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

12273

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First American Title
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Order No. 1498172 (22)

When Recorded, Return to:

Robinson-Hillcrest 92103, LLC
c/o Christopher Stearns
Attorney at Law
1901 First Avenue
Suite 112
San Diego, CA 92101-0300

DOC # 2006-0790177



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2006-0790177

DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS ESTABLISHING A PLAN OF
CONDOMINIUM OWNERSHIP
FOR
727 ROBINSON CONDOMINIUMS

NOTICE: THIS DECLARATION CONTAINS PROVISIONS FOR BINDING ARBITRATION OF DISPUTES IN CERTAIN SITUATIONS. SEE SECTIONS 10.02-10.02.8 FOR DETAILS. THESE ARBITRATION PROVISIONS INCLUDE A WAIVER OF THE CONSTITUTIONAL RIGHT TO A JURY. YOU SHOULD READ THE ARBITRATION PROVISIONS CAREFULLY AND YOU SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, and made by the person(s) and/or entity or entities hereinafter identified as the "Declarant", is made with reference to the following facts:

A. The Declarant is the owner of a certain tract of land located in the City of San Diego (the "City"), County of San Diego, State of California, more particularly described as set forth in Exhibit "A" to this Declaration, which is attached hereto and incorporated herein by reference and made a part hereof as though set forth in full, which property, together with all improvements and structures now or hereafter constructed thereon and all appurtenances thereto, is hereinafter defined and referred to as the "Project".

B. The Declarant hereby establishes by this Declaration a plan for the division of the Project in a single phase into a development consisting of residential Condominiums under the provisions of the Common Interest Development Act of the State of California (Civil Code Section 1350, et. seq.).

C. The Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of the said Condominiums and the Owners thereof.

NOW, THEREFORE, the Declarant hereby declares that the Project, and every part thereof shall be held conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plan for the improvement of the Project and the division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon the Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE 1

DEFINITIONS

1.01 "Articles" shall mean and refer to the Articles of Incorporation of the Association as originally established and as may be amended from time to time.

1.02 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, and managing the Project which is to be paid by each Unit Owner as determined by the Association or its Board of Directors.

1.03 "Association" shall mean and refer to the California nonprofit mutual benefit corporation established by the Declarant or its agent for the Owners of Condominiums in the Project, namely 727 ROBINSON HOMEOWNERS ASSOCIATION.

1.04 "Association Maintenance Manual" refers to the manual, if any, that may be prepared for Declarant by its agents and provided to the Association, specifying obligations for maintenance of the Common Area by the Association, as updated and amended from time to time.

1.05 "Board" and "Board of Directors" shall mean and refer to the governing body of the Association.

1.06 "Bylaws" shall mean and refer to the Bylaws of the Association as originally established and as may be amended from time to time.

1.07 "Common Area" shall mean and refer to the entire common interest development (the Project) except the separate interests (Units) therein.

1.08 "Common Expenses" means and includes the actual and estimated expenses of operating the Project, and any reasonable reserve for such purpose, as found and determined by the Board, and all sums designated Common Expenses by or pursuant to the Condominium Documents.

1.09 "Common Interest" means the proportionate undivided one-eighth (1/8th) fractional interest in the Common Area which is appurtenant to each Unit as set forth in Section 2.02(b) of this Declaration.

1.10 "Common Interest Development" means and refers to the Project.

1.11 "Condominium" shall mean an estate in real property as defined in California Civil Code Section 1351(f) or any successor statute and shall consist of an undivided interest in common in a portion of the real property hereinafter described, coupled with a separate interest in space called a Unit, the boundaries of which are described on the recorded final Condominium Plan in sufficient detail to locate all boundaries thereof.

1.12 "Condominium Building" shall mean the residential structure containing the Condominium Units.

1.13 "Condominium Documents" and "Project Documents" and "Governing Documents" are synonymous terms and mean and include this Declaration, the exhibits, if any, attached hereto, the Articles, the Bylaws, and any Rules And Regulations for the Members, as any and all of the foregoing are established and may be amended from time to time.

1.14 "Condominium Plan" and "Plan" shall mean and refer to the 727 ROBINSON CONDOMINIUM PLAN that is attached to and part of the Certificate Under Civil Code Section 1351 that is to be recorded in the Office of the County Recorder of San Diego County, California concurrently with this Declaration, consisting of: (1) a description or survey map of the Project, which refers to or shows monumentation on the ground; (2) a three-dimensional description of the Project, in sufficient detail to identify the Common Area and each separate Unit; and (3) a certificate consenting to the recordation of the Plan signed and acknowledged by the record owner of fee title to the real property included in the Project.

1.15 "Declarant" shall mean and refer to the person(s) and/or entity or entities identified in Exhibit "A" to this Declaration as the record holder(s) of title to the real property identified and legally described in said Exhibit, and shall also mean and refer to any and all successors and assigns of Declarant.

1.16 "Declaration" shall mean and refer to this Declaration Of Covenants, Conditions and Restrictions Establishing A Plan Of Condominium Ownership.

1.17 "Director" shall mean and refer to a person who is a member of the Board of Directors of the Association.

1.18 "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders".

1.19 "Eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with section 8.01 of this Declaration.

1.20 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 8.01 of this Declaration.

1.21 "Exclusive Use Common Area" and "Exclusive Use Easement Area" are synonymous terms and shall mean and refer to those portions of the Common Area that are designated by this Declaration for the exclusive use of one or more, but fewer than all, of the Owners of the separate Units, and which are or will become appurtenant to the separate Units, and over which exclusive easements are reserved for the benefit of certain Owners in accordance with Civil Code Section 1351(i).

1.22 "Institutional Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding, insuring or guaranteeing a recorded first mortgage on any Unit.

1.23 "Maintenance Obligations" refers to the Association's and each Owner's obligations to perform (i) all reasonable maintenance consistent with the terms of the Project Documents, the Association's Maintenance Manual and Owner Maintenance Manual, as applicable, any Maintenance Obligations and schedules in any warranty offered by Declarant or any manufacturer, and any Maintenance Obligations and schedules otherwise provided to either the Association or the Owners by Declarant or any manufacturer; and (ii) any commonly accepted maintenance practices to prolong the life of the materials and construction of the Common Area and the Units, as updated and amended from time to time.

1.24 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.25 "Mortgage" shall include a deed of trust as well as a mortgage.

1.26 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee, and shall include successors in interest of an original mortgagee.

1.27 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.28 "Owner" shall mean and refer to the record holder or holders of title of a Condominium in the Project. This shall include any person having a fee simple title to any Unit and shall include contract sellers, but shall exclude persons or entities having any interest merely as security for the performance of an obligation.

1.29 "Owner Maintenance Manual" refers to the manual, if any, that may be prepared for the Declarant by its agents and provided to each Owner, specifying obligations for maintenance of the Units by the Owners, as updated and amended from time to time.

1.30 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.31 "Project" shall mean and refer to that certain tract of land described in Exhibit "A" to this Declaration, including all structures and improvements erected or to be erected thereon, and all appurtenances thereto.

1.32 "Rules And Regulations" means and includes any "Association Rules" adopted by the Association or Owners, and also includes any "Operating Rules" adopted by the Board. Any Operating Rules are subject to the provisions of Civil Code Sections 1357.100 through 1357.150, inclusive, and any successor statute(s).

1.33 "Share" means the percentages in and to the Common Area attributed to and appurtenant to each Unit as set forth in Section 2.02(b) of this Declaration.

1.34 "Unit" shall mean and refer to the separate interests in space, the boundaries of which are described on the recorded final Condominium Plan in sufficient detail to locate all boundaries thereof.

1.35 "Unit Designation" means the number, letter or combination thereof or other official designations shown on the Condominium Plan.

1.36 Number and Gender. The singular and plural number and masculine, feminine and neuter gender, respectively, shall each include the other where the context requires.

1.37 Statutory References. Unless otherwise indicated, all references in this Declaration to a specific statute or code section refer to the statutes and codes of the State of California, and shall automatically include any amendment(s) thereto or any successor statute to any referenced statute or code section without the necessity of an amendment to this Declaration to update or change such reference.

ARTICLE 2

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

2.01 Description of Project: The Project consists of the above-referenced underlying tract of land with Condominium Units and all other improvements located thereon, and all appurtenances thereto. The Declarant has constructed or will construct, or there exists, upon the tract of land one or more structures which will be divided into Condominium Units. Reference is made to the Condominium Plan to supply further details concerning the Project. The development of the Project will be consistent with any overall development plans submitted by Declarant to, and approved by, the City, the United States Department of Veterans Affairs (VA), the Federal Housing Administration (FHA) or the Department of Housing and Urban Development (HUD), as applicable.

2.02 Division of Project: The Project is hereby divided into the following separate freehold estates:

(a) Units: Each of the Units is separately shown, numbered and identified on the Condominium Plan by the designation "LU-#" for Unit, where "#" is the number of the Unit. Each of the Units consists of the aggregate of the spaces bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors of that Unit. Each Unit includes both the portions of the building so described and the airspaces so encompassed, except for any soffits, exposed ceiling beams, interior bearing walls and those areas and those things which are defined as "Common Area" in Section 2.02(b) of this Declaration. All appliances, fixtures, and utility installations located within the Unit are a part of that Unit. Any and all individual heating and air conditioning equipment that serves only one Unit but is located outside that Unit is also part of that Unit. Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Section 2.06 of this Declaration. 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 and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

(b) Common Areas: The remaining portion of the Project is referred to herein as "Common Area" and shall include, without limitation: land; landscaping; driveways and driveway areas; exterior stairs and stairway areas and landing areas; walkways and walkway areas; utility areas and panels; trash and dumpster areas; perimeter fencing; controlled access gates; and the bearing walls, columns, girders, beams; sub-floors, unfinished floors, roofs and foundations of all buildings shown on the Plan; reservoirs, tanks, pumps, ducts, flues, chutes, conduits, pipes, plumbing, wires and other such installations (except the outlets thereof, other than central fire protection sprinkler heads, when located within a Unit), required to provide telephone, television, gas, water, sewerage, drainage, irrigation, electric, light, power and other utility service. Each Unit Owner shall have, as appurtenant to his Unit, an undivided interest in the Common Area equal to the quotient obtained by dividing the number one (1) by the number of Units within the Project. The ownership of each

Condominium shall include a Unit and such undivided interest in the Common Area. The Common Interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit Owners affected, and at least sixty-seven percent (67%) of the first Mortgagees of such Unit Owners, as expressed in an amended declaration. Such Common Interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner may use the Common Area in accordance with the purposes for which it is intended without interfering with the rights of any other Unit Owner. Each Unit shall have appurtenant to it a nonexclusive easement for ingress, egress and support through the Common Area.

2.03 Exclusive Use Common Areas:

(a) **Balcony Areas; Patio Areas; Deck Areas:** Certain parts of the Common Area of the Project are originally established as Exclusive Use Common Areas. These areas are identified on the Condominium Plan by the designations "B-#" for Balcony area and "P-#" for Patio area and "D-#" for Deck area, where "#" is a number which identifies the number of the Unit to which such Exclusive Use Common Area is made permanently and irrevocably appurtenant by and upon the proper recordation of this Declaration in the Office of the County Recorder where the Project is located. If the letters "A/a" and "B/b" (or any other such additional symbols) appear in the designations, they are simply a means of distinguishing one such area that is appurtenant to a particular Unit from another such area of the same type that is appurtenant to the same Unit.

(b) **Parking Spaces; Garage areas; Storage areas:** Certain parts of the Common Area of the Project may become Exclusive Use Common Areas as hereinafter provided. These areas are identified on the Condominium Plan by the designations "PS-*" for Parking Space and "G-*" for Garage area and "S-*" for individual Storage area, where "*" is a number which has no relation to the number designation of any Unit, but is simply used as a means to identify these spaces and areas and distinguish one such part of the Common Area from another of the same type. The Declarant may convey any such space and/or area to any purchaser of a Unit in the Project, thereby making such conveyed space and/or area an Exclusive Use Common Area which is appurtenant to the Unit described in the same conveyance of that Unit to such purchaser; provided that any and all such spaces and areas that are aligned in tandem with one another shall be conveyed to the same Unit. Any and all such spaces and areas which have not been so conveyed at the time of the recordation of the deed representing the first conveyance of the last Unit in the Project owned by Declarant to the purchaser or grantee thereof shall constitute a part of the ordinary Common Area of the Project.

(c) Any and all Exclusive Use Common Areas which are appurtenant to a Unit shall be described and included in the first conveyance of such Unit by the Declarant to the purchaser thereof (and in any and all subsequent conveyances of such Unit) and shall thereafter be available for the exclusive use and enjoyment of the Owner of the respective Unit transferred thereby upon recordation of such conveyance in the Office of the County Recorder where the Project is located.

(d) Any and all fireplaces, internal and external telephone wiring, shutters, awnings, window boxes, doorsteps, stoops, porches, balcony railings, patio fences, exterior doors, door frames, screens and windows; and hardware incident thereto, or other fixtures designed to serve

a single Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit.

2.04 No Separate Conveyance of Undivided Interests: The foregoing undivided 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 the Declarant, its successors, assigns and grantees covenant and agree that the undivided interests in the Common Area and the fee title to the respective Units conveyed therewith shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

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

2.06 Encroachment Easements: Each Condominium within the Project is hereby declared to have an easement over all adjoining Condominiums and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Condominium agrees that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In any Unit where noncentral air conditioning equipment is installed, an easement over the Common Area into which such air conditioning equipment encroaches shall exist for the purpose of the use and enjoyment, maintenance, replacement, and repair of said equipment.

2.07 Easements for Utilities and Maintenance:

(a) Easements over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas, sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the Project, and as may be hereafter required or needed to serve the Project, together with the right to grant and transfer the same, are hereby reserved in favor of Declarant until the sale of Declarant's entire interest in the Project, and thereafter in favor of the Association. Whenever sanitary sewer, water, electricity, gas, television receiving or telephone lines or connections, conduits, ducts, or flues are installed within the Project, which connections, or any portion thereof, lie in or upon Condominiums owned by other than the Owner of a Condominium served by said

connections, the Owners of any Condominium served by said connections shall have the right of reasonable access for themselves or utility companies to repair, replace and generally maintain said connections as and when necessary in the event the Board has failed or been unable to take timely action to do so.

(b) Whenever sanitary sewer, water, electricity, gas, television receiving or telephone lines or connections, conduits, ducts, or flues are installed within the Project which connections serve more than one Condominium, the Owner of each Condominium served by said connection shall be entitled to the full use and enjoyment of such portions of said connection as service his Condominium.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

(d) Notwithstanding any other provision of this Declaration to the contrary, the Owner of any Unit is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring that is part of the Exclusive Use Common Areas of his Unit. This access shall be subject to the consent of the Association, which approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the exterior of the Common Areas, and other conditions as the Association determines reasonable.

2.08 Rights of Entry and Use: The Units and Common Area (including Exclusive Use Common Areas) shall be subject to the following rights of entry and use:

(a) The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration or the Bylaws, provided that the Owner has received notice and a hearing as required by the Project Documents (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. Any entry by the Association to investigate a suspected or reported water intrusion shall be deemed an emergency.

(b) The access rights of the Association to maintain, repair, or replace improvements or property located in the Common Areas as described in Section 3.06(e) of this Declaration.

(c) The rights of the Owners, the Association, and the Declarant to install, maintain, repair, or replace utilities as described in Section 2.07 of this Declaration.

(d) The encroachment easements described in Section 2.06 of this Declaration.

(e) The rights of the Declarant during the construction period as described in Section 9.07 of this Declaration.

(f) The rights of Owners to make improvements or alterations authorized by California Civil Code section 1360, subdivision (a)(2), subject to the provisions of Article 6 of this Declaration to the extent applicable.

(g) Reasonable access for agents or employees of the Association or any public or private utility company serving the Project to inspect, read, maintain or replace any meters or other utility equipment located on the Project.

2.09 Creation of Designated Exclusive Use Common Area Walls: Until the sale or other conveyance by Declarant of its entire interest in the Project, Declarant shall have the right to grant to an Owner who acquires fee title to two (2) or more horizontally adjacent Units an Exclusive Use Easement within and through any demising walls separating those Units, along with the right to alter or modify or remove such demising walls, subject to the Owner's compliance with the applicable provisions of Section Article 6 of this Declaration. After the sale or other conveyance by Declarant of its entire interest in the Project, the foregoing right shall be vested in the Association. If an Owner receives all required approvals and combines two or more Units, after the removal or modification of any demising walls, such Units shall continue to be treated as separate Units for all purposes under this Declaration, including, but not limited to, voting rights and Assessment obligations.

ARTICLE 3

ASSOCIATION: ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS, DUTIES AND POWERS

3.01 Association to Manage Common Area: The Owners of all Condominiums covenant and agree that the management of the Common Area and the overall administration of the Project shall be vested in the Association in accordance with the provisions of the Condominium Documents.

3.02 Membership: The Owner of a Unit shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with the provisions of the Condominium Documents.

3.03 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or foreclosure 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 a foreclosure of such Unit. Upon death of a Member his membership passes automatically, along with title to his Unit, to his estate. A Mortgagee does not have membership rights until he becomes an Owner by foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his membership. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books, and thereupon any old membership outstanding in the name of the seller shall be null and void.

3.04 Membership Classes and Voting Rights: Initially, the Association shall have two (2) classes of voting membership:

(a) Class A: Class A Members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be Members, but the vote for such Unit shall be exercised as they among themselves determine, and in no event shall more than one vote be cast with respect to any Unit.

(b) Class B: Class B Members shall be the Declarant, and shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that the Class B Members may triple their votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(2) On the second anniversary date of the first conveyance of a Unit in the original issuance of the final subdivision report for the Project.

As long as Class B membership exists, no action by the Association that must have the prior approval of the Association Members shall be deemed approved by the Members unless approved by the appropriate percentage of Class A and Class B Members, except as set forth in Section 3.05(k) of this Declaration. Upon conversion to a single Class A voting membership, any action by the Association that must have the prior approval of the Members will require approval by at least a majority of the Members of the Association including at least a majority of Members other than Declarant.

3.05 Duties: In addition to the duties elsewhere enumerated or provided for in the Condominium Documents, and without limiting the generality thereof, the Association shall perform the following duties:

(a) Maintenance: The Association shall comply with the provisions of any Association Maintenance Manual provided by Declarant to the Association, and all Maintenance Obligations for the Common Area. The provisions set forth in any Association Maintenance Manual are intended as guidelines and are not exclusive of the Association's obligation to maintain the Common Area. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. The Association's responsibility specifically includes the operation and maintenance of any and all on-site private water and sewer and drainage facilities that are located on the Common Area or that serve more than one Unit. 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 neglect of an Owner, or his guests, tenants or invitees, the cost of which is not covered by insurance maintained by the Association. The repair or replacement resulting from such excluded items shall be the

responsibility of that Owner; provided, however, that if an Owner should fail to make the repairs or replacements which are the responsibility of such Owner, as provided above, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner, and hearing, the Association shall have the right, but not the obligation, to enter the Condominium and make such repairs or replacements, and the cost thereof shall be added to the Assessments chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

(b) Inspections: The Association shall regularly inspect, maintain and repair the Common Area (in accordance with any Association Maintenance Manual, if provided by Declarant). Inspections shall be done at least twice each year. The Association shall employ the services of a professional landscape architect, maintenance contractor or other such professional person to assist the Association in performing such inspections. The inspector shall provide written reports of their inspections to the Association and to the Declarant promptly following completion thereof. Declarant shall be invited to attend all such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all roofs and irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to Declarant, and to the Board of the Association at the next meeting of the Board following receipt of such written reports or as soon thereafter as reasonably practicable and shall include such written reports in the minutes of the Board and Association. The Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Board's minutes. Should such inspector require the inspection of any Unit, there is hereby created a nonexclusive easement in favor of the Association, and its officers, agents, employees and independent contractors, to conduct such inspections and to provide such maintenance, repair and replacement, provided that entrance is made at reasonable hours and with at least three (3) days advance notice to the Owner, except in case of emergency. Any damage to any structure, landscaping or other improvements caused by the Association, or any of its officers, agents, employees or independent contractors, while performing such maintenance, repair or replacement work shall be repaired by the Association at its sole cost and expense.

(c) Insurance: The Association shall procure and maintain such policy or policies of insurance as are required by the Condominium Documents.

(d) Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member or Members responsible for the existence of said lien.

(e) Assessments: The Association shall fix, levy, collect and enforce Assessments as set forth in the Condominium Documents.

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

(g) **Enforcement**: The Association shall enforce the provisions of the Condominium Documents.

(h) **Financial Statements**: The Association shall cause to be prepared and distributed budgets, financial statements and reports to each Member as set forth in the Bylaws.

(i) **Availability of Documentation**: The Association shall make available to any Owner of a Condominium, any first Mortgagee, and the holders, insurers and guarantors of any first Mortgage on any Condominium, current copies of the Declaration, the Articles, the Bylaws, any rules governing the Condominium and all the books, records and financial statements of the Association. "Available" as used in this paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances. The Association shall maintain at the offices of the Association a copy of any Owner Maintenance Manual provided by Declarant to the Owners and shall make available to every Owner upon request a copy of any Owner Maintenance Manual for the Owners' Units. The Association shall have the right to charge the requesting party a reasonable fee for providing a copy of any of the foregoing documents.

(j) **Utility Suppliers**: The Association shall permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development and operation of the Project. The Association has no duty or obligation to provide telephone lines, modem lines, or DSL-type lines to the Units or Common Area.

(k) **Approval of Legal Actions**: In the event that any claim or other actions brought by the Association against Declarant, including, but not limited to claims brought under California Civil Code Section 895 et seq., if applicable, and any successor statutes or laws, involving allegations of construction defects relating to the Common Area is not resolved pursuant to the non-adversarial procedures set forth in California Civil Code Sections 910 through 938, if applicable, and any successor statutes or laws, the Association shall not initiate a further action or procedure against Declarant without first obtaining the consent of the Owners other than Declarant, constituting a quorum of more than fifty percent (50%) of the Owners of the Association casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of California Corporations Code Sections 7510 et seq. and 7613 and any successor statutes or laws.

(l) **Notice of Actions Against Declarant**: Subject to the provisions of Sections 10.02 through 10.02.8 of this Declaration, the Association shall comply with the provisions of Civil Code Section 1368.5, prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Common Area or other property within the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Common Area or other property within the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Civil Code Section 1368.5.

(m) **Legal Updates:** The Board shall take reasonable steps to keep up-to-date on changes to all laws and regulations that affect the Project and/or the Board's responsibilities as the governing body of the Association, including but not limited to, reviewing (each year, in January), any changes to the Common Interest Development Act (Civil Code sections 1350 et seq.).

3.06 **Powers:** In addition to the powers elsewhere enumerated or provided for in the Condominium Documents, and without limiting the generality thereof, the Association shall have the following powers:

(a) **Utility Service:** The Association shall have the authority to obtain for the common benefit of all of the Condominiums, all water, gas, telephone, sewer, and electric service and refuse collection, and janitorial or window cleaning service, and other necessary utility service. The Association shall pay all charges for utilities supplied to the Project except those metered and charged separately to the Units. The Association shall have the power to sub-meter any and all utility service for the Project.

(b) **Easements:** The Association shall have authority to grant easements where necessary for utilities, sewer facilities and otherwise over the Common Area to serve the common and open space areas and the Condominium Units.

(c) **Manager:** The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except the power to conduct hearings, impose discipline, file suit, record or foreclosure 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 without cause or payment of a termination fee on sixty (60) days written notice.

(d) **Adoption of Rules:** The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereof, and the conduct of Owners and their tenants and invitees and guests with respect to the Project and other Owners. The Association shall have the power to levy fines to enforce such rules, after notice and an opportunity to be heard.

(e) **Access:** For the purpose of performing the maintenance of the Common Area, or for any other purpose related to the performance by the Association or the Board of Directors of their respective responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Unit or to enter any portion of the Common Area to effect emergency repairs. Any entry by the Association to investigate a suspected or reported water intrusion shall be deemed an emergency. Such entry for purposes of maintenance, replacement, improvement or non-emergency repair may be made only after such action has been approved as being reasonably necessary by at least a two-thirds (2/3rds) vote of the Board and at least three (3) days notice has been given to the Owners of any Units involved. All such entries shall be made with as little

inconvenience as possible to the Owner involved and any damage caused thereby shall be repaired by the Board at the expense of the Association.

(f) Assessments and Suspension: The Association shall have the power to fix, levy and collect Assessments in accordance with the provisions of the Condominium Documents. The Association may suspend the voting rights of a Member who is in default in the payment of any Assessment for any period during which such Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published Rules And Regulations, if any, or any violation of the Declaration or Bylaws, provided that the accused Member is given notice and an opportunity to be heard with respect to the alleged default or violation, pursuant to subdivision (h) of Section 1363 of the California Civil Code and Section 9.02 of this Declaration, before a decision is made to impose discipline against the Member.

(g) Enforcement: The Association shall have the authority to enforce the Condominium Documents pursuant to the provisions of subdivision (h) of Section 1363 of the California Civil Code (as more particularly set forth in Sections 9.01 and 9.02 of this Declaration).

(h) Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by three-fourths (3/4ths) of the total voting power of the Association, which shall include three-fourths (3/4ths) of the Members other than the Declarant.

(i) Loans: The Association shall have the power to borrow money, and only with the assent by vote or written consent of three-fourths (3/4ths) of the first Mortgagees and 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. A first Mortgagee who receives a written request to approve any such action and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request, provided that the notice was delivered by certified or registered mail with a return receipt requested.

(j) Dedication: The Association shall have the power to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Condominium for which the Association is obligated to provide management, maintenance, preservation or control, no such dedication or transfer shall be effective unless an instrument approving same has been signed by one hundred percent (100%) of the total voting power of the Association.

(k) Contracts: The Association shall have the power to contract for goods and services for the Common Area or for the Association, provided the term of such contract does not exceed one (1) year and subject to the other limitations elsewhere set forth in the Condominium Documents.

(l) **Delegation**: The Association shall have the power to appoint committees, including Architectural Control and Nominating Committees, and to delegate its authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, subject to the limitations elsewhere set forth in the Condominium Documents.

(m) **Claims and Actions**: Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to (a) the application or enforcement of this Declaration and (b) damage to the Common Area; provided, however that no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et seq., if applicable, such that from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue any claims or other actions using the non-adversarial procedures for construction defects in the Common Area pursuant to Civil Code Section 895 et seq., if applicable, and any successor statutes or laws. The Association shall comply with such non-adversarial procedures, if applicable, in bringing any such claims or actions. Any recovery by the Association with respect to any damage to or defect in the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

(n) **Revision of Maintenance Manuals**: The Board may, from time to time, make appropriate revisions to any Owner Maintenance Manual and any Association Maintenance Manual based on the Board's review thereof, to update such manuals to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

ARTICLE 4

ASSESSMENTS

4.01 **Creation of Lien; Personal Obligation of Assessments**: The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay Assessments to the Association for purposes herein permitted, which are to be established and collected as hereinafter provided. The Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such Assessment is made, the lien to become effective upon recordation of a Notice of Assessment. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by them. No

Owner of a Condominium may exempt himself from liability for his contribution towards the Common Expenses by waiver of the use or enjoyment of the Common Area or by the abandonment of his Condominium.

4.02 Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the health and welfare of all the Owners in the entire Project, and for the improvement and maintenance of the Common Area and the common good of the Project. The Association shall not impose or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

4.03 Types of Assessment:

(a) Annual Assessments: The Board shall establish and levy annual 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. Failure by the Board to set Assessments for any given year shall not be deemed a waiver of the Assessments for that year, but rather the prior year's Assessments shall continue.

(b) Special Assessments: The Board, at any time, may levy a special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, to cover the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area, or for such other purposes as the Board in its discretion considers appropriate.

(c) Utility Assessments (When Applicable): In the event that any water or other public utility service provided to the Project is sub-metered to the separate Units privately by the Association rather than directly by the public utility company and the cost of such utility service to the Units is not included in the annual Assessments levied by the Board, then the Board shall periodically levy a utility Assessment against each Unit to reimburse the Association for the actual cost of such utility service to that Unit that was billed to the Association by the public utility company. In the event an Owner fails to pay any utility Assessment, the Board has the authority to pursue enforcement in accordance with the provisions of Sections 4.10 and 4.12 of this Declaration.

4.04 Limitations on Annual and Special Assessments: Until the first (1st) day of January of the year immediately following the issuance of the public report for the Project, the maximum annual Assessment shall be sufficient to cover the maintenance, utility, insurance, and other reasonable and necessary operating expenses for the common good of the Project during this period of time and, except as otherwise provided in this Article, shall be in accordance with and shall not exceed the amount set forth in the budget approved by the Department of Real Estate (a partial copy of the final draft of which is attached hereto for reference and is labeled as Exhibit "B" to this Declaration). From and after the first (1st) day of January of the year immediately following the issuance of the public report for the Project, the Board may not impose an annual Assessment that is more than twenty percent (20%) greater than the annual Assessment for the Association's preceding fiscal year or impose special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of

Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this paragraph, quorum means more than fifty percent (50%) of the Owners of the Association. This paragraph does not limit Assessment increases necessary for emergency situations. For purposes of this paragraph, an emergency situation is any one of the following: (1) an extraordinary expense required by an order of a court, (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible, where a threat to personal safety on the property is discovered, (3) an extraordinary expense necessary to repair or maintain the Project, or any part of it for which the Association is responsible, that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Civil Code Section 1365; provided that, prior to the imposition or collection of an Assessment under this Subparagraph 3, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the Notice of Assessment. The Association shall provide notice by first-class mail to the Owners of the Units of any increase in the annual or special Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due. The annual Assessment may not be decreased either by the Board or by the Members by more than ten percent (10%) in any one year without the approval of at least sixty-seven percent (67%) of the voting power of the Association residing in Members other than the Declarant, or where the two-class voting structure is still in effect, at least sixty-seven percent (67%) of each class of Members. Without the approval of the Members of the Association, the Board of Directors may fix the annual Assessment at an amount not in excess of the maximum nor less than the minimum; however, annual increases in annual Assessments for any fiscal year, as authorized hereinabove, shall not be imposed unless the Board has complied with subdivision (a) of Civil Code Section 1365 with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this paragraph, "quorum" means more than fifty (50%) percent of the Owners of the Association. During the time the Project is subject to an outstanding public report, the Declarant shall notify the Department of Real Estate of any increase of ten percent (10%) or more over the amount of the annual Assessment reflected in the current public report for the Project.

4.05 Revision of Annual Assessment: Subject to the limitations on the maximum and minimum amount of Assessments herein provided, if at any time during the course of any year the Board shall deem the amount of the annual Assessment to be inadequate or excessive, the Board shall have the power, at a regular or special meeting, to revise the Assessment for the balance of the Assessment year, effective on the first day of the month next following the date of the revision.

4.06 Reserves for Replacement: As part of the regular annual Assessments for maintenance authorized hereinabove, the Board of Directors shall annually fix the amount to be contributed pro rata by each Member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements,

including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position.

4.07 Trust Accounts: Amounts received by the Association as contributions, Assessments or dues from the Owners shall be held in two (2) or more segregated trust accounts so that reserves for capital improvements and for replacement are clearly separated from funds for operating expenses, repair, and maintenance. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of Common Area within the Project.

4.08 Division and Collection of Assessments: Annual Assessments shall be charged to and divided among the Unit Owners equally (pro rata according to the total number of Units in the Project); provided that, if the original budget of the Association which is first duly approved by the Department of Real Estate (a partial copy of the final draft of which is attached hereto for reference and is labeled as Exhibit "B" to this Declaration) provides for variable Assessments, then, notwithstanding the equal division set forth hereinabove, the annual and special Assessments shall be charged to and divided among the Unit Owners according to the same formula or schedule under which said budget was calculated so that the Assessments against the various Unit Owners bear a relationship which is equitably proportionate to the value of common services furnished to the respective Units. Special Assessments shall be levied on the same basis as annual Assessments, except where the special Assessments against a Member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Member and his Unit into compliance with the provisions of the Condominium Documents, and provided that a special Assessment against Owners to raise funds for the rebuilding or major repair of the structural Common Area housing Units of the Project shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed. The Board shall fix the method of payment of such Assessments and shall be empowered to permit either lump sum or monthly payments. In the event that any utility service is sub-metered through the Association, the utility Assessment shall be charged to and divided among the Units in a manner which reflects the actual cost of any and all such services provided to a particular separate Unit but billed to the Association during the immediately preceding billing cycle of the public utility company, and notice of such Assessments shall be sent to the Owners no later than thirty (30) days after receipt by the Board of each bill from the utility company to the Association. In the event that any utility service billed to the Association is not sub-metered to the Units, the cost shall be apportioned to the Units in an equitable manner, such as upon the basis of the ratio of the square footage of the floor area of that Unit to the total square footage of floor area of all Units.

4.09 Date of Commencement of Annual Assessment: Due Dates: The annual Assessments provided for herein shall commence as to all Units covered by this Declaration on the first day of the month following the conveyance of the first Condominium to an individual Owner. The first Assessment shall be adjusted according to the number of months remaining in the calendar year. Subject to the provisions of Section 4.04, the Board of Directors shall determine and fix the amount of the annual Assessment against each Unit and send written notice thereof to every Owner at least thirty (30) but not more than sixty (60) days in advance of each annual Assessment period. The due dates for the payment of any Assessments and installments thereof shall be established by the Board of Directors, and shall be specified in said notice. Assessments shall be payable in equal monthly installments on the first (1st) day of each month unless otherwise established by the Board.

4.10 Delinquent Assessments: Assessments levied pursuant to the Condominium Documents are delinquent fifteen (15) days after they become due. If an Assessment is delinquent, the Association may recover all of the following:

(a) Reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorney's fees.

(b) A late charge not exceeding ten percent (10%) of the delinquent Assessment or ten dollars(\$10.00), whichever is greater.

(c) Interest on all sums imposed in accordance with this Section, including the delinquent Assessments, reasonable fees and costs of collection, and late charges, at an annual interest rate not to exceed twelve percent (12%), commencing thirty (30) days after the Assessment becomes due.

4.11 Transfer of Unit by Sale or Foreclosure: The lien of the Assessments and any related interest, late charges, costs and attorney's fees provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium, if the Mortgage was recorded before the Assessment was due. Sale or transfer of any Unit shall not affect the Assessment lien; however, the sale or transfer of any Unit pursuant to a power of sale or judicial foreclosure of any first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer, if the Mortgage was recorded before the Assessment was due. No sale or transfer shall relieve such Unit from liability for any Assessments thereafter becoming due or from the lien thereof. Where the Mortgagee of a first Mortgage of record obtains title to the same as a result of a power of sale or judicial foreclosure of any such first Mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer, if the Mortgage was recorded before the Assessment was due. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Condominiums including such acquirer, his successors and assigns.

4.12 Notice of Lien; Contents; Payments/Receipts; Disputes; Recording of Notice and Release; Priority; Assignment; Enforcement; Foreclosure; Correction of Errors:

(a) A regular or special Assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Civil Code Section 1366, shall be a debt of the Owner of the separate interest Unit at the time the Assessment or other sums are levied. At least thirty (30) days prior to recording a lien upon the separate interest Unit of the Owner of record to collect a debt that is past due under this Article, the Association shall notify the Owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the separate interest Unit 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 UNIT IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

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

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

(4) The right to request a meeting with the Board as provided by subparagraph (3) of paragraph (c) below.

(5) The right to dispute the Assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program, pursuant to Section 10.01.1 of this Declaration.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to Section 10.01 of this Declaration before the Association may initiate foreclosure against the Owner's separate Unit, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Any payments made by the Owner of a separate interest Unit toward the debt as set forth, as required in paragraph (a), shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall such payments be applied to the fees and costs of collection, attorney's 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.

(c)

(1) (A) Prior to recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program, pursuant to Section 10.01.1 of this Declaration. (B) Prior to initiating a foreclosure for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program, pursuant to Section 10.01.1 of this

Declaration, or alternative dispute resolution with a neutral third party, pursuant to Section 10.01.1 of this Declaration. 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.

(2) For liens recorded on or after January 1, 2006, the decision to record a lien for delinquent Assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(3) An Owner, other than an Owner of any interest that is described in Section 11212 of the Business and Professions Code that is not otherwise exempt from this Section pursuant to subdivision (a) of Section 11211.7 of that Code, may submit a written request to meet with the Board to discuss a payment plan for the debt noticed pursuant to paragraph (a). The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within forty-five (45) days of the date 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. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's separate interest Unit to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(d) The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code Section 1366, shall be a lien on the Owner's separate interest Unit in the Project from and after the time the Association causes to be recorded with the county recorder of the county in which the Project is located, a notice of delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's separate interest Unit in the Project against which the Assessment and other sums are levied, and the name of the record Owner of the separate interest Unit in the Project against which the lien is imposed. The itemized statement of the charges owed by the Owner described in subparagraph (2) of paragraph (a) above shall be recorded together with the notice of delinquent Assessment. In order for the lien to be enforced by non-judicial foreclosure as provided in Civil Code Section 1367.1 subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent Assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association. A copy of the recorded notice of delinquent Assessment shall be mailed by

certified mail to every person whose name is shown as an Owner of the separate interest Unit in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the notice of delinquent Assessment, the Association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent Assessment is recorded a lien release or notice of rescission and provide the Owner of the separate interest Unit a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(e) [See paragraph (c) of Section 9.01 of this Declaration for additional provisions relating to subdivision (e) of Section 1367.1 of the Civil Code.]

(f) A lien created pursuant to subdivision (d) of Civil Code Section 1367.1 shall be prior to all other liens recorded subsequent to the Notice of Assessment, except all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and except the lien or charge of any first Mortgage of record.

(g) The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision shall not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. Subject to the limitations of this paragraph, after the expiration of thirty (30) days following the recording of a lien created pursuant to subdivision (d) of Civil Code Section 1367.1, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent Assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in Mortgages and deeds of trust. The fees of the trustee may not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

(h) Nothing in Civil Code Section 1367.1 or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the Owner of a separate interest Unit to recover sums for which a lien is created pursuant to Civil Code Section 1367.1 or prohibits the Association from taking a deed in lieu of foreclosure. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, Mortgage and convey the same. During the period a Unit is owned by the Association following foreclosure: (1) no right to vote shall be exercised on behalf of the Unit; and (2) no Assessment shall be assessed or levied on the Unit; and (3) each other Unit shall be charged, in addition to its usual Assessment, its proportionate 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. Each Owner, to the extent permitted by law, waives to the extent of any liens created pursuant to this Declaration, the benefit of any homestead

or exemption laws of California in effect at the time any Assessment or installment becomes delinquent or any lien is imposed. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any Assessment, after notice and hearing as provided in Section 9.02 of this Declaration.

(i) If it is determined that a lien previously recorded against a separate interest Unit was recorded in error, the party who recorded the lien shall, within twenty-one (21) calendar days, 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 of the separate interest Unit with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program or through alternative dispute resolution with a neutral third party pursuant to Section 10.01.1 of this Declaration that the Association has recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all late charges, fees, interest, attorney's fees, costs of collection, costs imposed for the notice prescribed in subdivision (a) of Civil Code Section 1367.1, and costs of recordation and release of the lien authorized under subdivision (b) of Civil Code Section 1367.4, and pay all costs related to the dispute resolution or alternative dispute resolution.

(j) In addition to the requirements of Civil Code Section 2924, a notice of default shall be served by the Association on the Owner's legal representative in accordance with the manner of service of summons in Sections 415.10 et seq of the Code of Civil Procedure.

(k) Upon receipt of a written request by an Owner identifying a secondary address for purposes of collection notices, the Association shall send additional copies of any notices required by this Section to the secondary address provided. The Association shall notify Owners of their right to submit secondary addresses to the Association, at the time the Association issues the pro forma operating budget pursuant to Civil Code Section 1365. The Owner's request shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. The Owner may indicate or change a secondary address at any time, provided that, if a secondary address is identified or changed during the collection process, the Association shall only be required to send notices to the indicated secondary address from the point the Association receives the request.

(l) If the Association fails to comply with the procedures set forth in Civil Code Section 1367.1, the Association shall, prior to recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of a separate interest Unit.

(m) If the Association seeks to collect delinquent regular or special Assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated Assessments, late charges, fee and costs of collection, attorney's fees, or interest, the Association

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may not collect that debt through judicial or non-judicial foreclosure, but may attempt to collect in any of the following ways, subject to the specific provisions of Section 1367.4 of the Civil Code:

(1) By a civil action in small claims court, and within the jurisdictional limits of that court;

(2) By recording a lien on the Owner's separate interest Unit, 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 are more than twelve (12) months delinquent.

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

(n) If the Association seeks to collect delinquent regular or special Assessments of an amount of one thousand eight hundred dollars (\$1,800) or more, not including any accelerated Assessments, late charges, fee and costs of collection, attorney's fees, or interest, or any Assessments that are more than twelve (12) months delinquent, the Association may use judicial or non-judicial foreclosure subject to the specific conditions set forth in Section 1367.4 of the Civil Code.

4.13 Unallocated Taxes: In the event that 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 Section 4.01, and, if necessary, a special Assessment may be levied against the Units in an amount equal to said taxes, to be paid no later than thirty (30) days prior to the due date of said tax.

4.14 Estoppel Certificate: The Association shall, upon demand by any person and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Unit have been paid. Such a certificate, when properly executed, shall be conclusive evidence of such payments as of the date of its issuance.

4.15 Membership Approval: Any action authorized under Section 4.04 hereinabove, which requires a vote of the membership of the Association, shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members of the Association by personal delivery or by first-class, registered or certified mail 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. If a quorum is present and the proposed action is favored by a majority vote of the Members present at such meeting, but such vote is less than a majority of the total voting power of the Association, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

4.16 Initial Capitalization of the Association. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) the amount of the then annual Assessment for the Condominium as determined by the Board. This amount shall be deposited by the buyer in to the purchase and sale escrow and disbursed therefrom to the Association. This shall not constitute a prepayment of two month's annual Assessments. Within six (6) months after the close of the first escrow, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6th) of the then Regular annual Assessment for any and all Units which are not yet sold and on which Assessments have commenced. Escrow shall remit these funds to the Association. Upon close of escrow of any Unit for which this capital contribution was prepaid by Declarant, escrow shall remit to Declarant the capitalization fee collected from the buyer.

ARTICLE 5

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project, and each Condominium therein, is subject to the following:

5.01 Condominium Unit Use: No Condominium Unit shall be used and/or occupied except for residential purposes by the Owners, their tenants, members of their families, and their social guests and no trade or business shall be conducted therein, except that the Declarant, its successors or assigns, may use any Unit in the Project owned by the Declarant for a model home site and display and sales office during construction and until the last Unit is sold by the Declarant or three years from the date of the closing of the first sale of a Condominium, whichever shall first occur, and further excepted that any Owner or tenant or family member actually residing in a Unit may use a part of that Unit for the purpose of operating a home-based small business, provided that, such use does not (as determined by the Board) involve an unreasonable number of invitees, customers or other persons coming to the Unit for business purposes, and does not (as determined by the Board) cause an unreasonable amount of mail or other business deliveries to the Unit, and further provided that such use does not (as determined by the Board) interfere with any other Unit Owner's or tenant's quiet enjoyment of his/her Unit or otherwise violate any covenant or restriction set forth in this Declaration regarding nuisances, and further provided that such use is permitted by and at all times is in compliance with all applicable governmental laws and regulations. No element of a Unit other than living area elements shall be used at any time as a residence, either temporarily or permanently. No tent, shack, trailer, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently. No water beds of any kind or size are permitted in any Unit.

5.02 Common Area (and Exclusive Use Common Area) Use:

(a) The parts of the Common Area that are not Exclusive Use may be used for pedestrian movement within the Project, for vehicular passage to and from parking spaces, and for laundry, storage, trash disposal, and recreational purposes in the appropriate and designated areas,

if any. All Owners and tenants shall have reasonable rights of ingress to and egress from their respective Condominiums and any and all Exclusive Use Common Areas appurtenant thereto. The Board and the Architectural Committee have the authority to make reasonable Rules And Regulations regarding the use of the Common Area.

(b) The parts of the Common Area that are Exclusive Use Common Area may be used for vehicle parking, personal property storage, balcony, deck, patio and other permitted purposes in the appropriate and designated areas, if any. Any physical changes or improvements that an Owner or tenant desires to make within any such area shall require the prior approval of the Board or Architectural Committee. The Board and the Architectural Committee have the authority to make reasonable Rules And Regulations regarding the use of the Exclusive Use Common Areas. Any items of personal property (including, but not limited to, outdoor furniture and plants) that an Owner or tenant desires to place within any such area shall be of a type and size appropriate for the particular area and shall conform to the Rules And Regulations, if any, adopted by the Board or Architectural Committee. All plants placed in a balcony, deck or patio area shall be contained in pots or planters that do not allow water to drain outside of the pot or planter, and no plant shall be over-watered to the extent that water overflows onto the balcony, deck or patio surface. Without the prior approval of the Board, no plants or other objects shall extend beyond the railings, walls or other boundaries of a balcony, deck, patio or other Exclusive Use Common Area, and no balcony, deck, patio or other "outside" Exclusive Use Common Area shall be used for storage purposes (including, but not limited to, the temporary storage of bicycles).

5.03 Nuisances; Noise: No noxious, illegal, or seriously offensive activities shall be carried on within any Condominium, or in any part of the Project, nor shall anything be done thereon that may be or may become a serious annoyance or a serious nuisance to, or which may in any way interfere with the quiet enjoyment of, each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or cause a refusal to renew the same, or which will impair the structural integrity of any building. Each Owner and tenant shall take reasonable actions to minimize any noise transmission from his/her Unit to another Unit, and shall comply with any rule or regulation adopted by the Board for such purpose. Speakers for music or sound reproduction from stereos, radios, television sets and other such devices shall be elevated by an appropriate sound insulation material or platform from any floor that is above another separate Unit, and shall not be attached to or supported from or placed in contact with any wall or ceiling that is located between separate Units.

5.04 Vehicles and Parking: Except as otherwise permitted by the provisions of this Declaration or any Rules And Regulations adopted by the Board, only Authorized Vehicles shall be parked, operated or stored within the Project.

(a) Authorized Vehicles: The following specified types of vehicles (bearing appropriate and current governmental registration and/or license plates) are "Authorized Vehicles" for purposes of this Declaration: standard passenger automobiles, standard sport utility vehicles, standard pickup trucks, and standard vans, all designed with a seating capacity of eight (8) or fewer persons and a carrying capacity of one (1) ton or less; standard size and capacity motorcycles. Any Authorized Vehicle that is used for both personal and business purposes is not prohibited, provided

that any signs or markings of a commercial nature on such vehicle are unobtrusive and inoffensive as determined by the Board. The Board has the power to adopt a regulation for the purpose of classifying additional vehicles as Authorized Vehicles permitted within the Project.

(b) **Prohibited Vehicles:** The following vehicles are "Prohibited Vehicles" for purposes of this Declaration: recreational vehicles (including, but not limited to, motor homes, campers, travel trailers, oversize vans, any type of off-road vehicles); commercial-type vehicles (including, but not limited to, heavy-duty trucks, flat-bed trucks, stake-bed trucks, tanker trucks, dump trucks, step vans, limousines, vehicles designed with a seating capacity of more than eight persons); any type of construction vehicle or equipment; water craft (including, but not limited to, boats, jet skis); trailers; mobile homes; buses; aircraft (airplanes, gliders, etc.); any vehicle having more than two axles; any inoperable vehicle and any parts of such vehicle; any excessively noisy or smoky vehicle or any vehicle or equipment deemed to be a nuisance by the Board; any other vehicle not defined as an Authorized Vehicle under this Declaration, including, but not limited to, any Authorized Vehicle that is not in compliance with all applicable governmental registration and licensing requirements.

(c) **Parking Restrictions:** Vehicles may not be parked on any driveway areas or on any private streets within the Project. Vehicles may be parked only in such designated parking spaces, garages or carports as exist within the Project. Any parking space or garage or carport that exists within the Project may not be converted to any use (such as a recreational or storage use) that would prevent its use as a parking area for the number of vehicles it was designed to contain. Each Owner and each tenant shall use any designated parking area(s) assigned to his/her respective Unit by duly recorded conveyance or by the Board as the primary location for parking his/her Authorized Vehicle(s) within the Project. Any unassigned parking spaces may be used by any Owner or tenant, as a secondary location for parking his/her Authorized Vehicle(s), and by guests and invitees, on a temporary and first-come first-served basis, unless and until otherwise provided in any Rules And Regulations adopted by the Board. No Owner or tenant shall park his/her vehicle in any parking space, garage or carport that has been assigned to a Unit other than his/her Unit. No Owner or tenant may park more than two vehicles within the Project at any given time. No vehicle repair work, other than emergency repair work, and no vehicle maintenance or restoration work shall be permitted anywhere within the Project, except with prior written approval of the Board.

(d) **Parking Enforcement:** The Board may take all actions necessary to enforce all provisions of this Declaration or any Rules And Regulations adopted by the Board that relate to vehicle parking and/or use restrictions for the Project, including the removal of any vehicle that is parked or operated within the Project in violation of any such provision, rule or regulation. When removal of a vehicle is necessary, the Board shall comply with Section 22658.2 of the California Vehicle Code (and all amendments thereto or any successor statute) and any other applicable laws. If the Board fails to enforce any vehicle parking and/or use restrictions, the City may enforce them.

5.05 **Signs, Posters, Flags, Banners; Holiday Decorations:** Except as provided in Subsection 9.07(d) of this Declaration, or except as expressly authorized in advance by the Board, and except as permitted under Civil Code Sections 712 and 713 and 1353.5 and 1353.6, no signs, posters, flags or banners, other than one (1) sign of customary and reasonable dimensions advertising

a Condominium for sale or lease and displayed or erected in such Unit, shall be displayed to the public view on any Unit or any portion of the Project. All signs on the Project must conform to the applicable ordinances of the city and county in which the Project is located. Any exterior holiday decorations may be displayed only during holiday periods (including a reasonable length of time before and after such periods, as determined by the Board) and thereafter shall be promptly removed.

5.06 Pets and Animals: Owners, tenants or other occupants of Units may keep within their Unit no more than two (2) dogs or two (2) cats or one (1) dog and one (1) cat, with each dog or cat weighing no more than sixty (60) pounds, and a reasonable number of other usual and ordinary household pets, such as birds in ordinary and reasonably sized cages and fish in standard household aquariums, not exceeding thirty (30) gallons of water, provided that such pets are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Project which result in a serious annoyance to other Unit Owners or their tenants. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. Owners shall promptly clean up after their pets.

5.07 Trash and Recycling Disposal: All trash, garbage, and other waste and recycling material shall be regularly removed from each Unit and from the Common Area, and shall not be allowed to accumulate thereon. Trash, garbage and other waste and recycling material shall be kept only in appropriate containers, which shall be kept in a clean and sanitary condition, and which shall be concealed from the view of other Units except when temporarily placed out for pickup on the designated day(s). No toxic or hazardous materials shall be placed in trash or recycling containers.

5.08 Antennas: No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Antennas") with a diameter or diagonal measurement in excess of one (1) meter shall be erected, constructed or placed on any Common Area or Unit. Antennas with a diameter or diagonal measurement of one (1) meter or less may be installed only if they conform to any Rules And Regulations and any Architectural Committee standards and only if any and all necessary governmental and other approvals are obtained in accordance with the provisions of the Architectural Control section of this Declaration. Reasonable restrictions which do not significantly increase the cost of the Antenna system or significantly decrease its efficiency or performance may be imposed. Antennas may not be attached to the exterior surface of any building or to any fence. The Architectural Committee shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices, comply with California Civil Code Section 1376 and FCC (Federal Communications Commission) regulations.

5.09 Floor Coverings: To reduce sound transmission, any and all Units that are above other Units shall have all floor areas (except in kitchens, bathrooms and entry areas) covered with carpet and padding or other material that provides equivalent insulation against sound transmission to the Unit below, and no change in the type of floor covering materials originally installed by Declarant in any area of any Unit above another Unit shall be permitted, except with the prior written consent of the Architectural Committee or Board. Any hard surface flooring installed in any Unit that is above another Unit shall have approved sound insulation material underneath it.

5.10 Window Coverings: All drapes, curtains, blinds, shutters and other window coverings visible from the street or Common Area shall be beige, white or off-white, or such other colors and patterns as are approved in advance by the Board or its authorized committee. No windows shall be covered with bed sheets, newspaper or other paper, foil, or any other such reflective or temporary material. No windows shall be tinted without the prior approval of the Board or its authorized committee. No shampoo bottles or similar items shall be placed on bathroom window ledges if doing so causes them to be visible from outside that Unit.

5.11 Clothes Lines, Washers and Dryers: No exterior clothes lines shall be erected or maintained, unless specifically permitted by local ordinance. There shall be no outside laundering or drying of clothes, and no towels, clothes, rugs or other such items shall be draped over or similarly placed upon any balcony or other exterior railings, except with prior written approval of the Board. Washing machines, gas or electric dryers, and any other such major clothes laundering appliances are permitted in a Unit only if the Unit is equipped with appropriate hookups installed or approved by Declarant, or if the installation of such hookups is approved in writing in advance by the Board or by the Architectural Committee and the installation is done by a licensed contractor.

5.12 Power Equipment: No power equipment, hobby shops, or carpentry shops 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.

5.13 Water Supply System: Except for improvements installed by Declarant, no individual water supply, sewage disposal or water softener system is permitted in any Condominium unless such system is designed, located, constructed and equipped in accordance with the requirements, standards and recommendations of any water district having jurisdiction, the Board or Architectural Committee, the City, and all other governmental authorities with jurisdiction.

5.14 Right to Lease: The respective Condominiums shall not be leased or rented by the Owners thereof for transient or hotel purposes, which shall include a rental for any period less than thirty (30) days (except a pre-closing rental to the purchaser of such Unit). Subject to the foregoing restrictions, the Owners of the respective Condominiums shall have the absolute right to lease same, and in connection therewith to delegate use and enjoyment of the Common Area provided that the lease is in writing, and is made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the other Condominium Documents, and any rules or regulations established by the Board of Directors regarding occupancy or use of the Units and Common Area by non-Owner occupants, and further provided that any Owner who rents or leases his Unit shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of their family occupying such Unit and the address and telephone number where such Owner can be reached. Owners who do not reside within the Project and who have rented or leased their Unit are not permitted to use any recreational facilities of the Project during the term of such rental or lease. The Board may enforce any breach of this Declaration, the other Condominium Documents, and/or the Rules And Regulations established by the Board for non-Owner occupants, by a legal proceeding brought directly against such non-Owner occupant without the necessity of joining the

Owner as a party to such proceeding. An Owner who rents or leases his/her Unit shall provide his/her tenant or lessee with a copy of this Declaration and any current Rules And Regulations that have been adopted by the Board and shall be responsible for his/her tenant's or lessee's compliance with all provisions of such documents.

ARTICLE 6

ARCHITECTURAL CONTROL AND COMMITTEE

6.01 Committee: The Architectural Committee shall consist of three (3) members. The Declarant shall appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of a final public report for the Project. The Declarant reserves to itself the power to appoint a majority of the members of the Committee until ninety percent (90%) of all the Units in the Project have been sold or until the fifth anniversary of the issuance of the final public report for the Project, whichever occurs first. After one year from the date of issuance of the original public report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Committee until ninety percent (90%) of all the Units in the Project have been sold or until the fifth anniversary date of the issuance of the final public report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Declarant need not be Members of the Association. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until the Declarant no longer has the right to appoint any members to the Committee, and thereafter the remaining members of the Committee shall have full authority to designate such a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to the provisions of the Condominium Documents.

6.02 Building/Landscaping/Drainage Restrictions: No building, balcony, awning, patio, patio cover, carport, carport cover, pool, spa, fence, wall, wiring, plumbing, air conditioning equipment, trellis, screen, landscaping, planting, obstruction, improvement, or structure of any kind shall be commenced, installed, erected, stained, painted or maintained upon the Common Area of the Project (including Exclusive Use Common Areas), nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by the Architectural Committee appointed by the Board. No permission or approval shall be required to repaint in accordance with the Declarant's original color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee. There shall be no change to or interference with the established drainage patterns within the Project unless an adequate alternative provision is made for other proper drainage patterns within the Project and is made with the prior written approval of the Board or Architectural Committee. For purposes of this Declaration, "established drainage patterns" means the drainage patterns that existed at the time of the first sale or other conveyance of a Unit by

Declarant or that are shown on any plans approved after that time by the Board or Architectural Committee.

6.03 Modification for Handicapped: If the boundaries of a separate Unit are contained within a Condominium Building, the Owner of the Unit may modify his Unit, at his own expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled or alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from public way to the door of the Unit for purposes of this paragraph if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements.

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of the Project Documents pertaining to safety or aesthetics.

(3) Modifications external to the Unit shall not prevent reasonable passage by other Owners, and shall be removed by the Owner when the Unit is no longer occupied by disabled persons requiring those modifications.

(4) Any Owner who intends to modify his Unit pursuant to this paragraph shall submit his plans and specifications to the Association for review to determine whether the modifications will comply with the provisions of this paragraph. The Association shall not deny approval of the proposed modifications under this paragraph without good cause.

6.04 Modifications Of Unit: The establishment of the Architectural Committee and the procedures described in this Section for architectural approval shall not be construed as changing any rights of or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over their Condominiums as may be specified in Section 9.06 or elsewhere in this Declaration, or in the Bylaws or in the Association rules; provided that any alteration, improvement or maintenance within the boundaries of any Unit shall not impair the Project's structural integrity, utilities, mechanical systems or support, and further provided that any alteration, improvement or maintenance of electrical, plumbing or other utility service or facilities that affects the Common Area shall require prior approval of the Architectural Committee.

6.05 Reconstruction After Destruction: After destruction of a Condominium Building, any reconstruction accomplished in substantial compliance with the recorded Condominium Plan covering the part of the Project in which such Condominium Building is situated shall not require compliance with the provisions of this Section. Such reconstruction shall be conclusively deemed to be in substantial compliance with such Plan if it has received the approval of the Board.

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6.06 Architectural Standards: The Board shall adopt and promulgate Architectural Standards to be administered through its Architectural Committee. The Architectural Standards shall include the following restrictions and limitations:

(1) Time limitations for the completion of the improvements for which approval is required pursuant to the Architectural Standards;

(2) Conformity of completed improvements to plans and specifications approved by the committee; provided, however, that as to purchasers and encumbrancers in good faith and for value, unless a notice of non-completion or nonperformance identifying the violating Condominium and its Owner and specifying the reason for the notice, executed by the Committee, is recorded in the Recorder's Office of the County in which the Project is located and given to such Owner within thirty (30) days of the expiration of the time limitation described in subsection (1) above, or unless legal proceedings have been instituted to enforce compliance or completion within that thirty-day period, the completed architectural improvements shall be deemed to be in compliance with plans and specification approved by the Committee;

(3) Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, regulation of construction, reconstruction, exterior addition, change, alteration to or maintenance of any building, with regard to the nature, kind, shape, height, materials, exterior color and surface and location of such structure.

6.07 Submission, Approval and Conformity of Plans: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. The Committee may establish reasonable procedural rules and may assess a reasonable fee, per submission, in connection with review of plans and specifications. Unless such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. In the event the Committee fails to approve or disapprove plans or other requests submitted to it within thirty (30) days after such submission, then such approval will not be required so long as any structure or improvement erected or altered pursuant to such plans conforms to all the conditions and restrictions herein contained and is in harmony with similar structures erected within the Project. The Committee may delegate its plan review responsibilities to one (1) or more members of the Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Committee. The address of the Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for submissions of plans and specifications and the place where the current Architectural Standards, if any, shall be kept. Review and approval by the Committee of plans and specifications does not constitute approval of engineering design, and by approving such plans and specifications, neither the Committee, the members thereof, the

Association, the Members, the Board, nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Approval of plans and specifications by the Committee does not relieve the Owner of the responsibility to obtain necessary building permits and approvals from the appropriate governmental entities. Before any such alterations or improvements are actually commenced, the Owner shall also comply with any and all applicable governmental laws and regulations.

6.08 Appeal: In the event plans and specifications submitted to the Architectural Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Committee. The Board shall submit such request to the Committee for comment, and the Committee's written comments will be submitted to the Board. If requested by the appealing party, the submission shall be reconsidered by the Board at an open meeting of the Board. Within ninety (90) days following receipt of the request for appeal, the Board shall render its written decision. Failure of the Board to render a decision within this ninety day period shall be deemed a decision in favor of the applicant.

6.09 Variances: The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Any authorize variance must be evidenced in a writing signed by at least two members of the Board. Whenever a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Unit and/or part of the Common Area covered by the variance and the particular provision of this Declaration covered by the variance, nor shall it in any way affect any Owner's obligation to comply with any and all applicable governmental laws and regulations, including, but not limited to, zoning ordinances and other requirements imposed by the City or other governmental authority.

6.10 Designated Exclusive Use Common Area Walls: The Board or Architectural Committee shall not approve the removal of a demising wall between two or more horizontally adjacent Units that are owned by the same Owner unless: (1) the plans and specifications for such improvements have been approved by an architect and by a structural engineer, both of whom are licensed in California; (2) the improvements do not affect any other Units or any common utilities and do not adversely impact the structural integrity of the Project; (3) the plans and specifications conform to the requirements of this Declaration and any Architectural Standards for the Project. If the Owner of two or more Units that have been joined by the removal of a demising wall sells or otherwise conveys any of such Units separately, that Owner shall be responsible for replacing all building components that were removed and for performing all work necessary to return that Unit and any other affected Unit(s) to their original configurations prior to being joined together.

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ARTICLE 7

INSURANCE; DAMAGE AND DESTRUCTION;
CONDEMNATION

7.01 **Insurance:** The Association shall obtain and continue in effect a master policy of insurance, which meets or exceeds any requirements of the Federal Home Loan Mortgage Corporation, and/or the Federal National Mortgage Association if either or both of such entities, respectively, owns or holds a Mortgage on a Condominium in the Project, and which covers all of the personal property and supplies of the Association and all of the real property and improvements of the Project, including the Units, and protecting the interests of the Association, its Members, and their Mortgages, as their interests may appear, including without limitation, insurance of the following types:

(a) Insurance on the buildings themselves but excluding flooring, wall coverings, equipment, fixtures, furniture, furnishings, and other personal property supplied or installed by an Owner within his Unit. Insurance shall be in an amount as near as practicable to the full replacement cost of the building, without deduction for depreciation, and shall insure against loss caused by all risks of direct physical loss, subject to the customary and acceptable exclusions, conditions, limitations and/or deductible. By optional perils endorsement the Board may insure against loss caused by breakage of glass, falling objects, water damage, collapse, vandalism, malicious mischief, or loss due to such other peril as the Board may consider reasonable or prudent to insure against. The insurance maintained under this Subsection 7.01(a) shall provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association and Board, and every other interested person who shall have requested such notice of the insurer, and shall contain a standard lender's loss payable endorsement.

(b) During any period when the insurance provided for under Subsection 7.01(a) hereinabove would not be in full force and effect because of any repair or reconstruction of the building, the Board shall obtain and maintain "course of construction" insurance on the buildings, in completed value form, against all risks of direct physical loss, in an amount not less than the full amount of the cost of such repair or restoration, as estimated by the Board.

(c) Comprehensive general liability insurance covering the Association against liability for all civil claims arising out of the Common Area of the Project, or any other real or personal property owned or maintained by the Association, with minimum limits of at least Two Million Dollars (\$2,000,000.00) if the Project consists of 100 or fewer Condominium Units, and Three Million Dollars (\$3,000,000.00) if the Project consists of more than 100 Condominium Units.

(d) A policy of Workmen's Compensation Insurance to the extent required to comply with any applicable laws.

(e) A comprehensive coverage endorsement or fidelity bond written in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the

Association or its management agent at any given time during the term of the fidelity bond, provided that the bond shall not be less than a sum equal to three (3) months aggregate Assessments, plus reserves, on all Condominium Units. The bond must name the Association as insured and insure against misuse and misappropriation of Association funds by members of the Board of Directors, officers and employees of the Association, and any management agent or his employees, whether or not such persons are compensated for their services.

(f) Director's and officer's liability insurance covering persons serving in such capacities, and insuring against loss because of any civil claim made against Directors or officers for any negligent act, error, omission, or breach of duty by any one or all of them.

(g) If, at any time, flood insurance is required by any Mortgagee of a Condominium or by any lender who desires to become a Mortgagee of any Condominium by reason of any applicable law, ordinance, statute or the like requiring flood insurance as a condition of such Mortgagee's or lender's loan remaining or being made, the Board shall forthwith obtain such flood insurance covering the entirety of the Project in amount and coverage, and with such carrier(s) and subject to such terms, as shall satisfy such Mortgagee or lender.

7.01.1 The limits and coverage of all insurance provided for herein or otherwise acquired shall be reviewed at intervals of not more than one (1) year and adjusted, if necessary, to provide such coverage and protection as the Association may deem prudent. Insurance premiums for the master policy shall be a common expense to be included in the monthly Assessments levied by the Association and the portion of such payment necessary for the insurance premiums shall be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due. Each buyer of a Unit shall pay the portion of the premiums attributable to his Unit for the policy or policies purchased by the Declarant for the Association. All property, liability and other insurance carried by the Declarant for the Association and/or the Owners shall contain a cross liability or severability of interest endorsement and a waiver of subrogation provision as to the Association, officers, and Directors, and any Members, their tenants, guests, agents, and employees. Copies of all insurance policies maintained by the Association shall be retained by the Board and shall open for inspection by Owners at any reasonable time.

7.01.2 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.

7.01.3 No Condominium Owner shall separately insure his or her Condominium 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 result from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

7.01.4 Insurance maintained by the Association does not cover the Owner's or occupant's personal property and does not cover personal liability for damages or injuries occurring within the Unit. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her 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 "tenant's improvements."

7.01.5 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 liability 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 liability insurance will not be obtained or renewed.

7.02 Damage and Destruction: If the Project is destroyed or damaged by fire or any other casualty, the payment and the application of the insurance proceeds, if any, from any policy obtained by the Association pursuant to this Declaration or from any loss payable endorsement, the repair and rebuilding of the Project, and the other consequences of such destruction and damage, shall be as follows:

(a) Within thirty (30) days after the date of such damage or destruction, the Board shall ascertain the cost of repair or reconstruction by obtaining fixed price bids from at least two (2) reputable licensed general contractors, including the obligation to obtain a performance bond if the Board deems one to be necessary, and shall also ascertain the current replacement cost of all Project improvements by obtaining one or more independent appraisals or by other appropriate means, and shall also determine the amount of insurance proceeds if any, by contacting a representative of the Association's insurance carrier. The Board shall have full and sole authority to negotiate with the Association's insurance carrier, and to settle any of the Association's claims for less than full coverage, if to do so is reasonable and/or necessary. Any settlement made in good faith by the Board and the Association's insurance carrier shall be binding upon all Owners. The Board shall also have full and sole authority to contract for the repair and/or reconstruction of all Common Area improvements of the Project.

(b) The Project improvements which have been damaged or destroyed shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Committee, but excluding any improvements added by individual Owners, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, and available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and at least three-fourths (3/4) of the total voting power of the Association, including three-fourths (3/4) of the voting power held by Members other than Declarant, vote against such repair and reconstruction at a duly called and noticed annual or special meeting of Members

at which a quorum is present; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, and a special Assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.05, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time. Any meeting of the Association that is necessary under the provisions of this Section (to vote on the issue of repair and reconstruction, or the issue of a special Assessment to supplement any insurance proceeds) shall take place within thirty (30) days after the date that the Board has obtained all of the information specified in Subsection (a) above.

(c) If the Project is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all Common Area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any funds borrowed by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor, and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of such certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

(d) If the cost of repair or reconstruction of the Project is less than twenty-five percent (25%) of the current replacement cost of all Common Area improvements, then any insurance proceeds shall be paid to the Association, and the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

(e) The repair or reconstruction of the Project shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after such date, subject to delays that are beyond the control of the party responsible for making the repairs. The Board shall promptly take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction. The repair of any damage to the interior of any Unit shall be made by and at the individual expense of the Owner of that Unit, and shall be completed in a lawful and workman like manner as soon as possible after the repair or reconstruction of the Condominium Building that contains that Unit.

(f) If the Project is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective Mortgages in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of clearing debris and mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

(g) If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction, as determined by the Board within ninety (90) days after the date of such damage or destruction, the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. A material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all Common Area improvements. If any Owner or first lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their Mortgagees.

(h) If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective Mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction, as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this Section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within ninety (90) days following the date of a determination by the Board or arbitrator of a material alteration, or within one hundred eighty (180) days following the date of damage or destruction if the Board has failed to make a determination as to a material alteration, any

Owner may file a partition action as to the entire Project under Civil Code Section 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.

(i) In the event of substantial damage to or destruction of any Condominium or any part of the Common Area, the Institutional Lender with respect to such Condominium, or all Institutional Lenders, respectively, which have informed the Association in writing of their addresses and requested in writing to be notified, shall be sent timely written notice of such damage or destruction, and no provision of the Condominium Documents will entitle the Owner of any damaged Condominium, or any other party, to priority over such Institutional Lender with respect to the distribution to such Condominium of any insurance proceeds.

(j) The Association is responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms. The cost of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Owner of the Unit affected. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the occupants and to the Owners not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of the treatment, the anticipated date and time of the termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either: (1) personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address shown on the books of the Association, or (2) by sending a copy of the notice to the occupants at the address of the Unit and a copy of the notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address shown on the books of the Association. For purposes of this section, "occupant" means an Owner, resident, guest, invitee, tenant, lessee, sub-lessee, or other person in possession of the Unit.

7.03 Water Intrusion Damage: Notwithstanding any other provision in the Project Documents, each Owner shall be solely responsible at his sole expense for effecting the repair or replacement of any damage to any and all interior items of his Unit caused by water intrusion from a Common Area source, including but not limited to, windows and back-ups from drains and sewers. Each Owners' responsibility shall include, without limitation, any personal property, decorations, interior surfaces, floor and wall coverings, appliances, fixtures or other items within his Unit. An Owner may obtain and maintain at his sole expense such insurance as necessary to protect against any damage or loss of property due to water intrusion, including the cost of repair or replacement of damaged items for which such Owner is responsible. If water intrusion is caused by a source within a Unit and such water intrusion causes damage in another Unit or the Common Area, then the Owner of the Unit causing the water intrusion is responsible for all damages.

7.04 Liability of Owners for Damage to Common Area: The Owner of each Unit shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such Owner or any occupant of his Unit or guest or invitee, as such liability may be determined pursuant to the laws of the State of California. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

7.05 Condemnation: The term "taking" as used in this Section shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Project.

(a) Subject to the right of all Institutional Lenders who have duly requested the right to join the Board in the proceedings, the Board shall represent all Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Section.

(b) A condemnation award or settlement proceeds affecting all or part of the Common Area of the Project, and which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, shall be distributed among the affected Owners and their respective Mortgagees, if any, according to the relative fair market values of the Units affected by the condemnation as determined by independent appraisal at the time said taking occurs.

(c) In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof he and his Mortgagee shall be divested of all interest in the Project if such Owner shall vacate his Condominium 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 re-surveyed, if necessary, and the Declaration and Condominium Plan shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project.

(d) If there is a substantial taking of the Project's property (more than fifty percent (50%)), the Owners may terminate the legal status of the Project and, if necessary, bring a partition action under Civil Code Section 1359 or any successor statute, on the election to terminate by at least fifty-one percent (51%) of the total voting power of the Association residing in Members other than Declarant and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Holder Mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees according to the relative fair market values of the Units, as determined by independent appraisal at the time said taking occurs.

(e) In the event of a taking, each Owner shall have the exclusive right to claim any award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. The Board shall nevertheless represent each Owner in any action to recover all awards with respect to any personal property which may, at the

time of the taking, be part of the real estate comprising any Condominium, and shall allocate to such Owner so much of any awards as is attributed in the taking proceedings, or failing such attribution, attributable by the Board to such personal property.

(f) If any Condominium or portion thereof, or the Common Area or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the Institutional Lender with respect to any such Condominium, or all Institutional Lenders participating in the Project, respectively, will be entitled to timely written notice of such proceedings or proposed acquisition and no provision of any document establishing the Project will entitle the Owner of a Condominium or other party to priority over such Institutional Lender with respect to the distribution to such Condominium Owner of the proceeds of any award or settlement.

(g) The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

ARTICLE 8

INSTITUTIONAL LENDERS

8.01 Rights of Institutional Lenders: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall impair or render invalid the lien of any first Mortgage (meaning a Mortgage with first priority over any other Mortgage) on any Unit made in good faith and for value, but all of said 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. A lender who acquires title by foreclosure shall not be obligated to cure any breach of this Declaration or other Condominium Document which is non-curable or of a type which is not practical or feasible to cure. It is intended that any loan to facilitate the resale of any Condominium after foreclosure is a loan made in good faith and for value and entitled to all the rights and protections afforded to other lenders. Notwithstanding any provision in the Condominium Documents to the contrary, Institutional Lenders shall have the following rights:

(a) Document Availability: The Association shall make available to Condominium Owners and Institutional Lenders, and to holders, insurers, or guarantors of any first Mortgage, current copies of the Declaration, Bylaws, Articles, and any other rules concerning the Project, and the books, records, and financial statements of the Association. "Available" means available for inspection and copying (at reasonable charge), upon request, during normal business hours or under other reasonable circumstances.

(b) Audited Statement: Any holder, insurer, or guarantor of a first Mortgage shall be entitled, on written request, to an audited financial statement for the immediately preceding fiscal year. If the Project contains fifty (50) or more Units, the Association shall provide such statement at no charge and within a reasonable time following such request. If the Project contains fewer than

fifty Units and there is no such statement already available, the requesting party shall be allowed to have such statement prepared within a reasonable time at its own expense.

(c) Required Notices: On written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, insurer or guarantor, as applicable.

(2) Any default in performance of obligations under the Project documents or delinquency in the payment of Assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, insurer or guarantor, which remains uncured for a period of sixty (60) days;

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

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in paragraph (d) herein below; and

(5) Written notice of all meetings of the Association. Such eligible holder, insurer or guarantor shall be permitted to have its designated representative attend all such meetings.

The Association shall discharge its obligation to notify eligible holders, insurers or guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section 9.11 of the Declaration.

(d) Material Amendments: Except as provided by statute or by other provision of the Condominium Documents, in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Condominium Documents, the consent of Owners of Condominiums 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 Condominiums which have at least fifty-one percent (51%) of the votes of the Condominiums subject to Eligible Holder Mortgages, shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) Assessments, Assessment liens or the priority of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area(s); (iv) insurance or fidelity

bonds; (v) rights to use of Common Area(s) and Exclusive Use Common Areas; (vi) responsibility for maintenance and repair of the Project; (vii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project (except as provided in the original Condominium Documents); (viii) redefinition of boundaries of any Condominium; (ix) reallocation of the interests in the Common Areas and Exclusive Use Common Area(s); (x) convertibility of Units into Common Area(s) or of Common Area(s) into Units; (xi) leasing of Condominiums; (xii) imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer, or otherwise convey his or her Condominium; (xiii) any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders, or eligible insurers or guarantors of first Mortgages on Condominiums; and (xiv) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than specified herein. An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendments and who does not deliver or post to the requesting party a negative response within sixty (60) days shall be deemed to have approved such request, provided the notice was delivered by certified or registered mail with a return receipt requested.

(e) Consent to Actions: Except as provided by statute, in case of condemnation or substantial loss to the Condominium and/or Common Area(s) of the Project, unless the holder(s) of at least sixty-seven percent (67%) of the first Mortgages (based on one (1) vote for each first Mortgage owned), or Owners (other than Declarant) of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the Condominium Project and/or the Association (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);

(2) Change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area(s);

(3) Partition or subdivide any Condominium Unit;

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

(5) Use hazard insurance proceeds for losses to any Condominium property (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such Condominium property.

(f) Right of First Refusal: Sale or Resale Restrictions: The Condominium Documents contain no provisions creating a "right of first refusal." If any such rights are created in the future, or if the Project is subject to any inclusionary housing or zoning ordinance, or any affordable housing agreement or density bonus agreement or relocation assistance agreement, or any other ordinance or recorded agreement that imposes sale or resale restrictions on any Unit, then neither such rights nor the terms of any such ordinance or agreement shall impair the rights of any first lender or Fannie Mae to: (i) foreclose or take title to a Unit pursuant to the remedies provided in the mortgage; or (ii) cure any default under the mortgage, or accept a deed or assignment in lieu of foreclosure in the event of a default by a mortgagor; or (iii) sell or lease a Unit acquired by the mortgagee; or (iv) otherwise protect its interests under the mortgage. The terms and provisions of Fannie Mae's Selling Guide, including but not limited to "Announcement 06-03," shall prevail over any conflicting terms and provisions contained in any of the following that are applicable to the Project: any inclusionary housing or zoning ordinance, or any affordable housing agreement or density bonus agreement or relocation assistance agreement, or any other ordinance or recorded agreement that imposes sale or resale restrictions on any Unit.

(g) Unpaid Dues or Charges: A first Mortgagee may, jointly or singly, pay taxes, insurance premiums, or other charges which are in default and which may or have become a charge against the Common Area, and may secure new casualty insurance coverage on the lapse of any policy covering the Common Area. First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Board, which is hereby expressly empowered and authorized to enter into an agreement in favor of all first Mortgagees respecting such reimbursements.

(h) Insurance or Condemnation Proceeds: Nothing shall give an Owner, or any other person or entity, priority over any rights of the first Mortgagee of the Condominium Unit pursuant to its Mortgage or the rights of Fannie Mae in the case of payment to the Owner or party or entity of insurance proceeds or condemnation awards for losses to or taking of Condominium Units and/or Common Area. All applicable insurance policies shall contain loss payable clauses naming the Institutional Lenders who encumber the Condominiums by deed of trust or Mortgage, as their interests may appear.

(i) 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 maintained, repaired or replaced on a periodic basis. The dues or charges shall be payable in regular installments rather than by special Assessments.

(j) Contracts: Any agreement for professional management of the Condominium Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year, but may be renewable for successive one (1) year periods. 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 Condominium 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.

(k) Termination of Professional Management: When professional management has been previously required by the Project's documents or by any Eligible Mortgage Holder, insurer or guarantor, whether such entity became an Eligible Mortgage Holder, 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 Condominiums 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 Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages.

(l) Priority of Liens: Each holder of a first Mortgage lien on a Condominium who comes into possession of the Condominium by virtue of foreclosure of the Mortgage, or any purchaser at the foreclosure sale under a first deed of trust, will not be liable for more than six (6) months of the Unit's unpaid regularly budgeted dues or charges (i.e., Regular Assessments) that accrued before acquisition of the title to the Unit by the Mortgagee (or purchaser at foreclosure). If the Association's lien priority includes the costs of collecting unpaid dues (Assessments), the Mortgagee (or purchaser at foreclosure) will be liable for any fees or costs related to the collection of the unpaid dues (Assessments).

(m) Restoration or Repair: Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages.

(n) Project Termination: Any action to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property requires the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Holder Mortgages, and the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Except as provided by statute or by the foregoing provision (in case of substantial destruction or condemnation of the Project), the consent of Owners of Condominiums 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 Condominiums which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Holder Mortgages, shall be required to terminate the legal status of the Project as a condominium project.

(o) Reallocation of Interests: No reallocation of interests in the Common Area(s) resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of Eligible Mortgage Holders holding Mortgages on all remaining Condominiums, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Condominiums subject to Eligible Holder Mortgages.

(p) Partition: Partition or subdivision of any Unit, as provided in Sections 2.05 and 2.08 of this Declaration, is subject to the rights of Institutional Lenders.

ARTICLE 9

GENERAL PROVISIONS9.01 Enforcement:

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity (subject to the provisions of Article 10 hereof, whenever applicable), all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration and other Condominium Documents, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court; provided that no judicial proceedings shall be commenced by the Board against an Owner for any non-monetary breach of this Declaration and/or the other Condominium Documents unless and until there has been a hearing with respect to such breach in accordance with this Declaration and the other Condominium Documents. It is hereby agreed that damages at law for such non-monetary breach are inadequate. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided for in the Condominium Documents for breach of the covenants contained therein shall be cumulative, and none of such remedies shall be exclusive.

(b) The Association shall have no power to cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his individually owned Unit on account of a failure by such Owner to comply with the provisions of the Condominium Documents or any duly enacted rules of operation for any Common Areas and facilities except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of such Owner to pay Assessments levied by the Association.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Condominium Documents, or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member or the Member's guests or tenants were responsible (pursuant to Section 9.06 of this Declaration or otherwise), or in bringing the Member and his Unit into compliance with the Condominium Documents, shall not be characterized nor treated 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 2924, 2924b and 2924c of the California Civil Code; provided that this provision shall not apply to charges imposed against an Owner consisting of reasonable interest on delinquent Assessments and/or charges to reimburse the Association for attorney's fees and/or costs reasonably incurred in its efforts to collect delinquent Assessments, as more particularly set forth in Section 4.12 of this Declaration.

(d) If the Association adopts or has adopted a policy of imposing any monetary penalty, including any fee, on any Association Member for a violation of the Condominium Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board of Directors shall adopt and distribute to each Member,

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 Member discipline contained in the Condominium Documents. The Board of Directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

9.02 Hearing: If any Condominium Owner, or other occupant of the Condominium owned by him, shall fail to observe any of the provisions of this Declaration, the other Condominium Documents, or any of the rules or regulations (other than related to vehicles, violation of which may be enforced by towing) adopted by the Board, the Board shall give written notice of such fact to the Condominium Owner. When the Board is to meet to consider or impose discipline upon a Member, the Board shall notify the Member in writing, by either personal delivery or first-class mail, at least ten (10) days prior to the meeting. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which a Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Member being disciplined. At such meeting, the Board shall accept such evidence and take such testimony as is required by subdivision (h) of Section 1363 of the California Civil Code, and any additional evidence and testimony as may be reasonable under the circumstances, reach a decision with respect thereto, and if the Board concludes that the alleged violation did in fact occur, the Board may impose monetary penalties, temporarily suspend voting and Common Area privileges for a period not to exceed thirty (30) days, or take any other disciplinary action permitted by the Condominium Documents. If the Board imposes discipline on a Member, the Board shall provide the Member a written notification of the disciplinary action, by either personal delivery or first-class mail, within fifteen (15) days following the action. A disciplinary action shall not be effective against a Member unless the Board fulfills the requirements of this Section. The notice and hearing provided for by this Section 9.02 shall not be a prerequisite to enforcement by the Board of an Owner's obligation to pay annual and special Assessments, only for disciplinary/compliance Assessments.

9.03 Invalidity of any Provision: Should any provision or portion hereof 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.

9.04 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 Condominium subject to this Declaration, his respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from and after the date this Declaration is first duly recorded, after which term they shall be automatically extended for successive periods of fifty (50) years, unless an instrument in writing, signed by at least sixty-seven percent (67%) of the Owners of the Condominiums, has been recorded within the year preceding the beginning of any such successive period, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

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9.05 Amendments:

(a) Prior to close of escrow on the sale or conveyance of the first Unit to a purchaser or grantee other than Declarant, the Declarant may amend this Declaration, subject to the consent of the Department of Real Estate and/or any Mortgagee in such instances as required, by the recordation of an appropriate instrument in the Office of the County Recorder where the Project is located.

(b) After sale or conveyance of the first Unit to a purchaser or grantee other than Declarant, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing at least fifty-one percent (51%) of the voting power of the Association, which shall include at least fifty-one percent (51%) of the affirmative votes or written consent of Members other than the Declarant, or where the two-class voting structure is still in effect, at least fifty-one percent (51%) of each class of membership; 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, and any "material" amendment must also be approved by the required percentage of Eligible Mortgage Holders pursuant to the provisions of Section 8.01(d) of this Declaration. During the period when the Declarant or its successor holds or controls as many, or more than, one-fourth (1/4th) of the total voting power of the Association, amendments which would materially change rights to ownership, possession, or use of interests in the Project must have the prior written consent of the Department of Real Estate.

(c) The Association, or any Owner, may petition the Superior Court for an order reducing the voting percentage required to amend this Declaration, pursuant to Civil Code Section 1356. After the Declarant has completed its construction and marketing activities with respect to the Project, or a particular phase thereof, the Board of Directors of the Association may adopt an amendment, in accordance with the provisions of Civil Code Section 1355.5, deleting from this Declaration any provision which is unequivocally designed and intended to facilitate access by the Declarant over and across the Common Area of the Project, or a particular phase thereof, for the completion of such activities.

(d) All amendments must be recorded and shall become effective upon recordation of a Certificate of Amendment in the Office of the County Recorder where the Project is located. After sale or conveyance of the first Unit to a purchaser or grantee other than Declarant, the Certificate must be executed and acknowledged by any two (2) Directors and must state the full text of the amendment and the names of the Owners who voted for the amendment. In the event that any loan on any Unit in the Project has been submitted to and accepted by the Department of Veterans Affairs (VA) or the Federal Housing Administration (FHA) or the Department Of Housing And Urban Development (HUD), any amendment to this Declaration shall require the prior written approval of this agency as long as the two-class voting structure is still in effect for the Association, in which case a draft of any amendment should be submitted to this agency for approval prior to recordation.

(e) Notwithstanding anything to the contrary contained in this Declaration, Sections 1.04, 1.23, 1.29, 3.04, 3.05(a), 3.05(b), 3.05(k), 3.05(l), 3.06(m), 3.06(n), 9.06(a), 9.13(e) and

10.02 through 10.02.8, inclusive, of this Declaration shall not be amended without the vote or approval by written ballot of at least ninety percent (90%) of the voting power of the Association, including at least ninety percent (90%) of the Members other than Declarant, and at least ninety percent (90%) of the Eligible Mortgage Holders.

9.06 Owner's Right and Obligation to Maintain and Repair:

(a) Each Owner shall comply with the Maintenance Obligations and each Owner is further obligated to provide a copy of any Owner Maintenance Manual and any documents describing the Maintenance Obligation to any successor purchaser of such Owner's Condominium. 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 his Unit, and all elements thereof, keeping the same in good condition. An Owner's obligation of maintenance, repair and replacement includes the exterior doors and windows of his Unit (and all hardware and other components of such doors and windows) and any individual air conditioning and heating equipment, appliances, plumbing and electrical systems and equipment located within his Unit or serving only his Unit. Each Owner shall have the exclusive right at his sole cost and expense, to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, and doors bounding his Unit, subject to Sections 5.09 and 5.10 of this Declaration. Each Unit Owner shall keep any portions of the Exclusive Use Common Area which are appurtenant to his Unit in a clean, neat and safe condition.

(b) In the event an Owner fails to maintain and repair his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board shall give written notice to such Owner, stating with particularity the work required, and request it be done within a reasonable time from the giving of such notice. If an Owner disputes his liability to carry out such maintenance or repairs, he may request a hearing by the Board. The determination of the Board at such hearing shall be final. If the Owner is determined by the Board at such hearing to be liable for such maintenance and repair, and the Owner fails to carry out the same within the time prescribed by the Board at the hearing, the Board may cause such work to be done and may specially assess the costs thereof to such Owner and, if necessary, lien his Unit for the amount thereof.

9.07 Limitation of Restrictions on Declarant: The Declarant is undertaking the work of construction and development of Condominium Units and other incidental improvements upon the Project. The completion of that work and the sale, rental, and other disposal of said Condominium Units is essential to the establishment and welfare of said Project as a residential development. In order that said work may be completed and said Project be established as a fully occupied residential development as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent the Declarant, its contractors or subcontractors, from doing on the Project whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent the Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project such structures as may be reasonable and necessary

for the conduct of its business of completing said work and establishing said Project as a residential development and disposing of the same in parcels by sale, lease or otherwise; or,

(c) Prevent the Declarant from conducting on any part of the Project its business of completing said work and of establishing a plan of Condominium ownership and of disposing of said Project in Condominium Units by sale, lease or otherwise; or

(d) Prevent the Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the sale of Declarant's entire interest in the Project or the third anniversary of the issuance of the final public report for the Project, whichever occurs first. So long as the Declarant, or its successor and assigns, own one or more of the Condominiums established and described herein, the Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration and the other Condominium Documents. In exercising its rights under this Section 9.07, the Declarant shall not unreasonably interfere with the use and enjoyment of the Units and the Common Area by Owners while completing any work necessary to said Units or Common Area.

9.08 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: The Declarant, for itself, its successor and assigns, covenants that any and all improvements to the Common Area shall be completed in accordance with generally accepted building industry standards. In the event that said improvements have not been completed prior to issuance by the Department of Real Estate of its original final public subdivision report for the Project, the Declarant shall assure completion of those portions of said improvements which have not been completed by said date under a bond or other financial arrangement approved by the Department of Real Estate, generally describing the nature of said improvements and the date(s) for completion thereof and with the Association designated as obligee thereunder. Where the Project includes Common Area improvements which have not been completed prior to the issuance by the Department of Real Estate of its original final public subdivision report for the Project, and where the Association is obligee under a bond or other arrangement to secure performance of the commitment of the Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. 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 on the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing at least five percent (5%) 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 obligation under the bond and a vote of a majority of the voting

power of the Association, excluding the 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. On satisfaction of Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between Declarant and the Association regarding the completion of the Common Areas shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

9.09 Termination of any Responsibility of Declarant: At such time as the first (organizational) meeting of the Association is held pursuant to the provisions of the Condominium Documents, or as soon as practical, the Declarant shall surrender to the Association such books, records, contracts, and other documents relating to the operation and management of the Project as may then exist, including a set of approved construction plans. In the event the Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, the Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

9.10 Owner's Consent and Compliance: Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction and other provisions of the Condominium Documents. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration and, to the extent they are not in conflict with this Declaration, the Articles and the Bylaws, as all of the foregoing may have been duly amended, and the decisions and resolutions of the Association or its duly authorized representative, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, the Articles, and the Bylaws, and all questions of interpretation and construction of these Condominium Documents which are resolved by the Board, shall be deemed to be final, conclusive and binding on all Owners of Condominiums, their successors and assigns.

9.11 Notices: Any notice permitted or required by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered to a person seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, certified or registered, addressed to such person at the current address given by such person to the secretary of the Board for the purpose of such service of notice, or addressed to the Unit of such person if no other address has been given to the secretary.

9.12 **Fair Housing:** No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging or occupancy of his Unit to any person of a specified race, color, religion, ancestry, national origin, sex, marital status or physical handicap.

9.13 **Documents Provided to Prospective Purchaser:** The Owner of a Unit shall, as soon as practicable before transfer of title or execution of a real property sales contract thereof, provide the following to the prospective purchaser:

- (a) A copy of the Condominium Documents of the Project.
- (b) A copy of the most recent documents distributed pursuant to Civil Code Section 1365.
- (c) A true statement in writing from an authorized representative of the Association as to the amount of the Association's current annual and special Assessments and fees, as well as any Assessments levied upon the Owner's Unit in the Project which are unpaid on the date of the statement, and any monetary fines or penalties levied upon the Owner's interest and unpaid on 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 Owner's Unit in the Project pursuant to Civil Code Section 1367.1.
- (d) Any change in the Association's current annual and special Assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.
- (e) A copy of any Owner Maintenance Manual and any documents describing the Maintenance Obligation.
- (f) A copy or summary of any notice previously sent to the Owner pursuant to subdivision (h) of Civil Code Section 1363 that sets forth any alleged violation of the Governing Documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the Association's right to enforce the Governing Documents against the Owner or the prospective purchaser of the separate interest Unit with respect to any violation. This paragraph shall not be construed to require the Association to inspect the Owner's separate interest Unit.
- (g) A copy of any preliminary list of defects provided to each Member of the Association pursuant to Civil Code Section 1375, unless the Association and Declarant subsequently enter into a settlement agreement or otherwise resolve the matter and the Association complies with Civil Code Section 1375.1. Disclosure of any preliminary list of defects pursuant to this paragraph does not waive any privilege attached to the document. Any preliminary list of defects shall also include a statement that a final determination has not been made as to whether the list of defects is accurate and complete.
- (h) A copy of the latest information, if any, provided for in Civil Code Section 1375.1.

Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Unit with a copy of the requested items specified in paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) above. The Association may charge a reasonable fee for this service, based upon the Association's actual cost to procure, prepare and reproduce the requested items; otherwise, the Association shall not impose or collect any Assessment, penalty, or fee in connection with a transfer of title or any other interest except the Association's actual costs to change its records.

9.14 Equitable Servitudes; Privity of Contract; Covenants Running With Land: All covenants, conditions, restrictions, and agreements contained herein are made for the direct mutual and reciprocal benefit of each and every Condominium in the Project, and shall create mutual equitable servitudes upon each Condominium in favor of every other Condominium, and, shall create reciprocal rights and obligations between the respective Owners of all Condominiums and privity of contract and estate between all grantees of said Condominiums, their heirs, successors and assigns; and, as to the Owner of each Condominium, his heirs, successors and assigns, shall operate as covenants running with the land for the benefit of all other Condominiums.

9.15 Mechanics Liens: No Owner or tenant shall cause or permit any mechanic's lien to be filed against the Common Area or any other Owner's Unit for labor or materials alleged to have been furnished or delivered to the Owner or tenant. Any Owner or tenant who causes or permits any such mechanic's lien to be filed shall cause the mechanic's lien to be discharged within five (5) days after notice to the Owner or tenant from the Board. If the Owner or tenant fails to cause the lien to be discharged within this time period, the Board may cause the lien to be discharged and levy a Special Assessment against the violating Owner's or tenant's Condominium to recover the costs and expenses incurred by the Board in accomplishing the discharge.

ARTICLE 10

ALTERNATIVE DISPUTE RESOLUTION; MEDIATION; ARBITRATION

10.01 DISPUTES INVOLVING ENFORCEMENT OF GOVERNING DOCUMENTS: (THIS SECTION OF THE DECLARATION APPLIES ONLY TO DISPUTES BETWEEN OWNERS, OR BETWEEN THE ASSOCIATION AND ONE OR MORE OWNERS, THAT INVOLVE ENFORCEMENT OF THE GOVERNING DOCUMENTS.)

10.01.1 Discussion and Mediation. In the event of a dispute arising between one or more Owners or between the Association and one or more Owners involving enforcement of any provision of this Declaration or the other Project Documents ("Enforcement Dispute"), the parties involved in such dispute shall meet to discuss and negotiate with each other in a good faith attempt to reach a fair and equitable solution that is acceptable to all such parties. If the Association is involved as a party, the Board shall act on behalf of the Association. Except as the parties may otherwise agree in writing, in the event that any Enforcement Dispute is not settled in this manner within ten (10) days after written notice of the Enforcement Dispute ("Enforcement Dispute Notice") from the sending party has been served on or delivered to the other party(parties), the parties shall participate in mediation in an attempt to settle the Enforcement Dispute in an amicable manner, with

the mediator selected by mutual agreement of the parties. In no event shall the provisions of this Section relieve any Owner or the Association from performing his/her/its obligations under the Project Documents.

10.01.2 Binding Arbitration. Any Enforcement Dispute that is not resolved pursuant to the foregoing subsection of this Section shall be settled by submission to binding arbitration in accordance with the rules then in effect under the provisions of California Code of Civil Procedure Sections 1280 et seq. (or any successor statute) and the procedures set forth in the following subsections of this Section. After the expiration of forty (40) days from the date of service or delivery of an Enforcement Dispute Notice, any member of the Board may commence an arbitration proceeding of an Enforcement Dispute that has not been resolved through mediation by giving written notice of his/her intention to arbitrate the Enforcement Dispute ("Enforcement Dispute Arbitration Notice") to all other involved parties.

10.01.3 Appointment of Arbitration Panel. Unless another procedure is agreed upon by all parties to the Enforcement Dispute, a panel of three (3) arbitrators shall be appointed by the parties in the following manner and that panel shall constitute the "Arbitration Panel." The first two arbitrators shall be appointed within ten (10) days after service or delivery of the Enforcement Dispute Arbitration Notice. If the Enforcement Dispute involves the Association or Board and the Owner(s) of only one Unit, the Board shall appoint one (1) arbitrator and the Owner(s) of that Unit shall appoint one (1) arbitrator. If the Enforcement Dispute involves the Association or Board and the Owners of more than one Unit, the Board shall appoint one (1) arbitrator, and the Owners of the other Units involved in the Enforcement Dispute shall collectively appoint one (1) arbitrator. Any member of the Board that is also an Owner of any Unit involved in any Enforcement Dispute shall not participate in the Board's appointment of one of the arbitrators. If the Enforcement Dispute involves only the Owners two Units, the Owner(s) of each such Unit shall appoint one (1) arbitrator. If the Enforcement Dispute is such that it involves the Owners of a group of Units with a common claim or position against the Owner(s) of a single Unit or against the Owners of another group of Units with a common claim or position, the Owners of the first group of Units shall collectively appoint one (1) arbitrator and the Owner(s) of the single Unit, or the Owners of the other group of Units, acting collectively, shall appoint one (1) arbitrator. The two arbitrators appointed by the opposite sides of the Enforcement Dispute shall appoint the third arbitrator of the Arbitration Panel within five (5) days after the last of their own appointments. In the event the arbitrators appointed by the opposite sides of the Enforcement Dispute are unable to agree upon the third arbitrator within that period of time, any party to the arbitration may apply to the Superior Court in the County where the Project is located for the appointment of the third arbitrator. If the Board or any Owner(s) or group of Owners fails to appoint an arbitrator within ten (10) days after service or delivery of the Enforcement Dispute Arbitration Notice, the arbitrator appointed by the party or parties on the other side of the Enforcement Dispute need not appoint any other second or third arbitrator and (acting alone) shall be deemed to be the Arbitration Panel. The decision of a majority of a three-member the Arbitration Panel or the decision of the sole arbitrator, if only one was duly appointed, shall be final and binding on the parties, unless an exemption from arbitration applies to any such party as provided in any section or subsection of this Article. Each arbitrator appointed shall have at least five (5) years of direct experience as a property or asset manager in the operation and management of a development similar (in facilities and permitted uses) to the Project and located in the County

where the Project is located. Any arbitration proceeding under this Section shall take place in the County where the Project is located, unless the parties mutually agree otherwise.

10.01.4 Submission of Proposals and Materials. Each party to the arbitration (or each group, through its representative) shall submit a proposal for resolution of the Enforcement Dispute to the Arbitration Panel and to the other party or parties involved in the Enforcement Dispute. Each party may modify its proposed resolution until such time as the matter has been finally submitted for determination. Each party shall make available to the Arbitration Panel all of its books, records, documents and other information requested by the Arbitration Panel relating to the Enforcement Dispute, and shall do so at such times as are deemed reasonably necessary by the Arbitration Panel to make its decision in accordance with the provisions of this Section. Any party that submits written materials to the Arbitration Panel shall be required to at the same time deliver a copy to all other parties. Any party that plans to submit information orally shall give all other parties reasonable advance notice of the date and time of the submission so any other party may be present if desired. Prior to rendering a decision, the Arbitration Panel shall allow each party or its legal counsel an opportunity to express its point of view either orally or in writing regarding each party's proposed resolution and to respond to any written materials and oral information provided by another party. Any party may utilize an expert for the purpose of presenting evidence to the Arbitration Panel regarding such party's proposed resolution. Each party shall have reasonable access during normal business hours to examine and copy (at its own expense) such books, records, documents, and other data as are reasonably necessary for that party to analyze and evaluate the Enforcement Dispute.

10.01.5 Decision by Arbitration Panel. The Arbitration Panel shall diligently pursue the determination of the Enforcement Dispute under consideration and shall render its decision no later than thirty (30) days after the appointment of the Arbitration Panel. The determination of the Arbitration Panel shall be made by selecting only one of the proposals submitted to it, unless all of the parties to the Enforcement Dispute otherwise agree in advance and in writing. The decision of the Arbitration Panel shall be final and binding on all the parties to the Enforcement Dispute and may be enforced in any court of competent jurisdiction. Each party to the Enforcement Dispute agrees to indemnify and hold harmless each member of the Arbitration Panel from and against any claim or liability arising out of the arbitration of the Enforcement Dispute, unless resulting from the willful misconduct of that arbitrator. The costs of the arbitration, including any attorney's fees and expert's fees, shall be allocated among all parties to the Enforcement Dispute as the Arbitration Panel in its sole discretion shall determine, except that any other party's costs shall not be allocated to the Association or Board.

10.01.6 No Cure or Waiver. Neither the delivery or service of any Enforcement Dispute Arbitration Notice nor the commencement of any arbitration or other proceeding under this Section shall cure or waive any alleged breach or default of any obligation under the terms of this Declaration, nor shall it have any impact on the applicable period for curing any such breach or default nor shall it in any way constitute a waiver or relinquishment of any rights granted under this Declaration or otherwise by any party with regard to any alleged breach or default, including, but not limited to, the obligation of any Owner to pay as and when due any and all Assessments, liens, fees,

and/or charges required under this Declaration or otherwise and to perform such maintenance as is required under the Project Documents.

10.01.7 Provisional Relief. Nothing in this Section shall preclude an Owner or the Association from seeking provisional relief from a court of law with respect to the matter being disputed between any Owner(s) and/or the Association or Board, as applicable, including, but not limited to, injunctive relief under the Declaration, which may be brought in the Superior Court in the County where the Project is located. The procedures set forth in this Section shall not apply to any action taken by the Association against any Owner for delinquent Assessments; provided that any Enforcement Dispute related to the right or ability of the Association to enforce any remedies in connection with any Owner's failure to pay Assessments may be resolved as set forth in this Section.

10.01.8 Exception to Arbitration. An Owner or any Board member appointed by such Owner shall not be required to participate in any arbitration proceeding under this Section if such participation would directly result in the denial of insurance coverage to such Owner or Board member for any damages or other relief awarded in connection with such proceeding.

10.02 CONSTRUCTION/DESIGN DEFECT DISPUTES: (THIS SECTION OF THE DECLARATION APPLIES ONLY TO DISPUTES BETWEEN THE ASSOCIATION, OR ONE OR MORE OWNERS, AND DECLARANT THAT INVOLVE ALLEGED DEFECTS IN THE DESIGN OR CONSTRUCTION/RENOVATION OF THE PROJECT.) The purpose of Sections 10.02 through 10.02.8 is to provide an expedited means of resolving any claims, disputes and disagreements which may arise between Owner or the Association and Declarant after the close of escrow or other conveyance of any portion of the Project by Declarant, and which concern the Project and which are not resolved pursuant to any applicable contractual or statutory dispute resolution procedures (individually referenced to herein as "Dispute" and collectively as "Disputes"). Initially, Declarant will attempt to resolve any Dispute, asserted by an Owner or the Association, of which it is given notice. If the Dispute cannot be resolved between the parties in this manner, it will be resolved through the procedure set forth below and in the purchase contract. If there is any conflict, the procedure in the purchase contract shall control. Alternatively, Declarant, an Owner or the Association may elect to resolve such Disputes through a small claims court proceeding. **THE ARBITRATION PROCESS INVOLVES WAIVER OF THE RIGHT TO A JURY TRIAL. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER AND THE ASSOCIATION, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, RESPECTIVELY AGREE TO BE BOUND BY THE PROVISIONS OF SECTIONS 10.02 THROUGH 10.02.8, INCLUSIVE, OF THIS DECLARATION.**

10.02.1 Mediation: Subject to the provisions of Section 10.02.2(h) below, and except for actions in small claims court or Disputes that have already been mediated, Owner, Association and Declarant agree to submit any and all disputes to non-binding mediation before commencing arbitration. The cost of mediation shall be paid by the Declarant. Each party to the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

(Bayer initials)

10.02.2 Arbitration:

- a. Agreement to Arbitrate. The Association, each Owner and Declarant shall resolve any Dispute not resolved as provided above exclusively through binding arbitration in the county in which the Project is located. This arbitration provision shall apply to Disputes of any kind or nature regardless of when the Dispute first arose or the nature of the relief sought.
- b. Waiver of Trial by Judge or Jury. By agreeing to resolve all Disputes through binding arbitration, the Association, each Owner and Declarant each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and Disputes shall instead be decided by the arbitrator or the appeal arbitrator(s), if applicable.
- c. Rules Applicable to All Cases. The arbitration will be conducted by Judicial Arbitration and Mediation Services ("JAMS") in accordance with the rules of JAMS in effect as of the initiation of the arbitration ("JAMS Rules"), as supplemented by the following provisions. The following supplemental rules shall apply to all arbitration proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules.
- d. Qualifications of Arbitrators. The arbitrator shall be neutral and impartial and a retired judge with experience in construction related disputes.
- e. Appointment of Arbitrator. The arbitrator to preside over the Dispute shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.
- f. Expenses. All fees charged by JAMS and the arbitrator shall be advanced by the Declarant. If the Declarant is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Owner or Association to reimburse the Declarant for Owner's or the Association's, as applicable, pro rata share of the JAMS fee and arbitrator's fee advanced by the Declarant.
- g. Venue. The venue of the arbitration shall be in the County where the Project is located unless the parties agree in writing to another location.)
- h. Preliminary Procedures. If state or federal law requires the Association or an Owner or Declarant to take steps or procedures before commencing an action in court, then the Owner or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 1368.5, 1375, 1375.05 or 1375.1.
- i. Participation by Other Parties. The Association, an Owner and Declarant, to the extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration.

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

k. Attorneys' Fees and Costs. Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration. Nothing shall preclude the arbitrator from awarding costs of investigation.

10.02.3 Additional Rules Applicable To Certain Cases: In any arbitration in which a claim of Owner, the Association or Declarant exceeds \$100,000 in value, the following additional rules will supplement the JAMS Rules and govern in the event of a conflict between the following rules and the rules set forth above, the JAMS Rules, or both.

a. Qualifications of Arbitrator. In addition to the requirements of Section 10.02.2(d) above, the arbitrator shall be a retired judge of the California Superior Court, a California Court of Appeal, or the California Supreme Court, with experience in construction related disputes.

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

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

d. Additional Discovery Rights. In addition to the discovery rights provided for in the JAMS Comprehensive Arbitration Rules, the parties will have the following discovery rights:

(i) Inspection, Examination and/or Test. The right to a reasonable inspection, examination and/or test of any site, defect, personal injury or property damage relevant to any claim;

(ii) Deposition of Opposing Party. The right to take one deposition of each opposing party for up to four hours. The deposition of a person designated by an entity or organization as most knowledgeable, or an individual officer or employee of an entity or organization, shall count as the deposition of a party which is not a natural person.

(iii) Deposition of Expert Witnesses. The right to take the deposition of each expert witness designated by an opposing party for up to four hours.

(iv) Additional Depositions. The arbitrator shall have discretion to allow additional depositions and longer depositions upon a showing of good cause.

10.02.4 Procedures for Appeal of Certain Cases. In any arbitration in which a claim or arbitration award of any Owner, the Association or Declarant exceeds \$250,000 in value, Owner, the Association and Declarant, respectively, hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplement the JAMS Optional Appeal Procedure. In the event of a conflict between the following rules and the JAMS Optional Appeal Procedure, the following rules shall govern and control.

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

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

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

d. Expenses and Costs on Appeal. The fees charged by JAMS and the appeal arbitrator(s) shall be advanced by the Declarant, except as provided above in subsection 10.02.4b. The party that files the appeal must, at its sole expense, provide JAMS and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must equally share the costs of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrator(s) may, within thirty (30) days of his/her(their) determination, award costs of the nature provided in the Federal Rules of Appellate Procedure. If the Declarant is the prevailing party on appeal, the appeal arbitrator(s) may, in his/her(their) discretion, and only to the extent permitted by law and JAMS Minimum Standards of Professional Fairness, include in the award of costs on appeal, the non-prevailing party's/parties' prorata share(s) of the JAMS fee and arbitrator's fee advanced by the Declarant.

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

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

10.02.6 AGREEMENT TO ARBITRATION; WAIVER OF JURY TRIAL:

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

b. WAIVER OF JURY TRIAL. IN THE EVENT THAT, FOR ANY REASON, THE FOREGOING ARBITRATION PROVISION IS HELD NOT TO APPLY OR IS HELD INVALID, VOID OR UNENFORCEABLE IN ITS ENTIRETY, ALL DISPUTES SHALL BE TRIED BEFORE A JUDGE IN A COURT OF COMPETENT JURISDICTION WITHOUT A JURY. THE JUDGE IN SUCH COURT OF COMPETENT JURISDICTION SHALL HAVE THE POWER TO GRANT ALL LEGAL AND EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. DECLARANT, BY EXECUTING THIS DECLARATION, AND EACH OWNER, BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, AND THE ASSOCIATION, RESPECTIVELY, HEREBY WAIVE AND COVENANT NOT TO ASSERT THEIR CONSTITUTIONAL RIGHT TO TRIAL BY JURY OF ANY DISPUTES, INCLUDING, BUT NOT LIMITED TO, DISPUTES RELATING TO CONSTRUCTIONS DEFECTS, MISREPRESENTATION, OR DECLARANT'S FAILURE TO DISCLOSE MATERIAL FACTS. THIS MUTUAL WAIVER OF JURY TRIAL SHALL BE BINDING UPON THE RESPECTIVE SUCCESSORS AND ASSIGNS OF SUCH PARTIES AND UPON ALL PERSONS AND ENTITIES ASSERTING RIGHTS OR CLAIMS OR OTHERWISE ACTING ON BEHALF OF

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DECLARANT, ANY OWNER, THE ASSOCIATION OR THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

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

10.02.8 Severability: In addition to and without limiting the effect of any general severability provisions of this Declaration, if the arbitrator or any court determines that any provision of Sections 10.02 through 10.02.8 are unenforceable for any reason, those provisions shall be severed, and proceedings agreed to in these Sections 10.02 through 10.02.8 shall be conducted under the remaining enforceable terms of Sections 10.02 through 10.02.8.

IN WITNESS WHEREOF, the Declarant has executed this Declaration, as indicated by its acknowledgment hereinbelow.

ROBINSON-HILLCREST 92103, LLC,
A California Limited Liability Company,
Declarant

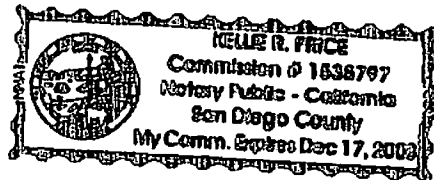
By: [Signature]
JUDY PRESTON,
Managing Member

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On this 18 day of October, 2006, before me, Kellie R. Price, a Notary Public in and for said County and State, personally appeared Judy Preston, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]



SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE IS REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3)

CALIFORNIA BANK & TRUST, beneficiary under that certain Deed of Trust recorded on June 28, 2004, as Document Number 2004-0603889 of Official Records of the County Recorder of San Diego County, California, hereby agrees that the lien and charge of said Deed of Trust is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

Dated: 10-18-06

CALIFORNIA BANK & TRUST

By: *Cindy Lehman*

By: _____

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On this 18 day of October, 2006, before me, the undersigned, a Notary Public in and for said County and State, personally appeared *Kellie R Price*

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

WITNESS my hand and official seal.
Kellie R Price



SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE IS REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3)

JANAY KRUGER, an unmarried woman, beneficiary under that certain Deed of Trust recorded on September 19, 2006, as Document Number 2006-0665288 of Official Records of the County Recorder of San Diego County, California, hereby agrees that the lien and charge of said Deed of Trust is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

Dated: 10/18/06

JANAY KRUGER, an unmarried woman

By: *Janay Kruger*

By: _____

STATE OF CALIFORNIA)

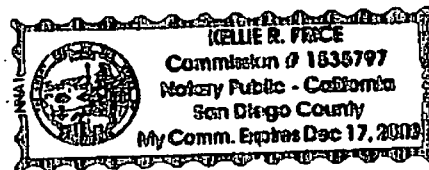
COUNTY OF SAN DIEGO)

On this 18 day of October, 2006 before me, *Kellie R. Price*, a Notary Public in and for said County and State, personally appeared *Janay Kruger*

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

WITNESS my hand and official seal.

Kellie R. Price



SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE IS REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3)

SAN DIEGO HOUSING COMMISSION, A PUBLIC AGENCY, beneficiary under that certain Deed of Trust recorded on September 20, 2006, as Document Number 2006-0670494 of Official Records of the County Recorder of San Diego County, California, hereby agrees that the lien and charge of said Deed of Trust is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

Dated: October 30, 2006

SAN DIEGO HOUSING COMMISSION,
A PUBLIC AGENCY

By: *Carrol Vaughan*
Carrol Vaughan
Chief Operating Officer

By: _____

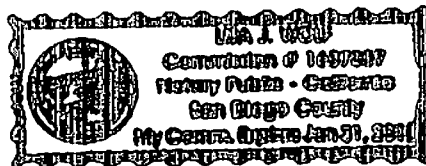
STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

On this 30th day of October, 2006, before me, ^{*Lise J. Wolf*} ~~the undersigned~~, a Notary Public in and for said County and State, personally appeared CARROL VAUGHAN

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

WITNESS my hand and official seal.

Lise J. Wolf



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Legal Description of Real Property

Lot 1 of 727 ROBINSON AVENUE, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 15433, filed in the Office of the County Recorder of San Diego County, on September 20, 2006.

Record Holder(s) of Title to Real Property When Declaration Recorded:

ROBINSON-HILLCREST 92103, LLC,
A California Limited Liability Company

EXHIBIT "A"

12339

(Partial Copy of final BUDGET)

EXHIBIT "B"

727 ROBINSON

CCRS (050906.1)

EXHIBIT B

BUDGET SUMMARY

Phase Number	Date of Budget	ORE File Number	Per Unit Per Mo.	Total Monthly	Total Annual
1 of 1	June 2006				
Number of Units	Tract Number/Name of Project				
3	T.B. 137005				
100 - FIXED COSTS					
101.	Property Taxes				
102.	Corporate Franchise Taxes (Filing Fee Only)		0.20	2.08	25.00
103.	Insurance (Estimate provided by Farmer's)		30.10	241.50	2,888.00
104.	Local License & Inspection Fees (Elevator Permit)				
105.	Estimated Income Taxes				
	100 - Sub Total		30.46	243.58	2,923.00
200 - OPERATING COSTS					
201.	Electricity - (attach work sheet) (see @ on next page) Lighting: Leased		6.42	51.39	616.68
202.	Gas - (attach work sheet)		1.75	19.97	167.84
203.	Water - (attach work sheet)		35.49	283.88	3,406.50
204.	Sewer/Septic Tanks (Include if not in 203)			(Included in 203)	
205.	Cable TV/Master Antenna:				
206.	Custodial Area: No. of Restrooms:				
208.	Landscapa area (see page 15): Landscaped Common Area - Sq.Ft. 265		25.00	200.00	2,400.00
209.	Refuse Dispos No. of bins: 1 Vendor Name: Waste Management Telephone #: 819-590-5100		17.00	138.00	1,632.00
210.	Elevators Number: Type:				
211.	Private Streets, Driveways & Parking Areas Area: Sq.Ft. 2,420			(Included in 200)	
212.	Heating & Air-Conditioning Maintenance Area: Sq.Ft.				
213.	Swimming Pool Number: Size: Sq.Ft. Mths heated: Spa: Number: Size: Sq.Ft. Mths heated:				
214.	Tennis Court Number:				
215.	Access Control Guard hours per day: No. of motorized gates: Type: No. of Intercoms/Telephone Entry: 1		5.63	45.00	540.00

EXHIBIT B

PRORATION SCHEDULE WORKSHEET

(1 of 2)

Section I Variable Assessment Computation

A.	Variable Cost Description		Monthly Cost	
	1 Insurance	\$	241.50	
	2 Domestic Gas (if common)	\$	13.97	
	3 Domestic Water (if common)	\$	263.08	
	4 Paint	\$	55.14	
	5 Roof	\$	24.59	
	6 Hot Water Heater (if common)	\$	8.17	
	7 Other	\$		
	Total Variable Cost	\$	620.25	
B.	Total livable square footage of all units from condominium plan:		<u>5,445</u>	BF
C.	Variable Factor (variable monthly costs ÷ square footage = variable factor):		<u>0.11538</u>	
	Multiply this factor by each unit size below in Section III.			

Section II Equal Assessment Computation

A.	Total Monthly Budget	\$	1,834.80
	Less Variable Costs	\$	620.25
	Total Monthly Equal Costs	\$	1,000.55
B.	Monthly Base Assessment:	\$	125.82
	<i>(total monthly cost monthly costs ÷ number of units = monthly base assessment)</i>		

Section III (Part 1) Assessment Schedule

Unit Size	x	Variable Factor	=	Variable Assessment	+	Base Assessment	=	Monthly Assessment	x	# of Units	=	Total Mthly. Budget*
105	x	0.11538	=	\$111.34	+	\$125.82	=	\$237.16	x	1	=	\$237.16
761	x	0.11538	=	\$87.80	+	\$125.82	=	\$213.62	x	1	=	\$213.62
460	x	0.11538	=	\$53.07	+	\$125.82	=	\$178.89	x	1	=	\$178.89
985	x	0.11538	=	\$111.34	+	\$125.82	=	\$237.16	x	1	=	\$237.16
719	x	0.11538	=	\$82.86	+	\$125.82	=	\$208.78	x	1	=	\$208.78
460	x	0.11538	=	\$53.07	+	\$125.82	=	\$178.89	x	1	=	\$178.89
655	x	0.11538	=	\$75.57	+	\$125.82	=	\$201.39	x	1	=	\$201.39
460	x	0.11538	=	\$53.07	+	\$125.82	=	\$178.89	x	1	=	\$178.89
	x		=		+		=		x		=	

Subtotal Section III - Part 1 (this page): \$1,834.78

Subtotal Section III - Part 2 (from next page):

TOTAL Section III: \$1,834.78

VERIFICATION OF COMPUTATIONS

Total Assessment x number of units of each type.	Total Monthly Budget (Section III)	\$1,834.78
	Total Monthly Budget (Section IIA)	\$1,834.80

Section IV Variable Assessments

Highest Assessment	-	Lowest Assessment	+	Lowest Assessment	=	% Differential
\$237.16	-	\$178.89	+	\$178.89	=	33%

EXHIBIT B

PRORATION SCHEDULE WORKSHEET

(2 of 2)

Section III (Part 2)	Assessment Schedule							
Unit	Variable	Variable	Base	Monthly	# of	Total Mthly.		
Size	Factor	Assessment	Assessment	Assessment	Units	Budget*		

Subtotal Section III - Part 2 (this page):
← transfer Sub-Total to previous page

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