shall comply with the provisions of Section 3.2.3. The failure by the Association to perform any duty under, or to enforce the provisions of, this Declaration, the Articles, the Bylaws, the Operating Rules, Board resolutions or Architectural Committee decisions,

shall give rise to a cause of action in any aggrieved Owner to compel such performance or enforcement or to recover damages, or both.

8.5.26 Exceptions. The covenants and restrictions set forth in this Section 8.5 or in Section 17 shall not and do not apply to any of the following:

(a) Any act done or proposed to be done upon the Property, or any condition created thereon, by any governmental agency or entity, or the agents or employees of any governmental entity acting in the scope of their authority as such agents or employees;

(b) Any act done or proposed to be done upon the Property, or any condition created thereon, by any utility company (including, but not limited to, companies furnishing electric, gas, water, telephone, cable television and/or sewer service to all or parts of the Property), or the agents or employees of any such company, which act could be done by such company were this Declaration not made;

(c) Any act done or proposed to be done upon the Property, or any condition created thereon (including without limitation, the use of Units for models, sales or resales offices), by Declarant, or its successors, assigns, agents, employees or contractors, in connection with the marketing, leasing, sales or resales of Condominiums, located now or in the future within the Property or in the course of planning for, preparing the Property for and/or construction upon the Property of any Condominium or streets, utilities, recreational and residential buildings, and all other original improvements, or in connection with the exercise of any right or easement reserved to Declarant in this Declaration; provided, however that any such acts, proposed acts or conditions created upon the Property shall not unreasonably restrict the Owners in their use and enjoyment of the Common Area or the facilities thereon;

(d) Any act done or proposed to be done upon the Property, or any condition created thereon, which act or condition has been approved in advance by the Board or the Architectural Committee acting within its authority as set forth in this Declaration; or

(e) Any act done or proposed to be done upon the Property, or any condition created thereon, by any person pursuant to court order, or the order of any public officer or public agency; provided, however, that the orders contemplated in this sub-Section are only those which are the result of action initiated by public officers or agencies and which embody mandatory requirements with penalties for non-performance, and are not those orders which result from the application of private parties or are merely permissive.

8.5.27 Future Construction. Nothing in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of improvements upon the Common Area or to construct or modify buildings or structures or to alter them or to construct additional improvements as Declarant deems advisable before completion and sale of the entire Project. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarant's interest in the Project, as developer, by an express assignment incorporated in a recorded deed that transfers any such interest to a successor or in any other recorded instrument.

ARTICLE IX INSURANCE

9.1 Insurance.

The following insurance shall be obtained and maintained by the Association:

9.1.1 Unit Insurance; Amount, Term and Coverage.

(a) master hazard policy insuring all improvements, equipment and fixtures in the Project including those the Units and all built-in or set-in appliances, cabinets and floor coverings in the Units, in the amount designated by Declarant as the original replacement cost thereof based on the standard package of appliances, cabinets and floor coverings offered to all Owners before the Close of Escrow) with policy limits of either: (i) full replacement value off the covered improvements or (ii) no less than 80% of replacement cost of the covered improvements, excluding foundations and footings in either instances, unless otherwise required by FNMA or FHLMC requirements as set forth in subparagraph 9.1.2, below. The following endorsements should be included in any such master hazard policy, if commercially reasonable to obtain:

- (1) changes in building codes ("ordinance or law endorsement");
- (2) inflation guard coverage;
- (3) demolition coverage;
- (4) "agreed-amount" endorsement (to eliminate a coinsurance problem);
- (5) replacement cost endorsement; and
- (6) primary coverage endorsement.

(b) an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members, against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property. The amount of general liability insurance that the Association shall carry at all times shall be not less than the minimum amounts required by California Civil Code § 5800 and § 5805;

(c) workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

(d) fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

(e) flood insurance if the Project is in an area designated by an appropriate governmental agency as a special flood hazard area;

(f) officers' and directors' liability insurance in the minimum amounts required by California Civil Code Sections 5800 and 5805;

(g) insurance against water damage, and liability for non-owned and hired automobiles, such other insurance as the Board in its discretion considers necessary or advisable; and

(h) earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

9.1.2 Unit Insurance; Amount, Term and Coverage. The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor to either of those entities (except for earthquake insurance, the purchase of which shall be within the discretion of the Board, as provided in § 9.1.1(h) above). If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area. The Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Board determines otherwise, the Association shall pay deductibles required under any insurance claims from Association funds, unless insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with Sections 5.4 and 5.5 of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from Association funds or from borrowing.

9.1.3 Representation for Claims. Each Owner appoints the Association of which it is a Member, or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

9.1.4 Representation for Claims. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

9.1.5 Waiver of Subrogation. Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Units and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured.

All individually owned insurance carried by Owners shall contain a waiver of subrogation as to the Association and its officers, directors and Members, the Owners and occupants of the Units and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide.

9.1.6 Review of Policies. The Association shall periodically (and not less than annually) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

9.1.7 Separate Insurance Limitations. No Unit Owner shall separately insure his Unit against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the personal property in the residences and does not cover personal liability for damages or injuries occurring in the Units. Each Owner shall insure his personal property and any improvements within the unit against loss and obtain any personal liability insurance that he desires. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in Section 9.1.1 will provide coverage for such improvements.

9.1.8 Association Copies of Policies; Notice to Members. The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 9.1.1. The Association shall distribute annually to the Members a summary of the Association's insurance policies as required by Civil Code Section 5310(a)(7) and as provided in the Bylaws. The Association, as soon as reasonably practical, shall notify its Members by first-class mail if any of the policies have been cancelled and not immediately renewed or restored or if there is a significant change such as a reduction in coverage or limits or an increase in the deductible for any policy. If the Association receives any notice of non-renewal of a policy, the Association immediately shall notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

To the extent that the information required to be disclosed, as described in Civil Code § 5310(a)(7), is specified in the insurance policy declaration page, the Association may meet its disclosure obligations by making copies of that page and distributing copies to all its Members.

9.1.9 Limitation on Liability. The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the insurance required hereunder, because the insurance is no longer available or, if available, 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. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the insurance will not be obtained or renewed. Notwithstanding the foregoing provisions of this Section 9.1.9 and this Article IX, in all events the Association shall obtain and maintain such policy or policies of insurance with the minimum coverage limits described in Civil Code section 5800 and 5805 or any successor statutes thereto.

9.1.10 Policies and Procedures Regarding the Filing and Processing of Claims. The Board shall adopt a policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area improvements or any other matters covered by insurance maintained by the Association.

ARTICLE X DAMAGE AND DESTRUCTION; CONDEMNATION

10.1 Damage or Destruction; Proceeds Exceed 85% of Repair or Reconstruction Cost.

If there is a total or partial destruction of any of the buildings, structures or improvements in the Project, including improvements (but not personal property) located within Units or within Common Area, the Board shall obtain estimates from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and specifications. If the Board determines, based on the estimates received, that available proceeds of the insurance carried pursuant to Article IX are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the damaged or destroyed buildings, structures or improvements shall be promptly repaired or reconstructed, unless, within ninety (90) days from the date of damage or destruction, Owners holding at least seventy-five percent (75%) of the total voting power of each class of Owners entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair or reconstruction shall not take place.

10.2 Damage or Destruction; Proceeds Less than 85% of Repair or Reconstruction Costs.

If the Board determines, based on the estimates received, that proceeds of insurance carried pursuant to Article IX are less than eighty-five percent (85%) of the costs of repair and reconstruction of the buildings, structures or improvements located within Units or within Common Area, repair and reconstruction shall take place unless, within ninety (90) days from the date of date of damage or destruction, Owners then holding at least sixty-six and two-thirds percent (66-2/3%) of the total voting power of each class of Owners entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place.

10.3 Repair or Reconstruction Assessment.

If repair or reconstruction of the buildings, structures or improvements located within Units or within Common Area is authorized pursuant to Sections 10.1 or 10.2, each Owner in the Project shall be obligated to contribute a proportionate share of the cost of repair or reconstruction over and above the available insurance proceeds. The proportionate share of each Owner, in the case of damage or destruction to those portions of the Project that do not constitute buildings or structures within which residential elements of Units are located, shall be equal and, in the case of damage or destruction to those portions of the Project that constitute buildings or structures within which residential elements of Units are located, shall be based on the ratio that the square footage of the living area of each Owner's Unit bears to the total square footage of the living area of all Units. If any Owner fails or refuses to pay the Owner's proportionate share, the Association may levy a special assessment in the amount of the Owner's proportionate share against the Condominium of such Owner, which may be enforced under the lien provisions contained in Section 5.1 or in any other manner provided in this Declaration.

10.4 Repair or Reconstruction Contract.

If the repair or reconstruction of the buildings, structures or improvements located within Units or within Common Area is authorized pursuant to Sections 10.1 and 10.2, the Board shall obtain bids from at least two reputable licensed contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Association shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

10.5 Repair, Replacement and Reconstruction of Appliances, Fixtures, Equipment or Interior Improvements.

10.5.1 Owners' Duty to Repair, Replace or Reconstruct. If repair or reconstruction of the buildings, structures or improvements located within Units or within Common Area is authorized pursuant to Sections 10.1 and 10.2, appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning and electrical systems, equipment or fixtures or non-structural interior partition walls, windows and doors located within a Unit or exclusively serving a Unit that are damaged or destroyed, irrespective of the cause and whether or not covered by insurance, shall be repaired, replaced or reconstructed by the Owner of the Condominium of which the Unit is a part in accordance with the same plans and specifications utilized by Declarant, except as to modifications required by the City, the County or other governmental body having jurisdiction of the Project or approved by the Architectural Committee.

10.5.2 Available Insurance Proceeds. Subject to the rights of Mortgagees and provided there are sufficient proceeds to repair or reconstruct the buildings, structures and Common Area improvements, the Association shall make available to each such Owner, or to the insurance trustee described in Section 8.5 for the benefit of the Owner, solely for the purpose of repair, replacement or reconstruction, all insurance proceeds received by the Association on account of such damage or destruction affecting the appliances, systems, equipment or fixtures, or non-structural interior improvements located within the Owner's Unit.

10.5.3 Uninsured or Underinsured Losses. Any costs of repair, replacement or reconstruction of appliances or mechanical, plumbing, sewer, water, gas, cable television, heating, air conditioning and electrical systems, equipment or fixtures or non-structural interior partition walls, windows and doors located within a Unit or exclusively serving a Unit which are not covered by available insurance proceeds, including any uninsured or underinsured damage or destruction, shall be paid by the Owner of the Condominium of which the affected Unit is a part, and no other Owner nor the Association shall have any obligation or liability with respect thereto.

10.5.4 Repair or Reconstruction Affecting Structure. In the event that an Owner is required to make any repair, or if an Owner desires to reconstruct any improvement or install any fixture or equipment, which will affect or involve the exterior walls of the Owner's Unit, any bearing wall or other structural member or portion of the Common Area, the prior written approval of the Architectural Committee must first be obtained. However, such approval need not be obtained to make emergency repairs, provided that the structure or other Common Area so affected is restored to its original condition at the Owner's expense. All repairs or reconstruction shall be performed by the contractor selected by the Association as provided in Section 10.4 and shall be included in the contractor's bid and contract, unless the Architectural Committee determines that, because of the separate nature of the repair or reconstruction work, a separate contractor or supplier can be used by the Owner.

10.6 Repair or Reconstruction Not Authorized.

If the Owners determine not to repair or reconstruct the buildings, structures or improvements located within Units or within Common Area pursuant to Sections 10.1 and 10.2, any proceeds of insurance available for such repair or reconstruction shall be used or distributed as follows:

10.6.1 Purchase of Condominiums by Association.

(a) Decision to Purchase. If, at the meeting of Owners described in Sections 10.1 or 10.2, or at a separately called and noticed meeting held within thirty (30) days thereafter, Owners holding at least seventy-five percent (75%) of the total voting power of each class of Owners entitled to vote, in person or by proxy, approve the purchase of Condominiums with Units that were rendered uninhabitable by the damage or destruction, and within one hundred twenty (120) days thereafter sixty-seven percent (67%) of the institutional first Mortgagees with Mortgages encumbering Condominiums in the Project (excluding those with Mortgages encumbering Condominiums with Units that were rendered uninhabitable) consent in writing, the Board acting on behalf of the Association shall have the right to purchase the Condominiums with Units that were rendered uninhabitable by damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined pursuant to Section 10.8), using, first, the available proceeds of insurance for such purpose and, second, the proceeds of a special assessment levied against all Owners in the Project whose Condominium is not being purchased in the manner described in Section 10.3 (but without the consent or approval of Owners despite any contrary provisions in the Declaration). The Board's decision as to whether or not a Unit is uninhabitable shall be final and binding on all parties.

(b) Payment of Purchase Price. The purchase price of a Condominium purchased by the Association shall be paid jointly to the selling Owner and to all Mortgagees of the Owner's Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell and to convey the Condominium by grant deed to the Association as provided herein.

(c) Amendment of Project Documents. Concurrently with the purchase of a Condominium by the Association, the Association, acting as attorney-in-fact of all Owners pursuant to Section 20.8, shall amend the applicable Condominium Plan, the Tract Map (if necessary), any conditional use permit (if necessary), and this Declaration to eliminate from the Project the Condominiums so purchased and, if all Condominiums are purchased, to convert the purchased Condominiums to Common Area.

(d) Adjustment of Undivided Interests in Common Area. If less than all Condominiums are purchased, the Association shall convey to each remaining Owner of affected Common Area an equal fractional share of the undivided interests in the Common Area represented by the Condominiums purchased. The number of Condominiums in the Project subject to assessment shall be reduced by the number of Condominiums purchased and the assessment ratios described in Section 6.5 shall be adjusted to reflect the reduced number of Condominiums in the Project.

(e) Repair of Habitable Condominium Units. Notwithstanding a determination not to rebuild pursuant to Sections 10.1 or 10.2 and approval by the requisite number of Owners and Mortgagees to purchase Condominiums with Units that were rendered uninhabitable by damage or destruction as provided in Section 10.6.1(a), any Units (exclusive of furnishings and other personal property of Owners), which were not rendered uninhabitable by the damage or destruction, and any other portion of the Common Area which was damaged or destroyed, shall be repaired and reconstructed to a condition as near as possible to the condition existing immediately before such damage or destruction. Such repair and reconstruction shall be paid for, first, from the insurance proceeds remaining after setting aside funds for the purchase of Condominiums authorized to be purchased pursuant to Section 10.6.1(a), if any, and second, from a special assessment levied against all remaining Owners in the Project in the manner described in Section 10.3 (but without the consent or approval of Owners, despite any contrary provisions in the Declaration).

10.6.2 Apportionment of Insurance Proceeds if Purchase of Condominiums Not Authorized. If the required seventy-five percent (75%) of all Owners and sixty-seven percent (67%) of institutional first Mortgagees do not consent to purchase the Condominiums with Units that were rendered uninhabitable, the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to the relative fair market values of their Condominiums determined pursuant to Section 10.8. The Board shall have the duty, within two hundred seventy (270) days from the date of damage or destruction, to execute, acknowledge and record in the office of the County Recorder of the County, a certificate declaring the intention of the Owners not to repair or reconstruct or to purchase, and the Board shall commence proceedings to wind up and dissolve the Association and shall execute and record a grant deed conveying all Common Area to the Owners in equal undivided interests. On recordation of the certificate and grant deed, the right of any Owner to maintain a partition action as to the entire Project as described in Section 2.6 shall revive immediately.

10.7 Minor Repair and Reconstruction.

The Association shall have the duty to repair and reconstruct the buildings and structures or improvements located within Units (except furnishings or other personal property of Owners) or Common Area without the consent of Owners, and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction to the Units or Common Area does not exceed Twenty Thousand Dollars (\$20,000). The Association is expressly empowered to levy a special assessment for the cost of repairing and reconstructing Units or Common Area to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 10.3 (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

10.8 Fair Market Value.

Wherever in this Article X reference is made to a determination of the relative fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to any damage or destruction as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the relative fair market value of each such Condominium. The cost of such appraisal shall be paid from the available insurance proceeds or from the reserves or general funds of the Association.

10.9 Condemnation.

The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area(s), or part of the Common Area(s). In the event of a taking or acquisition of part or all of the Common Area(s) by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Unit in the Project by eminent domain, the Owner of such Unit shall be entitled to receive the award for such taking and, after acceptance of the award, he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Unit as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall

be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Units are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Units and their respective Mortgagees according to the relative values of the Units affected by the condemnation, said values to be determined by the method provided in Section 10.8.

If there is a substantial taking of the Project (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under California Civil Code § 4610 or any successor statute, on the election to terminate by fifty-one percent (51%) of the total voting power of the Association and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Units as determined under the method described in Section 10.8.

10.10 Portions of Awards in Condemnation Not Compensatory for Value of Real Property.

Those portions of awards in condemnation that do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

ARTICLE XI ARCHITECTURAL REVIEW COMMITTEE

11.1 Architectural Approval.

11.1.1 Except as to construction of improvements by Declarant in the Common Area of the Project, including those improvements made by Declarant as optional improvements to Units, and their replacements, no building, fence, wall or other structure shall be commenced, erected or maintained within the Project, nor shall any exterior addition to or change or alteration in any such structures or the Project, including solar heating systems, pools, spas, ponds, fountains, landscaping, stonework, concrete work or related mechanical plumbing or electrical facilities, awnings, covers or antennae, be made until the plans and specifications showing the nature, kind, shape, materials and location of the same have been submitted to and approved in writing as to harmony of design and location in relation to surrounding structures, landscaping and topography by the Architectural Committee provided for in Section 11.2. Whenever in this Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions or modifications of the Common Area, or such Owner's Unit, the Association through the Board may delegate to the Architectural Committee the right and duty to grant or withhold such consent or approval. In determining whether to approve or disapprove any proposed alteration, change, addition, or modification of or within the Common Area or an Owner's Unit, the Architectural Committee may consider and apply any subjective or objective criteria that it finds are consistent with or necessary to preserve or enhance the existing character, quality, design, and aesthetics of the Project. Any Owner who disagrees with the standards, policies, or requirements applicable to the Owner's Unit shall be entitled to request a hearing before the

Architectural Committee; however, all decisions of the Architectural Committee shall be final and binding on the Owner, and the Association shall take such action to enforce such standards, policies, or requirements as the Board deems appropriate in the circumstances. An Owner shall be liable to the Association for all costs, including attorney fees, expended by the Association in enforcing such standards, policies, or requirements. If the Architectural Committee or its designated representatives fails to approve or disapprove any proposed alterations, changes, additions, or modifications to an Owner's Unit within thirty (30) days after required plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been complied with in full. If the boundaries of a Unit are contained within a building, notwithstanding the foregoing, if an Owner submits plans and specifications to modify the Owner's Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to those persons, including a proposed modification of an existing route or means of access to the Owner's Unit, the review of the plans and specifications by the Architectural Committee shall be limited to a determination that the proposed modifications are consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics and the proposed and are consistent with the requirements of Civil Code, Section 4760, and the Architectural Committee shall not deny approval of the Owner's plans and specifications without good cause. In addition, the Architectural Committee shall from time to time propose and recommend to the Board modifications or additions to the Association Maintenance Standards and the Owner Maintenance Standards, as well as procedures and schedules for meetings and hearings concerning such standards and policies or their enforcement. In establishing or modifying the Association Maintenance Standards or the Owner Maintenance Standards, the Architectural Committee shall act with a view toward achieving uniform appearance and standards and policies consistent with the original design and construction of the Project and equality among Owners. Before recommending to the Board the adoption, amendment, or repeal of any of the Owner Maintenance Standards, the Architectural Committee shall provide to all Owners at least 30 days' prior written notice of such proposed action. The notice shall include the text of the proposed or revised standards and a description of their purpose and effect. The Architectural Committee shall make its recommendation to the Board after considering any comments made by the Owners. The decision of the Board to adopt, amend or repeal any of the Association Maintenance Standards or any of the Owner Maintenance Standards shall be final and binding upon the Owners. Upon request of any Owner, the Association shall provide the Owner with a copy of the then applicable Association Maintenance Standards and/or the Owner Maintenance Standards.

11.1.2 Combining Units. The Owner of two or more adjacent Units may combine the Units by creating internal access from one Unit to another through the walls or other portions of the Common Area which separate and divide such Units, or separate and divide two or more Units previously joined hereunder, so long as any such work does not impair the structural integrity of the Project and conforms with all applicable laws, including, without limitation, local planning and building codes and ordinances, and all plans and specifications have been submitted to and approved by the Board, or the Architectural Review Committee, as the case may be, prior to commencement of the work. The Board or Architectural Review Committee, as the case may be, shall not unreasonably withhold its consent, and may impose reasonable terms and conditions on its approval, including, without limitation, a requirement that the Owner obtain lien and completion bonds to assure lien-free completion of the work. All such work shall be done at the sole expense of the Owner of such Units. The Owner shall indemnify all other Owners and the Association against and hold them harmless from any cost, loss, liability, damage or injury to property or persons arising from, or caused, by such work.

11.2 Appointment of Architectural Review Committee.

Declarant shall appoint all of the original members of the Architectural Committee, consisting of not less than three (3) nor more than five (5) persons who need not be Owners and any replacements thereof. The number of members initially appointed shall constitute the number of authorized members of the Committee until increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of each class of Owners. The initial appointees (and any replacements) shall hold office until the first (1st) anniversary of the original issuance of the Final Subdivision Public Report for the Project by the DRE. Thereafter, Declarant may appoint a majority of the members of the Architectural Committee, and any replacements thereof until ninety percent (90%) of the Condominiums in the Project have been sold and deeds thereto recorded in favor of Owners or until the fifth (5th) anniversary of the original issuance of the Final Subdivision Public Report for the Project, whichever shall first occur. After one (1) year from the date of the original issuance of a Final Subdivision Public Report for the Project, the Board shall have the power to appoint one member of the Architectural Committee, which power shall continue until ninety percent (90%) of the Condominiums have been sold and deeds thereto recorded in favor of Owners or until the fifth (5th) anniversary of the original issuance of a Final Subdivision Public Report for the Project. Thereafter the Board shall have the power to appoint all of the members of the Architectural Control Committee; provided, however, such members shall include Declarant (or a if Declarant is a partnership, corporation, or limited liability company, a partner, officer or shareholder or member, as the case may be) for so long as Declarant owns any Unit in the Project. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the Board does not appoint an Architectural Review Committee the Board shall itself perform the functions of such Architectural Review Committee under the Architectural Rules as described below and this Declaration.

11.3 Submission of Plans; Action by Board or Committee.

11.3.1 Plans and specifications for all proposed improvements or alterations shall be submitted to the Board or Architectural Review Committee, as the case may be, by personal delivery or certified mail to the secretary of the Association or the chairman of the Architectural Review Committee. The approval of a majority of the members of the Architectural Review Committee, which shall include Declarant so long as Declarant owns any Unit in the Project shall be required to approve any Owners plans and specifications. In the event the Board or Architectural Review Committee fails to approve or disapprove in writing such design and location within thirty (30) days after such plans and specifications have been submitted to it, the request shall be deemed to have been approved. The Board or Architectural Review Committee's approval may contain conditions or requests for modification of particular aspects of the Owner's plans and specifications.

11.3.2 In reviewing and approving or disapproving a proposed change, the Architectural Review Committee shall satisfying the following requirements:

(a) It shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the Architectural Review Committee's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the Board.

(b) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(c) Notwithstanding a contrary provision of any of the Governing Documents, a decision on a proposed change may not violate any governing provision of law, including, but not

limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.

(d) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the Board.

(e) If a proposed change is disapproved, the applicant is entitled to reconsideration by the Architectural Review Committee, at an open meeting of such committee, except that the applicant is not entitled to reconsideration of a decision that is made by the Board. Reconsideration by the Board does not constitute dispute resolution within the meaning of Civil Code Section 5905.

Notwithstanding any provision of this Article XI to the contrary, nothing in this section authorizes a physical change to the Common Area in a manner that is inconsistent with the Architectural Review Committee's governing documents, unless the change is required by law.

11.4 Architectural Rules.

The Board may, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Such rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed improvements and alterations and guidelines for architectural design, placement of any work of improvement or color schemes, exterior finishes and materials and similar features that are recommended for use within the Property, provided that such rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail. The Board shall annually provide the Members with notice of any requirements for Board approval of physical changes to the Common Area, a Unit, or Exclusive Use Common Area. The notice shall describe the types of changes that require Architectural Review Committee approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

11.5 Variances.

The Board only shall be entitled to allow reasonable variances with respect to this Article XI to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that if the requested variance will necessitate deviation from, or modification of, a Property use restriction that would otherwise apply under this Declaration, the Board must conduct a hearing on the proposed variance after giving at least ten (10) days' prior written notice to the Board and to all Owners of Units immediately adjacent to the Unit for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 30-day comment period has expired.

The Board must make a good faith determination that (a) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Project or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (b) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or

(c) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area or Owner within the Property.

11.6 Estoppel Certificates.

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 Board), the Board shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Unit owned by the applicant Owner) that as of the date thereof, either (a) all improvements made and other work completed by such Owner with respect to the Unit comply with this Declaration; or (b) that 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 bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Unit through the Owner, shall be entitled to rely on the certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

ARTICLE XII PROTECTION OF MORTGAGEES

12.1 Rights of First Lenders.

No breach of any of the covenants, conditions and restrictions contained in this Declaration, nor the enforcement of any of its lien provisions, shall render invalid the lien of any First Lender on any Unit made in good faith and for value, but all those covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through Foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Governing Documents to the contrary, First Lenders shall have the following rights:

12.1.1 Copies of Governing Documents. The Association shall make available to Unit Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Declaration, Bylaws, Articles or other Rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the requested documents which may not exceed the reasonable cost to prepare and reproduce them.

12.1.2 Audited Statement. Any holder, insurer or guarantor of a First Mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

12.1.3 Notice of Action. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Unit number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;

(b) any default in performance of obligations under the Governing Documents or delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in section 12.1.4.

The Association shall discharge its obligation to notify Eligible Mortgage Holders or Eligible Insurers or Guarantors by sending written notices required by this Declaration to such parties, at the address given on the current request for notice, in the form provided in Section 15.9 below.

12.1.4 Consent to Action.

(a) Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project:

(i) the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgages, shall be required to terminate the legal status of the Project as a condominium project; provided, however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units is required;

(ii) the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of the Units subject to Eligible Mortgages, shall be required to add or amend any material provisions of the Governing Documents which establish, provide for, govern or regulate any of the following: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment Liens, or the priority of Assessment Liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Exclusive Use Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Units; (x) imposition of any restrictions on an Owner's right to sell or transfer his Unit; (xi) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the Governing Documents; (xii) to grant exclusive use of any portion of a Common Area to any Member (except as otherwise provided in Section 4600 of the Civil Code); or (xiii) any provisions that expressly benefit Mortgage holders, insurers, or guarantors;

(iii) an Eligible Mortgage Holder who receives a written request to approve additions or amendments without delivering or posting to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment shall be

deemed to have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

(b) except as provided by statute in case of condemnation or substantial loss to the Units and/or common elements of the Project, unless the holder(s) of at least two-thirds (2/3) of the First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners of the individual Units have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(i) by act or omission, seek to abandon or terminate the Project as a condominium project (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(ii) change the pro rata interest or obligations of any individual Unit for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determine the pro rata share of ownership of each Condominium; provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;

(iii) partition or subdivide any Unit;

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

(v) use hazard insurance proceeds for losses to any of the Project (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such Project.

12.1.5 Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

12.1.6 Contracts. Any agreement for professional management of the Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

12.1.7 Reserves. Condominium dues or charges shall include an adequate Reserve Fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments of Regular Assessments, rather than by Special Assessments.

The Association shall establish and maintain a Reserve Fund for replacements and a general operating reserve.

12.1.8 Priority of Liens. Any Assessment Lien created under the provisions of this Declaration is expressly made subject and subordinate to the lien and encumbrance of any First Mortgage that encumbers all or any portion of the Project, or any Unit. Each First Lender who comes into possession of the Unit by virtue of Foreclosure of the Mortgage, or any purchaser at a Foreclosure, will take the Unit free of any claims for unpaid Assessments and fees, late charges, fines or interest levied in connection with such claims, against the Unit which accrue prior to the time such First Lender or purchaser at a Foreclosure takes title to the Unit, except for claims for a pro rata share of such Assessments or charges to all Units including the mortgaged Unit, and except for Assessment Liens as to which a Notice of Delinquent Assessment has been recorded prior to the Mortgage.

12.1.9 Distribution of Insurance or Condemnation Proceeds. No provision of the Governing Documents gives an Owner, or any other party, priority over any rights of First Lenders in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Area.

12.1.10 Termination of Professional Management. With respect to the Common Area, when professional management has been previously required by the Governing Documents or by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to Eligible Mortgages.

12.1.11 Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Unit after acquisition by Foreclosure or by a deed in lieu of Foreclosure or by an assignment in lieu of Foreclosure, shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

12.1.12 Right to Appear at Meetings. Any Eligible Mortgage Holder may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or Assessments.

ARTICLE XIII AMENDMENT OR REVOCATION

13.1 Before Close of First Sale.

Before the close of the first sale of a Condominium in the Project to a purchaser other than a Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution of an instrument amending or revoking the Declaration by Declarant and any Mortgagee of record. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments or to the Supplement and shall be acknowledged and recorded in the office of the County Recorder of the County.

ARTICLE XIV
DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES

14.1 Notices Regarding Litigation.

14.1.1 Notices to Owners Regarding Significant Legal Proceedings. Notwithstanding anything in this Declaration to the contrary, except as otherwise provided in this Section 14, the Board shall not cause nor permit the Association to institute any significant legal action or proceeding, including any arbitration or judicial reference proceeding, against any person without providing the Owners with at least thirty (30) days' prior written notice of the Association's intention to institute legal action or proceedings. The notice shall describe the purpose of the action or proceeding, the parties to the action or proceeding, the anticipated cost to the Association (including attorney fees) in prosecuting the action or proceeding, the source of funds to prosecute the action or proceeding (reserves or special or regular assessments), and suggested information that should be disclosed to third parties, such as prospective purchasers and lenders, while the action or proceeding is being prosecuted. For purposes of this Declaration, "significant legal proceeding" shall mean any action or legal proceeding in which it reasonably could be anticipated that any of the following events could occur:

- (a) The levy of a special assessment to fund all or any portion of the action or proceeding;
- (b) The expenditure of funds from the Association's reserves in connection with the action or proceeding in an amount in excess of five (5%) percent of the then current reserves;
- (c) The amount of the claim is in excess of twenty-five thousand dollars (\$25,000); or
- (d) A material adverse effect on the ability to sell and/or refinance the Condominiums within the Project during the period the action or proceeding is being prosecuted.

Notwithstanding the foregoing, if the Board in good faith determines that there is insufficient time to provide prior notice to the Owners as required in this Section 14.1.1 before the expiration of any applicable statute of limitations or before the loss of any other significant right of the Association, the Board may take the necessary steps to commence the proceeding to preserve the rights of the Association, provided that as soon as is reasonably practical thereafter, and not later than 30 days following the commencement of the proceeding, the Board shall provide the Members with notice as required in this provision.

14.1.2 Notice to and Approval by Owners Regarding Suit Against Declarant or Other Developer Parties. At least thirty (30) days prior to filing any claim or civil action by the Association against the Declarant or other builder, developer or contractor of the Project ("Other Developer Party(ies)") for construction defects, including, without limitation, alleged damage to the Common Area, alleged damage to a Unit that the Association is obligated to maintain or repair, or alleged damage to a Unit that arises out of, or is integrally related to, damage to the Common Area or a Unit that the Association is obligated to maintain or repair, the Board shall provide a written notice to each Owner who appears on the records of the Association when the notice is provided that complies with Civil Code, Section 5985. This notice shall specify that (i) a meeting will take place to discuss problems that may lead to the filing of a civil action, (ii) the options, including civil actions, that are available to address the problems, and (iii) the time and place of the meeting.

Notwithstanding the above, if the Association has reasons to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give notice, as described above, within thirty (30) days after the filing of the action. Prior to initiating any such claim or civil action by the Association, the Board shall obtain approval by written ballot of at least a majority of the voting power of the Members of the Association other than Declarant.

14.1.3 Notice Not Required for Suits to Enforce Declaration. Notwithstanding the provisions of Sections 14.1.1 and 14.1.2, notice shall not be required to commence and pursue any action against an Owner, including Declarant, to enforce the Declaration to collect delinquent assessments as described in Article V or to enforce any Common Area completion bond as described in Section 15.10.

14.2 [Reserved.]

14.3 Notice to Owners of Settlement Agreement.

If the Association and the Declarant or Other Developer Party enter into a settlement agreement, or if the matter has otherwise been resolved, where the defects and resulting damage giving rise to the dispute have not been corrected as provided in Civil Code, Section 6100, the Association shall provide written notice to each Owner that the matter has been resolved, by settlement agreement or other means, including each of the disclosures required by Civil Code, Section 6100.

14.4 Mediation.

14.4.1 If the Association and the Declarant or Other Developer Parties cannot resolve any dispute or claim pursuant to the procedures described in Sections 14.1 through 14.3 (including, as applicable, the procedures set forth in Civil Code, Section 6000 and Civil Code, Sections 910-938), or if any Owner has a claim against Declarant or any Other Developer Parties, the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that are acceptable to the parties. This provision shall be mandatory for the Owners, the Association and Declarant and shall be binding upon the Other Developer Parties that consent in writing to be bound by the procedures set forth in this Section 14.4 and in Sections 14.5 and 14.6.

14.4.2 No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the mediation process.

14.4.3 Within ten days of the selection of the mediator, each party shall submit a memorandum setting forth its position regarding the issues that need to be resolved. The mediator shall have the right to schedule a premediation conference, and all parties shall attend unless otherwise agreed in writing. The mediation shall be commenced within ten days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree in writing to extend the mediation period.

14.4.4 The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable by the parties. The mediator has discretion to conduct the mediation in the manner the mediator believes is most appropriate for reaching a settlement of

the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. The mediator does not have the authority to impose a settlement on the parties. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree in writing and assume the expenses of obtaining such advice.

14.4.5 The mediator is subject to the provisions of Evidence Code, Sections 1115-1128, or any successor statutes thereto, except as the parties may agree otherwise in writing or orally in accordance with the requirements of Evidence Code, Section 1115.

14.4.6 Persons other than the parties, the representatives, and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

14.4.7 The expenses of witnesses shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless the parties in writing agree otherwise.

14.5 Judicial Reference.

If the parties cannot resolve their dispute or claim in accordance with the procedures described in Section 14.2, the Claim shall be resolved by means of a general reference made under the provisions of Code of Civil Procedure, Sections 638-645, by a general referee appointed under the provisions of Code of Civil Procedure, Section 638(a) or any successor statutes thereto (the "Referee"). Either or both parties may take the necessary steps to secure the appointment of the Referee. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. None of the parties shall be required to participate in the judicial reference proceeding unless the parties are satisfied that all necessary and appropriate parties (including affected subcontracts and/or material suppliers) will participate.

14.5.1 The Referee shall have the authority to hear and determine any and all issues in the action or proceeding, whether of fact or law, and to report a statement of decision. Neither the Referee nor any party shall have the right to impanel a jury. Each party waives the right to a jury trial. The following rules and procedures shall apply in all cases unless the parties agree otherwise in writing:

(a) The proceedings shall be heard in the County;
(b) The Referee shall be a retired judge, or an attorney with at least five years' real estate experience;

(c) Either party may object to the appointment of a particular referee for any grounds authorized under Code of Civil Procedure, Section 641 or any successor statute thereto; and any dispute regarding the selection of the Referee shall be resolved by the entity providing the reference services or, if no entity is involved, by the court in which the action or proceeding is pending;

(d) The Referee may require one or more pretrial conferences;

(e) The parties shall be entitled to such discovery as the Referee may authorize at the Referee's sole and absolute discretion, provided that the parties shall be given copies of the reports of any experts that will testify at the hearing or that will be introduced at the hearing, shall be entitled to take the deposition of any party to the proceeding and any party's expert witness(es), and shall be provided with the opportunity to inspect and/or test any areas that have been inspected and/or tested by the claimant;

(f) The Referee shall have the power to hear and dispose of motions in the same manner as a trial court judge;

(g) The Referee shall apply the rules of law, including the rules of evidence, unless expressly waived by both parties in writing;

(h) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except to the extent permitted by California law;

(i) The Referee's decision may include legal and/or equitable remedies;

(j) The Referee's statement of decision shall contain a description of the grounds for the Referee's decision and shall stand as the decision of the court as authorized under Code of Civil Procedure, Section 644(a), and judgment may be entered thereon in the same manner as if the action had been tried by a court; and

(k) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(l) Each party retains the same appeal rights from the Referee's decision as if judgment had been entered on a trial court judge's statement of decision.

14.6 Claims for Declaratory Relief or Enforcement of Project Documents.

Prior to the filing of an enforcement action for declaratory, injunctive, or writ relief in conjunction with a claim for monetary damages not in excess of Ten Thousand Dollars (\$10,000), the Board, or any Owner who seeks such relief, shall first endeavor to submit the matter to alternative dispute resolution in compliance with the provisions of California Civil Code Sections 5925-5940. The Board shall comply with the requirements of California Civil Code Section 5965 by providing Members of the Association annually with a summary of the provisions of Article 2 (commencing with Civil Code Section 5925) of Chapter 10 (Division 4, Part 5) of the California Civil Code, including the following language: "Failure of a Member of the Association to comply with the alternative dispute resolution requirements of Section 5930 of the Civil Code may result in the loss of your right to sue the Association or another Member of the Association regarding enforcement of the Governing Documents or the applicable law."

14.7 Covenant Not to Sue.

Declarant, the Association, each Other Developer Party that agrees to be bound by these provisions, and each Owner covenant that each shall forbear from commencing any litigation without complying with the procedures described in this Section 14. If any party breaches the

foregoing covenant, the other party may obtain an appropriate order compelling the breaching party to comply with the procedures described in this Section 14. Despite the foregoing, any party may file a lawsuit and take such other action as may be necessary in order to toll the running of any applicable statute of limitations, provided that the party shall immediately stay any further proceedings under the legal action and shall comply with the provisions of this Section 14.

ARTICLE XV GENERAL PROVISIONS

15.1 Enforcement.

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court. If permitted by law, the Association has the right to record a Notice of Violation against the Unit of an Owner who is not in compliance with the provisions of the Governing Documents. Failure by the Association or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

15.2 Invalidity of Any Provision.

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

15.3 Term.

The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners of the Units, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change the covenants and restrictions in whole or in part, or to terminate the same.

15.4 Amendments.

15.4.1 Unilateral Amendment by Declarant. Notwithstanding any other provisions of this Section, at any time prior to the first Close of Escrow in the Project, Declarant may unilaterally amend or terminate this Declaration by recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant. Notwithstanding any other provisions of this Section, Declarant (for so long as Declarant owns any portion of the Project or until five (5) years following the date of the issuance of the original final Public Report for the Project by the DRE, whichever shall occur earlier) may unilaterally amend this Declaration or by recording a written instrument signed by Declarant in order to: (i) conform this Declaration, to the rules, regulations or requirements of VA, FHA, Fannie Mae, Ginnie Mae or Freddie Mac; (ii) amend, replace or substitute any Exhibit, except Exhibit A and Exhibit B hereto, for any purpose to the extent that the Exhibit affects portions of the Project that have not yet

been conveyed to the Association or for which there has been no Close of Escrow, as applicable; (iii) amend, replace or substitute any Exhibit to correct typographical or engineering errors; (iv) include any Exhibit that was inadvertently omitted from the Declaration at the time of recording; (v) comply with any city, county, state or federal laws or regulations; (vi) correct any typographical errors; (vii) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association or Owners arising under the Right to Repair Law at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; and (viii) change any exhibit or portion of an exhibit to this Declaration to conform to as-built conditions.

15.4.2 Amendment by Members. After sale of the first Unit, in a single-class voting structure, the provisions of this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of Members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership and, if required, the consent of the DRE. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the County Recorder's Office. Notwithstanding anything in this Declaration to the contrary, any amendment to the Condominium Plan shall satisfy the requirements of California Civil Code § 4285 or any successor statute.

15.4.3 Amendments Regarding Initiation of Construction Defect Claims. Notwithstanding anything to the contrary contained in this Declaration, Sections, 6.1.1, 6.1.2, 7.1, 10.1, 15.4.3, 15.6, and 15.7 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 First Lenders.

15.4.4 Amendments Requiring Consent of Owners. Notwithstanding anything herein to the contrary, no amendment affecting the dimensions of any Unit or the interests in the Common Area or Exclusive Use Common Area shall be effective without the consent of all Owners whose Units, Common Area interests, or Exclusive Use Common Area rights are affected by the amendment. The provisions of this Section 15.4.4 may not be amended without the unanimous consent of the total voting power of the Association.

15.5 Encroachment Rights.

If any portion of the Common Area encroaches on any Unit or any part of a Unit, or any portion of a Unit encroaches on any Common Area due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by that encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner or Owners if that encroachment occurred due to the intentional conduct of such Owner or Owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be appropriate rights for the maintenance of those encroachments so long as they shall exist. In the event an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an

adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map and/or Condominium Plan. Such modification may be in the form of a certificate of correction and shall be executed by Declarant (so long as Declarant is the sole Owner of the Project) and by Declarant's engineer (in the case of a condominium plan) and, in addition, by the city engineer (in the case of a subdivision map). If the correction occurs after title to the Association Common Area has been conveyed to the Association, the Association shall also execute the certificate of correction. The Board of Directors may, by vote or written approval of a majority of the Directors, authorize the execution of the certificate of correction. The modification may also be made by lot line adjustment, if more appropriate.

15.6 Limitation of Restrictions on Declarant.

Declarant is undertaking the work of construction of the improvements upon the Project. The completion of that work and the sale, rental, and other disposal of the Units is essential to the establishment and welfare of the Project as a residential community. In the event such construction is not completed prior to the date of the issuance of the original final Public Report for the Project by the DRE, then in order that the work may be completed and the Project be established as a fully-occupied community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

15.6.1 Prevent Declarant, its contractors, or subcontractors from doing on the Project or any Unit whatever is reasonably necessary or advisable in connection with the completion of the work; or

15.6.2 Prevent Declarant or its representatives from erecting, constructing and maintaining on the Project (except upon Units owned by others), such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing said Project as a residential community and disposing of the Project in parcels by sale, lease or otherwise; or

15.6.3 Prevent Declarant from conducting on the Project (except upon Units owned by others) its business of completing the work and of establishing a plan of Unit ownership and of disposing of the Project as Units by sale, lease or otherwise (including use of one (1) or more Units as a sales office); or

15.6.4 Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof; or

15.6.5 Subject Declarant to the architectural control provisions of Section 11.1 for construction of any Unit or other improvements on the Project.

The foregoing rights of Declarant with respect to the Common Area shall terminate upon sale of Declarant's entire interest in the Project or until five (5) years following the date of the issuance of the original final Public Report for the Project by the DRE, whichever shall occur earlier.

So long as Declarant, its successors and assigns, owns one (1) or more of the Units established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid

disturbing the use and enjoyment of Units (and the Common Area) by Owners, while completing any work necessary to those Units or Common Area.

15.7 Termination of Any Responsibility of Declarant.

In the event Declarant shall assign or convey all its right, title and interest in and to the Project to any successor Declarant, then and only in such event, Declarant shall be relieved of the performance of any further duties or obligations under this Declaration arising after such conveyance, and such successor Declarant, shall thereafter be obligated to perform all such duties and obligations of the Declarant.

15.8 Owners' Compliance.

Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys' fees, or (5) any combination of the foregoing.

In the event of a violation of the Governing Documents, the Association may, if permitted by applicable law, record a Notice of Violation against the Unit of the non-complying Owner. Upon recording a Notice of Violation, the Association shall have complete discretion in deciding whether, when and how to proceed with enforcement, and any delay after recording a Notice of Violation shall not give rise to a defense of waiver or estoppel in favor of a non-complying Owner. The Association may act to enforce compliance against a subsequent Owner who acquires a Unit with a recorded Notice of Violation. The right of the Association to record a Notice of Violation shall be in addition to all other rights and remedies the Association may have at law or under the Governing Documents.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws, shall be deemed to be binding on all Owners, their successors and assigns.

15.9 Notice.

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

15.10 Special Provisions Relating to Enforcement of Declarant's Obligation to Pay Assessments.

In the event the Association is obligee under a Bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to pay Assessments on Units owned by Declarant, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any of Declarant's Assessments which are delinquent for thirty (30) days. A special meeting of Members of the

Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or such a meeting to consider the failure of the Board to consider and vote on the question shall be held not less than ten (10) days nor more than twenty (20) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligations under the Bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

Upon satisfaction of the Declarant's obligation to assure the availability of funds to pay Assessments upon unsold Units as set forth in Title 10 Cal Code of Regs § 2792.9, the escrow holder holding the Bond shall return the Bond to Declarant, after delivery to said escrow holder of Declarant's written request for release of the Bond, and Declarant's written statement that [1] Declarant has paid, as and when due, all regular and special Assessments levied by the Association against Units owned by the Declarant and that [2] 80% of the Units in the Project have been conveyed by Declarant, unless pursuant to Title 10 Cal Code of Regs § 2792.9, the Association delivers to said escrow holder its written objection to the return of the Bond to Declarant within forty (40) days after delivery of notice of Declarant's request from release and the statement to the Association. The Association shall not condition its approval of the release of the Bond on the satisfaction of any condition other than the payment of Assessments.

If the Association delivers to the escrow holder of the Bond a demand for remittance of the Bond or a portion thereof, or the proceeds thereof to the escrow holder of the Bond, which demand is accompanied by a written statement signed by an officer of the Association that the Declarant is delinquent in the payment of Regular or Special Assessments which have been levied by the Association against Units owned by the Declarant, then all or some specified portion of the security as demanded shall be remitted to the Association upon the Declarant's failure to give the escrow holder within forty (40) days after receipt of delivery of the demand by the escrow holder, the subdivider's written objection to remittance of the security. Both the Declarant and the Association shall adhere and comply with the terms of escrow instructions with the escrow depository of the Bond, which shall be in the form approved by the Department of Real Estate, with respect to the holding of the Bond, the return or remittance of the Bond and other disposition of matters set forth in said escrow instructions with respect to the Bond. Any dispute between the Declarant and the Association regarding the question of satisfaction of the conditions for exoneration or release of the security shall, at the request of either party, be submitted to judicial reference as provided in Section 14.5 hereof.

15.11 Fair Housing.

No Owner shall, either directly or indirectly, discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person, or to engage in any act prohibited under all applicable laws, including, without limitation, Government Code sections 12955-12956.2.

15.12 Mergers or Consolidations.

In a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated

association, or, alternatively, the properties, rights 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 and enforce the covenants, conditions and restrictions established by this Declaration governing the Project, together with the covenants and restrictions established on any other property, as one (1) plan.

15.13 Notification of Sale.

Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner of the Condominium, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee, the transferee's Mortgagee and the 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 managing agent 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 Association. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to the transferee's transferor if the Association has received no notice of transfer as above provided, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Condominium over the age of twelve (12) years.

15.14 Power of Attorney.

Each Owner, by accepting and recording a Grant Deed to a Unit in the Project, is deemed to constitute and irrevocably appoint Declarant, for so long as Declarant owns all or any portion of the Project or until the fifth anniversary of the issuance of a final Public Report for the Project by the DRE, whichever shall occur first, and thereafter to the Board, as Owner's attorney-in-fact, for Owner and for each of Owner's mortgagees, optionees, Owners, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successor and assigns, whether voluntary or involuntary, and each Owner is deemed thereby to have conveyed to Declarant (for so long as Declarant owns all or any portion of the Project or until the fifth anniversary of the issuance of a final Public Report for the Project by the DRE, whichever shall occur first, and thereafter to the Association) a special power of attorney coupled with an interest authorizing Declarant to act as each Owner's attorney in fact to prepare, execute, acknowledge and record any amendment to or restatement of a Condominium Plan, as Declarant deems to be reasonably necessary in order to correct errors, to conform to as-built conditions, or to bring the Condominium Plan into compliance with any city, county, state or federal laws or regulations. The acceptance or creation or 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.

15.15 Binding Effect.

This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, successors and assigns.

15.16 Counterparts.

This Declaration may be signed in one or more counterparts, each of which shall constitute an original, and together shall constitute a single document.

15.17 Easements Reserved and Granted; Easements as Rights.

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Condominium. In the event that a legally sufficient easement for any purpose described in this Declaration cannot or has not been created, the reference to easement shall be construed as a right or a benefit in favor of the party for whom the benefit of the easement was intended to be conferred and a duty, obligation or servitude, if applicable, of the party against whom the right or benefit is stated to be exercisable or enforceable.

15.18 Additional Provisions.

Notwithstanding the provisions contained in the Governing Documents, the Association and the Owners are aware and understand that there may be, currently and from time to time, provisions of laws, such as under the Act, and other laws local, state and federal laws, statutes, ordinances or regulations, including without limitation the federal Fair Housing Act (Title 42, United States Code Sections 3601 *et seq.*) which may supplement or override the Governing Documents. Declarant makes no representations or warranties regarding the future enforceability of any provision in the Governing Documents.

15.19 Condominium Plan Consent.

Declarant, by its execution of this Declaration, and any beneficiary under a deed of trust encumbering the Project, by its subordinating to this Declaration, if any, certify that each consents to the recordation of the Condominium Plan attached hereto as Exhibit "A" and incorporated here, pursuant to the requirements of California Civil Code §§ 4285 and 4290.

[NEXT PAGE IS SIGNATURE PAGE]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of the date first written above.

DECLARANT:

Albany Hills, LLC, a California limited liability company

By: Andrew Goldberg

Its: Manager Andrew Goldberg

Attachments:

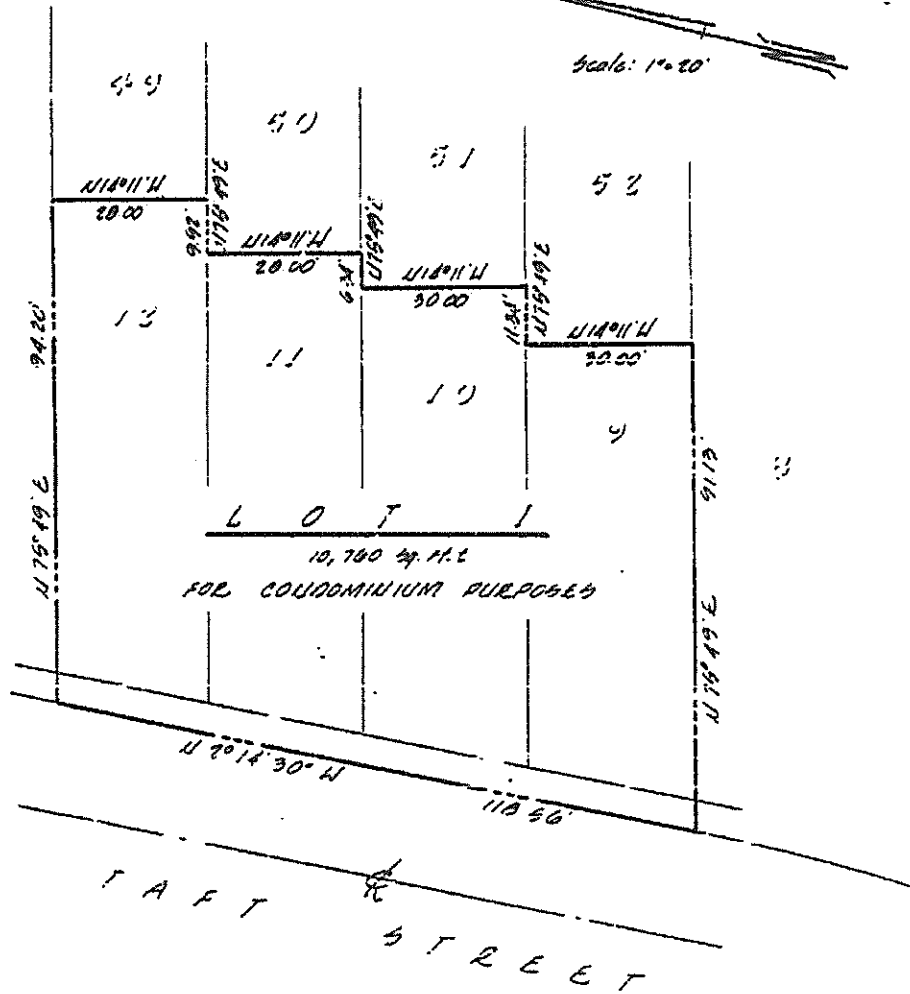
EXHIBIT A CONDOMINIUM PLAN

EXHIBIT B ASSIGNMENT OF UNDIVIDED OWNERSHIP INTEREST

EXHIBIT A
CONDOMINIUM PLAN

EXHIBIT "A"

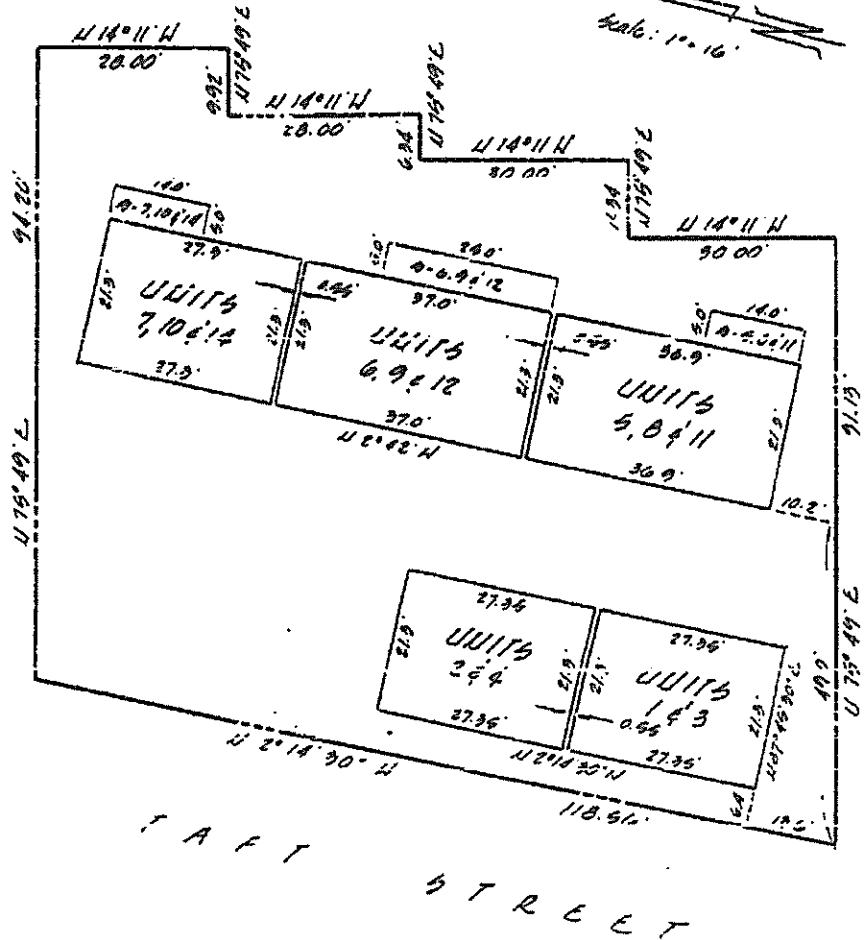
Scale: 1" = 20'



CONDOMINIUM PLAN

TRACT 4187
ALBANY, CALIFORNIA

BEING LOTS 9, 10, 11 AND 12, BLOCK 9 AND A PORTION OF
TAFT STREET, PLAT OF CERRITO HILL, FILED MAY 19, 1909,
MAP BOOK 24, PAGE 70, ALAMEDA COUNTY RECORDS



CONDOMINIUM PLAN
TRACT 4187
ALBANY, CALIFORNIA

FIRST, SECOND & THIRD LEVELS

EXHIBIT B

Floor Area of Units

<u>Unit No.</u>	<u>Floor Area (sf)</u>
1	580
2	580
3	580
4	580
5	780
6	780
7	580
8	780
9	780
10	580
11	780
12	780
14	580
Total:	8740

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

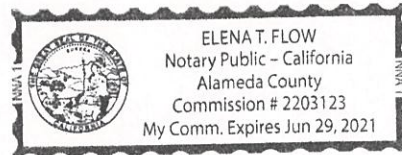
On 6/3/19 before me, Elena T Flow, Notary Public
(insert name and title of the officer)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature E T Flow (Seal)



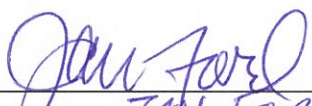
CONSENT AND SUBORDINATION

The undersigned, Fremont Bank, Beneficiary, under that certain Deed of Trust, which recorded on May 24, 2018, as Document No. 2018103229, Official Records of the County Recorder of the County of Alameda, executed by Albany Hills Development LLC, a California limited liability company, as Trustor, and Fremont Bank, as Trustee, does hereby consent to the execution and recordation of the Restated and Amended Declaration of Covenants, Conditions and Restrictions for Albany Hill Condominiums, Albany, California, a Condominium Project, to which this Consent and Subordination is attached ("Declaration"), and does hereby subordinate said Deed of Trust to said Declaration to the same extent and with the same force and effect as if said Declaration had been executed and recorded prior to the execution and recordation of said Deed of Trust.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Subordination this 12th day of April, 2019.

BENEFICIARY:

Fremont Bank

By: 
Name: JAN FORD
Title: CCO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

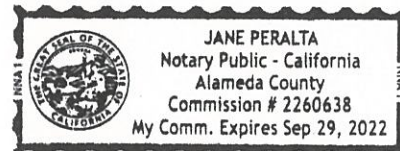
County of Alameda

On April 12, 2019, before me Jane Peralta, a Notary Public, personally appeared Jan Ford, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity(ies), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Jane Peralta



RECEIVED AND READ
DATE _____

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1 of 2

RESERVES

	Replacement Cost	Remaining Life	
Paint metal	\$18,375.00	8	\$2,296.88
Paint Stucco	\$18,144.00	8	\$2,268.00
Paint Wood	\$6,804.00	8	\$850.50
Paint Interior	\$1,524.00	8	\$190.50
Stucco	\$56,700.00	30	\$1,890.00
Wood trim	\$9,000.00	15	\$600.00
Roof gutters	\$4,200.00	15	\$280.00
Roof (tar & gravel)	\$30,000.00	30	\$1,000.00
Decks and stairs replacement	\$54,000.00	35	\$1,542.86
Decks and stairs membrane	\$13,500.00	10	\$1,350.00
Open parking structure	\$40,000.00	30	\$1,333.33
Hot water heater	\$1,000.00	10	\$100.00
Concrete	\$272.00	1	\$272.00
Mailboxes	\$1,300.00	15	\$86.67
Metal railing	\$20,000.00	10	\$2,000.00
vestibule entry	\$2,000.00	20	\$100.00
Fire protection system partial	\$15,000.00	10	\$1,500.00
Landscape	\$15,000.00	20	\$750.00
irrigation	\$2,500.00	10	\$250.00
gunnite slope cover	\$20,000.00	15	\$1,333.33
Plumbing (long term)	\$20,000.00	25	\$800.00
Plumbing short term	\$2,500.00	5	\$500.00
Electrical	\$6,000.00	30	\$200.00
TOTAL ANNUAL RESERVES			\$21,494.07

**RECEIVED AND READ
DATE _____**

DocuSigned by:

Andy Goldberg

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4276787 Gmk

FILED
Secretary of State
State of California

MAY 13 2019

100

(150)

1 of 4

ARTICLES OF INCORPORATION
OF
ALBANY HILL CONDOMINIUMS HOMEOWNERS ASSOCIATION

I

The name of this corporation is ALBANY HILL CONDOMINIUMS HOMEOWNERS ASSOCIATION.

II

This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under such law.

More specifically, the corporation is an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, and repairs, maintains and manages common areas, enforces rules and regulations adopted from time to time by the Board of Directors and discharges such other lawful duties and responsibilities required pursuant to the corporation's bylaws and the Restated and Amended Declaration of Covenant, Conditions and Restrictions (the "Declaration") recorded in the Office of the Recorder of Alameda County, State of California, with respect to the condominium project.

III

This corporation is intended to qualify as an owners association under the applicable provisions of the Internal Revenue Code and of the California Revenue and Taxation Code. No part of the net earnings of this corporation shall inure to the benefit of any private individual, except as expressly provided in those sections with respect to the acquisition, construction, or provision for management, maintenance and care of the corporation's property, and other than by a rebate of excess membership dues, fees or assessments. In the event of the dissolution, liquidation or winding up of the corporation, upon or after termination of the aforementioned real estate project in accordance with provisions of the Declaration, the corporation's assets remaining after payment, or provision of payment, of all known debts and liabilities of the corporation shall be divided among and be distributed to the members thereof in accordance with their respective rights therein.

IV

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purposes of this corporation.

V

The qualifications for membership in this corporation, the different classes of membership, the property, voting and other rights and privileges of members and their liability for dues and assessments and the methods of collection thereof, shall be as provided for in the Declaration and the Bylaws of this corporation.

VI

The location of the corporation's office, is 5111 Telegraph Avenue, Suite 304, Oakland, CA 94609-1925. The cross street is Claremont Avenue. The corporation has not yet appointed a managing agent.

VII

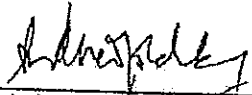
The name and complete business address in the State of California of this corporation's initial agent for service of process is:

4276787

Andrew Goldberg
5111 Telegraph Avenue, Suite 304
Oakland, CA 94609-1925

VIII

These Articles of Incorporation may be amended from time to time by the affirmative vote of a majority of the Board of Directors and a majority of the voting power of the members of the Association, and a majority of the voting power of the members of the Association other than the declarant under the Declaration, or where the two-class voting structure is still in effect, a majority of each class of membership.



Andrew Goldberg, Incorporator



I hereby certify that the foregoing transcript of 2 page(s) is a full, true and correct copy of the original record in the custody of the California Secretary of State's office.

MAY 22 2019

Date: _____

Handwritten signature of Alex Padilla in cursive script.

ALEX PADILLA, Secretary of State