

RECORDING REQUESTED BY  
CHICAGO TITLE COMPANY  
AND WHEN RECORDED MAIL TO

G-APEX, LLC, A CALIFORNIA  
LIMITED LIABILITY COMPANY  
119 EAST ST. JOSEPH STREET  
ARCADIA, CA 91006

Recorded in Official Records, County of San Bernardino



**LARRY WALKER**  
Auditor/Controller - Recorder

10/04/2006  
8:00 AM  
LM

726 Chicago Title Company - CIS

Doc#: 2006-0677269



Titles: 1 Pages: 91

Fees	278.00
Taxes	0.00
Other	1.00
<b>PAID</b>	<b>\$279.00</b>

Escrow No. -  
Order No. 52015091 - K07

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

52015091-K07

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(Additional recording fee applies)

RECORDING REQUESTED BY:

**RECORDED AT THE REQUEST OF  
CHICAGO TITLE COMPANY**

AND WHEN RECORDED MAIL TO:  
G-APEX, LLC A CALIFORNIA LIMITED LIABILITY COMPANY  
119 East St. Joseph Street  
Arcadia CA 91006

---

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS  
FOR  
FOOTHILL HIGHLAND - TRACT NO. 17745  
(A Condominium Project)**

---

[C-Single Attached: 12-04-05]  
[This Set: 05/04/06]

Document Prepared By:  
Timothy S. Murakami, Esq.  
1990 So. Bundy Drive, Suite 540  
Los Angeles, California 90025  
Tel: (310) 979-0325

<u>Article</u>	<u>Description</u>
<b>IV</b>	<b>ASSOCIATION MEMBERSHIP AND VOTING RIGHTS</b>
4.01	Organization
4.02	Membership
4.03	Membership Classes
4.04	Voting Rights and Requirements
4.05	Transfer of Membership
<b>V</b>	<b>DUTIES AND POWERS OF THE ASSOCIATION</b>
5.01	Commencement of Duties
5.02	Specific Association Duties and Powers
5.03	Board Powers and Limitations
5.04	Contracts
5.05	Adoption/Amendment of New Rules and Regulations
5.06	Authority of Board to Alter Boundaries of Condominiums
5.07	Voting Affecting Exclusive Use Common Areas
5.08	Association Records and Governing Documents Available to Members
5.09	Required Notices and Disclosures
5.10	Penalties for Noncompliance
5.11	Right of Entry
5.12	Personal Liability
<b>VI</b>	<b>COVENANTS FOR ASSESSMENT</b>
6.01	Assessments
6.02	Commencement; Due Dates of Assessments
6.03	Equal Assessment Rate
6.04	Assessment Duties of the Board of Directors
6.05	Notices and Disclosures
6.06	Effect of Nonpayment of Assessments:
	Delinquency and Remedies of the Association
6.07	Notice of Delinquent Assessments
6.08	Payments and Payment Plans
6.09	Collection of Assessment Debts Not Collectible Through Foreclosure
6.10	Right of Redemption
6.11	Nonuse and Abandonment
6.12	Emergency Assessments
6.13	Waiver of Exemptions

## **TABLE OF CONTENTS**

<b><u>Article</u></b>	<b><u>Description</u></b>
	<b>SUMMARY</b>
	<b>DECLARATION AND RECITALS</b>
	<b>DEFINITIONS</b>
<b>II</b>	<b>DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY</b>
2.01	Units
2.02	Common Area(s) and Association Property
2.03	Exclusive Use Common Area(s)
2.04	Repair and Maintenance of the Property by Owner
2.05	Repair and Maintenance of the Property by Association
2.06	Association Insurance
2.07	Owner Insurance
2.08	Preventive Maintenance by Declarant
<b>III</b>	<b>OWNERS GENERAL USE RESTRICTIONS</b>
3.01	Unit Use
3.02	Common Area and Association Property Use
3.03	Nuisances
3.04	Debris, Trash and Refuse
3.05	Signs
3.06	Use/Alteration Affecting Insurance Rates
3.07	California Vehicle Code and Parking Regulations
3.08	Animal Regulations
3.09	Antennae and Satellite Dishes
3.10	Temporary Structures
3.11	Indemnity of the Association by Owner
3.12	Basketball Standards
3.13	Exterior Lighting
3.14	Window Covers
3.15	Common Fences
3.16	Air Conditioners and Other Equipment
3.17	Declarant's Exemption from Use Restrictions
3.18	Large Water Containing Receptacles
3.19	Architectural Changes Affecting the Noise Level
3.20	Owner's Failure to Comply

<u>Article</u>	<u>Description</u>
<b>VII</b>	<b>ARCHITECTURAL CONTROL</b>
7.01	The Architectural Committee
7.02	Architectural Guidelines
7.03	Plan Review Functions of the Architectural Committee
7.04	Approval
7.05	Variances
7.06	Non-Liability for Approval
7.07	Appeal
7.08	Commencement of Construction
7.09	Proceeding with Work
7.10	Failure to Complete Work
7.11	Inspection; Compliance and Noncompliance Statements
7.12	Remedy for Noncompliance
7.13	No Guarantee of Views
<b>VIII</b>	<b>MORTGAGEE PROTECTION</b>
8.01	Subordination of Lien and Foreclosure
8.02	Mortgagees Are Not Required to Cure Certain Breaches
8.03	Effect of Breach of Declaration
8.04	Exemption from Right of First Refusal
8.05	Restrictions on Certain Changes
8.06	Inspection of Association Books and Records
8.07	Condemnation Awards and Insurance Proceeds
8.08	Loss Payable Endorsement
8.09	Mortgagee's Right to Attend Meetings
8.10	Payments by Mortgagees
8.11	Notices to Mortgagees
8.12	Loan to Facilitate Resale
8.13	Control if Mortgagee Protections Conflict with Other Provisions
8.14	Reserves
<b>IX</b>	<b>DAMAGE AND DESTRUCTION TO IMPROVEMENTS</b>
9.01	Restoration of the Property
9.02	Notice to Owners and Listed Mortgagees
9.03	Sale of Property and Right to Partition
9.04	Damage to Dwellings
<b>X</b>	<b>CONDEMNATION</b>
10.01	Representation by Board in Condemnation Proceeding
10.02	Distribution of Award

<b><u>Article</u></b>	<b><u>Description</u></b>
<b>XI</b>	<b>COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST</b>
11.01	No Partition; Exceptions; Power of Attorney
11.02	Proceeds of Partition Sale
11.03	No Separate Conveyance of Condominium Components
<b>XII</b>	<b>EASEMENTS</b>
12.01	Creation of Easements
12.02	Reservation of Easements for Declarant's Construction and Marketing Activities
12.03	Certain Easements for Association
12.04	Certain Easements for Owners
12.05	Drainage Easements
12.06	Encroachment
<b>XIII</b>	<b>SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE IMPROVEMENTS</b>
13.01	Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area and Association Property Improvements
<b>XIV</b>	<b>AMENDMENT</b>
14.01	Amendment
<b>XV</b>	<b>DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES</b>
15.01	Scope and Purpose of Article
15.02	No Right to Trial
15.03	Procedures Applicable to Resolution of All Disputes
15.04	Special Provisions Applicable to Resolution of Disputes Between the Association and Any Owner

<u>Article</u>	<u>Description</u>
<b>XVI</b>	<b>MISCELLANEOUS PROVISIONS</b>
16.01	Term of Declaration
16.02	Notices
16.03	Partial Invalidity
16.04	Number
16.05	Attorneys' Fees
16.06	Delivery of Governing Documents
16.07	Disclosures
16.08	Declarant's Rights After Sale of All Units in the Project
16.09	Supremacy of Legislation
16.10	No Enhanced Protection Agreement
16.11	Changing the Project Marketing Name

#### **EXECUTION PAGE**

#### **SUBORDINATION BY LIENHOLDER**

#### **EXHIBIT A - PROPERTY**

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR  
FOOTHILL HIGHLAND**

This Declaration is dated this 23<sup>rd</sup> day of May, 2006 (for reference purposes), by G-APEX, LLC A CALIFORNIA LIMITED LIABILITY COMPANY ("Declarant").

**RECITALS**

- A. Declarant is the owner in fee of that certain real property ("Property") in the City of Rancho Cucamonga, County of San Bernardino, State of California, legally described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a Condominium project ("Project") under the provisions of California Civil Code Section 1351(f).
- C. Declarant desires to impose a general plan for the development, maintenance, improvement, protection use, occupancy and enjoyment of the Project, and to establish, adopt and impose covenants, conditions, restrictions, easements, equitable servitudes, liens and charges upon the Project for the purpose of enforcing, protecting and preserving the value, desirability and attractiveness of the Project.
- D. This Declaration, and all Governing Documents for this Property, shall be deemed in full force and effect upon recordation of the first Grant Deed conveying fee title of a Condominium to an Owner in the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following Declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and every part thereof, in accordance with the plan for the improvement of the Property and division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assignees, and all parties having or acquiring any right, title or interest in or to any part of the Property.



## **SUMMARY**

The following "plain English" summary of the contents of this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements is provided solely for the convenience of the reader. This summary is not a part of the Declaration and should not be relied upon except as an explanatory index to the detailed provisions of the Declaration.

Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.

Article II defines the extent of a condominium and of common areas and Association Property, including portions of the common area which owners are exclusively entitled to use, if any, and assigns maintenance and insurance obligations to the owners and the Association respectively. Owner maintenance obligations generally include all interior elements of the unit and certain exterior elements which service only the unit. Association maintenance obligations generally include all common areas and Association Property, including structural and exterior elements; the Association is obligated to inspect for mold and termites. Declarant retains the right, but is not obligated, to conduct preventive inspections and maintenance. The Association must maintain general liability insurance as required by law, may maintain higher policy limits, and can alter insurance coverage upon notice to members. Owners must insure their own separate interest.

Article III defines the manner in which residential condominiums may be used. Units can only be used as a single family dwelling, and some uses incompatible with community living or public health are prohibited; the whole unit may be leased as long as certain information is given. Usual uses of common areas and Association Property are allowed. Residents must not cause a nuisance, such as offensive odors or excessive noise, and owners are responsible for the behavior of guests. Any use or alteration of a unit must not affect insurance rates. Each residential unit has assigned parking spaces. Association or Vehicle Code parking restrictions must be obeyed. A maximum of two 35-pound dogs or cats are allowed, and certain other small animals are also allowed if caged; pets in common areas and Association Property must be on a leash and must not be allowed to create noise or a nuisance. Residents may install their own antennae or satellite dishes only in limited situations. Owners must indemnify the Association for damage they cause. Exterior lighting must not disturb others. Certain kinds of window coverings are not allowed. Water beds and aquariums over 30 gallons capacity are not allowed. Air conditioning, heating, mechanical and electrical devices and the like must not disturb others, and non-original wiring and equipment can be installed only with approval. These use restrictions do not apply to the Declarant until all units (except required rental units) are sold, but the Declarant must take reasonable steps to avoid disturbing owners with such work.

Article IV defines owners' membership and voting rights and the Association's legal form. Every owner is automatically a member of the Association and must abide with this Declaration and the Association's bylaws and rules and regulations. For up to two years, there are two classes of membership, which allows the Declarant to control the Association during that time. Describes the voting rights of the two classes, of co-owners of a unit, and of owners whose payments of assessments are delinquent. Upon sale of a unit, membership is automatically transferred to the new owner.

Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas and Association Property. The Association's duties commence upon the first close of escrow for a unit. The Association has the power to enforce its own rules, make contracts, borrow money and enter into a contract with the Declarant to maintain the building, with the approval of the DRE. Some limits are placed on certain kinds of contracts made by the Association. Procedures for adoption or amendment of new rules and regulations of the Association. The board has authority to alter condominium boundaries in certain cases. Exclusive use common areas can be changed if proper procedures are followed. The Association must keep

financial records and make copies available to members. Certain notices and disclosures are required by law to be given by the board to owners. The Association can impose penalties for non-compliance with this Declaration, bylaws or rules and regulations, and must provide proper notice and provide for fair proceedings. The Association has the right to enter any unit as necessary to ensure compliance or in an emergency. No officer, director or other person acting on behalf of the Association is personally liable for damage incurred by an individual owner, as long as the person acted in good faith.

Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc. Every owner agrees to pay assessments, which are the owner's personal obligation and can become a recorded lien upon the condominium; assessments cannot exceed the amount necessary to accomplish their purpose. Assessments begin when the first escrow in the project closes. Assessment amounts are equal for every unit. The Board of Directors of the Association must levy regular and special assessments according to law, and must maintain separate bank accounts for operating and reserved funds. Certain notices and disclosures regarding assessments must be given before the beginning of each fiscal year. The Association has various remedies for delinquent assessments, including foreclosure for amounts over \$1,800, charging interest and penalties and suspending voting rights. Notice must be given regarding delinquent assessments. How payments can be made and procedures for negotiating payment plans for delinquent assessments, and procedures for collecting debts by means other than foreclosure, are specified. An owner who does not use common facilities is not excused from paying assessments. The Board may increase assessments in order to fund extraordinary expenses. The Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of assessment. California homestead and exemption laws do not protect a delinquent owner from imposition of a lien on the unit.

Article VII addresses alterations which owners may wish to make to their units. The Association's approval must be obtained for most such changes. An architectural committee of 3 to 5 members shall be appointed; Declarant appoints all committee members the first year and a majority for up to the next 4 years after that. The committee adopts and promulgates guidelines for architectural alterations. The committee reviews proposed plans and may retain consultants, such as professional architects, for that purpose, and may charge reasonable fees for the review. Plans for alterations require approval by the committee. The committee may give written authorization for variances from the architectural guidelines. Members of the committee, Board or Association are not liable for any defect in construction based on approved plans, and the owner making the alterations may be required to indemnify the Association and its agents. The committee's decisions may be appealed within 15 days, and the committee must respond within 45 days or the plans are deemed approved. Construction by a licensed contractor must begin within 6 months of approval, and the committee must retain a set of the approved plans. The work must proceed diligently and, if possible, during reasonable daylight hours; the owner must agree to indemnify the Declarant, committee and all other owners from claims arising from the work. The work must be completed within 12 months. Upon completion, the committee must inspect the alteration for compliance with the plans and must issue a certificate of compliance, which is conclusive proof that the work complies with the plans; if a certificate of noncompliance is issued, the owner must remedy the noncompliance within 30 days. The Association has various remedies if the owner fails to bring the construction into compliance, but this right expires in 1 year or if the unit is sold.

Article VIII provides certain protections to holders of the first mortgage on any unit, in order to make it easier for owners to obtain purchase money loans or refinancing. Any lien by the Association against a unit for nonpayment of assessments is subordinate to the rights of a mortgagee. Mortgagees are not required to cure violations of the Declaration if cure would be impossible or impractical. An owner's violation of this Declaration does not entitle the Declarant or Association to take back the unit. However, an injunction can be obtained against violation so long

as the validity of the mortgage is not impaired. The mortgagee's rights are not impaired if the owner gives a right of first refusal to the Association or other party. For certain kinds of changes, at least 51% of owners and at last 67% of first mortgagees must approve. Any first mortgagee has the right to inspect the Association's books and records. If condemnation awards or insurance proceeds are received for any unit, a mortgagee has the right to receive those moneys up to the amount of the mortgage balance still owed. Insurance policies must name the mortgagee in the loss payable clause of the policy. A mortgagee has the right to attend Association meetings but not to vote, except in limited circumstances. Mortgagees have the right to pay taxes and insurance premiums on common areas and Association Property and to be reimbursed by the Association for such payments. Mortgagees are entitled to notice of certain kinds of events affecting their security. A loan given to facilitate resale of a unit after foreclosure is treated as a first mortgage. The provisions of this article prevail over any conflicting provisions in another part of the Declaration. The Association must charge as regular assessments sufficient amounts to periodically maintain, repair or replace improvements which the Association is required to maintain.

**Article IX concerns restoration or other disposition in the case of damage or destruction of common areas and Association Property.** After a casualty loss, the property is to be repaired or restored to its previous condition, but if insurance proceeds cover less than 85% of the loss, the owners must vote whether to levy a reconstruction assessment, rebuild to a lesser standard, or not rebuild. Notice of material damage must be given to mortgagees. If the Association elects not to rebuild, a licensed appraiser must appraise the units as of just before the casualty, and insurance proceeds must be distributed proportionately to those values. If a unit is damaged, the owner must immediately secure the unit against further damage, and must promptly rebuild.

**Article X concerns condemnation of common areas and Association Property by a governmental entity.** The board will represent the owners at the condemnation hearing and will give the necessary notices and disburse the condemnation proceeds in the manner described in the article on destruction of improvements.

**Article XI governs partition of the property.** Common areas and Association Property cannot be partitioned except on a 75% vote of both owners and mortgagees, but partition of a unit between co-owners is allowed. If there is a partition sale, the proceeds will be shared in the same proportions as the relative values of the units. The components of an owner's interest cannot be severed from each other, such as the separate interest in the unit and the undivided interest in the common areas.

**Article XII addresses easements within the property.** Easements are established upon the first close of escrow. Easements are reserved to facilitate Declarant marketing, Association maintenance, owner use and drainage. Owners' respective rights when there are encroachments are explained.

**Article XIII concerns the Declarant's obligation to complete common area and Association Property improvements.** The Declarant has posted a bond to ensure completion of any common area and Association Property improvements by the time the first escrow closes, and the Association must decide whether to enforce that obligation.

**Article XIV concerns amendments to the Declaration.** Until the first unit is sold, the Declarant can unilaterally amend the Declaration, but afterwards, amendment can only be made by a 67% vote of each class of membership. Any amendment affecting the rights of the Declarant must be approved by the Declarant.

**Article XV provides detailed procedures for resolution of construction defect claims and other disputes.** The article provides for economical, streamlined means of resolving disputes between or among the Declarant, Association and individual owners, except for disputes involving payment of assessments. There is no right to a jury trial or trial by a judge. Procedures applicable

to all non-assessment types of disputes require notice of the claim, informal meeting and conferring, mediation, and if those means fail, judicial reference; there is an automatic right of appeal from the judgment entered upon a judicial referee's award. In disputes between the Association and an individual owner, the procedures set forth in this article apply, and the parties must also comply with particular provisions of the Civil Code. In disputes arising from construction defects, the Declarant has elected to define contractual pre-litigation procedures which must be followed, rather than the statutory pre-litigation procedures set forth in the Civil Code.

Article XVI covers miscellaneous issues not addressed elsewhere in the Declaration. The Declaration's term is 60 years, automatically extendable for 10 years at a time, but once the Declarant no longer owns an interest in the project except as owner of a "Class A" membership, the members can agree that it is in the best interest of the members to terminate the Declaration. How written notices must be given is specified. If any part of the Declaration is declared invalid, the remainder of the Declaration is valid. The singular includes the plural. The prevailing party in any lawsuit connected with enforcement of this Declaration is entitled to recovery reasonable attorney's fees. Certain documents must be given to owners. Certain disclosures about noise are made. For 10 years after the last unit is sold, the Declarant has certain rights to inspect documents which are in addition to its rights as an owner of a unit. In case of future changes in the laws governing common interest developments, those laws will override this Declaration, which will be automatically amended to conform to the changes in the law, without necessity for formally amending or recording an amended Declaration.

## ARTICLE I

### DEFINITIONS

*Article I provides definitions of the terms commonly used in this Declaration. Defined terms are capitalized throughout the Declaration.*

The following definitions apply unless otherwise required by the context:

**"Alternative Dispute Resolution"** - Resolution of disputes arising out of claims of construction defects or violations of Governing Documents in which Declarant and/or the Association and/or one or more Owners are parties, as set forth below in the Article entitled *"Dispute Notification and Resolution Procedures"*.

**"Approval"** - Prior written approval.

**"Architectural Committee"** - The committee created pursuant to the Article herein entitled *"Architectural Control"*.

**"Architectural Guidelines"** - The rules and standards adopted by the Board pursuant to the Section hereof entitled *"Architectural Guidelines"* in the Article hereof entitled *"Architectural Control"*.

**"Articles"** - The Articles of Incorporation of the Association, including any amendments.

**"Assessments"** - All types of Association charges and Assessments levied against the Owners. The three (3) types of Assessments are Regular, Special, and Compliance Assessments.

**"Association"** - FOOTHILL HIGHLAND INC., a California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project. The term includes its agents, the Board or any committee as applicable.

**"Association Property"** - That portion of the Property designated as Lot 16 as described in this Declaration and the Condominium Plan.

**"Authorized Antenna"** - (a) An antenna designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one (1) meter or less in diameter, or (b) an antenna designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, and is one (1) meter or less in diameter or diagonal measurement, or (c) an antenna designed to receive television broadcast signals, and includes (d) an antenna used to receive and transmit fixed wireless signals, or (e) as otherwise permitted by law, that is of a size and type consistent with the provisions of California Civil Code Section 1376 and with the provisions of Section 207 of the Telecommunications Act of 1996 (47 U.S.C. Section 303) or the regulations promulgated thereunder.

**"Beneficiary"** - The lender on the security of a Promissory Note and Deed of Trust.

**"Board" or "Board of Directors"** - The Board of Directors of the Association.

**"Bylaws"** - The Bylaws of the Association, including any amendments.

**"Code Section"** - Refers to Codes of the State of California (e.g. "Civil Code", "Vehicle Code"). Reference to any specific Code Section includes any future successor Code Sections. Any applicable new legislation or future amendment of any Code Section referenced in this Declaration

shall automatically amend this Declaration in the same way, without necessity for execution and recording of any amendment to this Declaration.

**"Common Area(s)"** - The entire Property (including land and improvements) other than the Units described in this Declaration and the Condominium Plan.

**"Common Expenses"** - The actual and estimated expenses of the Association in performing its duties as set forth in the Governing Documents.

**"Compliance Assessment"** - An Assessment imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Condominium"** - An estate in real property (defined in Sections 783 and 1351(f) of the California Civil Code) consisting of both:

- (a) A separate interest in space called a "Unit"; and
- (b) An undivided interest in the Common Area.

**"Condominium Plan"** - The recorded diagrammatic drawings of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 1351(e).

**"Construction Defect"** - Any deficiency with respect to water, structural, soil, fire protection, plumbing and sewer, electrical or other areas of construction, as defined in Sections 896 and 897 of the California Civil Code.

**"Declarant"** - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors to and assignees of special rights, preferences, or privileges designated herein, including any Mortgagees acquiring Declarant's interest in the Project by foreclosure or deed in lieu of foreclosure.

**"Declaration"** - This instrument and any amendments.

**"Deed of Trust"** - A three party security instrument conveying title to land as security for the repayment of a loan. Also called "Trust Deed". Reference to Deed of Trust includes a mortgage.

**"DRE"** - The California Department of Real Estate and any successors thereto.

**"Eligible First Mortgagees"** - Holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents and other Association matters.

**"Exclusive Use Common Area"** - Those portions of the Common Area designated by the Declaration, and/or Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

**"FHA"** - The Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

**"FHLMC"** - The Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

**"First Close of Escrow"** - The date on which the first deed is recorded conveying fee title to a Condominium to the first Owner pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the Department of Real Estate.

**"First Mortgage" or "First Mortgagee"** - A Mortgage or Mortgagee that has priority over all other Mortgages or Mortgagees encumbering the same Condominium or any other portion of the Project, including a First Mortgagee's blanket Mortgage recorded prior to the recording of this Declaration.

**"FNMA"** - The Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

**"Foreclosure"** - The legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower's interest in that property is sold, pursuant to California Civil Code section 2924 et seq., or sale by the court pursuant to California Code of Civil Procedure section 725a et seq., and any other applicable law.

**"Governing Documents"** - All documents governing the Property, including this Declaration, the Articles, Bylaws, Condominium Plan and any Rules and Regulations.

**"Grant Deed"** - A written instrument transferring title to real property.

**"Improvements"** - All structures and appurtenances thereto of every kind whatsoever, including, but not limited to, dwellings, outbuildings, swimming pools, spas, garages, retaining walls, walls, fences, rain gutters, downspouts, decorative or informative signs, mail kiosks, private utility lines and connections, private storm drains and sewer lines and laterals, all trees, shrubs and other forms of landscaping and all related irrigation systems. Improvements shall also mean any and all additions and/or exterior modifications to any Unit, including, but not limited to, (a) painting the exterior of any dwelling or other structure; (b) changing the roof material of any dwelling or other structure; (c) modifying any driveway or front entry walkway on any Unit; and/or (d) building, constructing, installing or planting (as the case may be), any swimming pools, spas, patio covers, decks, gazebos, stairs, trellises, sunshades, screening walls or fences, fences, awnings, screen doors, skylights, poles, signs, solar heating systems, air conditioning systems, water softening or refining systems, and all trees, shrubs and other forms of landscaping.

**"Institutional Mortgagee"** - Any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded First Mortgage on any Condominium.

**"Manager" or "Managing Agent"** - The party contractually engaged by the Association or Declarant to manage the Common Area(s) and Association Property and perform other duties of the Association.

**"Member"** - Any person who is an Owner based upon the provisions of the Governing Documents.

**"Mortgage"** - A two party security instrument pledging land as security for the performance of an obligation. Reference to Mortgage includes the Deed of Trust.

**"Mortgagee"** - The party entitled to performance by a Mortgagor. Reference to Mortgagee includes any beneficiary under a Deed of Trust including a Deed of Trust on any portion of the Property, recorded prior to the recording of this Declaration.

**"Mortgagor"** - The party executing a Mortgage. Reference to Mortgagor includes the Trustor under the Deed of Trust.

**"Notice and a Hearing"** - A notice of time and an opportunity for a hearing as provided for in the Governing Documents.

**"Occupant"** - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person residing in a Unit.

**"Owner" or "Owners"** - The person(s) or legal entity holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser(s) of a Condominium under an installment land sales contract. "Owner" does not include any person or entity having an interest in a Condominium merely as security for the performance of an obligation.

**"Person"** - A person, partnership, corporation, trustee or other legal entity.

**"Project" or "Property"** - The real property described in Paragraph "A" of the Recitals to this Declaration. The Project is a "Condominium Project" as defined in Section 1351(f) of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

**"Quorum"** - Members entitled to vote (in person or by proxy) holding a majority of the total voting power of the Association constitute specifically, a quorum for business transactions at all Member meetings (except as otherwise specifically provided in this Declaration or the Bylaws of the Association).

**"Regular Assessments"** - Assessments used to meet the Association's normal operating expenses and to establish necessary reserves.

**"Rules and Regulations"** - The rules as established and adopted from time to time by the Board as provided for in this Declaration.

**"Special Assessments"** - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature, or imposed against a particular Owner in order to reimburse the Association for any costs incurred in connection with that Owner's violation of the Governing Documents, or a monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Governing Documents.

**"Total Voting Power"** - One hundred percent (100%) of the votes by Owners which may potentially be cast. (Even if any Owner's voting rights have been suspended, the number of votes constituting the Total Voting Power would include any suspended vote(s).)

**"Trustor"** - The borrower from a Trust Deed lender, who deeds real property securing the loan to a Trustee to be held as security for the loan.

**"Unit"** - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 1351(f). Each Unit is designated as a Unit in the Condominium Plan for the Property and is separately identified.

**"VA"** - The Department of Veterans Affairs of the United States and any department or agency of the federal government which succeeds to the VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.



## **ARTICLE II**

### **DIVISION, MAINTENANCE AND INSURANCE OF PROPERTY**

*Article II defines the extent of a condominium and of common areas, including portions of the common area which owners of a condominium are exclusively entitled to use, and assigns maintenance and insurance obligations to the owners and the Association respectively.*

Ownership of each Condominium shall include a Unit, an undivided interest in the Common Area (or a portion of it), membership in the Association, and any Exclusive Use Common Area(s) appurtenant to such Unit.

#### **2.01 Units.**

Each Unit consists of all elements and areas identified as such on the Condominium Plan.

#### **2.02 Common Area(s) and Association Property.**

- (a) The Property not constituting the Units and Association Property is the Common Area.
- (b) The entire Property (including land and improvements) other than the Units and the Common Area as described in this Declaration and the Condominium Plan is the Association Property.
- (c) Each Owner of a Condominium in the Property will receive the following undivided interest in the Common Area in the Property: one/sixtieth (1/60).

#### **2.03 Exclusive Use Common Area(s).**

- (a) Exclusive Use Common Area(s) include the following:
  - (1) Portions of the Common Area(s) designed to serve a particular Unit but located outside the boundaries of the Unit, as set forth in Civil Code Section 1351(i)(1), if not shown and designated as such on the Condominium Plan; and
  - (2) Those air space portions of the Common Area(s), more particularly described in the Condominium Plan, for the exclusive use of the Owner(s) of the Unit to which the Exclusive Use Common Area is appurtenant.
- (b) Use of the Exclusive Use Common Area(s) are subject to reasonable restrictions contained in any Governing Documents.

#### **2.04 Repair and Maintenance of the Property by Owner.**

- (a) In accordance with the Governing Documents, each Owner must maintain, repair, and keep in good orderly condition all of the following, except as otherwise specifically stated herein:

- (1) All of the Owner's Unit (see the Condominium Plan for a detailed description) in a clean, sanitary and attractive condition, including, but not limited to, the following within the Unit's boundaries:
    - (A) Utility fixtures and equipment;
    - (B) Plumbing fixtures and pipes;
    - (C) Electrical fixtures;
    - (D) Interior floor covering;
    - (E) Interior wall covering, lath, plaster and drywall; and
    - (F) Interior doors, door frames, and thresholds.
  - (2) The improvements within the air space portions of the Unit's Exclusive Use Common Area(s), and the interior finished surfaces thereof, as shown and designated on the Condominium Plan, if any, in a clean, sanitary and attractive condition;
  - (3) The following, whether located within or outside the Unit, that solely and exclusively serves the Unit:
    - (A) Air conditioning and heating equipment; and
    - (B) Hot water heaters.
  - (4) Windows, window frames, exterior doors and related hardware, door frames of exterior doors, balcony doors, balcony door frames, patio doors, and patio door frames, subject to the Board's approval as to structural integrity where doors and windows adjoin the building, and aesthetic uniformity with the building exterior;
  - (5) Any damage to any real or personal property in the Project caused by an Owner or an Owner's Occupants or invitees, even if the damage is to an area otherwise maintained by the Association or another Owner. All the repairs shall be subject to prior approval of the Board; and
  - (6) Balconies/decks appurtenant to an Owner's Unit, shall not be used for storage purposes and shall be kept free of clutter and debris. Owners are responsible for keeping their balcony area in orderly condition and clear of debris; however, the Association shall be responsible for waterproofing of the finished surface and all issues pertaining to the structural integrity of the balcony. As soon as practicable, the Owner shall notify the Association of any problem with the balcony's waterproofing or structure.
- (b) An Owner may not do anything that unreasonably increases the level of noise from within the Unit without obtaining the approval of the Board. If an Owner does anything within the Unit that may increase the level of noise or sound that can be heard outside the Unit during normal use and occupancy of the Unit, the Owner must first obtain approval from the Board, and upon approval, take all reasonable measures (at own expense) to deaden, insulate or otherwise decrease the level of such noise to the minimum level reasonably possible.
  - (c) Any change to the exterior appearance of a Unit must be approved by the Board in accordance with the Governing Documents and applicable laws.

- (d) Owners may not place on the decks/balconies large potted plants or other items which can damage the waterproofing membrane and indoor/outdoor carpet or tile which can impair the waterproofing and may even change drainage patterns. Any damage to the structure(s) caused by Owner's negligence shall be billed to the Owner.

- (d) Notice and Mitigation Regarding Water Intrusion and Mold. In the event of intrusion of water into any Unit (including, without limitation, as a result of any roof, window, siding, plumbing or other leaks), and whether or not the cause of such leak constitutes a repair issue, the Owner of the affected Unit shall be obligated to immediately notify Declarant of such event, and Owner shall take all necessary and appropriate action to stop any such water intrusion. Declarant shall thereafter have the right to inspect the condition, including the right to assess the likelihood of mold and mildew, and to offer recommendations for mitigation of mold or mildew. Each Owner shall be obligated to take all reasonable steps to mitigate any possible spread or accumulation of mold or mildew. Nothing herein shall obligate Declarant to take any action, nor shall any rights of Declarant under this Section constitute an admission or acknowledgment that any causes of any water intrusion are the result of defective construction.

Owner's obligation to inspect the Unit for evidence of mold or mildew and to remedy any such infestation is enforceable by the Association as set forth in the article of this Declaration entitled "Duties and Powers of the Association." Further, failure of any Owner to timely notify Declarant of any such water intrusion shall be cause to deny future claims against Declarant relating thereto, which claims could have been mitigated had earlier action been taken.

- (e) An Owner may not alter, affect, or otherwise impair the integrity of the Property's structural components, including but not limited to puncturing, perforating, or piercing the ceiling, flooring, perimeter walls, or partition walls of the Property unless first approved by the Architectural Committee.

**2.05 Repair and Maintenance of the Property by Association.**

- (a) Except as otherwise specifically stated, the Association (not individual Owners) is responsible for maintaining, repairing, modifying, and altering Common Areas and Association Property and exterior surfaces of Exclusive Use Common Areas (where applicable) including the following:
- (1) Subfloors, bearing walls (except for the finished surfaces thereof);
  - (2) Plumbing and pipes in Common Area and Association Property walls;
  - (3) Roofs;
  - (4) Electrical lines in common walls, Common Areas, and Association Property lighting fixtures in Common Areas and Association Property;
  - (5) Common Area and Association Property landscaping, including irrigation systems and related fixtures;
  - (6) Finished surfaces and structural components of balconies, balcony railings, if any;
  - (7) Patios, if any;

- (8) Storage spaces, if any; and
- (9) Open parking spaces in Common Areas and Association Property, if any
- (b) The Association shall be responsible for maintaining the structural elements of decks/balconies. Any damage to the structure(s) caused by Owner's negligence shall be billed to the Owner.
- (c) The Association shall be responsible for the periodic cleaning of the exteriors of any windows within or bordering a Unit that are inaccessible to the Owner thereof. Each Owner will cooperate with the Association to provide access to the Association to clean such windows. The Association shall provide reasonable advance notice to the Owners and shall be responsible for any damage to the Unit resulting from such entry.
- (d) Termite Eradication. If the Board adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Owner and the Occupants of his or her Unit may require such Owner and Occupants to temporarily relocate from such Unit in order to accommodate efforts by the Association to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the Occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Unit by such entry by the Board or by any person authorized by the Board shall be repaired by the Board as a Common Expense of the Association. All costs involved in maintaining the inspection and preventive programs as well as repairing and replacing the Common Area and Association Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be a Common Expense subject to the restrictions applicable to capital improvement assessments.
- (e) Graffiti Removal. The Association shall cause to be removed forthwith all graffiti that is placed upon the perimeter walls (\*remove if no perimeter walls\*) of the Project and/or on any other improvement within the Project and the Association, and its agents and contractors, shall have access upon and over all of the Units in the Project in order to accomplish the same.
- (f) SWPPP. Comply with the storm water pollution prevention plan ("SWPPP") that was prepared by the Declarant and filed with the State of California, including, without limitation, any "best management practices" contained therein, and any other SWPPP or drainage area management plan prepared by the City. A copy of the SWPPP applicable to the Property shall be on file with the Association or its property manager.
- (g) Maintenance Inspections. The Board shall cause condition inspections of Common Areas and Association Property and all Improvements thereon to be conducted in conformity with the applicable maintenance guidelines, if any, and in the absence of inspection frequency recommendations in any applicable maintenance guidelines at least once every year.
- (h) Mold Remediation. At least annually, and upon notice to each Owner of at least three (3) days, the Board shall cause a mold remediation expert certified by the State of California to inspect each Unit as part of a complete water intrusion/mold prevention program. Said inspections shall be at the expense of the Association.

If the certified mold remediation expert determines that water intrusion or water leaks in any Unit are likely to allow mold to spread to other units or to Common Areas and Association

Property, then the Board shall notify the Owner of the finding and shall require the Owner to remedy the problem within thirty (30) days of said notification. At the Owner's expense, the Owner shall have the right to challenge the findings of the Association's expert by obtaining the opinion of an independent certified mold remediation expert. Any disagreement between the Association's and Owner's respective certified mold remediation experts shall be reconciled by them in a single opinion, for which the Association and the Owner shall equally share the expense.

If the Owner fails to make the required remediation within the thirty (30) day period, the Board shall remediate the problem at the Owner's expense, and the Owner shall reimburse the Association for the expense of remediation within six (6) months of being informed of the cost of the remediation. Failure to reimburse the Association for the cost of mold remediation within the stated period shall be deemed to constitute a default in the Owner's obligations under this Declaration.

## **2.06 Association Insurance.**

- (a) The Board shall obtain and maintain the following specified (or equivalent) insurance coverages, provided it is financially reasonably prudent to do so:
  - (1) A master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Common Areas and Association Property.
    - (A) The form, content, and term of the policy and its endorsements and the issuing company shall satisfy the minimum requirements for this type of Project by FNMA and FHLMC.
    - (B) The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.
    - (C) The policy shall name as insured the Association, the Owners and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.
    - (D) The Board in its discretion, shall have the right but not the obligation to limit the insurance provided in this section to a so-called "bare-walls" type of coverage which only insures damage to or replacement of structural improvements (i.e. buildings), but excludes interior non-structural improvements (i.e. floors, cabinets, appliances).
    - (E) Notwithstanding subparagraph (a)(1) above, the Board may, after consultation with its insurance professional and if it deems it prudent to do so, purchase coverage with deduction for depreciation and/or coinsurance.
  - (2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area(s) and Association Property against physical injury, death and property damage arising out of a single

occurrence. The Board should consider maintaining insurance in the amount specified by Civil Code Sections 1365.7 and 1365.9.

- (3) If available, an extended coverage endorsement clause known as "Special Form", and a clause that permits a cash settlement to cover the full value of improvements in case of destruction and a subsequent decision not to rebuild.
  - (4) A fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months' aggregate Assessments on all Condominiums and reserve funds) that could be effected by the dishonest act of any Member of the Association or Board, managing agent, employee, or Occupant, who handles funds for the Owners' benefit. Fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
  - (5) Workers' compensation insurance, in compliance with all applicable laws (if there are any employees or any workers hired to work in the Common Areas and Association Property). If contractors are utilized, the Association should require evidence of Workers Compensation insurance and a certificate of insurance verifying Comprehensive General Liability insurance in a minimum amount of \$1,000,000.00, naming the Association as additional insured. The contractor's policy shall have a minimum 30 day notice of cancellation provision.
  - (6) Any other insurance policy the Association deems appropriate.
- (b) Association insurance policies shall contain the following provisions, if available:
- (1) Statements that the policies are primary and non-contributing;
  - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
  - (3) Inflation Guard Endorsement (if obtainable at a reasonable cost);
  - (4) Standard Mortgagee clause, and name as Mortgagee FNMA or servicer (if applicable).
- (c) The Board shall consider including in the Association policy the following types of coverage:
- (1) Flood insurance available under the appropriate programs for the National Flood Insurance Agency, or any other such agency.
  - (2) Earthquake insurance.
- (d) 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.
- (e) Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors, and the Owners and occupants of the Condominiums and Mortgagees, and all Owners are deemed to have waived subrogation rights as to the Association and/or other Owners, whether or not their policies so provide.

- (f) All insurance policies must require a written thirty (30) day notice of modification or termination of coverage from the insurer to the Association, Declarant, Owners and their Mortgagees, and any interested party who requests such a notice.
- (g) The Association is not obligated to provide intra-Unit public liability insurance or any protection against risks customarily covered under "homeowners" or "broad form homeowners" policies. Owners may individually insure against such risks.
- (h) The Board shall adopt policies and procedures regarding the filing and processing of claims for damage and destruction of Common Area and Association Property Improvements or any other matters covered by insurance maintained by the Association.
- (i) At least annually, the Board must review the Association's insurance policies.

#### **2.07 Owner Insurance.**

- (a) An Owner shall not obtain any insurance that potentially may cause a reduction in the Association's insurance proceeds, for example, by insuring an interest that is already insured on behalf of the Association. If an Owner violates this provision, the Owner shall be liable to the Association for any reduction in the Association's insurance proceeds.
- (b) Any improvements made by an Owner within an Owner's Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements". In the event the Association provides a "bare-walls" type of policy, each Owner shall purchase and provide insurance for all improvements to the interior of the Unit, such as a condominium unit policy with an extension for interior building improvements and/or betterments. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional mortgagee of such Condominium.
- (c) It is each Owner's responsibility, if desired, to obtain insurance for the following:
  - (1) Insurance for the personal property or potential liability occurring within a Unit;
  - (2) Loss assessment coverage for certain future special assessments; and
  - (3) Any other available insurance.
- (d) An Owner shall consider including in the policy coverage for earthquake insurance.

#### **2.08 Preventive Maintenance by Declarant.**

For a period of ten (10) years after the last sale by Declarant, Declarant shall, in its sole discretion, be entitled to inspect all Common Areas and Association Property of the Property with or without notice to the Association and shall, within its sole discretion, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Units by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain Owner consent for inspection of Units, shall be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through

preventive maintenance. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.



## **ARTICLE III**

### **OWNERS GENERAL USE RESTRICTIONS**

*Article III defines the manner in which residential condominiums may be used.*

#### **3.01 Unit Use.**

- (a) A Unit may only be used for a single family dwelling.
- (b) An Owner may lease a Unit, but not less than the entire Unit, for residential purposes provided:
  - (1) There is a written agreement;
  - (2) The lease states it is subject to all the provisions of the Governing Documents and that any failure to comply with any provision of this Declaration or the other Governing Documents shall constitute a default under the terms of said agreement;
  - (3) A copy of this Declaration is made available to each tenant or lessee by the Owner so leasing;
  - (4) Owners must give the Board the names and telephone numbers of all Occupants, tenants, and their roommates;
  - (5) Tenants/lessees/Occupants shall have no obligation to the Association to pay Assessments imposed by the Association nor shall they have any voting rights in the Association;
  - (6) No Owner may lease a Unit for hotel, motel or transient purposes or any other purpose inconsistent with the provisions of this Declaration;
  - (7) Owners, at all times, are responsible for their tenant's or lessee's compliance with all of the provisions of the Governing Documents in the occupancy and use of the Units; and
  - (8) The Association and each Owner shall have a right of action directly against any tenant/Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights pursuant to the Article entitled "*Easements*" herein, occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation, such as an unreasonable increase in visitors, or an increase in the sound or smell emanating from the Unit.
- (d) No exterior clothesline shall be erected or maintained or hung on balconies or railings within the Project and shall be no exterior drying or laundering of clothes or any other items on any Exclusive Use Area or Common Area or Association Property.

- (e) No person shall discharge into the Project's sewer system, storm drain or any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, welfare, violate any law, subject any Owner to liability under state and/or federal law for any clean-up, or cause injury or damage to neighboring property or business elsewhere on the Project.

### **3.02 Common Area Use.**

- (a) Common Area(s), Association Property and Exclusive Use Common Area(s), if any, may only be used for purposes which are compatible with usages customarily associated with common areas and Association Property located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.
- (b) Any Owner may delegate his/her rights of use and enjoyment of any Common Area and Association Property facilities to the members of his/her immediate family, and guests and invitees. If an Owner has rented or leased his/her Condominium, such rights shall be automatically delegated to the tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights to use and enjoy any such facilities for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his/her rights to use and enjoy any such facilities to the purchaser under the contract.

### **3.03 Nuisances.**

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any unreasonable action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.
- (d) Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children and other family members or persons residing in or visiting his or her Unit. Any damage to the Common Area(s) and Association Property, personal property of the Association, or property of another Owner, caused by such children or other family members or persons residing or visiting shall be repaired at the sole expense of the Owner of the Unit where such children or other family members or persons are residing or visiting.

### **3.04 Debris, Trash and Refuse.**

Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s) and Association Property.

**3.05 Signs.**

- (a) For up to five (5) years from the First Close of Escrow in the Project, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property, as long as the activities do not unreasonably interfere with any Owner's use of the Property.
- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with sign(s) with a size, format, and location previously approved by the Board.
- (c) All Owners are subject to Civil Code Sections 1353.5 and 1353.6 in regard to the display of non-commercial flags, banners, signs and posters. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the City.
- (d) No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.
- (e) If Civil Code Sections 712, 713, 1353.5 and 1353.6 are amended, this provision automatically shall be amended in the same manner. If these sections are repealed and no successor sections are enacted, this provision shall remain in full force and effect. The Civil Codes may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**3.06 Use/Alteration Affecting Insurance Rates.**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property may not be committed without Board approval.
- (b) If a particular Owner's use or activity is the cause of increased insurance rates, the responsible Owner is personally liable for the additional insurance premiums.

**3.07 California Vehicle Code and Parking Regulations.**

- (a) **Authorized Vehicles.** The following vehicles are authorized within the Property: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less (collectively, "Authorized Vehicles"). Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles.
- (b) **Prohibited Vehicles.** The following vehicles are prohibited within the Property: recreational vehicles (e.g. motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g. stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board (collectively, "Prohibited Vehicles"). Prohibited Vehicles shall not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other Common Area parking area, except for brief periods for loading, unloading, making deliveries, emergency repairs, or unless specifically authorized by the Board.

- (c) All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658.2 (or any successor statute regarding removal of parked cars and required warning signs). The Association may establish "Parking" and "No Parking" areas within the Common Area(s) and Association Property, in accordance with California Vehicle Code Section 22658.2 (or successor statute).
- (d) The Association (through the Board) may establish parking Rules and Regulations.
- (e) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (f) Parking is permitted in driveways, as long as it does not obstruct free traffic flow, constitute a nuisance, violate the Rules and Regulations, or otherwise create a safety hazard.
- (g) Under no circumstances may explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, etc. be stored in any garage.
- (h) Garage doors, if any, may not be left open, except as temporarily necessary or while used for entering or exiting.
- (i) All vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Unit and kept within the Property shall be parked in the Owner's garage or assigned parking space, and each Owner shall maintain his garage or assigned parking space in a manner which ensures that it is capable of accommodating no less than the number of Authorized Vehicles the space was originally designed for by Declarant. Vehicles shall not be restored or repaired on the Property, unless parked wholly within a garage with the doors closed.
- (j) Garage space shall not be converted into any use (such as a recreational room or storage room) that would prevent its use as parking for the number of vehicles the space was designed to contain. Owners are to use their assigned parking spaces for parking of their vehicles so that unassigned Common Area will be available for guest parking. The Association may establish rules for the parking of vehicles in the Common Area and Association Property.
- (k) Neither the Association nor any of its officers, directors, agents or employees shall be liable to any Owner, or to any member of his family, his guests, servants, employees or invitees, for any theft or, or injury to, any vehicle on the Project, except as provided by Sections 22658(d) and 22658.2( c) of the Vehicle Code. Each Owner shall indemnify, defend, and hold harmless the Association and the Association's officers, directors, agents, employees, and representatives from any injury, damages, claims, liabilities, costs or expenses caused by, arising out of, or related to the provisions of this Section, or any offending vehicle.
- (l) The guest parking areas in the Project may not be used on a long-term or routine basis by Owners or tenants in the Project.
- (m) Vehicles may not be washed on the Property except as provided for by the Board.
- (n) The provisions of this Section are intended to comply with California Vehicle Code Section 22658.2 (regarding illegally parked cars) in effect on the date this Declaration was recorded. If this Vehicle Code section is amended, this provision automatically shall be amended in the same manner. If this section is repealed and no successor section is enacted, this provision shall remain in full force and effect. Vehicle Code §22658.2 may have been amended by the

State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.

**3.08 Animal Regulations.**

- (a) A maximum of two (2) 35-pound domesticated cats and/or dogs may be kept in a Unit, unless a greater number is authorized by the Board and provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) In addition, small domesticated animals (e.g., birds, hamsters, fish, turtles) may be kept in a contained environment (cage or aquarium), provided they are not kept, bred or raised for commercial purposes, and subject to the following sub-paragraphs of this Section.
- (c) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs, chirping birds, or noisy aquarium filters) may not be kept on the Property or in a Unit.
- (d) An animal may only enter the Common Area(s) and Association Property while on a leash which is held by a person capable of controlling it.
- (e) Owners must prevent their pets from soiling the Common Area(s) and Association Property, and are solely responsible for any required clean-up. No pets or animals of any kind may be taken into recreational areas containing swimming pools or spas.
- (f) The Board shall determine whether specific pets are a nuisance and should be removed from any Unit.
- (g) Each Owner shall defend, indemnify and hold harmless all other Owners, the management company, the Association and the Board of Directors from any and all losses, costs, and liability arising from having any pet on the Property.
- (h) Notwithstanding the foregoing, no domestic dogs shall be within the Common Area and Association Property that are deemed by the Board to be vicious or potentially dangerous dogs. All vicious and potentially dangerous dogs must be kept indoors or in a securely fenced area within the Owner's Unit from which it cannot escape, and into which children or other individuals cannot trespass. A dog shall be deemed "vicious" for purposes of this Section if, when unprovoked:
  - (1) It has bitten a person (however, a dog may be vicious even though it is not proven to have bitten any person);
  - (2) In an aggressive manner, it inflicts injury on or kills a human being; or
  - (3) It has previously been determined to be and is currently listed as a potentially dangerous dog (as determined by the Board of Directors or local governmental authority) and, after its Owner or keeper has been notified of this determination, it continues to engage in behavior deemed potentially dangerous.
- (i) A dog shall be deemed "potentially dangerous" for purposes of this Section if, when unprovoked: (1) On two separate occasions within the prior 36-month period, it engages in any behavior that requires a defensive action by any person to prevent bodily injury when the person and the dog are off the property of the Owner or keeper of the dog; (2) It has killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal off the property of the Owner or keeper of the dog; or (3) The dog has run loose or,

if leashed, was not under the control of a responsible adult on two occasions per subparagraph (d) above.

- (j) The Association shall have the right to cause a dog found to be in violation of any provision of this Section to be removed from the Property and to enforce this Section pursuant to the terms of Section 5.03 or any other provision or amendment thereto.

### **3.09 Antennae and Satellite Dishes.**

- (a) Except for Authorized Antenna, no television or radio poles, antennae, satellite dishes, or technological evolutions of the foregoing, flag poles, clotheslines, or other external fixtures other than those originally installed by the Declarant or approved in accordance with this Declaration shall be constructed, erected or maintained on or within the Project, unless authorized by the Architectural Committee.
- (b) Any Owner who desires to install an Authorized Antenna shall agree to install such device wholly within his Unit and/or Exclusive Use Common Area(s) so that it does not encroach upon another Unit or Common Area(s), and maintain, repair or replace any Improvements affected by the installation, maintenance or use of such antenna, if required by the Architectural Committee. Under no circumstances shall any Owner drill through, or install any Improvements upon any Common Area(s) and Association Property with respect to the installation or maintenance of any antenna or wiring, unless approved by the Architectural Committee. Nothing shall be done in any Unit or Common Area(s) and Association Property which will or may tend to impair the structural integrity of any building in the Project. There shall be no alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the buildings in the Project.
- (c) Architectural Committee Restrictions. The Architectural Committee may adopt reasonable restrictions on installation and use of an Authorized Antenna in order to minimize visibility of the Authorized Antenna from other Units/Lots. Such restrictions may designate one (1) or more preferred installation locations, or require camouflage such as paint (subject to the antenna manufacturer's recommendations), screening or other Improvements. However, no restriction imposed by the Architectural Committee may (a) unreasonably delay or prevent the installation, maintenance or use of an Authorized Antenna, (b) unreasonably increase the cost of the installation, maintenance or use of an Authorized Antenna, or (c) preclude acceptable quality reception.

The Architectural Committee may prohibit the installation of an Authorized Antenna in a particular location if, in the Architectural Committee's opinion, the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of the Owners or any other Person, or for any other safety-related reason established by the Architectural Committee. The Architectural Committee may also prohibit an Owner from installation an Authorized Antenna on any real property which such Owner does not own or is not part of his Exclusive Use Common Area. Further, the Architectural Committee has the power to prohibit or restrict the installation of any antenna or other over-the-air receiving device that does not meet the definition of an Authorized Antenna.

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

- (d) Declarant and the Association shall have the right, without obligation, to erect, place or install and maintain any such apparatus, such as a central antenna, for the benefit of all or a portion of the Project. In such event, an Owner may install an individual Authorized Antenna provided that:
- (1) The Owner desires, and with an individual antenna could receive, particular video programming or fixed wireless service that is unavailable from the central antenna;
  - (2) The signal quality of transmission to and from the Unit would be better with an individual antenna than from the central antenna and would not affect the quality of reception in other Units;
  - (3) Owner's costs associated with the use of the central antenna would be greater than Owner's costs of installation, maintenance and use of an individual antenna; and
  - (4) The requirement to use the central antenna instead of an individual antenna would unreasonably delay the Owner's ability to receive video programming or fixed wireless services.
- (e) No wiring insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed, erected or maintained on or within the Common Area and Association Property including any structures on it.
- (f) All installers of antennas or satellite dishes agree to indemnify or reimburse the Association or its Members for loss or damage caused by the installation, maintenance or use of an antenna or satellite dish.
- (g) Notwithstanding the foregoing, all restrictions on video or television antennae (including satellite dishes) shall be subject to all applicable federal state and local laws, including, but not limited to, the Federal Telecommunications Act of 1996 and California Civil Code Section 1376, as same may be amended from time to time. Furthermore, all amendments, modifications, restatements and interpretations of the laws applicable to the installation, use or maintenance of an antenna or over-the-air receiving device shall be interpreted to amend, modify, restate and/or interpret this Section 3.09.

### **3.10 Temporary Structures.**

A temporary structure is only permitted on a Unit with approval of the Architectural Committee and if it is incidental to construction actively in progress.

### **3.11 Indemnity of the Association by Owner.**

Each Owner shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation on any claims arising from the Owner's negligence or willful misconduct (or the Owner's family members, relatives, guests or invitees) for damages sustained on the Common Area(s) and Association Property, including any costs incurred.

**3.12 Basketball Standards.**

No basketball standards or fixed sports apparatus shall be attached to any Residence except as approved by the Board. The Rules and Regulations may further limit the use or placement of portable basketball apparatus.

**3.13 Exterior Lighting.**

Any exterior electrical, gas or other artificial lighting installed on any Unit shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as not to unreasonably disturb the residents of any other Unit. Further rules regarding exterior lighting may be promulgated by the Architectural Committee.

**3.14 Window Covers.**

Newspaper, aluminum foil or similar materials may not be used as window coverings.

**3.15 Common Fences.**

- (a) An easement exists appurtenant to any Unit for any "Common Fences" (fences on boundary lines between the Units and/or Common Area(s) and Association Property) originally installed by the Declarant, whether or not the fences are located precisely on the Unit boundary line.
- (b) Owners with a Common Fence have an equal right to use the fence, with the following provisions:
  - (1) Each Owner has exclusive right to use the interior surface of the fence facing the Residence;
  - (2) Owners may not drive nails, screws, bolts or other objects more than half way through any Common Fence;
  - (3) Owners may not interfere with the adjacent Owner's use and enjoyment of the Common Fence;
  - (4) Owners may not threaten or impair the structural integrity of the Common Fence; and
  - (5) If any portion of the fence (other than the interior surface of one (1) side) is damaged by any cause other than the act or negligence of either party, it must be repaired or rebuilt at the relevant Owners' joint expense.

**3.16 Air Conditioners and Other Equipment.**

- (a) Air conditioners, heating, cooling, ventilating equipment and all other mechanical, lighting, or electrical devices shall be so operated and located so that they do not disturb the peace, quiet, and comfort of neighboring residents and shall be screened, shielded and/or sound buffered from surrounding Units, streets and other portions of the Common Area and



Association Property. All such equipment must be installed and operated in accordance with all applicable provisions of the local Codes and any other applicable requirements.

- (b) No wiring insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved in accordance with the requirements of this Declaration, and their replacements shall be constructed; erected or maintained on any Unit.

**3.17 Declarant's Exemption from Use Restrictions.**

Conveyance of a substantial number of the Units is essential to the establishment and welfare of the Project. In order that all work necessary to complete the Project and to establish a substantially occupied Project may proceed as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractor or subcontractors, from doing work on said Project or any part thereof whenever it determines it to be reasonably necessary or advisable in connection with the completion of said work;
- (b) Prevent Declarant, or its representatives from erecting, constructing and maintaining on any part of parts of said real property owned or controlled by Declarant, its contractors, or subcontractors, such structures as may be reasonably necessary to complete said work, establish said property as a residential Project and dispose of the same by sale, lease or otherwise;
- (c) Prevent Declarant from maintaining or displaying such sign(s), pennants and flag(s) on the Project (except upon Units owned by others) as may be necessary for the sale, lease or disposition thereof; or
- (d) Subject Declarant to the architectural control provisions of Article VII for construction of any Unit or other improvements on the Project.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns one (1) or more of the Units established and described in this Declaration, Declarant, and its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of Units and the Common Area(s) and Association Property by Owners, while completing any work necessary to those Units or Common Area(s) and Association Property.

**3.18 Large Water Containing Receptacles.**

Due to the potential water, mold and other damage that may occur, unless authorized in writing by the Architectural Committee, no Owner may keep a waterbed, aquarium, Jacuzzi tub, or other large water containing receptacle intended to hold thirty-five (35) or more gallons of water, within the Owner's Unit.

**3.19 Architectural Changes Affecting the Noise Level.**

An Owner may not do anything that unreasonably increases the level of noise from within the Unit without obtaining the approval of the Architectural Committee. If an Owner does anything within the Unit that may increase the level of noise or sound that can be heard

outside the Unit during normal use and occupancy of the Unit; including but not limited to, replacing or altering the flooring in any manner that does not comply with the floor sound assembly originally installed by the Declarant, rigidly attaching sound system loudspeakers to the ceilings, walls, shelves, or cabinets, and/or mounting fixtures without a drywall wrap to dampen noise that can filter between Units, the Owner must first obtain approval from the Architectural Committee. Upon approval, said Owner shall take all reasonable measures, at Owner's expense, to deaden, insulate or otherwise decrease the level and vibrational energy to the minimum level reasonably possible.

**3.20 Owner's Failure to Comply.**

In the event that an Owner fails to comply with the conditions, obligations, regulations, and maintenance set forth for their Unit within the Governing Documents, the Board may deliver written notice to such Owner demanding compliance and informing said Owner of the particular condition, obligation, regulation or maintenance requirement that has been violated. Upon receipt, Owner shall have thirty (30) days, unless an alternate reasonable time is established by the Board, to correct the violation. In the event that said Owner continues the violation beyond the designated period, the Board shall have the right to enter onto the property to remedy the violation, and the Owner shall be charged a Special Assessment equal to the Board's cost of repair.

## **ARTICLE IV**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

*Article IV defines owners' membership and voting rights.*

#### **4.01 Organization.**

The Association is a California nonprofit mutual benefit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Restrictions.

#### **4.02 Membership.**

Every Owner is automatically an Association member. Each Member shall be obligated promptly, fully and faithfully to comply with the provisions of this Declaration, and the Bylaws of the Association, and any Rules and Regulations from time to time which may be prescribed by its officers or directors.

#### **4.03 Membership Classes.**

(a) The Association has two (2) classes of voting membership:

- (1) Class A Members - All Owners (other than Declarant).
- (2) Class B Member - Declarant, entitled to three (3) votes for each Condominium owned by Declarant.

(b) Class B Membership irreversibly ceases and converts to Class A Membership on the first to occur of the following:

- (1) The total outstanding votes held by Class A Membership equals the total outstanding votes held by Class B Membership (tripled); or
- (2) Two (2) years after the First Close of Escrow of a Condominium in the Project.

#### **4.04 Voting Rights and Requirements.**

(a) Voting rights shall commence for each Condominium within the Project when Assessments against the Condominium have been levied by the Association.

- (1) Each Co-Owner has an indivisible interest in a single Membership.
- (2) Each Unit's vote is cast as a single unit, without fraction. If Co-Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.

- (3) If a Co-Owner casts a vote representing a certain Condominium, it will be presumed for all purposes to be a vote with the authority and consent of all other Co-Owners of the Condominium.
- (b) After Notice and Hearing as provided herein, the Board has the right to suspend the voting rights of any Owner delinquent more than forty-five (45) days in the payment of Assessments.
- (c) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).
- (d) If Membership approval of a specified prescribed majority (e.g. 67%) of the voting power (other than Declarant) is required, the following rules apply:
  - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
  - (2) After conversion to all Class A memberships, the required vote is a bare majority of the Total Voting Power of the Association, and the prescribed majority of the Total Voting Power of Members other than Declarant.
- (e) With the exception of the provisions of the Article herein entitled "*Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements*", no provision which requires the approval of a prescribed majority of the voting power of Members of the Association other than the Declarant for action to be taken by the Association is intended to preclude the Declarant from casting votes attributable to Condominiums which Declarant owns.

**4.05 Transfer of Membership.**

- (a) Membership of each Owner shall be appurtenant to the Unit owned, and may only be (and is automatically) transferred upon conveyance of title to a Unit to the new Owner.
- (b) In connection with any transfer or change of ownership of any Unit, the Association and each Owner must comply with Civil Code Section 1368.

## **ARTICLE V**

### **DUTIES AND POWERS OF THE ASSOCIATION**

*Article V describes in detail the duties and powers of the Association to govern its members and maintain the common areas and Association Property.*

#### **5.01 Commencement of Duties.**

- (a) The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences upon First Close of Escrow of a Condominium.
- (b) The Association's responsibility to maintain Common Areas shall commence upon the First Close of Escrow of a Condominium. The Association's responsibility to maintain the Association Property shall commence concurrently with the recordation of the grant deed conveying the Association Property to be maintained. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other improvements on Common Areas and Association Property for a specified period in which said contractors or subcontractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Assessments.
- (c) The Association shall be obligated to accept title to the Association Property, and shall assume and undertake all maintenance responsibilities for the Association Property when title is conveyed and/or maintenance responsibilities are tendered by Declarant. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of the improvements in Common Areas and Association Property, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to assume and undertake maintenance responsibilities pending resolution of the dispute, in accordance with the provisions set forth in the Article herein entitled "*Dispute Resolution and Notification Procedures*".

#### **5.02 Specific Association Duties and Powers.**

The duties and powers of the Association are those set forth in the Governing Documents, together with its general and implied powers as a nonprofit mutual benefit corporation, generally to do all things which are necessary or proper for the peace, health, comfort, safety and general welfare of its Owners, including the following:

- (a) Enforce the applicable provisions of the Governing Documents and other instruments for the ownership, management and control of the Project.
- (b) Contract for goods and/or services for Common Areas (not including Exclusive Use Common Areas), and Association Property facilities, and interests, or for the Association subject to the limitations set forth below.

- (c) Borrow money with the assent of sixty-seven percent (67%) of the voting power and/or to mortgage, pledge, or otherwise hypothecate any of its real or personal property as security for money borrowed or debts incurred.
- (d) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.
- (e) Have the authority, through the Board, to enter into a maintenance agreement, as approved by DRE, with Declarant for temporary suspension of a portion of Regular Assessments.
- (f) Forty-five (45) days before any real or personal property tax assessed on Common Area or Association Property becomes delinquent, the Association shall deliver to each Owner a copy of the tax bill levied thereon or on any portion thereof, together with written notice informing each Owner of that portion of the tax bill for which the Owner is responsible and any additional charges that may be incurred in the event that the Owner fails to make a timely payment. The Association shall pay all real and personal property taxes levied against the Common Area or Association Property to the extent that they are left unpaid by an Owner. The Association shall collect a Special Assessment from any Owner who fails to make a timely payment of the Owner's portion of the tax bill in the amount of such tax plus any costs associated with its collection.

#### **5.03 Board Powers and Limitations.**

The powers and duties of the Board shall normally include, but shall not be limited to, the following:

- (a) Enforcement of applicable provisions of the Covenants, Conditions and Restrictions, Articles, Bylaws and other instruments for the ownership, management and control of the Project.
- (b) Contracting for casualty, liability and other insurance on behalf of the Association.
- (c) Delegating its powers to committees, officers or employees of the Association as expressly authorized by the Governing Documents.
- (d) Preparation of budgets and financial statements for the Association as prescribed in the Governing Documents.
- (e) Formulation of rules of operation of Common Areas and Association Property and facilities owned or controlled by the Association.
- (f) Election of officers of the Board of Directors.
- (g) Filling of vacancies on the Board of Directors, except for vacancies created by removal of a director.
- (h) The Board is authorized to:
  - (1) Adopt and enforce reasonable Rules and Regulations not inconsistent with the Governing Documents concerning the Property and that comply with Civil Code Sections 1357.100 et seq. or any successor statutes;
  - (2) Pay taxes and assessments which are, or could become, a lien on the Common Area and Association Property or a portion thereof;

- (3) Contract for goods and/or services for Common Areas and Association Property and facilities for the Association subject to the limitations set forth in Section 5.04 below;
- (4) Delegate its powers to committees, officers or employees of the Association or outside companies or persons hired by the Association as expressly authorized by the Governing Documents;
- (5) Formulate rules of operation of Common Areas and Association Property and facilities owned or controlled by the Association;
- (6) Commence disciplinary proceedings against members of the Association for violations of provisions of the Governing Documents in accordance with procedures set forth in the governing instruments;
- (7) Enter upon any privately owned Unit as necessary in connection with construction, maintenance or emergency repair for the benefit of Common Areas and Association Property or the Owners in common;
- (8) Amend the Governing Documents for the purpose of correcting technical errors, clerical mistakes or for clarification without presenting such changes to the Members for approval; and
- (9) Institute, defend, settle or intervene on behalf of the Association in litigation, mediation, or administrative proceedings in matters pertaining to:
  - (A) Enforcement of the Governing Documents;
  - (B) Damage to the Common Areas and Association Property;
  - (C) Damage to the separate interests which the Association is obligated to maintain or repair; or
  - (D) Damage to the separate interests which arises out of, or is integrally related to, damage to Common Areas and Association Property or separate interests that the Association is obligated to maintain or repair.

#### **5.04 Contracts.**

- (a) The Board may not ordinarily take any of the following actions unless approved by a majority of Members (other than Declarant) constituting a quorum, at a meeting or by written ballot without a meeting, pursuant to Corporations Code Section 7513:
  - (1) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Association, with the exception of the types of contract specified in paragraph (h)(9).
  - (2) Incur aggregate expenditures for capital improvements to the Common Area and Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
  - (3) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

- (4) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.
- (b) Notwithstanding the provisions of paragraph (a)(1) above, the Board is authorized to enter into the following types of contract for a term longer than one (1) year with a third person who furnishes goods or services for the Association:
- (1) A management contract with terms approved by the FHA or VA;
  - (2) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;
  - (3) Prepaid casualty and/or liability insurance policies not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
  - (4) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%);
  - (5) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%);
  - (6) A management contract for a term not to exceed three (3) years that is terminable by the Association without cause, penalty or other obligation upon no more than ninety (90) days written notice of termination to the other party;
  - (7) Lease agreements for laundry room fixtures and equipment, if any, not to exceed five years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%).

#### **5.05 Adoption/Amendment of New Rules and Regulations.**

- (a) Pursuant to Civil Code Section 1357.001-1357.150, the Board shall adopt or amend new rules and regulations according to the following procedure:
- (1) At least thirty (30) days before a vote on adopting or amending an operating rule, the Board must mail a copy of the proposed change to the members, along with an explanation of its purpose and effect. When voting on the rule, the Board must take into consideration any member comments received. Within fifteen (15) days of voting on an operating rule, the Board must notify the membership of the results of the vote.
  - (2) Within thirty (30) days of this notification, at least five percent (5%) of the members can request a special meeting to reverse the Board vote. The Board must give ten to (10) to ninety (90) days' notice of a special meeting at which a quorum is present, at which a majority of the votes represented and voting can reverse the Board's decision. The Board must notify the members of the results of this vote within fifteen (15) days. If an operating rule is reversed, it cannot be re-adopted by the Board for at least one year. However, the Board may vote on other "operating rules" covering the same subject.



- (3) If the Board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change; and no notice is required. An emergency rule change is effective for one hundred twenty (120) days.
- (b) If Civil Code Section 1357 is amended, this provision automatically shall be amended in the same manner. If this Section is repealed and no successor section is enacted, this provision shall remain in full force and effect. This Civil Code Section may have been amended by the State Legislature since this Declaration was recorded, and the Board should confirm the current statutory requirements.
- (c) An operating rule shall be enforceable only if it is: (1) in writing, (2) within the Board's authority, (3) consistent with governing law and the Association's Governing Documents, (4) adopted in good faith, and (5) reasonable.

**5.06 Authority of Board to Alter Boundaries of Condominiums.**

If any building or portion thereof containing Condominiums is damaged or destroyed or in need of renovation or rehabilitation and the building is repaired or reconstructed, the Condominium building may be repaired or reconstructed in a manner that alters the boundaries of the Units and/or Common Areas and Association Property provided all of the following conditions are satisfied:

- (a) The alteration has been approved by the Board of Directors, by members holding a majority of the total voting power of the Association, and by the holders of any First Mortgages to the extent required herein;
- (b) The Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures, or to improve the conditions and quality of the Condominium building;
- (c) The alteration does not materially change the location of any Unit or materially reduce the size of any Unit without the consent of the Owner of such Unit and the holders of any First Mortgages thereon. For purposes of this Declaration, a material reduction in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior floor space of the Unit by more than five percent (5%) from that which was originally constructed by Declarant;
- (d) The Board has determined that any alteration that will relocate or reduce the Common Areas and Association Property will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Areas and Association Property;
- (e) The Condominium Plan is amended to reflect the alteration to the Units or Common Areas and Association Property; and
- (f) Each Owner hereby irrevocably appoints the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit or Common Areas and Association Property as authorized above, including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instrument.

**5.07 Voting Affecting Exclusive Use Common Areas.**

After the Association acquires fee title to or an easement right over a Common Area and Association Property, the affirmative vote of at least sixty-seven percent (67%) of the voting power must approve the grant to any Member of the exclusive use of any portion of the Common Area and Association Property. However, approval by the membership shall not be required in order to accomplish any of the following:

- (a) A reconveyance of all or any portion of that Common Area and Association Property to Declarant to enable the continuation of development that is in substantial conformance with a detailed plan of phased development submitted to the DRE with the application for a public report.
- (b) Any grant of exclusive use that is in substantial conformance with the Condominium Plan submitted to the DRE with the application for a public report or in accordance with the governing documents approved by the Commissioner of the Department of Real Estate.
- (c) Any grant of exclusive use to eliminate or correct engineering errors in documents recorded with the county recorder or on file with a public agency or utility company.
- (d) Any grant of exclusive use to eliminate or correct encroachments due to errors in construction of any improvements.
- (e) Any grant of exclusive use to permit changes in the Condominium Plan submitted to the DRE in circumstances where the changes are the result of topography, obstruction, hardship, aesthetic considerations, or environmental conditions.
- (f) Any grant of exclusive use to fulfill the requirement of a public agency.
- (g) Any grant of exclusive use to transfer the burden of management and maintenance of any Common Area and Association Property that is generally inaccessible and is not of general use to the membership at large of the Association.
- (h) Any grant in connection with an expressly zoned industrial or commercial development, or any grant within a subdivision of the type defined in Civil Code Section 1373 or successor statute.

**5.08 Association Records and Governing Documents Available to Members.**

- (a) The Board of Directors of the Association shall comply with all current requirements of California Civil Code Sections 1365, 1365.2, 1365.5 and 1368, or successor statutes pertaining to the provision to Members of copies of financial records and Governing Documents of the Association. Any amendment to those statutes shall automatically amend this Section to conform to such Legislative amendments.
- (b) The Association shall not be liable for failure to retain records created prior to January 1, 2005.
- (c) Owners shall annually be provided a summary of the provisions of Section 1354, as set forth therein, which must include the following language: "Failure by any member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of Owner's rights to sue the Association or another member of the Association regarding enforcement of the Governing Documents". This summary shall be

provided either at the time of distribution of the pro forma budget required by Section 1365, or in the manner specified in Section 5016 of the Corporations Code.

**5.09 Required Notices and Disclosures.**

The notices and disclosures to be given or made by the Board shall include but not necessarily be limited to the following:

- (a) Sixty (60) days before the beginning of the Association's fiscal year, the notice required by Civil Code Section 1365.1 regarding assessments and foreclosure shall be provided to every Member and shall be printed in at least 12-point type. The notice shall be in the language set forth in Section 1365.1 or any successor statute.
- (b) Sixty (60) days before the beginning of the Association's fiscal year, the disclosure summary required by Civil Code Section 1365.2.5 regarding assessments and reserve funding shall be provided to every Member, in the language set forth in Section 1365.2.5 or any successor statute.
- (c) No less than thirty (30) days nor more than ninety (90) days before the beginning of the Association's fiscal year, the disclosure summary required by Civil Code Section 1365(e) regarding the Association's insurance policies shall be provided to every Member, in the language set forth in Section 1365(e) or any successor statute.
- (d) No less than thirty (30) days nor more than ninety (90) days before the beginning of the Association's fiscal year, the pro forma operating budget required by Civil Code Section 1365(a) shall be provided to every Member, in the language set forth in Section 1365(a) or any successor statute.
- (e) At the time the pro forma operating budget is distributed, the Association shall also distribute to the Members a summary of the Alternative Dispute Resolution procedures set forth in Civil Code Sections 1369.510 through 1369.580, and Sections 1363.810 through 1363.840. Said summary shall include the following language: "Failure of a member of the Association to comply with the Alternative Dispute Resolution requirements of Section 1360.520 of the Civil Code may result in the loss of Owner's right to sue the Association or another member of the Association regarding enforcement of the governing documents or the applicable law."

**5.10 Penalties for Noncompliance.**

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
  - (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties);
  - (2) Assess such penalties against any Owner found to be in violation of any provision of the Governing Documents; and
  - (3) Temporarily suspend an Owner's voting rights as a Member of the Association and/or rights to use Common Area and Association Property facilities for as long as the violation continues.

- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
  - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
  - (3) The Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
  - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner;
  - (5) The Board shall meet in executive session if requested by the Owner being disciplined, and the Owner shall be entitled to attend the executive session; and
  - (6) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If the Board establishes a policy imposing any monetary penalty, including any fee on any member for a violation of the Governing Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a member, the Board shall adopt and distribute to each member by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for member discipline contained in the Governing Documents. (The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the members.)
- (d) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (e) All procedures relating to the imposition of any penalties or discipline for violation of any provision in the Governing Documents shall, at minimum, comply with Civil Code Section 1363 and Corporations Code Section 7341.

**5.11 Right of Entry.**

- (a) The Association has the right to enter any Unit or Exclusive Use Common Area to determine compliance with the Governing Documents and to perform its duties.
- (b) At its option, the Board shall periodically cause a compliance inspection of the Property to be conducted by the Architectural Committee to report any violations thereof.
- (c) In case of emergency, or by Court order, a Unit may be entered immediately. Otherwise, a Unit or its Exclusive Use Common Areas may only be entered at reasonable hours after the Owner has received three (3) days' notice, and if the entry will not result in a breach of the peace.

- (d) Entry must be made with as little inconvenience as possible to the Owner/Occupant.

**5.12 Personal Liability.**

To the fullest extent permitted by law, no member of the Board or the Architectural Committee or any other committee of the Association or any officer of the Association, or Declarant shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence or the like of the Association, the Board, the Architectural Committee, or any other representative or employee of the Association, Declarant, or any officer of the Association, or of Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct, and within which such person reasonably believed to be the scope of his/her duties.

## ARTICLE VI

### COVENANTS FOR ASSESSMENT

*Article VI describes assessments which owners pay in order to fund Association functions, including maintenance, insurance, etc.*

#### 6.01 Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s) and Association Property, administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) Each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay all Assessments to the Association.
- (c) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner, but are not the personal obligation of successors in title unless expressly assumed by them. The Condominium remains subject to any Assessment liens of record, except upon foreclosure of a First Mortgage, as stated in the Article entitled "Mortgagee Protection".
- (d) Pursuant to Civil Code Section 1366.1, the Association may not collect an assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.

#### 6.02 Commencement; Due Dates of Assessments.

- (a) Regular Assessments for all Condominiums in the Project commence on the first day of the month following the First Sale within the Project.
- (b) Regular Assessments shall be due and payable in any reasonable manner established by the Board.

#### 6.03 Equal Assessment Rate.

- (a) Regular Assessments and Special Assessments must be fixed at a uniform rate for all subject Condominiums, except as otherwise provided.
- (b) Each subject Condominium is liable for a pro rata share (the fractional number one (1) over the total number of Condominiums subject to Assessment by the Association at that time).

#### 6.04 Assessment Duties of the Board of Directors.

- (a) The Board must levy Regular and Special Assessments in compliance with Civil Code Section 1366.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies. In the event of transfer or conveyance of an Owner's fee simple title to a Unit, said Owner

shall have no further right or interest in any Assessments collected prior to such transfer. Assessments collected in accordance with the provisions of the Governing Documents shall be appurtenant to a Unit and shall automatically transfer to a new Owner in the event of sale.

- (c) The Board may not impose Special Assessments in a fiscal year aggregating more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year unless approved by a majority of the votes cast at a meeting in which the need for a Special Assessment is determined. Special Assessments levied by the Board in order to restore funds to the reserve account are included in this limitation.

#### **6.05 Notices and Disclosures.**

- (a) Sixty (60) days before the beginning of the Association's fiscal year, the Association shall distribute to all Members the following notices and disclosures regarding assessments:
  - (1) The notice required by Civil Code Section 1365.1 shall be provided to every Member and shall be printed in at least 12-point type. The notice shall be in the language set forth in Section 1365.1 or any successor statute.
  - (2) The disclosure summary required by Civil Code Section 1365.2.5 regarding assessments and reserve funding shall be provided to every Member, in the language set forth in Section 1365.2.5 or any successor statute.
- (b) An Owner may provide written notice by facsimile transmission or United States mail to the Association notifying of a secondary address. If a secondary address is provided, the Association shall send any and all correspondence and legal notices to both the primary and the secondary address.

#### **6.06 Effect of Nonpayment of Assessments: Delinquency and Remedies of the Association.**

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
  - (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
  - (2) Reasonable collection costs and attorney's fees; and
  - (3) Interest on all costs and charges at the maximum permissible rate, commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.
- (c) Notwithstanding the foregoing, a Compliance Assessment imposed by the Board as a disciplinary measure for failure of an Owner to comply with the Governing Documents may not become a lien against the Owner's Unit enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. However, this does not apply to charges imposed against an Owner consisting of reasonable late payment penalties for Delinquent Assessments and/or charges to reimburse the

Association for the loss of interest or for costs reasonably incurred including attorney's fees in its efforts to collect other Delinquent Assessments.

- (d) In addition to all other legal rights and remedies, the Association may:
  - (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
  - (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;
  - (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
  - (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire and thereafter to hold, lease, mortgage or convey; or
  - (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.
- (e) The Association may not foreclose a lien unless the amount of Delinquent Assessments exceeds one thousand eight hundred dollars (\$1,800) exclusive of late charges, interest and fees and costs of collection, or unless the assessments have been delinquent for longer than twelve (12) months.
- (f) Foreclosure action may not proceed until thirty (30) days after a Notice of Delinquent Assessment is duly recorded with the relevant County Recorder that meets the requirements of Civil Code Sections 1367 and 1367.1.
- (g) The decision either to record a lien for Delinquent Assessments or to initiate foreclosure upon such a lien shall be made only by the Board and may not be delegated to an agent of the Association. The Board's decision shall be by majority vote of Directors present in an open meeting and shall be recorded in the minutes of that meeting. The confidentiality of the affected Owner shall be maintained by identifying the matter in the minutes by the parcel number of the property rather than the name of the Owner.
- (h) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.

**6.07 Notice of Delinquent Assessments.**

At least thirty (30) days before a lien is recorded upon an Owner's separate interest to collect a debt for Delinquent Assessments, the Association shall notify the Owner in writing by certified mail of the following, as required by Civil Code Section 1367.1 or successor statute:

- (a) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount;
- (b) A statement that the Owner has the right to inspect the Association records, pursuant to Corporations Code Section 8333;



- (c) The following statement, in capital letters or in 14-point boldface type: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."
- (d) An itemized statement of the charges owed, showing the amount of any Delinquent Assessments, the fees and reasonable costs of collection, reasonable attorney's fees, late charges and interest, if any.
- (e) A statement that the Owner shall not be liable to pay the charges, interest and costs of collection if it is determined that the assessment was paid on time to the Association.
- (f) A statement that the Owner shall not be liable for charges, interest or costs of collection if it is established that the assessment was properly paid on time.
- (g) A statement that the Owner has the right to request, and upon request the Association shall participate in, a meeting to discuss establishing a payment plan to satisfy Delinquent Assessments.
- (h) A statement that the Owner has the right to request, and upon request the Association shall participate in, Alternative Dispute Resolution as set forth in Civil Code Sections 1363.810 through 1363.840 or Sections 1369.510 through 1369.580. The form of Alternative Dispute Resolution, if any, used to resolve a dispute arising from Delinquent Assessments shall be the choice of the Owner, except that binding arbitration shall not be used if the Association intends to commence a judicial foreclosure.

Should the Owner make such a request, the Association shall not record a lien or initiate foreclosure action without participating in Alternative Dispute Resolution. If it is determined through dispute resolution or Alternative Dispute Resolution that the Association has filed a lien for a Delinquent Assessment in error, the Association shall be required to reverse specified charges and take other corrective actions.

- (i) If a lien is recorded against an Owner's Unit in error, the person who recorded the lien must record a lien release within twenty one (21) days, and must provide the Owner certain documents in this regard.

#### **6.08 Payments and Payment Plans.**

- (a) The Association must provide a receipt for payment of assessments, indicating the date of payment and the person who received it, if requested by an Owner.
- (b) The Association must inform all Owners of a mailing address for overnight payments.
- (c) An Owner may dispute an assessment debt by submitting to the Association a request for dispute resolution under Civil Code Section 1368.810 through 1368.840, The Association may not commence foreclosure without participating in dispute resolution under Civil Code Section 1369.510 through 1369.580 if requested by the Owner.
- (d) An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt pursuant to Section 6.06 above. The Board shall meet with the Owner in executive session or by a designated committee of one or more Members within forty-five (45) days of the postmark of the request, if the request is mailed within fifteen (15) days of the date of the postmark of the Notice of Delinquent Assessment.

- (1) Payment plans may incorporate any assessments that accrue during the payment plan period.
  - (2) Payment plans shall not impede the Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments.
  - (3) Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan.
- (e) 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.

**6.09 Collection of Assessment Debts Not Collectible Through Foreclosure.**

Delinquent Regular or Special Assessments of less than one thousand eight hundred dollars (\$1,800), exclusive of interest, charges and fees, may be collected in any of the following ways, as provided by Civil Code Section 1367.1(b) or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of Delinquent assessments exceeds one thousand eight hundred dollars (\$1,800) or the delinquency is for longer than twelve (12) months; or
- (c) Any other manner provided by law except judicial or non-judicial foreclosure.

**6.10 Right of Redemption.**

A nonjudicial foreclosure by the Association shall be subject to a right of redemption from a foreclosure sale within ninety (90) days after the foreclosure sale.

**6.11 Nonuse and Abandonment.**

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area(s) and Association Property or abandonment of a Unit.

**6.12 Emergency Assessments.**

- (a) Notwithstanding any other provision of this Article, the Board may increase assessments in order to fund any of the following:
  - (1) An extraordinary expense required by an order of the court;
  - (2) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible if a threat to personal safety on the property is discovered;

- (3) An extraordinary expense necessary to repair or maintain the property or any part of it for which the association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget.
- (b) Prior to imposition or collection of an assessment for emergency purposes, the Board must pass a resolution containing written findings as to the necessity for the extraordinary expense and why it was not or could not have been reasonably foreseen while preparing the budget. The resolution must be distributed to the Members together with the notice of assessment.

**6.13 Waiver of Exemptions.**

With respect to Assessment liens, each Owner waives (to the extent permitted by law) the benefit of any California homestead or exemption laws in effect when any Assessment or installment becomes delinquent or a lien is imposed.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

*Article VII addresses alterations which owners may wish to make to their units. The Association's approval must be obtained for most such changes.*

#### **7.01 The Architectural Committee.**

- (a) The Architectural Committee shall consist of not fewer than three (3) persons nor more than five (5) persons as fixed from time to time by resolution of the Board.
- (b) Declarant shall initially appoint the Architectural Committee. Declarant shall retain the right to appoint, augment or replace all members of the Architectural Committee until one (1) year after issuance of the original DRE final subdivision public report for the Property, at which time the Board may appoint members, as further described herein.
- (c) Declarant shall retain the right to appoint, augment or replace a majority of the members of the Architectural Committee until (i) five (5) years after the First Close of Escrow, or (ii) close of escrow has occurred on ninety percent (90%) of the Units within the Property, whichever shall first occur, at which time the right to appoint, augment or replace all members of the Architectural Committee shall automatically be transferred to the Board.
- (d) As long as Declarant has the right to appoint some but not all of the members of the Architectural Committee, the Board shall have the right but not the obligation to fill the remaining vacancies on the Architectural Committee.
- (e) Persons appointed by the Board to the Architectural Committee must be Members; however, persons appointed by Declarant to the Architectural Committee need not be Members, in Declarant's sole discretion.
- (f) The address of the Architectural Committee shall be the address established for giving notice to the Association unless another address is specified for such purpose in the Architectural Guidelines or Architectural Committee Rules. Such address shall be the place for the submittal of plans and specifications and the place where the current Architectural Guidelines shall be kept.
- (g) Meetings of the Architectural Committee shall be held from time to time as necessary. Notice, hearing and conduct of the meetings must be in accordance with the Bylaws of the Association and general corporation laws regarding committee meetings.
- (h) In addition to the powers set forth in this Article, the Architectural Committee may perform other duties delegated to it by the Board.

#### **7.02 Architectural Guidelines.**

- (a) The Board may, from time to time, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines may include such limitations and restrictions on Improvements as the Board in its reasonable discretion shall adopt, including, without limitation, the regulation of the placement, kind,

shape, height, materials, species and location of any Improvement; and time limitations for the completion of the Improvements, including but not limited to window treatments and dressings and the location and design of fences.

- (b) Any change in the Architectural Guidelines shall require a 30-day written notice to the membership for their review and comment before the Board can approve the changes.
- (c) The Board is required to annually disclose to the Members items that require architectural approval. The disclosure shall also describe the Improvements which, if completed in conformity with the Architectural Guidelines, do not require approval by the Architectural Committee. The annual membership notice shall contain the procedures used for reviewing architectural applications.

#### **7.03 Plan Review Functions of the Architectural Committee.**

- (a) The Architectural Committee shall consider and act upon proposals or plans submitted pursuant to the terms of this Declaration or the Architectural Guidelines. Unless all of the rules of the Architectural Committee have been complied with, such plans and specifications shall be deemed not submitted.
- (b) The Architectural Committee has the power, but not the duty, to retain Persons (including, but not limited to, architects and other professionals) to advise its members in connection with decisions; however, the Architectural Committee does not have the power to delegate its decision-making power.
- (c) The Architectural Committee may, from time to time, adopt, amend and repeal its rules, subject to approval by the Board. Among other things, said rules may require the prepayment of a reasonable deposit to be applied toward the payment of any Special Assessment levied by the Board if an Owner fails to restore any portion of the Property to a clean and attractive condition; may assess a reasonable fee as appropriate for the type and nature of the Improvement, to cover the cost of inspections that may be necessary to insure compliance and in connection with the review of plans and specifications for proposed Improvements, including, without limitation, a procedure for approval of preliminary plans and drawings as well as final approval; may specify the number of sets of plans to be submitted; and may require such detail as it deems proper, including without limitation, floor plans, site plans, elevation drawings, and descriptions or samples of exterior material and colors, landscape planting plans, drainage plans, lighting plans, electrical plans, mechanical plans, and the like.

#### **7.04 Approval.**

- (a) Declarant is not subject to the provisions of the Governing Documents pertaining to architectural control. Any Improvements constructed by Declarant shall automatically be in compliance with the Governing Documents and shall not be subject to further architectural control until and unless there has been a change or alteration made by a successor in title to Declarant as to any Residence in the material, texture, color or appearance of any such Improvement upon such Residence.
- (b) Other than such Improvements by Declarant, no Improvements shall be made upon the Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Architectural Committee except as may otherwise be provided for in the Architectural Guidelines. Normal maintenance, repair or reconstruction by

any successor in title to Declarant in the event of a destruction, in substantial conformance with the Improvements constructed by Declarant, shall not be deemed to be an Improvement that requires approval pursuant to the provisions of this Article.

- (c) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance and location and shall approve such plans and specifications only if it deems that the proposed Improvement will not be detrimental to the appearance of the Property as a whole; that the Improvement complies with the Architectural Guidelines; that the appearance of any Improvements will be in harmony with the surrounding structures; that the construction of any Improvement will not detract from the beauty and attractiveness of the Property or the enjoyment thereof by the Owners; and that the upkeep and maintenance of any Improvement will not become a burden on the Association.
- (d) Plans and specifications shall be approved by the Committee as to style, design, appearance and location only, and are not approved for (i) engineering design, (ii) compliance with zoning and building ordinances, and other applicable statutes, ordinances or governmental rules or regulations, (iii) compliance with the requirements of any public utility, (iv) any easements or other agreement, or (v) preservation of any view.
- (e) The Architectural Committee may (i) determine that the proposed Improvement cannot be approved because of its effect on existing drainage, utility or other easements, (ii) require submission of additional plans and specifications or other information or materials prior to approving or disapproving plans and specifications submitted, or (iii) condition its approval of plans and specifications for any Improvement on such changes therein as it deems appropriate.
- (f) The Architectural Committee may also condition its approval of a proposed Improvement on approval by a holder of an easement which may be impaired thereby or upon approval of any such Improvement by the appropriate governmental agency. Any Architectural Committee approval conditioned upon the approval by a governmental agency or an easement holder shall not imply that the Association is enforcing any government codes or regulations or provisions of any easement agreement, nor shall the failure to make such approval conditional imply that approval by any such governmental agency or easement holder is not required.
- (g) The Architectural Committee shall issue its decisions in writing. If an Owner's application is disapproved, the Committee shall include an explanation for the disapproval.
- (h) In the event the Architectural Committee fails to approve or disapprove plans and specifications within sixty (60) days after the same have been duly submitted in accordance with the Architectural Committee's rules, such plans and specifications will be deemed approved.

#### **7.05 Variances.**

- (a) The Board may authorize a variance from compliance with the Architectural Guidelines or with provisions of this Article when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations may require. Such variance shall be evidenced in writing, signed by a majority of the members of the Board and delivered to such Owner, and shall become effective upon execution. A copy of the resolution of the Board authorizing such variance must be retained in the permanent records of the Association.

- (b) No violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which any such variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Residence and particular provision of this Article covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all government laws and regulations affecting use of the Residence including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by any governmental or municipal authority.

**7.06 Non-Liability for Approval.**

- (a) Each Owner shall be solely responsible for any violation of this Declaration, the Architectural Guidelines, or any applicable instrument, law or regulation, caused by an Improvement made by such Owner even though same is approved by the Committee.
- (b) By approving such plans and specifications neither the Architectural Committee, the members thereof, the Association, the Owners, the Board nor the Declarant, nor agents, employees, attorneys or consultants of any of the foregoing, assume liability or responsibility therefor, or for any defect in any Improvement constructed from such plans and specifications or for any obstruction or impairment of view caused or created as the result of any Improvements approved by the Architectural Committee. The Committee shall have a right to require, as a condition of approval, that an Owner provide indemnification on terms and conditions satisfactory to the Committee.

**7.07 Appeal.**

- (a) All decisions of the Architectural Committee are subject to review by the Board, except with regard to Improvements made by Declarant.
- (b) If an application is disapproved, the notice to the Owner shall include a description of the procedure for appealing the decision to the Board. The hearing for reconsideration must be at an opening meeting of the Board. If the disapproval was by the Board, then there shall be no requirement for reconsideration by the Board.
- (c) Written request for an appeal to the Board of a decision rendered by the Architectural Committee must be received by the Board via certified mail with return receipt not more than fifteen (15) days following the final decision of the Architectural Committee.
- (d) Unless the composition of the Architectural Committee is identical to that of the Board, the Board must review and decide upon the proposal within forty-five (45) days after receipt of the appeal, otherwise the proposal will be deemed approved.

**7.08 Commencement of Construction.**

Upon approval by the Committee, an Owner must commence construction pursuant to such approval within six (6) months of the date of such approval, or such approval shall no longer be valid and such Owner shall be obligated to resubmit its request for approval pursuant to the requirements of this Article. One (1) set of plans as finally approved shall be stamped approved and shall be retained by the Committee as a permanent record. The construction shall be performed by a contractor licensed by the State of California.

**7.09 Proceeding with Work.**

- (a) Upon receipt of approval from the Committee pursuant to this Article, the Owner shall satisfy, as soon as practicable, all conditions thereof and shall commence construction and shall thereafter work diligently to perform and complete all construction, reconstruction, additions, grading, refinishing, alterations and excavations pursuant to said approval and in accordance with the following provisions:
- (b) Except in the case of a bona fide emergency, all work shall be performed during reasonable daylight hours. All persons performing such work shall use their best efforts to minimize (i) the duration of the work, (ii) the inconvenience to other Owners in the Project and (iii) the accumulation of debris and construction materials on and around the Unit. All work shall be performed in a neat and orderly manner, and all reasonable safety precautions shall be taken during the performance of such work. Before commencement of any alteration or Improvement approved by the Committee, the Owner shall comply with all appropriate governmental laws and regulations and shall obtain all required governmental permits and approvals therefor. Approval by the Committee does not satisfy necessary and appropriate approvals and permits that may be required from any governmental entity with appropriate jurisdiction.
- (c) The Owner of any Unit upon which any work of Improvement is being performed shall indemnify, defend and hold harmless Declarant, the Committee, and every other Owner in the Project from and against any and all liability arising out of or otherwise resulting from any negligent or intentional act or omission relating to the performance of such work by such Owner, its contractors, subcontractors, agents and employees.

**7.10 Failure to Complete Work.**

The Owner must complete the construction and landscaping, reconstruction, refinishing, or alteration of all Improvements on, in, under and/or about his Unit within a reasonable period of time, not to exceed twelve (12) months after commencing construction thereof, unless an extension of time has been granted in writing by the Committee. If Owner fails to comply with this Section, the Committee may proceed in accordance with the other provisions of this Article as though the failure to complete the Improvement were a noncompliance with approved plans.

**7.11 Inspection; Compliance and Noncompliance Statements.**

- (a) Owner shall notify the Architectural Committee upon completion of Improvements, whereupon the Architectural Committee shall inspect the Improvements in order to determine whether the completed Improvements conform to plans and specifications approved by the Architectural Committee.
- (b) The Architectural Committee shall inspect the Improvements either within sixty (60) days after notification by the Owner of the completion of an Improvement or within ninety (90) days after the cessation of work on the Improvements if the Owner fails to notify the Architectural Committee of completion. The Committee's inspection rights shall include the right to require an Owner to take such action as may be necessary to remedy any non-compliance with the Committee-approved plans for the Owner Work or with the requirements of this Declaration.



- (c) If for any reason an inspection has not been made within sixty (60) days of notification by the Owner of the completion of an Improvement or if the Owner has not been notified of any noncompliance within thirty (30) days after such inspection, the Improvement shall be deemed to be completed in substantial conformance with approved plans and specifications.
- (d) If the Improvements upon such Residence comply or by virtue of the passage of time are deemed to comply with the plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon request, issue a statement (hereinafter a "Compliance Statement") which will evidence such compliance.
- (e) If any of the Improvements upon such Residence do not comply with the provisions of the Governing Documents, the Architectural Committee shall issue a statement (hereinafter a "Noncompliance Statement") delineating the corrective action that is required to bring such Improvements into compliance with the Governing Documents. If an Owner fails to remedy any such noncompliance noticed by the Committee, then the Committee shall notify the Board in writing of the same.
- (f) Any Compliance or Noncompliance Statement issued by the Architectural Committee shall be executed by any person or persons authorized by resolution of the Board or by the president and secretary of the Association, and a copy thereof shall be retained in the records of the Association.
- (g) In the event the Architectural Committee has issued a Noncompliance Statement as to any such Residence, the Architectural Committee shall provide a Compliance Statement, upon request, after the corrective work has been satisfactorily completed. Such Compliance Statement shall then evidence that the Improvements upon such Residence comply with the provisions of the Governing Documents.
- (h) A Compliance Statement shall be conclusive evidence of compliance with the provisions of the Governing Documents as to the Improvements described in the Compliance Statement and further approval of any such Improvements shall not be required unless there is a change or alteration in material, exterior appearance, color or texture in such Improvements.
- (i) In the event an Improvement was commenced without the required approval of the Architectural Committee, or, if such Improvement was not completed within the time limitation established for such Improvement in the Architectural Guidelines or in substantial conformance with the approved plans and specifications, the Board shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance, and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If the noncompliance is not cured within such thirty (30) day period, the Board, after notice and hearing as provided herein, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance and the Architectural Committee shall correct the violation or take other appropriate action.

#### **7.12 Remedy for Noncompliance.**

- (a) In the event of issuance of a Noncompliance Statement, then the Owner shall remedy or remove the same within forty-five (45) days from the date that the written Noncompliance Statement is delivered to the Owner.
- (b) If the Owner does not correct the noncompliance within that period, then the Association shall have the right (i) to enter the Owner's Unit and to cause the noncompliance to be corrected and the cost of the same shall be reimbursed to the Association by the Owner and

if not timely reimbursed, then the Association shall be entitled to pursue any and all legal rights and remedies against the Owner including the levying of a special assessment for the same against the Owner's Unit as herein permitted and/or (ii) to bring an action for damages or injunctive relief to remedy the same.

- (c) After the lapse of one (1) year after notice of completion of the Improvement or after correction of nonconforming work, whichever occurs later, the Committee shall have no further right to exercise its remedies under this section. However, the Committee's remedies shall expire upon transfer of the Unit if such transfer occurs within either of the one-year periods specified in this paragraph.

**7.13 No Guarantee of Views.**

- (a) Depending upon location, some Units in the Property may enjoy some unique view potential. The view, if any, from a Unit in the Property is subject to the limitations and disclaimers set forth in this section.
- (b) There are no express or implied easements for views or for the passage of light and air to any Unit in the Property. Although the provisions of this Article may have some effect on preserving views from and providing for the passage of light and air to an individual Unit, nevertheless Declarant, the Architectural Committee, and the directors, officers, employees, consultants, agents and contractors of the foregoing, do not make any representations or warranties, express or implied, concerning the view, if any, that a particular Unit will enjoy. Furthermore, the payment by any Owner of any "premium" does not constitute a representation or warranty, express or implied, concerning the view, if any, the Unit will enjoy.
- (c) Each Owner, by accepting a Deed to his respective Unit, expressly acknowledges and agrees that any view which his Unit may enjoy as of the date of purchase may be impaired or obstructed by the installation of trees, other landscaping or other types of barriers, the growth or relocation of landscaping, the construction or other installation of improvements in the Property and/or on any property adjoining the Property in accordance with applicable laws, codes, ordinances and regulations, and each Owner expressly consents to any such obstructions. (d) Each Owner further understands that the provisions of this Declaration establish certain architectural and landscaping controls applicable to the Property, and that each Owner has the right to enforce such controls. Except as expressly set forth in this Declaration, there are no rights concerning the preservation of any view.

## **ARTICLE VIII**

### **MORTGAGEE PROTECTION**

*Article VIII provides certain protections to holders of the first mortgage on any unit, in order to make it easier for owners to obtain purchase money loans or refinancing.*

#### **8.01 Subordination of Lien and Foreclosure.**

- (a) Any lien for Regular or Special Assessments created or claimed in this Declaration:
  - (1) Is subject and subordinate to the rights of any First Deed of Trust that encumbers any part of the Property made for value in good faith; and
  - (2) May not in any way impair or invalidate the obligation or priority of a First Mortgage unless expressly subordinated in writing by the Mortgagee. The signing of any Mortgage to the Subordination by Lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
- (b) No breach of any provision of Declaration, nor the enforcement of any of its lien provisions, nor the Foreclosure of any lien created by or claimed under this Declaration, shall invalidate, affect or impair the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through Foreclosure sale, trustee's sale, or otherwise.
- (c) Upon foreclosure of a First Mortgage, the purchaser:
  - (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale, except that in the event the net sale proceeds exceed what is owed on all encumbrances prior to the Assessment lien, the Association shall be entitled to receive payment on any Assessment lien; and
  - (2) Is only obligated to pay Assessments or other Association charges accruing after the title to the Condominium is acquired.
- (d) If the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien shall not be extinguished upon recordation of the deed.

#### **8.02 Mortgagees Are Not Required to Cure Certain Breaches.**

A First Mortgagee who acquires title by foreclosure or by a deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure an existing breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

#### **8.03 Effect of Breach of Declaration.**

- (a) Breach of this Declaration may not:
  - (1) Cause any forfeiture or reversion of title; or

- (2) Create any right of reentry.
- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Owner, and damages may also be awarded provided that:
  - (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
  - (2) This Declaration binds any Owner whose title is derived through Foreclosure, trustee's sale or otherwise.

**8.04 Exemption From Right of First Refusal.**

- (a) Any right of first refusal or option to purchase a Condominium that may be granted to the Association or other party may not impair the rights of a First Mortgagee to do any of the following:
  - (1) Foreclose or take title to a Condominium, pursuant to the remedies provided in the Mortgage;
  - (2) Accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or
  - (3) Sell or lease a Condominium acquired by the Mortgagee.
- (b) No right of first refusal or similar restriction may be placed on an Owner's right to sell, transfer, or otherwise convey a Condominium, unless the Mortgagee, if any, grants written consent for the restriction.

**8.05 Restrictions on Certain Changes.**

- (a) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees (based on one vote for each Eligible First Mortgage held) must give written approval before the Association may do any of the following:
  - (1) Alter the method of determining Assessments or other charges levied against an Owner.
  - (2) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area(s) and Association Property.
  - (3) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) and Association Property as specified in this Declaration.
  - (4) Amend the Governing Documents concerning any material provision, including but not limited to the following:
    - (A) Voting rights;

- (B) Reductions in reserves for maintenance, repair, or replacement of the Common Area and Association Property improvements;
- (C) Responsibility for maintenance and repairs;
- (D) Reallocation of interests in the Common Area and Association Property or Exclusive Use Common Area or rights to their use;
- (E) Redefinition of any Unit boundary;
- (F) Convertibility of Units into Common Area and Association Property or Common Area and Association Property into Units;
- (G) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (H) Hazard or fidelity insurance requirements;
- (I) Imposition of any restrictions on the leasing of Units except as provided herein;
- (J) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (K) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (L) Any provisions that expressly benefit mortgagees, insurers, or guarantors;
- (M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (N) A decision by the Association to establish self-management when professional management had been required previously by the governing documents or by an Eligible First Mortgagee (\*applicable only if there are 50 or more units\*).

(b) Except as provided by statute in case of condemnation or substantial loss to the Property, at least sixty-seven percent (67%) of the votes of the First Mortgagees (based on one vote for each Eligible First Mortgage held) must give written approval before the Association may, by act or omission, do any of the following:

- (1) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Unit or Common Area and Association Property (other than granting easements as specified in this Declaration);
- (2) Partition or subdivide any Unit;
- (3) Seek to abandon or terminate the legal status of the Property;
- (4) Use hazard insurance proceeds for losses to the Property (Unit or Common Area and Association Property) for other than repair, replacement or reconstruction of the Property;

- (5) Change the pro rata interest or obligation of any Unit 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 each Owner in the Common Area and Association Property, provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner;
  - (6) Change or alter the priority of any liens created by or claimed under this Declaration;
  - (7) Modify or amend any provisions that are for the express benefit of First Mortgagees, insurers or governmental guarantors of First Mortgages;
  - (8) Modify or amend any provisions of this Declaration regarding insurance;
  - (9) Modify or amend any provisions of this Declaration which is a requirement of the GNMA, FHLMC or FNMA.
- (c) An Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after the Eligible First Mortgagee receives notice of the proposed action, provided notice was delivered personally or by certified or registered mail, return receipt requested.
- (d) Any addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

**8.06 Inspection of Association Books and Records.**

Any First Mortgagee has the right to examine the books and records of the Association during business hours and after notice to the Association. Any First Mortgagee shall be entitled, upon written request, to have an audited financial statement for the immediately preceding year, free of charge to the party so requesting.

**8.07 Condemnation Awards and Insurance Proceeds.**

Condemnation awards or insurance proceeds for losses to or taking of Units or Common Areas and Association Property shall be distributed to the Owner(s) in proportion to the fair market value of their Unit, provided that if at the time of distribution there is a Mortgage on any individual Unit, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Unit is mortgaged. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.

**8.08 Loss Payable Endorsement.**

All applicable fire, physical loss or extended coverage insurance policies must contain loss payable clauses naming the Mortgagees who encumber the Condominiums.

**8.09 Mortgagee's Right to Attend Meetings.**

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote except as provided in Section 8.05.

**8.10 Payments by Mortgagees.**

(a) First Mortgagees may pay the following jointly or severally:

- (1) Taxes or other charges in default which may be a charge against any part of the Common Area(s) and Association Property; and
- (2) Overdue premiums on hazard insurance policies, or to secure new hazard insurance coverage on the lapse of a policy for the Common Area(s) and Association Property.

(b) Upon such payments, the Association:

- (1) Owes immediate reimbursement to First Mortgagees making such payments; and
- (2) Must, upon Mortgagee's request, execute an agreement that reflects the First Mortgagees' entitlement to such reimbursement.

**8.11 Notices to Mortgagees.**

(a) Each Eligible First Mortgagee is entitled to timely written notice of:

- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its Mortgage;
- (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage or any other breach or default under the Governing Documents by the Owner of any Unit on which it holds the mortgage;
- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgagees.

(b) To obtain the information above, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the Condominium number or address of the Condominium for which it has the Mortgage:

**8.12 Loan to Facilitate Resale.**

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

**8.13 Control If Mortgagee Protections Conflict With Other Provisions.**

In the event of any conflict between any of the provisions of this Article and any other provisions of this Declaration or the Governing Documents, whether now or as hereafter amended, the provisions of this Article shall control.

**8.14 Reserves.**

Fees, dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements that the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special Assessments.



## ARTICLE IX

### DAMAGE AND DESTRUCTION TO IMPROVEMENTS

*Article IX concerns restoration or other disposition in the case of damage or destruction of common areas and Association Property.*

#### **9.01 Restoration of the Property.**

In case of casualty damage to Common Area Improvements and Association Property Improvements, the Association will repair and substantially restore the Common Area and Association Property Improvements to the same manner as existed before:

- (a) If insurance proceeds cover at least eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners to make up the balance of costs (according to the Article "Covenants for Assessments").
- (b) If insurance proceeds cover less than eighty-five percent (85%) of repair costs, the Association will repair the damage and levy a reconstruction Assessment equally against the Owners, unless at least sixty-seven percent (67%) of the Owners (other than Declarant) determine either:
  - (1) To rebuild in a less expensive manner than substantial replacement, utilizing all available insurance proceeds. The Association will levy a reconstruction Assessment equally against the Owners to raise any rebuilding cost in excess of insurance proceeds; or
  - (2) Not to rebuild. All net insurance proceeds for the damage (after expenses of clearing debris and making the damaged area aesthetically pleasing) are at the Association's discretion to perform its functions according to the Restrictions or to distribute equally to the Owners (subject to the rights of Mortgagees of record).
- (c) If the estimated cost of repair does not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall cause the repair to occur without the consent of Members irrespective of the available amount of insurance proceeds. The Board is empowered to levy a Special Assessment if necessary as described herein.
- (d) If the Owners and Mortgagees determine that restoration costs would be substantial and reconstruction would not be in their best interests, the Owners may proceed as provided below.

#### **9.02 Notice to Owners and Listed Mortgagees.**

Immediately upon learning of any material damage or destruction to the Common Area or Association Property or any Unit, the Board must notify all Owners, and First Mortgagees, insurers or guarantors of any relevant Mortgagees who have filed a written request for Board notice (see "Mortgagee Protection" Article).

**9.03 Sale of Property and Right to Partition.**

If the Association elects not to rebuild, an appraiser licensed by the State of California Office of Real Estate Appraisers shall determine the relative fair market values of all condominiums as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such values.

**9.04 Damage to Dwellings.**

- (a) If a Unit is damaged by fire or other casualty, the relevant Owner must proceed with due diligence to repair or reconstruct the Improvement 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 or as authorized by the Architectural Committee.
- (b) Repair or reconstruction must commence within ninety (90) days after damage or destruction, and must be completed within one hundred and eighty (180) days after such date, subject to delays that are beyond the Owner's control.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction.

## **ARTICLE X**

### **CONDEMNATION**

*Article X concerns condemnation of common areas and Association Property by a governmental entity.*

#### **10.01 Representation by the Board in Condemnation Proceedings.**

- (a) If any portion of a Common Area and Association Property is to be condemned or sold by eminent domain, the Board (or its delegation) will:
  - (1) Represent Owners in the proceedings;
  - (2) Immediately give notice of the condemnation threat to all Beneficiaries, insurers and guarantors of First Mortgages who have filed written requests for notices; and
  - (3) Be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
- (b) Any award(s) received shall be paid to the Association.
- (c) If only part of a Common Area and Association Property is affected, the rules regarding restoration and replacement of the Common Area and Improvements apply as if in the case of destruction.
- (d) If any of the net condemnation award is not used to restore the remaining Common Area and Association Property, the Association will handle the award in accordance with the Article entitled, "*Damage and Destruction to Improvements*".

#### **10.02 Distribution of Award.**

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be distributed to the Owner(s) in proportion to the fair market value of their Condominium, provided that if at the time of distribution there is a Mortgage on any individual Condominium, the balance of such Mortgage (in order of priority) shall first be paid before the distribution of any awards or proceeds to the Owner whose Condominium is mortgaged.
- (c) If a condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an appraiser licensed by the State of California Office of Real Estate Appraisers and hired by the Board with approval of fifty-one percent (51%) of the Mortgagees. If said percentage of Mortgagees do not approve the Board's

selection of appraiser, then any Mortgagee may hire a licensed appraiser at its own cost, and the award amount will be calculated based upon the average of all appraisals obtained.

- (e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser, and in the event of disagreement between the appraisers the Board shall resolve the dispute.

## ARTICLE XI

### **COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST**

*Article XI governs partition of the property.*

#### **11.01 No Partition; Exceptions; Power of Attorney.**

- (a) An Owner may not bring an action for partition of the Common Area and Association Property by sale except as provided in California Civil Code Section 1359 (or any similar statute in effect at the time).
- (b) These provisions do not prevent a judicial partition between co-tenants of a Condominium.
- (c) Subject to obtaining the prior approval by vote or written consent of seventy-five percent (75%) of the Owners and seventy-five percent (75%) of all First Mortgagees, the Association (through its Board) has irrevocable power of attorney to sell the Property for the benefit of Owners and Mortgagees when partition takes place under California Civil Code Section 1359.

#### **11.02 Proceeds of Partition Sale.**

- (a) Whenever an action is brought for partition by sale, the Owners will share the proceeds in the same proportion as the relative values of each Condominium, determined by comparing its fair market value on partition date (established by an Licensed appraiser selected by the Association) to the fair market value of all Condominiums in the Property on that date.
- (b) If applicable, distribution of partition sale proceeds must be adjusted to reflect prior condemnation awards or insurance proceeds paid to Owners and Mortgagees.

#### **11.03 No Separate Conveyance of Condominium Components.**

- (a) An Owner may not sever, sell, convey or encumber a Condominium's component interests, such as the undivided interest in the Common Area from the Unit.
- (b) The provisions of the Section terminate when a partition is decreed, either judicial or in accordance with this Article.

## ARTICLE XII

### EASEMENTS

*Article XII addresses easements within the property.*

#### 12.01 Creation of Easements.

- (a) Easements referred to herein are established upon the First Close of Escrow in the Project, and the provisions hereof with respect to such easements shall be covenants for the use and benefit of Condominiums and Property superior to all other encumbrances.
- (b) Individual grant deeds to Condominiums shall state that the grant is made subject to the provisions of this Declaration, and may set forth reference to these easements, but are not required to do so.

#### 12.02 Reservation of Easements for Declarant's Construction and Marketing Activities.

- (a) For as long as five (5) years from the date of the First Close of Escrow in the Project (and without unreasonably interfering with other Owners), the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board approval:
  - (1) Improvements. Easements over i) the Common Area and Association Property for the purpose of constructing, erecting, completing, operating and maintaining thereon, therein or thereunder roads, streets, walks, and driveways, as long as any Unit remains unsold; and ii) the Property for the installation and maintenance of electric, telephone, cable television, water, gas, irrigation lines, sanitary sewer lines and drainage facilities, provided that access for such purpose is not otherwise reasonably available;
  - (2) Construction and Sales. Easements for construction, display, maintenance, sales and exhibit purposes over the Common Area and Association Property, other than Exclusive Use Common Area if any, in connection with the erection and sale or lease of Residences within the Property provided, however, that such use shall not be for a period beyond the sale by Declarant of all Units within the Property;
  - (3) Utilities. Easements, whether or not shown on the Tract Map/Condominium Plan, over the Property for the installation and maintenance of electric, telephone, cable television, community antenna television system, water, gas, sanitary sewer lines and drainage facilities. Declarant further reserves the right to grant and transfer easements over the Units and Common Area(s) and Association Property for installation, maintenance and repair of the Service Lines and Facilities.
- (b) The easements reserved to Declarant, or granted and conveyed by Declarant pursuant to this Section shall not unreasonably interfere with the use and enjoyment by the Owners of the Property, and any repair or restoration necessitated by any such installation, construction or maintenance shall be completed by the holder of the easement that has entered upon the Property for any such purpose within a reasonable time after the occurrence of such damage or need for restoration.

**12.03 Certain Easements for Association.**

- (a) The Association has, and may grant, nonexclusive easements and rights of way for ingress, egress and access to all portions of the Property as reasonably required to perform its maintenance obligations and other duties established in this Declaration, and further has utility and drainage easements as hereinafter provided to maintain the health, safety, convenience and enjoyment of the Units and Common Area(s) and Association Property.
- (b) Declarant hereby reserves for the benefit of the Association the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and sale of the Property. Such right of Declarant shall expire upon the later of (i) the close of escrow for the sale of all Units in the Project by Declarant, or (ii) expiration of seven (7) years from the date of issuance by the DRE of the Final Subdivision Public Report for the Project.

**12.04 Certain Easements for Owners.**

- (a) Declarant grants nonexclusive easements for enjoyment, ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area and Association Property (except Exclusive Use Common Areas) to all Owners, subject to other provisions of the Governing Documents.
- (b) Owner rights and duties with respect to drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, and other service lines and facilities ("Service Lines and Facilities") are as follows:

Easements for Service Lines and Facilities in Units or Common Area(s) and Association Property is granted in favor of the Owner of a Unit or Association served by said Service Lines and Facilities to the full extent necessary for the maintenance and repair by the Owner, Association, or servicing company;

If Service Lines and Facilities serve more than one Unit, each Owner served is entitled to reasonable use and enjoyment and access for repair, replacement and maintenance of all necessary portions of the Service Lines and Facilities. In the event of a dispute between Owners respecting the repair, replacement or maintenance of the Service Lines and Facilities, or the sharing of the cost thereof, said Owners shall first contact the appropriate utility company in an effort to resolve the dispute; provided however, if said dispute remains unsolved, the matter shall be submitted to the Board who shall decide the dispute and the decision of the Board shall be final and conclusive on the Owners.

- (c) Notwithstanding that an Owner may install Improvements within said easement area with the approval of the Architectural Control Committee, each Owner acknowledges that such Improvements may be removed by the respective utility or Public Agency to maintain, repair or replace any of the foregoing facilities without any liability to the Owner to repair or restore such Improvements.
- (d) Declarant hereby reserves, for its benefit and the benefit of the Association and each Owner, nonexclusive easements on, over, across and through all Units for the construction, installation, inspection, maintenance, repair and replacement of drainage lines and improvements, and subdrain lines, access ports, and the like, wherever same may be located, in accordance with the provisions of this Declaration. Such easements over such portions of each Unit shall be appurtenant to, binding upon, and shall pass with the title to, every Unit conveyed.

**12.05 Drainage Easements.**

- (a) The Association and each Owner accept the drainage facilities and pattern for the Units and Common Area(s) and Association Property established by the final grading of the Property originally undertaken by Declarant (including "cross-unit" drainage from adjacent Units and Common Areas and Association Property).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.
- (c) If the drainage pattern must be altered, the party requesting the alteration must make reasonable and adequate provisions for proper drainage and pay for its costs.
- (d) In the event Declarant shall have installed any drainage lines or other facilities which serve two or more Units, the Owners of said Units shall jointly maintain and repair said lines and facilities so as to keep same in proper operating condition at all times.

**12.06 Encroachment.**

- (a) Easement rights are hereby created, established and granted to Declarant, the Association and Owners of any Unit or Common Area and Association Property, originally constructed by Declarant, or as reconstructed in substantial conformance with the Condominium Plan, with improvements encroaching on, over and across any portion of a contiguous Unit or Common Area and Association Property, as shown in the Condominium Plan, resulting from engineering errors, errors or adjustments in original construction, reconstruction, repair, settling, shifting, or any other movement.
- (b) If a portion of a Unit encroaches on, over and across any portion of a contiguous Unit or Common Area and Association Property, the encroaching Unit Owner's easement rights shall be exclusive.
- (c) If a portion of the Common Area and Association Property encroaches on, over and across any portion of a contiguous Unit, the Association's easement rights shall be non-exclusive.
- (d) Declarant, the Association and Owners of the encroaching improvements shall have the right to maintain, repair or replace the encroaching improvements.
- (e) In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure that is rebuilt pursuant to the original construction design.
- (f) In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of Unit(s), including any encroachment as defined in (a) above, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.
- (g) Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of same over the Common Area(s) and Association Property are specifically reserved for the benefit of the Owners. The foregoing easements shall not unreasonably interfere with an Owner's use and enjoyment of such Owner's Unit.
- (h) The easements for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any



easeement of encroachment may, but need not be, cured by repair and restoration of the structure.

## **ARTICLE XIII**

### **SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S OBLIGATION TO COMPLETE COMMON AREA AND ASSOCIATION PROPERTY IMPROVEMENTS**

*Article XIII concerns the Declarant's obligation to complete common area and Association Property improvements.*

#### **13.01 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area and Association Property Improvements.**

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area and Association Property improvement if all of the following factors apply:
  - (1) Declarant has not completed Common Area and Association Property improvements before the First Close of Escrow;
  - (2) The Association is the obligee under a bond or other arrangement securing completion; and
  - (3) A Notice of Completion has not been filed within sixty (60) days of the completion date specified in the planned construction statement appended to the bond.
- (b) The Association may grant a written extension for a Common Area and Association Property completion.
- (c) If a notice of completion has not been filed within thirty (30) days after the extension expires, the Board will meet and vote on enforcement options.
- (d) Owners may submit a petition signed by at least five percent (5%) of Total Voting Power calling for a Special Meeting to be held between thirty-five (35) and forty-five (45) days after the Board receives the petition.
- (e) At the Special Meeting, a majority vote of Owners (other than Declarant) overrides the Board's decision and causes the Board to enforce bond obligations through appropriate action in the name of the Association.

## **ARTICLE XIV**

### **AMENDMENT**

*Article XIV concerns amendments to the Declaration.*

#### **14.01 Amendment.**

- (a) Before the First Close of Escrow, and subject to the consent of the First Mortgagee, if any, Declarant may unilaterally amend this Declaration (subject to the Article entitled "*Mortgagee Protection*") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the First Close of Escrow, this Declaration may only be amended in the following ways (and subject to the Article entitled "*Mortgagee Protection*"):
  - (1) If there is only one Membership Class, approval by at least sixty-seven percent (67%) of Members other than Declarant, and by at least sixty-seven percent (67%) of the total voting power, including Declarant; and an instrument signed by two (2) Association officers certifying that the amendment was approved by at least sixty-seven percent (67%) of Members other than Declarant, and also approved by at least sixty-seven percent (67%) of the total voting power, including Declarant.
  - (2) If Class B Membership exists, approval by at least sixty-seven percent (67%) of the Members of each Class, and an instrument signed by two (2) Association officers certifying that the amendment was approved by sixty-seven percent (67%) of the Members of each Class.
- (c) Any amendment must be properly recorded in the County Recorder's Office.
- (d) The percentage of Owners needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) While the Declarant holds or directly controls at least twenty-five percent (25%) of the votes, any proposed amendment to any Governing Documents must comply with Business and Professions Code Section 11018.7.
- (g) No amendments to any provisions in this Declaration including, but not limited to, the Article entitled "*Dispute Notification and Resolution Procedures*" or other Governing Documents which specifically benefit the Declarant as developer, shall be made without the written consent of the Declarant.
- (h) Notwithstanding any other portion of this Section, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by recording an instrument in writing, signed by Declarant, without the consent of the Association or any other Owner, provided that such amendment is made in order to conform this Declaration to the requirements of the DRE, VA, FHA, FNMA, FHLMC, or any other governmental entity.

- (i) In no event shall an amendment for the purpose of correcting technical errors, clerical mistakes or for clarification be construed as a material change to the Governing Documents.

## ARTICLE XV

### DISPUTE NOTIFICATION AND RESOLUTION PROCEDURES

*Article XV provides detailed procedures for resolution of construction defect claims and other disputes. One of these procedures is judicial reference.*

*Explanation of Judicial Reference: Judicial reference is established by statute in California and has been judicially approved in the context of owner/Declarant disputes. When a lawsuit is filed, the case is assigned to a court or a particular judge. In judicial reference, the judge, with input from the parties, then appoints a referee (usually a retired judge) to handle all the fact-finding aspects of the case and report back to the judge when a decision has been made. At that point a judgment is entered and the decision can then be appealed like any other final court decision. The proceedings before the referee are like those of a trial by judge (not jury). The parties can agree to relax the rules of evidence or other procedural rules.*

*In one respect, judicial reference is more expensive than a trial, because the parties pay the referee's fees. On the other hand, the referee usually has more time to devote to the case than judges with heavy caseloads often have and can complete the case more quickly, and there may be less uncertainty than if the dispute is decided by a jury.*

*Judicial reference has advantages over binding arbitration, which must comply with federal as well as state arbitration laws, may be more expensive than reference, applies the discovery and evidentiary rules of the arbitration provider, is not automatically appealable by a dissatisfied party, and can lead to seemingly arbitrary results. Because judicial reference uses the same procedures as court trials, most lawyers are very familiar with those rules and may be better able to accomplish settlements or fairer trial results than in arbitration.*

#### **15.01 Scope and Purpose of Article.**

- (a) The purpose of this Article is to provide an expedited means of resolving any claims, disputes and disagreements relating to either the Governing Documents or construction defects, which may arise between or among i) Owner, and/or ii) the Association, and/or iii) Declarant. To the extent permitted by law, all such disputes shall be resolved under the "Alternative Dispute Resolution" procedures provided by this Article.
- (b) Exclusion of Disputes Relating to Assessments. Notwithstanding paragraph (a) of this Section, this Article does not apply to disputes between the Association and Owner relating to the imposition or collection of assessments.
- (c) Disputes Subject to Resolution Under This Article. Any and all claims, controversies, breaches or disputes by or between the Association, any Owner or Owners, and/or Declarant arising from or related to this Declaration, the Property, any Unit and/or any improvements construction thereon, the sale of any Unit or any transaction related hereto, whether such dispute is based on contract, tort, statute, or equity, shall be resolved pursuant to the procedures set forth in this Article.
- (d) This Article contemplates resolution of any dispute first by informal means; then if necessary by mediation as set forth in Section 15.03(c); then if necessary by judicial reference as set forth in Section 15.03(d).

**15.02 No Right to Trial.**

Each of the Parties has waived or shall waive his/her/its right to trial by jury or by a judge sitting without a jury and shall resolve the dispute through the Alternative Dispute Resolution procedures set forth in this Article.

**15.03 Procedures Applicable to Resolution of All Disputes.**

(a) **Obligation to Meet and Confer Before Initiating Formal Claim.** The procedure set forth in this paragraph is intended to satisfy the requirements of Section 1363.830 of the California Civil Code, or its successor statutes.

- (1) Any party to a dispute may request in writing that any other party meet and confer in an effort to resolve the dispute.
- (2) If the meet-and-confer procedure is invoked by an Owner against Declarant or the Association, or by the Association against Declarant, then Declarant or the Association shall participate in the procedure. If the procedure is invoked by Declarant or the Association against an Owner, the Owner may elect not to participate in the procedure.
- (3) Owner shall not be charged a fee to participate in the meet-and-confer process.
- (4) Any party intending to participate in the meet-and-confer procedure shall respond within twenty (20) days of receipt of the request to meet and confer.
- (5) The parties shall meet promptly at a mutually convenient time and place, explain their positions to each other, and confer in good faith in an effort to resolve the dispute.
- (6) Any resolution reached by the parties upon meeting and conferring shall be binding on the parties and judicially enforceable if it satisfies all three of the following conditions: (i) The agreement is in writing and is signed by all parties to the dispute, and (ii) the agreement is not in conflict with the law or with the Governing Documents, and (iii) the agreement is either consistent with the authority granted to its designee by the Association or Declarant, as the case may be, or is ratified by the Board of Directors of the Association or by Declarant, as the case may be.
- (7) If the meet-and-confer procedure does not result in agreement, then any party may notify any other party of a formal claim, as set forth in subparagraph 15.03(b), below.

(b) **Notification of Formal Claim.**

- (1) In the event of any dispute arising from violation of the Governing Documents by the Association or any Owner, or any material, structural or other defect in the Property, the party claiming the violation or defect shall notify the party against whom the claim is made in writing at the responding party's address for service of process registered with the California Secretary of State, if applicable.
- (2) Such notice shall be deemed a notice of intention to commence a legal proceeding and shall include: (a) a detailed description of the claimed violation or defect, (b) the date upon which the claimed violation or defect was first discovered, and (c) dates

and times when Owner/Association or an agent of either will be available during ordinary business hours for service calls or inspections.

- (3) Written notice pursuant to this paragraph is a condition precedent to Claimant's right to institute a legal proceeding, and Claimant shall not pursue any other remedies available, at law or otherwise, including without limitation the filing of any lawsuit or action, until Respondent has had the reasonable opportunity to inspect and cure the claimed violation or defect.
  - (4) If physical inspection would promote resolution of the dispute, the Parties shall abide by the inspection procedures set forth below in Section 15.05(d)(2) of this Article.
- (c) **Mediation.** If the Parties are unable to resolve any dispute, the matter shall be submitted to mediation by an unaffiliated mediator.
- (1) **Selection of Mediator.** The mediator shall be selected and paid for by Declarant, if a party, or else by the party initiating the claim. However, the Parties may agree to split the cost of the mediator among them, and if so, the mediator shall be selected jointly by the Parties so agreeing. No person with any affiliation with any Party, or with any financial or personal interest in the mediation's result shall serve as a mediator except by the written consent of the parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or prevent a prompt commencement of the arbitration process. The mediator shall hold the mediation conference within 15 days after receiving the request to mediate.
  - (2) **Location of Mediation Proceedings.** The mediation shall be held in the county where the Property is located.
  - (3) **Inadmissibility of Mediation Proceedings.** Prior to the commencement of the mediation proceedings, the mediator and all parties to the mediation shall execute an agreement pursuant to California Evidence Code Sections 1115 et seq., or pursuant to any similar successor statute, in order to exclude the use of any testimony or evidence produced at the mediation at any subsequent proceeding. Pursuant to California Evidence Code Section 1119(a), "No evidence of anything said or of any admission made for the purpose of, in the course of, or pursuant to, a mediation or a mediation consultation is admissible or subject to discovery, and disclosure of the evidence shall not be compelled in any arbitration, administrative adjudication, civil action or other non-criminal proceeding in which, pursuant to law, testimony can be compelled to be given".
  - (4) **Own Costs and Attorney's Fees.** Except as provided in subparagraph (1) of this paragraph, each party shall bear its own costs and attorneys' fees in connection with the mediation. The parties are not required to have attorneys participate in the mediation.
  - (5) **Submission to Judicial Reference in Event of Unsuccessful Mediation.** In the event that mediation does not resolve the Dispute, the Parties shall submit the Dispute to judicial reference, as provided in subparagraphs (d) and (e), below, of this Section.
- (d) **Submission to Judicial Reference.** If either Party commences a lawsuit for a dispute arising under this Declaration, all of the issues in such action, whether of fact or law, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a), 639(a) and (d), and 641 through 645.1, or any successor statutes thereto.

Any party to such lawsuit may commence a judicial reference pursuant to Code of Civil Procedure Section 638.

- (1) Inclusion of Necessary Parties. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. No Party shall be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. In the event that the participation in the judicial reference proceeding of a necessary and appropriate party cannot be obtained despite the good faith efforts of all Parties and a Party refuses to participate in the judicial reference proceeding on the ground of such lack of participation, then the dispute shall be tried in a court of competent jurisdiction.
- (2) Sharing of Costs and Fees. Declarant shall advance the fees necessary to initiate the dispute resolution process. The Parties shall share equally in the fees and costs of the referee, unless the referee orders otherwise. The prevailing party shall recover his/her/its reasonable attorneys' fees and costs.
- (3) Authority and Qualifications of Referee. The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The referee shall be the only trier of fact or law in the reference proceedings and shall have no authority to further refer any issues of fact or law to any other party, without the mutual consent of all parties to the judicial reference proceeding.

The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters. The referee shall not have any relationship to the parties or interest in the project. Any dispute regarding the selection of the referee shall be resolved by the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction.

The referee shall apply the laws of the State of California, including the rules of evidence, unless expressly waived by all parties to the judicial reference proceeding. The referee shall have the power to grant all legal and equitable remedies and award compensatory damages in the judicial reference proceeding.

- (4) Timeliness of Reference Proceedings. The participants in the judicial reference shall meet to select the referee within ten (10) days after service of the initial complaint on all defendants named therein. The referee shall promptly commence the judicial reference proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay.
- (5) Reference Venue and Procedures. The proceedings shall be heard in the county in which the Property is located.
  - (A) The referee may require one or more prehearing conferences.
  - (B) The parties shall be entitled to discovery and to avail themselves of the subpoena power of the court ordering the reference, and the referee shall oversee discovery and may enforce all discovery orders and subpoenas in the same manner as any trial court judge.
  - (C) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for posthearing motions and any appeals, and the Parties shall share equally in the cost of the record unless the Parties agree or the referee orders otherwise.



- (6) **Discovery.** The parties to the judicial reference proceeding shall be entitled only to limited discovery, consisting of the exchange between such parties of only the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections as provided in subparagraph (b) above. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the referee upon a showing of good cause or based on the mutual agreement of the parties to the judicial reference proceeding. The referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (7) **Motions.** The referee shall have the power to hear and dispose of motions, including motions relating to provisional remedies, demurrers, motions to dismiss, motions for judgment on the pleadings and summary adjudication motions, in the same manner as a trial court judge, except the referee shall also have the power to adjudicate summarily issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense. Notwithstanding the foregoing, if prior to the selection of the referee, as provided herein, any provisional remedies are sought by the parties to the dispute, such relief may be sought in the Superior Court of the County in which the Project is located. The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (8) **Statement of Decision.** The referee's statement of decision shall contain findings of fact and conclusions of law to the extent required by law if the case were tried to a judge. The decision of the referee shall stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the dispute had been tried by the court.
- (9) **Judgment and Appeal.** The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. Upon entry of judgment, the decision of the referee shall be appealable as if rendered by the court.

**15.04 Special Provisions Applicable to Resolution of Disputes Between the Association and Any Owner.**

- (a) **Rights of Enforcement of Governing Documents.** The Association or any Owner shall have a right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce all restrictions, conditions, covenants and reservations, now or hereafter imposed by the provisions of the Governing Documents or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants, or reservations and the right to recover damages or other dues for such violation except that Owners shall not have any right of enforcement concerning assessment liens.

The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Rules and Regulations, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement. Failure of any Party to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

- (b) Compliance with Law. Notwithstanding anything to the contrary set forth in subparagraph (a) above, in enforcing any action under the Governing Documents for monetary damages, the parties shall comply with the provisions of California Civil Code Section 1363.810 through 1363.850 and 1369.510 through 1369.590 and any successor statutes or laws. The Board shall annually provide to the Owners a summary of the provisions of California Civil Code Section 1369.590 and any successor statutes or laws, which shall include the language required and shall be delivered in the manner provided in Civil Code Section 1350.7.
- (c) Contractual Procedure for Enforcement; Exception. To the extent permitted by law, the Parties shall abide by the procedures for mediation and judicial reference set forth above in Section 15.03. However, the right of the Association to enforce payment of member dues and assessments shall not be subject to mediation or judicial reference except as set forth in the article entitled "*Assessments*".

## **ARTICLE XVI**

### **MISCELLANEOUS PROVISIONS**

*Article XVI covers miscellaneous issues not addressed elsewhere in the Declaration.*

#### **16.01 Term of Declaration.**

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Condominiums record a signed, written instrument:
  - (1) At least one (1) year before the beginning of any ten (10) year period; and
  - (2) Agreeing to change or terminate this Declaration.

#### **16.02 Notices.**

Any required notice must be given in writing by:

- (a) Personal delivery to the location of the address of the recipient of the Notice; or
- (b) Mailing by first-class, registered or certified pre-paid U.S. mail (deemed given five (5) days after deposit in the mail);
- (c) Delivery by a reputable overnight courier service such as Federal Express, United Parcel Service, etc. (deemed given upon delivery to the location of the address of the recipient of the Notice); or
- (d) Facsimile transmission (deemed given upon date of transmission upon confirmation of receipt).

#### **16.03 Partial Invalidity.**

If any of this Declaration is declared invalid or in conflict with any relevant law, the validity of the remainder of this Declaration will remain in full force and effect.

#### **16.04 Number.**

As required by the context of this Declaration, a singular grammatical reference includes the plural application.

**16.05 Attorneys' Fees.**

In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs, and damages, to reasonable attorneys' fees incurred after the filing of a lawsuit.

**16.06 Delivery of Governing Documents.**

Declarant shall deliver to the Board at the office of the Association, or at such other place as the Board shall prescribe, copies of the documents listed below as soon as they are readily obtainable. This obligation shall terminate upon the earlier of (a) the conveyance of the last Unit covered by a Final Subdivision Public Report or (b) three years after the expiration of the most recent public report, on the Project:

- (a) The recorded subdivision map or maps for the Project;
- (b) The deeds and easements executed by Declarant conveying the Common Area(s) and Association Property or other interest to the Association, to the extent applicable;
- (c) The recorded Declaration, including all amendments and annexations thereto;
- (d) The Association's Bylaws and all amendments thereto;
- (e) The Association's filed Articles of Incorporation, if any, and all amendments thereto;
- (f) All architectural guidelines, if any, and all other rules regulating the use of an Owner's interest in the Project or use of the Common Area(s) and Association Property which have been promulgated by the Association; and
- (g) The recorded Condominium Plan, if any, and all amendments thereto.

**16.07 Disclosures.**

- (a) Declarant does not in any manner guarantee or warrant that the Property will be soundproof or insulated to any particular degree from noise or sound emanating from within or without the Property, including noise or sound emanating from Lots, heating, ventilation air conditioning systems, plumbing, Common Area(s) and Association Property, garages, etc.

**16.08 Declarant's Rights After Sale of All Units in the Project.**

For a period of ten (10) years after the close of escrow for the sale of the last Unit in the Project covered by a Final Subdivision Public Report, in addition to Declarant's rights as an Owner and a Member, Declarant shall have the following rights:

- (a) Access to and the right to inspect the Association books and financial records;
- (b) Access to and the right to inspect the Association's maintenance records;
- (c) Access to and the right to inspect the Common Areas and Association Property of the Project;

- (d) Right to receive notice of, attend and speak at all regular and special meetings of the Board of Directors and meetings of the Members;
- (e) Right to receive copies of the minutes of the meetings of the Board of Directors and meetings of the Members, upon request and payment of the actual costs to copy and distribute such records; and
- (f) Right to inspect all Common Areas and Association Property of the Property upon three (3) days' notice to the Association and, within its sole discretion, be entitled to cure any defect, whether or not the Association or any Owner has complained of such defect. During said period, the Board shall use its best efforts to obtain the consent of all Owners, upon three (3) days' notice, to inspection of Units by Declarant for the sole purpose of discovering and repairing structural defects. Refusal by an Owner to allow inspection, or failure of the Board to attempt in good faith to obtain owner consent for inspection of Units, may be deemed a failure to mitigate damage in the event of a defect as defined in Section 896 of the California Civil Code which could have been avoided through preventive maintenance. The purpose of this right of inspection is to allow Declarant to repair defects at an early stage before substantial damage has occurred. Nothing set forth herein shall obligate Declarant to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner/Association.

**16.09 Supremacy of Legislation.**

The provisions of this Declaration are automatically supplemented and superseded by any state or federal enactment, and judicial interpretations of laws, affecting common interest developments. Any reference to a specific Code section in this Declaration is also a reference to future amendments thereof and to any successor statutes. The terms of this Declaration shall be deemed automatically amended to conform to such future changes in Code sections without necessity for recording any such amendment.

**16.10 No Enhanced Protection Agreement.**

In no event shall any of the provisions contained within the Governing Documents, other documentation, representations or warranties provided by Declarant or its agent to Owner be construed, interpreted or understood to be an "enhanced protection agreement" ("EPA") under California Civil Code Section 901 unless Declarant otherwise expressly states that such document, representation, or warranty constitutes an EPA under said section of the Civil Code.

**16.11 Changing the Project Marketing Name.**

The Project shall be marketed under the name FOOTHILL HIGHLAND. Declarant may at Declarant's sole discretion, change the marketing name of the Project upon notification to the DRE.

IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 17745 on the day and year first written above.

"Declarant"

G-APEX, LLC A CALIFORNIA LIMITED LIABILITY COMPANY

X

By: Jason Grohs  
Its: Managing Member

X

By: Joshua Grohs  
Its: Managing Member

STATE OF CALIFORNIA )

COUNTY OF Los Angeles ) ss.

On MAY 23, 2006, before me,  
Vicki Betebenner, a Notary Public in and for said State, personally  
appeared:

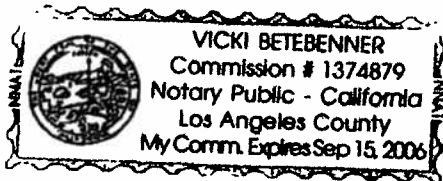
Jason Grohs and Joshua Grohs

[ ☒ ] Personally known to me - OR - [ ☐ ] Proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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.

(SEAL)

Vicki Betebenner  
Notary Public



CERTIFICATION

UNDER THE PROVISIONS OF GOVERNMENT CODE 27361.7 I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY: Vicki BeTebenner  
COMMISSION NO.: 1374879  
DATE COMMISSION EXPIRES: Sep 15, 2006  
COUNTY: Los Angeles

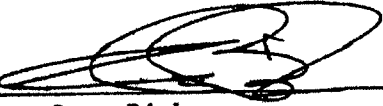
DATE: October 15, 2006  
SIGNATURE: Fernando Ramirez  
FERNANDO RAMIREZ / CHICAGO TITLE

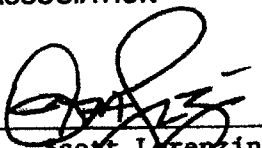
# SUBORDINATION BY LIENHOLDER

California National Bank, a National Banking Association, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 17745 ("Declaration") to which this instrument is attached, hereby subordinates the lien of said Deed of Trust to the recording of this Declaration, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest. The signing of this Subordination by Lienholder by any Mortgagee shall not constitute said Lienholder's subordination to any future Assessment liens.

Deed of Trust recorded on June 30, 2005, as Instrument No. 2005-0466927 of the Official Records of the San Bernardino County Recorder.

CALIFORNIA NATIONAL BANK, a NATIONAL BANKING ASSOCIATION

X   
By: Gene Bishop  
its: Vice President/Manager

X   
By: Scott Lorenzini  
its: Vice President

STATE OF CALIFORNIA )

COUNTY OF Los Angeles) ss.

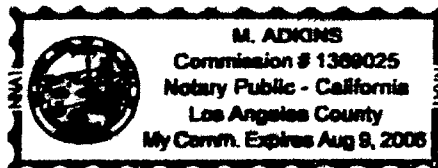
On June 12, 2006, before me, M. Adkins  
a Notary Public in and for said State, personally  
appeared:

Gene Bishop and Scott Lorenzini

[X] 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.

(SEAL)



  
Notary Public



CERTIFICATION

UNDER THE PROVISIONS OF GOVERNMENT CODE 27361.7 I CERTIFY UNDER PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED READS AS FOLLOWS:

NAME OF NOTARY:

M. Adkins

COMMISSION NO.:

1369025

DATE COMMISSION EXPIRES:

Aug 9, 2006

COUNTY:

Los Angeles

DATE:

October 3, 2006

SIGNATURE:

Fernando Ramirez  
FERNANDO RAMIREZ / CHICAGO TITLE

**EXHIBIT "A"**

**PROPERTY**

Lot(s) 1-15 and Common Area Lot 16 of Tract No. 17745, in the  
City of Rancho Cucamonga, Map recorded filed in Book  
323, Pages 31 through 34, inclusive, of Maps, in  
the Office of the County Recorder of San Bernardino County.

**EXHIBIT "B"**

**ASSOCIATION PROPERTY**

Lot(s) 16 of Tract No. 17745, in the City of Rancho Cucamonga,  
Map recorded filed in Book 323, Pages  
31 through 34, inclusive, of Maps, in the Office of the  
County Recorder of San Bernardino County.