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CA SB2 Fee	\$75.00
Total	\$312.00

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND RESERVATIONS OF EASEMENTS FOR
SYCAMORE SQUARE – TRACT 20313
(Condominium Project)

THIS DECLARATION CONTAINS PROVISIONS TO SUBMIT ALL DISPUTES INVOLVING THE
DECLARANT TO BINDING ARBITRATION WITH A WAIVER OF THE CONSTITUTIONAL
RIGHT TO A JURY TRIAL.

YOU SHOULD CAREFULLY READ THE PROVISIONS OF THE SECTION ENTITLED
"SUBMISSION OF ALL DISPUTES INVOLVING DECLARANT,
INCLUDING CONSTRUCTION DEFECT DISPUTES, TO ARBITRATION"
AND SHOULD CONSULT LEGAL COUNSEL WITH ANY QUESTIONS.

[C-Single Attached: 01-27-20- 09/13/18]
[This Set: 02/22/21]

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EXECUTION PAGE

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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR
SYCAMORE SQUARE**

This Declaration is made by **SB 24713 6TH, LLC**, a California limited liability company ("Declarant").

RECITALS

- A. Declarant is the owner in fee of the real property ("Property") in the unincorporated area of the County of San Bernardino, State of California, legally described in attached Exhibit A.
- B. Declarant has developed the Property into a Condominium project ("Project") under the provisions of California Civil Code Section 4125.
- 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 in effect upon recordation of the first Grant Deed conveying fee title of a Condominium to an Owner in the Property pursuant to a transaction requiring a Department of Real Estate Final Subdivision Public Report.

NOW, THEREFORE, Declarant hereby declares that upon the First Close of Escrow and in accordance with the plan for the improvement of the Property and division thereof into Condominiums, 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. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes per Civil Code Section 5975 and shall be binding upon Declarant and its successors, assignees, and all parties having or acquiring any right, title, or interest in or to any part of the Property.

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. Any reference to a document or code section, includes references to any amendments, modifications to the document and code section.

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

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

Articles - The Articles of Association.

Assessments - A charge against the Owners and their Condominiums representing their share of the common expenses. The annual Assessment is a regular assessment as described in California Civil Code Section 5600.

Association - **Sycamore Square**, a California nonprofit mutual benefit organization formed to govern the Project, Members of which shall be the Owners of the Condominiums in the Project. The term includes its agents, the Board, or any committee as applicable.

Board or Board of Directors - The governing body of the Association.

Bylaws - The Bylaws of the Association.

Code Section - Codes of the California (e.g., "Civil Code," "Vehicle Code"). Reference to any specific Code section includes any future successor Code Sections.

Common Area - The entire project except for all Units, as further defined in the Condominium Plan, which shall be owned by the Owners of the Units as tenants-in-common.

Compliance Assessment - An Assessment imposed against an Owner to reimburse the Association for any costs incurred because of the 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 or other breaches of any legal duty. Compliance Assessments area type of Special Assessments.

Condominium - An estate in real property (defined in Sections 783 and 4125 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 the Common Area and each Unit pursuant to California Civil Code Section 4285.

Construction Defect - A claim for defects in the design or construction of all or any portion of the Property or Improvements located thereon (regardless of whether such claim is based on common law or statutory law, including California Civil Code sections 895, et seq.).

Declarant - The owner of the Property identified in the introductory paragraph of this Declaration. The term Declarant includes 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. Successor means a natural individual or any legal entity who acquires Declarant of substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, by operation of law or otherwise. Declarant has the right to determine in its sole discretion, that manner in which it transfers its obligations and rights reserved to it under this Declaration.

Declarant Parties - Declarant, developer, builder, general contractor, subcontractor and design professional who have participated in the development of the Project.

Declaration - This document and any amendments.

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

DRE - The California Department of Real Estate.

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 - Portions of the Common Area designated by the Declaration, the Condominium Plan or by law for the exclusive or restricted use of the Owners of particular designated Units.

Family - (a) one or more natural individuals related to each other by blood, marriage, adoption, or domestic partnership or (b) a group of natural individuals, not all so related, but who live as a common household in a Unit, such as roommates.

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 that succeeds to the FHA's function of ensuring notes secured by Mortgages on residential real estate.

FHLMC - The Federal Home Loan Mortgage Corporation and any successors to such corporation.

Final Subdivision Public Report - The public report issued by the DRE authorizing the offering and sale of Condominiums to the public.

First Close of Escrow - The date on which the first Grant Deed is recorded conveying fee title to a Condominium to an 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. A blanket Mortgage recorded prior to the recording of this Declaration is a First Mortgage and the Mortgagee thereof is a First Mortgagee.

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, any maintenance manuals, and any Rules and Regulations as defined in Civil Code Section 4150.

Grant Deed - A written instrument transferring title to a Condominium.

Improvements - Any structure and its appurtenances including the buildings, any elevators, HVAC equipment, walkways, lighting systems, the structural elements of the building, any type of wall, awning, stairway, satellite dish, antenna, and sign. Improvement shall also mean the ceilings, doors, and windows that enclose a Unit and the floor coverings that are installed in a Unit. The Architectural Committee may identify additional items that are considered Improvements.

Manager or Managing Agent - The party contractually engaged by the Association to manage the Project and perform other duties of the Association.

Member - Any person who is an Owner of a Condominium.

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.

Notice and Hearing - A notice of the 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 - The Person holding a recorded fee simple interest in a Condominium (including the Declarant), or the purchaser 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.

Project or Property - The real property described in Exhibit A to this Declaration. The Project is a "Condominium Project" as defined in Section 4125 of the California Civil Code. The Property is a "Common Interest Development" as defined in Section 4100 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 any Governing Document).

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

Rules and Regulations - The rules and regulations adopted by the Board pursuant to Civil Code Section 4340 et seq.

Service Lines and Facilities - Electric, telephone, cable television, community antenna television system, satellite television lines, water, gas, security system lines, sanitary sewer lines and drainage facilities, irrigation lines, meters and related facilities, lines, cables, wires or other conduits or devices for utilities and other similar service lines and facilities.

Special Assessments - Assessments levied on an as-needed basis to meet expenses of any extraordinary or capital nature and may include but are not limited to Compliance Assessments.

Total Voting Power - One hundred percent (100%) of the votes by Owners which may potentially be cast.

Unit - The elements of a Condominium not owned in common with other Owners as defined in California Civil Code Section 4125. Each Unit is described and designated as a Unit in the Condominium Plan

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

This Article explains a Condominium, a Unit and Common Area, 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.

2.01 Condominium

A Condominium is comprised of the following:

(a) **Unit**

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

(b) **Common Area**

(1) The Property not constituting the Units is the Common Area.

(2) Each Owner of a Condominium in the Property will receive the following undivided interest in the Common Area in the Property: one-sixteenth (1/16).

(c) **Exclusive Use Common Area**

(1) Exclusive Use Common Area includes portions of the Common Area designed to serve a particular Unit but located outside the boundaries of the Unit, outlined in Civil Code Section 4145, if not shown and designated as such on the Condominium Plan.

(2) Use of the Exclusive Use Common Area is subject to reasonable restrictions contained in any Governing Documents.

2.02 Repair and Maintenance of the Property by Owner

(a) Owners shall maintain, repair, replace, and keep in good orderly condition the Unit and specifically all of those items stated in Exhibit B.

(b) Owners shall repair any damage to any real or personal property in the Project caused by an Owner or an Occupant, 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.

(c) If there is intrusion of water into any Unit, either intentionally or unintentionally (e.g., as a result of any roof, window, siding, plumbing or other leaks), the Owner shall promptly notify Declarant and Association. The Owner shall take immediate action to stop the water intrusion. Declarant and Association shall have the right to inspect the condition, including the right to mandate action for mitigation of mold or mildew.

2.03 Repair and Maintenance of the Property by Association

- (a) The Association is responsible for maintaining, repairing, modifying, replacing, and altering Common Area, including all private drives, street landscaping, common area landscaping, slopes, fencing, retaining walls, drainage facilities, water quality facilities, multi-tenant (common) complex signs, as well as the items stated in the attached Exhibit B Maintenance Responsibilities and Exhibit C Budget Summary and Reserves Worksheet. The Association is also responsible for the prompt removal of all graffiti.
- (b) The maintenance of landscaped areas shall be the sole responsibility of the developer until the transfer to individual ownership of the Condominiums or until the maintenance is officially assumed by the Association. A separate water meter shall be installed in any common easement landscaped area, in conformance with an approved landscaping plan.
- (c) The Association shall maintain drought-resistant, fire retardant, and water conserving plants and irrigation systems.
- (d) The Association shall enforce architectural controls to insure compatibility of colors, materials, landscaping and overall aesthetic appearance as described in Article VII of this Declaration.
- (e) The Association is responsible for maintaining, repairing, modifying, and replacing the drains in each Unit's yard, and the gutter and downspouts which drain water from the roof.
- (f) The Association is responsible for maintaining, repairing, modifying, and replacing and fuel modification and sound attenuation measures.
- (g) In accordance with Civil Code Section 4340, the Board may adopt operating rules, which reasonably addresses the responsibilities for maintenance of Common Area items not addressed in the Declaration. The rules adopted by the Board is subject to the right of the Members to reverse the rule adoption, pursuant to Civil Code Section 4365.
- (h) The Association shall comply with any water quality management plan ("WQMP") prepared for the Project, including any "best management practices," and any other drainage area management plan prepared for the Project.

2.04 Association Insurance

- (a) The Board shall obtain and maintain the following insurance coverages:
 - (1) Primary master policy of fire and casualty insurance with extended coverage endorsement known as "Single Entity Coverage" also known as "All Inclusive Coverage." The amount of coverage should be one hundred percent (100%) of the then current full replacement cost (without deduction for depreciation or co-insurance) of all insurable improvements on the Common Area (together with all fixtures, building service equipment and common personal property and supplies). Essentially, this covers what was originally part of the Condominium when it was built. It does not apply to the personal items (such as computers and clothing) of the residents, and does not apply to any enhancements made to the Unit. Owners should carefully review the provisions of the Association policy to determine what items are covered.

The Condominium Owner is responsible for covering under a HO6 policy, only the personal property along with any Improvements or betterments made by the Owner, whether or not approved by the Board. The policy shall name as insured the Association, Declarant (as long as Declarant owns a Unit), the Owners and all Mortgagees as their respective interests may appear, and waive the right of subrogation against Owners, if obtainable, and may contain a loss payable endorsement in favor of a Trustee. The policy must contain, if required by FNMA and if obtainable:

- (A) Either a Guaranteed Replacement Cost Endorsement or a Replacement Cost Endorsement;
 - (B) An Agreed Amount Endorsement issued by the insurer agreeing to waive the policyholder coinsurance requirement, if the policy of insurance includes a coinsurance clause;
 - (C) Inflation Guard Endorsement; and
 - (D) Building Ordinance or Law Endorsement if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction or additional demolition and removal costs.
- (2) Comprehensive public liability insurance in a reasonably prudent amount that covers the Association, Board, Managing Agent, Declarant (as long as Declarant owns a Unit), Owners, Occupants and any other agents or employees incident to the ownership or use of Common Area 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 5800 and 5805.
 - (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) Fidelity bond coverage for its directors, officers, and employees in an amount that is equal to or more than the combined amount of the reserves of the Association and total assessments for three (3) months. The fidelity bond shall also include computer fraud and funds transfer fraud. If the Association uses a managing agent or management company, the fidelity bond coverage shall additionally include dishonest acts by that person or entity and its employees. 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). 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) Director and officer liability insurance ("D&O") in an amount that satisfies Civil Code Section 5800(a). In the absence of gross negligence, intentional misconduct, or fraud, the Association shall indemnify directors and officers from personal liability for claims made as a result of the performance of their duties.
- (7) 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) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating."
- (d) Owners appoint 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 shall individually insure against such risks.

2.05 **Owner Insurance**

- (a) Owners shall obtain and maintain H06 condominium insurance for personal property coverage, liability coverage, and specific coverage of improvements to the Owner's unit. Owners are responsible for maintaining a policy with a liability limit of \$500,000 and must provide proof of insurance to the Board annually. The insurance maintained by the Association does not cover the personal property in the Units and does not cover personal liability for damages or injuries occurring in the Units. If the Unit is leased, the Owner must ensure that the tenant obtain and maintain renters insurance.
- (b) It is the Owner's responsibility, if desired, to obtain loss assessment coverage for certain future Special Assessments, earthquake insurance and any other available insurance.

2.06 Inspections 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 of the Property with or without notice to the Association and shall, within its sole discretion and at its expense, be entitled to cure any defect, whether or not the Association or any Owner has given notice of the defect. Declarant may request permission to inspect individual Units for the purpose of discovering and repairing any structural defects. The Declarant is not obligated to perform any inspection or repair, nor shall this Section be deemed to increase Declarant's legal obligations to Owner or the 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 for residential purposes if:
 - (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 the lease;
 - (3) A copy of this Declaration is made available to each tenant or lessee by the Owner;
 - (4) Owners must provide the Board the names and telephone numbers of all Occupants;
 - (5) An Owner may lease a Unit for short term vacation rental purposes, including Airbnb, or transient purposes;
 - (6) The Association shall have a right of action directly against any Occupant for any breach of any provision of the Governing Documents.
- (c) Subject to Declarant's rights stated in this Declaration, occupations and businesses that do not interfere with the residential nature of the Property or quiet enjoyment by other Owners, may be carried on within a Unit, if 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.

3.02 Common Area Use

- (a) Common Area and Exclusive Use Common Area, if any, may only be used for purposes which are compatible with usages customarily associated with common areas located within residential condominium developments in California, and subject to the limitations described in this Declaration and other Governing Documents.
- (b) Any Owner may, subject to the Governing Documents, delegate their rights of use and enjoyment of any Common Area facilities to any Occupant. If an Owner has rented or leased the 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.

3.03 Nuisances

- (a) Illegal, offensive, obnoxious actions or noxious odors are prohibited 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 a Unit within the Project (e.g., loud music or television, shouting, slamming of doors, etc.).
- (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) Owners shall be accountable to the Association and other Owners for the conduct and behavior of Occupants of the Unit.

3.04 Debris, Trash, Refuse, and Hazardous Materials

- (a) 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.
- (b) No person shall discharge into the Project's sewer system or storm drain any toxic or noxious liquids or materials in such concentrations as to be detrimental to or endanger the public health, safety, or welfare of an Occupant, or violate any law.

3.05 Signs

- (a) Subject to Civil Code Sections 712, 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with signs with a size, format, and location previously approved by the Board.
- (b) Owners are subject to Civil Code Sections 4705 and 4710 in regard to the display of non-commercial flags, banners, signs, and posters.
- (c) 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.
- (d) As long as Declarant owns a Condominium, Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property without Board or Architectural Committee approval, as long as the activities do not unreasonably interfere with any Owner's use of the Property.

3.06 Parking Regulations

- (a) 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.
- (b) The Board may establish parking Rules and Regulations.

- (c) The Association has the right to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (d) No explosives, fireworks, or highly flammable material such as gasoline, kerosene, oil, oil-based paints, solvents, etc. may be stored in any garage.
- (e) Ten (10) unassigned exterior parking spaces are provided for the use of Owners and Occupants and their guests, to be managed and maintained by the Association. In addition, two (2) spaces will be designated as Americans With Disabilities Act-compliant parking, to be managed and maintained by the Association.
- (f) The guest parking areas in the Project are for use by guests of Owners and Occupants in the Project and may not be used on a long-term or routine basis by Owners, Occupants or guests.

3.07 Pet Regulations

- (a) A maximum of two (2) domestic dogs or two (2) domestic cats, or combination thereof, but not to exceed two (2) total, is permitted in a Unit. In addition, small, domesticated pets (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.
- (b) No pets shall be permitted that are a nuisance or which create any unreasonable disturbance. If a pet is determined to constitute a nuisance, the Board may carry out enforcement measures, including fines and permanent removal of the animal from the Project.
- (c) A pet may only enter the Common Area while on a leash held by a person capable of controlling it. No pet may be tied or left unattended in any Common Area.
- (d) Owners and Occupants must prevent their pets from soiling the Common Area, and shall promptly clean up any waste left by their pets.
- (e) The Owner of a pet is responsible for any damage to the Common Area caused by the pet. The Owner of a pet shall have sole liability for all damages claimed by any person harmed by such pet, and shall defend, indemnify, and hold harmless all 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.
- (f) Occupants must obtain approval from the Owner before keeping pets in the Unit. The Owner shall be responsible for an Occupant's compliance with any Rules and Regulations regarding animals within the Project. Both the Occupant and Owner of the Unit shall have joint and several liability for any damage, including personal injury and property damage, claimed by any person harmed by such pet.
- (g) No domestic dog shall be within the Property that has, when unprovoked:
 - (1) Bitten a person
 - (2) Inflicted injury on or killed a human being in an aggressive manner;
 - (3) Been determined, by the Board or local governmental authority, to be potentially dangerous;

- (4) On two separate occasions within the prior 36-month period, engaged in any behavior that required a defensive action by any person to prevent bodily injury when the person and the dog are outside the Unit of the Owner or keeper of the dog; or
- (5) Killed, seriously bitten, inflicted injury, or otherwise caused injury attacking a domestic animal outside the Unit of the Owner or keeper of the dog.

3.08 **Antennas, Satellite Dishes, and Other Transmission Devices**

- (a) No television, radio, data transmission poles, antennas, satellite dishes, and similar mechanical equipment or devices, other than those originally installed by the Declarant, shall be constructed, erected or maintained on or within the Project unless authorized by the Board.

Installation is limited to the corner of the garage in the notch near the communication tie-in. Installation on roof and penetration in stucco are prohibited.

- (b) All restrictions on the foregoing devices 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 4725.

3.09 **Window Covers**

Window coverings shall not clash with the exterior look and design of the outside elevation. Newspaper, aluminum foil or similar materials may not be used as window coverings.

3.10 **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 Occupants.
- (b) No wiring insulation, air conditioning, heating, 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 in any Unit or Common Area.

3.11 **Indemnity by Owner**

Owners shall defend and indemnify and hold the Declarant, Association, Managing Agent, and other Owners harmless without limitation for any claims arising from the Owner's and Occupant's negligence or willful misconduct for damages caused and any costs incurred.

3.12 **Use/Alteration Affecting Insurance Rates**

- (a) Acts that threaten cancellation or an increase of insurance rates for the Property are prohibited without Board approval.

- (b) If an Owner's use or activity causes the increase of insurance rates, that Owner is personally liable for the additional insurance premiums for the Association.

3.13 Sound Attenuation

Changes to the Unit (especially plumbing and flooring) shall not have the effect of increasing the level of noise or sounds that can be heard outside of the Unit above a sound level (impact and airborne sounds) of 55 dB(A).

- (a) Floors. All changes to floors separating Units (tile, hardwood, stone, carpet, etc.) must provide code-compliant sound control properties for airborne and impact sound insulation. In addition, the floor/ceiling assemblies must satisfy the higher sound control requirements established for the Project as set forth herein. The impact sound insulation rating of the floor-ceiling assemblies after installation must be Field Impact Insulation Class (FIIC) 50 or higher. Airborne sound isolation rating thereof must be Noise Isolation Class (NIC) 52 or higher.
- (b) Walls. Walls must provide an airborne sound insulation sufficient to meet a Noise Isolation Class (NIC) rating of 52.
- (c) Plumbing. All plumbing must be properly insulated for sound and isolated from studs, joints, and penetrations.
- (d) Penetrations. Penetrations or openings for piping, electrical devices, recessed cabinets, bathtubs, soffits or heating, ventilating or exhaust ducts shall be sealed, lined, insulated, or otherwise treated to maintain the required sound insulation ratings.
- (e) Required Testing. All alterations to walls and floors must be field tested under the supervision of a person experienced in the field of acoustical testing to determine compliance with the minimum sound control standards set forth herein. Non-compliant systems must be promptly brought into conformance or removed and replaced with approved materials/assemblies.

3.14 Declarant's Exemption from Use Restrictions

- (a) Conveyance of a substantial number of the Condominiums 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 the Declarant has the following rights:
 - (1) To complete the build-out of the entire Project, including without limitation, any Units, Common Area or any other part of the Project;
 - (2) To maintain an onsite sales office, including but not limited to, using a Unit or a temporary rented trailer; or
 - (3) To maintain and display signs, pennants, and flags on the Project (except upon Units owned by others) as may be necessary for the sale, lease of the Condominiums.
- (b) These rights of Declarant shall terminate upon the sale of Declarant's entire interest in the Project. So long as Declarant, its successors and assigns, owns a Condominium, Declarant, and its successors and assigns, enjoy the benefits conferred on Declarant pursuant to the provisions of this Declaration.

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 organization charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.

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, 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), who are entitled to one (1) vote for each Condominium owned.
- (2) Class B Member - Declarant, which is 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 votes held by Class A Membership is equal to or is greater than the total 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.

(b) Co-Owners shall have the following voting rights:

- (1) Each Co-Owner has an indivisible interest in a single Membership.
- (2) Each vote on behalf of a Condominium is cast as a single unit, without fraction. If Co-Owners cannot unanimously agree on 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.
- (c) Unless otherwise specifically stated, 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) With the exception of the provisions of Section 2792.4 of the Regulations of the Real Estate Commissioner pertaining 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 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.
- (e) If a regulation of the Real Estate Commissioner, other than Section 2792.4, requires the approval of a prescribed majority of the voting power of Members other than the Declarant for action to be taken by the Association, then the following shall 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.

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 4525.

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.

5.01 Commencement of Duties

The Association's responsibility to maintain Common Areas shall commence upon the First Close of Escrow of a Condominium. Notwithstanding the foregoing, if the contractors or subcontractors chosen by Declarant are contractually obligated to perform maintenance on the Common Areas or have warranted any work performed in the Common Areas, the Association shall accept the performance of such warranty or other contractual maintenance obligations.

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 organization, generally to do all things which are necessary or proper for the peace, health, comfort, safety, and general welfare of the Project, including, without limitation, 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.
- (c) Borrow money with the assent of sixty-seven percent (67%) of the Total 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) Have the Board adopt and enforce reasonable Rules and Regulations not inconsistent with the Governing Documents that comply with Civil Code Sections 4340 et seq. or any successor statutes.
- (e) Exercise any powers normally exercised by residential homeowner Associations under the laws of the State of California.
- (f) Have the authority, through the Board, and as reviewed by the DRE, to enter into a maintenance agreement for the Common Areas with Declarant or for temporary suspension of a portion of Regular Assessments.
- (g) To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if the Condominiums in the Project are taxed under a blanket tax bill covering all of the Condominiums, each Owner shall pay his or her proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date.

- (1) Blanket taxes shall be allocated among the Owners and their Condominiums based upon the prorated square footage of each Unit. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his or her proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply.
- (2) The Association shall pay the taxes on behalf of any Owner who does not pay his or her proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his or her proportionate share of the taxes.

5.03 **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 subparagraph (b) below.
 - (2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
 - (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) 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 after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party;
- (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%).

5.04 Authority of Board to Alter Boundaries of Condominiums

If any building or portion thereof containing Condominiums is damaged, 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 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 will not unreasonably interfere with the rights of the Owners and occupants to use and enjoy the Common Areas; and
- (e) The Condominium Plan is amended to reflect the alteration to the Units or Common Areas.

5.05 Right of Entry

- (a) The Association has the right to enter any Unit or its Exclusive Use Common Area to determine compliance with the Governing Documents and to perform its duties, including the duties to maintain the Condominium building and to enforce the Governing Documents.
- (b) In case of emergency, or by court order, a Unit may be entered immediately.
- (c) Absent an emergency or court order, a Unit or its Exclusive Use Common Areas may only be entered at reasonable hours after the Owner has received three (3) days' written notice. The written notice of entry must state explicitly the Declarant/Association's reason for the necessity to enter any Unit or Exclusive Use Common Area.
- (d) Entry must be made with as little inconvenience as possible to the Owner/Occupant and without a breach of the peace. If the Association has reason to expect a breach of the peace upon entry, it may take such preventive steps as it deems necessary, including obtaining a court order.

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 shall be levied by the Association for improvement and maintenance of the Common Area, 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 Grant 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 5600, the Association shall comply with obligations under the Governing Documents regarding levying Regular and Special Assessments.
- (e) Pursuant to Civil Code Section 5600(b), the Association may not collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied.
- (f) Pursuant to Civil Code Section 5605(a), 5300(b), and 4070, the Association shall comply with all requirements regarding annual increases in Regular Assessments.
- (g) Pursuant to Civil Code Section 5605(b), the Board shall comply with all regulations regarding imposing Regular or Special Assessments and complies with all regulations regarding approval of a majority of quorum members as per Civil Code Section 4070 and defined in Section 5605(c).
- (h) Pursuant to Civil Code Section 5610, the Board shall comply with all regulations regarding Assessments necessary for emergency situations as defined in Section 5605.

6.02 Commencement; Due Dates of Assessments

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

6.03 **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 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 Sections 5600, 5605, 5610, 5615, 5620 and 5625.
- (b) The Board must establish separate bank accounts for operating monies and reserve monies.

6.05 **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 5650(b) (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 Condominium enforceable by a sale of the Condominium 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

6.06 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 5720 or successor statute:

- (a) By a civil action in small claims court;
- (b) By recording a lien on the Owner's Unit 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.

6.07 Reserves

- (a) A portion of Regular Assessments shall go towards an adequate reserve fund to repair, replace, or restore those Improvements that the Association is obligated to maintain and/or that must be replaced on a periodic basis.
- (b) The board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of major components that the association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

6.08 Right of Redemption

A non-judicial Foreclosure by the Association shall be subject to a right of redemption from a Foreclosure sale within ninety (90) days after the Foreclosure sale.

6.09 Nonuse and Abandonment

An Owner does not waive or otherwise avoid liability for Assessments by nonuse of the Common Area or abandonment of a Unit.

6.10 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 Project or any part of it for which the Association is responsible if a threat to personal safety on the Project is discovered;
 - (3) An extraordinary expense necessary to repair or maintain the Project, or any part of it, for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the 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.

6.11 Exemptions from Assessments

- (a) Any Condominium that does not include a structural improvement for human occupancy shall be exempt from the payment of that portion of any Assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. The exemption may include:
- (1) Roof replacement;
 - (2) Exterior maintenance;
 - (3) Walkway and carport lighting;
 - (4) Refuse disposal, if any;
 - (5) Cable television;
 - (6) Domestic water supplied to living Units, if any;
 - (7) Insurance on uncompleted Units.
- (b) The foregoing exemption shall be in effect until the earliest of the following events:
- (1) A notice of completion of the structural improvements has been recorded;
 - (2) Occupation or use of the Condominium; or
 - (3) Completion of all elements of the residential structure, which the Association is obligated to maintain.

- (c) Declarant and any other Owner of a Condominium are exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following to occur:
- (1) A notice of completion of the common facility has been recorded; or
 - (2) The common facility has been placed into use.

6.12 Waiver of Exemptions

Each Owner waives to the extent permitted by law, the protections of any homestead or exemption laws as applied to any action to enforce the assessments levied by the Association.

ARTICLE VII
ARCHITECTURAL CONTROL

Article VII addresses alterations Owners may wish to make to their Units. The Architectural Committee's approval must be obtained for most such changes.

7.01 The Architectural Committee

- (a) The Architectural Committee shall consist of no fewer than three (3) persons nor more than five (5) persons as fixed from time to time by the Board. Fractional or co-owners of a Unit shall not serve simultaneously upon the Board of Directors. Directors related by blood or marriage shall not be eligible to serve simultaneously.
- (b) Declarant shall initially appoint the members of 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.
- (f) Meetings of the Architectural Committee shall be held from time to time as necessary.
- (g) In addition to the powers set forth in this Article, the Architectural Committee may perform any other duties delegated to it by the Board.

7.02 Architectural Guidelines

The Board may and in its reasonable discretion, adopt and promulgate Architectural Guidelines to be administered through the Architectural Committee. The Architectural Guidelines shall be in compliance with Civil Code section 4765.

7.03 Approval

- (a) Other than such Improvements by Declarant, no Improvements visible from the exterior of any Unit may be made upon the Property except in compliance with plans and specifications that have been submitted to and approved by the Architectural Committee. The Architectural Committee has the right to specify the time and manner of the construction and installation of the Improvement. Normal maintenance, repair, or reconstruction by any successor in title to Declarant if there is 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.
- (b) The Architectural Committee shall review plans and specifications submitted for its approval as to style, exterior design, appearance, and location. The Architectural Committee 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, and that the upkeep and maintenance of any Improvement will not become a burden on the Association.

7.04 Variances

- (a) The Board may authorize a variance from compliance with the Architectural Guidelines or with provisions of this Article when circumstances reasonably require.
- (b) The granting of any variance shall not operate to waive any of the terms and provisions of the Governing Documents for any purpose except as to the particular Unit.

7.05 Non-Liability for Approval

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

7.06 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) If 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) If 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, 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.
- (j) All modifications, approvals and compliance shall be subject to decisions and orders of the Department of Building and Safety or any other applicable governmental entity.

7.07 Remedy for Noncompliance

- (a) If there is an issuance of a Noncompliance Statement, then the Owner shall remedy or remove the same within thirty (30) 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; 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.

7.08 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 Association, the Board, 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 Grant 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.

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 Mortgage 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 Mortgagee to any subordination by lienholder included in this Declaration shall not constitute said lienholder's subordination to any future Assessment lien.
 - (3) The provisions of this paragraph (a) do not preclude other mortgagee protections provided by California law.
- (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 if 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 re-entry other than as provided for in this Declaration.
- (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 parties 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 if there is a 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 per Unit 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.
 - (3) Fail to maintain Fire and Extended Coverage on insurable Common Area 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 improvements;
 - (C) Responsibility for maintenance and repairs;
 - (D) Reallocation of interests in the Common Area or Exclusive Use Common Area or rights to their use;
 - (E) Redefinition of any Unit boundary;
 - (F) Convertibility of Units into Common Area or Common Area 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; or
 - (M) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.
- (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 per Unit for each Eligible First Mortgage held), and at least sixty-seven percent (67%) of Owners, 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 (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) 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, 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 FHA, VA, 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 sixty (60) 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 shall be distributed to the Owners, 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; 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.

(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 Unit number or address of the Unit 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

If there is a 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.

ARTICLE IX

DAMAGE AND DESTRUCTION TO IMPROVEMENTS

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

9.01 Restoration of the Property

In case of casualty damage to Common Area Improvements, the Association will repair and substantially restore the Common Area Improvements 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:

- (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 repair costs not covered by the insurance (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 for the balance of the repair costs not covered by the insurance, 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 Governing Documents 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 in Section 9.03 below.

9.02 Notice to Owners and Listed Mortgagees

Immediately upon learning of any material damage or destruction to the Common Area or any Unit, the Board must notify all Owners, 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 Owners elect not to rebuild, a qualified independent appraiser licensed by the State of California Office of Real Estate Appraisers, selected by the Board 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) The repair or reconstruction of any damaged Units shall commence as soon as reasonably practicable after the occurrence of such damage or destruction and shall be completed as quickly as is reasonably practicable after commencement of reconstruction, subject to delays that are beyond the control of the party responsible for making the repairs.
- (b) If an Owner is required to make any repair, or if an Owner desires to rebuild any Improvement or install any fixture or equipment, which will affect or involve any interior bearing wall or other portion of the Common Area, the prior written approval of the Architectural Committee must be obtained.
- (c) Notwithstanding the foregoing, the Owner must immediately take reasonable steps as required to secure any hazardous conditions resulting from the damage or destruction and to screen any unsightly views resulting from the damage or destruction.

ARTICLE X
CONDEMNATION

Article X concerns condemnation of Common Areas by a governmental entity.

10.01 Representation by the Board in Condemnation Proceedings

- (a) If any portion of a Common Area 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 Mortgagees, 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 received shall be paid to the Association on behalf of the Owners, including Declarant, if Declarant still owns any Condominium.
- (c) If only part of a Common Area 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 part of the net condemnation award is not used to restore the remaining Common Area, 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 Owners 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 a qualified independent appraiser licensed by the State of California Office of Real Estate Appraisers that is selected by the Board.
- (e) An Owner or Mortgagee who disputes such appraisal shall be entitled to hire an independent, licensed appraiser; if there is a 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

- (a) An Owner may not bring an action for partition of the Common Area by sale except as provided in California Civil Code Section 4610 (or any similar statute in effect at the time).
- (b) These provisions do not prevent a judicial partition between co-tenants of a Condominium.

11.02 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 this 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

The easements reserved in this Declaration are created upon the First Close of Escrow in the Project.

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

- (a) So long as Declarant owns any Condominium, it shall have an easement over the Common Area for:
- (1) Constructing, erecting, completing, and maintaining Improvements for the development of the Project;
 - (2) Sales and promotional activities, including the use of a Unit or Units as models, or a sales office;
 - (3) The installation, maintenance, and repair of the Service Lines and Facilities.
- (b) The easements reserved to Declarant shall not unreasonably interfere with the use and enjoyment by the Owners of the Property.

12.03 Certain Easements for Association

- (a) The Association has, and may grant, non-exclusive 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.
- (b) Further, the Association is granted utility and drainage easements provided to maintain the health, safety, convenience, and enjoyment of the Units and Common Area, including the right of entry to clean subsurface drains within individual yard areas.
- (c) 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.
- (d) The Association shall have the right and power to grant and convey to any third party, easements, and rights of way in, on, over, or under the Units and the Common Area for the purpose of construction, erection, maintenance, repair, replacement, removal, and inspection of present and future utilities, including, but not limited to, pipelines, sewer, water and gas lines, drain pipes, utility and telephone lines, meters and related facilities, lines, cables, wires, or other conduits or devices for water, gas or cable television, electricity, power, telephone, and other purposes and any other similar public or quasi-public improvements or facilities.

12.04 Easements for Owners

- (a) Declarant grants non-exclusive easements for enjoyment, ingress, egress, pedestrian walkway, and general recreation purposes over and upon all portions of the Common Area (except Exclusive Use Common Areas) to all Owners, subject to other provisions of the Governing Documents.
- (b) Owner rights and duties with respect to Service Lines and Facilities (i.e., drainage facilities, sanitary sewer, water, electricity, gas, telephone, cable television, security system lines, meters, wires, ducts, flues, pumps, boilers, pipes, conduits, data lines, flues and other similar lines and facilities) are as follows:
- (c) Easements for Service Lines and Facilities in Units or Common Area 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 use, maintenance and repair by the Owner, Association, or servicing company;
- (d) If Service Lines and Facilities is located within a Unit other than the Unit served by those Service Lines and Facilities, the Owners of any Unit served by those Service Lines and Facilities shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain those Service Lines and Facilities.

12.05 Drainage Easements

- (a) The Association and each Owner accept the sewer and drainage facilities and pattern for the Units and Common Area established by the final grading of the Property originally undertaken by Declarant (including "cross-unit" drainage from adjacent Units and Common Areas).
- (b) The established drainage pattern may not be altered without prior written approval by the Association and/or Architectural Committee.

12.06 Encroachment

- (a) Each Owner is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settling or shifting of any building, or any other cause.
- (b) The existing physical boundaries of Units, including any encroachment, shall be the actual boundaries, rather than any description and/or depiction set forth in this Declaration, the Condominium Plan, or instrument of conveyance.

ARTICLE XIII

**SPECIAL PROVISIONS RELATING TO ENFORCEMENT OF DECLARANT'S
OBLIGATION TO COMPLETE COMMON AREA IMPROVEMENTS**

Article XIII concerns the Declarant's obligation to complete common area improvements.

13.01 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements

- (a) The Board must consider and vote on Association action to enforce bond obligations regarding any Common Area improvement if all of the following factors apply:
 - (1) Declarant has not completed Common Area improvements before the First Close of Escrow.
 - (2) The Association is the obligee, under a bond or other arrangement securing completion.
 - (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 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 of a Condominium, 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 with the County Recorder's Office.
- (b) After the First Close of Escrow of a Condominium, 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 the same percentage 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.
- (c) Any amendment shall be signed by two (2) Association officers certifying that the amendment was approved by the required vote and 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 4275, 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 shall 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 "*Enforcement and Dispute Resolution*" or other Governing Documents which specifically benefit or otherwise relate to the Declarant as developer, shall be made without the written consent of the Declarant.
- (h) Subject of subsection (i) below, an amendment for the purpose of correcting technical errors, clerical mistakes, for clarification, or to conform this Declaration to the rules, regulations, or requirements of the VA, FHA, FNMA, Ginnie Mae, or Freddie Mac, shall not be construed as a material change to the Governing Documents and may be made upon a majority vote of the Board of Directors without vote of the Membership.

- (i) Subject to Business and Professions Code section 11018.7, 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 Board or Association, if the amendment is made to: (1) conform this Declaration to the requirements of the DRE, VA, FHA, FNMA, FHLMC, or any other governmental entity; (2) supplement or amend this Declaration with provisions which pertain to rights and obligations of Declarant, the Association, or Owners arising under the Right to Repair Act at Division 2, Part 2, Title 7 (commencing with Section 895) of the California Civil Code; or (3) to correct errors, clerical mistakes, correct any internal inconsistency or inconsistency with any Governing Document, or for clarification of any provision.

ARTICLE XV
ENFORCEMENT AND DISPUTE RESOLUTION

Article XV provides methods for enforcement and for resolving any claims and Disputes between Owners, the Association, and/or Declarant.

15.01 Enforcement of Governing Documents

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Governing Documents.

15.02 Enforcement between Association and Owner

Any dispute between the Association and an Owner involving their rights, duties, or liabilities under this title, under the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code), or under the Governing Documents, shall, as may be required, be submitted to the procedures set forth in California Civil Code Sections 5900, *et seq.*, and 5925, *et seq.*

This Section shall not be applicable to (a) those governed disputes between the Association and Owner relating to the imposition or collection of Assessments, or (b) those subject to the Right to Repair Law, or California Civil Code Section 6000, *et seq.* (the "Calderon Act").

15.03 Failure Not a Waiver

The failure of any Owner, the Board, the Association, or its officers or agents to enforce any of the Governing Documents shall not constitute a waiver of the right to enforce the same thereafter. No such failure shall result in or impose any liability upon the Board, or any of its officers or agents. Waiver, or attempted waiver of any provision of this Declaration or the Association's other Governing Documents with respect to any Condominium, shall not be deemed a waiver thereof as to any other Condominium, nor shall the violation of any provision hereof or thereof in respect to any Condominium affect the applicability or enforceability of any provision of this Declaration in respect of any other Condominium. A waiver of any enforcement right shall be only pursuant to an instrument in writing, signed by the party to be charged with such waiver, and shall be limited to the particular covenants, condition, or restriction contained herein which is expressly set forth as being waived in such writing.

15.04 Discipline for Breach

After Notice and Hearing, the Board may do the following:

- (a) **Suspend Rights.** Suspend an Owner's right to use the Common Area (other than the right of ingress and egress to the Owner's Unit): (i) for the period during which any Assessment, including any monetary penalty against such Owner's Unit, remains unpaid and delinquent, and (ii) for a period not to exceed thirty (30) days, or for as long as the violation continues for any other infraction of this Declaration, the Bylaws or the published Rules and Regulations of the Association committed by any Owner, or such Owner's guests, servants, family members, tenants, or invitees.
- (b) **Impose Monetary Penalties.** Impose a monetary penalty on any Owner in such amounts as determined by the Board and as more fully described in a schedule of monetary penalties set forth in the Rules and Regulations adopted and amended by the Board, for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants, or invitees. The Board shall distribute to the Members, by personal delivery or first class mail, a copy of the schedule of monetary penalties adopted by the Board. Subject to other provisions herein, the Association and the Board shall have the same rights and remedies, including lien, foreclosure, late charge and interest rights, or seeking judicial enforcement for the enforcement and collection of monetary penalties as they have for the enforcement and collection of Assessments and any monetary penalty provided for herein shall be deemed to be a Special Assessment. Any infraction or violation of an ongoing nature shall subject the violating Owner to a continuing monetary penalty, which may be assessed on a daily basis until the infraction or violation in question has been remedied.
- (c) **Judicial Relief.** Seek judicial relief for the failure to comply with and/or for any violation of the Governing Documents committed by such Owner, or such Owner's guests, servants, family members, tenants, or invitees. In a situation where injury to persons or property is immediately threatened, the Board may seek judicial relief without first complying with the Notice and Hearing provisions herein.
- (d) **Limitation on Enforcement Remedies.** Except for the remedies provided in this Section, or as a result of a judgment or decree of a court or a decision arising out of arbitration, mediation, a foreclosure, or sale under a power of sale based on the failure of an Owner to pay assessments duly levied by the Association as provided hereinafter, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of the Owner's Condominium if the Owner does not comply with provisions of the Governing Documents.

15.05 Notice and Hearing

- (a) **General Provisions.** The Board shall have the right to establish the Rules and Regulations for providing an Owner a hearing for an alleged violation of this Declaration, the Bylaws, or the Association's Rules and Regulations where such Owner may have such Owner's common area privileges suspended and/or have a monetary penalty imposed. Such Rules or Regulations established and maintained by the Board shall be fair and reasonable, as required pursuant to California Corporations Code section 7341, and shall comply with Civil Code section 5855.

(b) Procedures. Notice and Hearing regarding monetary penalties, suspension of privileges, and any other disciplinary measures taken under this Declaration or the Association's other Governing Documents, shall be accomplished as follows:

- (1) Right to be Heard. The Owner being penalized shall be given an opportunity to be heard, either orally or in writing, at an executive session Board meeting;
- (2) Notice. Notice of the hearing shall be given either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records at least ten (10) days prior to the hearing. The notice shall contain, at a minimum, the date, time, and place of the hearing, the nature of the alleged violation, the proposed monetary penalty or sanction, and a statement that the Owner has the right to attend the hearing and to address the Board at the hearing.
- (3) Procedure for Hearing. At the hearing, the Owner so charged shall have the right to be heard by the presentation of oral or written evidence and arguments. If the Owner fails or refuses to attend the hearing, the Board may decide the matter in such Owner's absence.
- (4) Decision of Board. Following the hearing, the Board shall decide whether the Owner shall in fact be penalized or sanctioned or assessed for damages, as applicable.
- (5) Notice of Decision. Within fifteen (15) days of the hearing, the Board shall notify the Owner of its decision and the reasons, therefore, either by personal delivery or first-class mail to the most recent address of the Owner as shown on the Association's records.

15.06 Remedies Cumulative

Each remedy provided for by this Declaration for breach of any of the covenants, conditions, restrictions, reservations, liens, or charges contained herein shall be in addition to any other available remedy, whether provided for by law or in equity, and all of such remedies whether provided for by this Declaration or otherwise, shall be cumulative and not exclusive. In addition, except for the nonpayment of any Assessments provided for herein, it is hereby expressly stipulated that the remedy at law to recover damages for the breach or violation of this Declaration and/or the Association's other Governing Documents is inadequate and that appropriate relief shall be awarded to enjoin any such breach or violation.

15.07 Joint and Several Liability

In the case of joint ownership of a Condominium, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

- 15.08 Special Provisions Applicable to Resolution of Construction Defect Disputes; Declarant's Election to "Opt-In" to Statutory Pre-Litigation Procedures**
- (a) Notice of Procedures for Actions for Construction Defects. The Property is subject to Title 7 of Part 2 of Division 2 of the California Civil Code (commencing with Section 895) (the "Right to Repair Act"). The procedures established by the Right to Repair Act impact the Owners' and Association's legal rights.
 - (b) Declarant has elected to engage in the non-adversarial pre-litigation procedures set forth in Chapter 4 of the Right to Repair Act (California Civil Code §§ 910 through 938, inclusive). If such non-adversarial pre-litigation procedures fail to resolve a dispute governed by the Right to Repair Act, such dispute shall be resolved in accordance with the binding general arbitration procedures set forth herein.
- 15.09 Resolution of Construction Defect Disputes Against Declarant**
- (a) If a dispute between the Association and Declarant is not resolved despite the proceedings set forth in Civil Code Section 6000, further litigation shall comply with all of the requirements of Section 6150 of the Civil Code.
 - (b) Upon resolution of a dispute subject to Civil Code Section 6000, the Association shall disclose to its Members all of the matters specified in Section 6100 of the Civil Code.
 - (c) Declarant, and its representatives on the Board of the Association shall have no control over the issue to decide whether to initiate a claim under such statutory provisions. Prior to voting to pursue such a claim, the Board shall inform the Members of alternatives to remedy the deficiencies without litigation and of potential adverse consequences of litigation.
- 15.10 Submission of All Disputes Involving Declarant, Including Construction Defect Disputes, to Arbitration**

AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL

NOTICE: ANY DISPUTE BETWEEN THE ASSOCIATION OR ANY OWNER OR BOTH AND THE DECLARANT, ARISING OUT OF THE MATTERS INCLUDED IN THIS SECTION ENTITLED "ARBITRATION OF DISPUTES" PROVISION, SHALL BE DECIDED BY NEUTRAL BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS NOT INCONSISTENT WITH THE FEDERAL ARBITRATION ACT. THE ASSOCIATION, OWNER, AND DECLARANT, ARE GIVING UP ANY RIGHTS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL AND ARE GIVING UP JUDICIAL RIGHTS TO DISCOVERY AND APPEAL (UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION).

- (a) **Agreement to Arbitrate.** Association, Owner, and Declarant shall resolve any dispute, including, without limitation, a dispute about design, condition, use, physical or bodily injury, or a dispute arising out of development or construction defect claims in the design or construction of the Property or Improvements (regardless of whether the claim is based upon common law, statutory law, including any claim covered by Civil Code Section 895 *et seq.*) not resolved through the above-described mediation procedure, through binding arbitration in the county in which the Property is located. This arbitration provision shall be binding on and enforceable by every Owner, the Association, Declarant, and Declarant Parties. Alternatively, Owner/ Association, Declarant, or Declarant Parties may elect to resolve such disputes through a small claims court proceeding, in which case the party filing the small claims action will have waived the right to any relief in excess of the jurisdiction of the small claims court.
- (b) **Federal Arbitration Act.** As many of the materials and products used in the constructed on the Property are manufactured in other states, the development and conveyance of the Property evidence a transaction involving interstate commerce. The Federal Arbitration Act (9 U.S.C. §1, *et seq.*) and the California Arbitration Act shall govern the interpretation and enforcement of this arbitration provision to the extent the California Arbitration Act is not inconsistent with the Federal Arbitration Act. To the extent any state law, ordinance, or regulation is inconsistent with the rules of the arbitration service under which the arbitration is held, the rules of the arbitration service shall govern the arbitration proceeding.
- (c) **JAMS.** The arbitration shall be conducted by the Judicial Arbitration and Mediation Services ("JAMS") in accordance with the JAMS Comprehensive Arbitration Rules & Procedures ("Rules"). If JAMS is not in existence, then the arbitration shall be conducted by ADR Services, Inc. in accordance with its rules ("Rules"). If there is a conflict between the Rules and the provisions of this Section, the provisions of this Section shall apply.
- (d) **Advancement of Expenses.** All fees charged by the arbitrator and the arbitration provider to initiate the arbitration shall be advanced by Declarant. If Declarant is the prevailing party in the arbitration, the arbitrator may direct Owner/Association, as applicable, to reimburse Declarant for up to fifty percent (50%) of the arbitration fees advanced by Declarant within sixty (60) days after the final arbitration award.
- (e) **Qualifications of Arbitrator.** The arbitrator shall be neutral and impartial and shall be either a retired judge or a member or former member of the California State Bar with at least ten (10) years' experience, with substantial experience in the type of matter in dispute, and with a strong emphasis on the laws governing real estate matters, especially those dealing with residential real estate development and construction. The arbitrator shall not have any relationship to the parties to the dispute or any interest in the Property.
- (f) **Appointment of Arbitrator.** The arbitrator to preside over the dispute shall be selected no later than sixty (60) days after a notice of claim is filed, and may be challenged by any party for bias.
- (g) **Participation by Other Parties.** Declarant, Owner, or Association, may, if so chooses, to have all necessary and appropriate parties included as parties to the arbitration to the extent any such party is defending a claim in the arbitration.
- (h) **Venue.** The arbitration shall be conducted in the county where the Property is located unless the parties agree to some other location.

- (i) **Time of Commencement.** The arbitration process shall commence promptly, within the time provided by the arbitration agreement or by the rules of the arbitration provider. If no such date is provided by the arbitration agreement or rules, then the process shall commence on a date agreed upon by the parties or determined by the arbitrator.
- (j) **Rules of Law.** The arbitrator must follow California substantive law, including statutes of limitations and the provisions of Title 7 of Division 2 of Part 2 of the California Civil Code, sections 895 through 945.5, including all future amendments thereto, but may receive hearsay evidence.
- (k) **Discovery.** The parties to the proceeding shall be entitled only to reasonable discovery, 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; (vi) trial briefs. Such parties shall also be entitled to conduct further tests and inspections. Any other discovery provided for in the California Code of Civil Procedure shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the proceeding. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (l) **Motions.** The arbitrator 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. In addition, the arbitrator 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 arbitrator, 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 arbitrator shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (m) **Remedies.** The arbitrator is authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the proceeding or hearing, except that the award of punitive damages shall be prohibited.
- (n) **Timely Completion and Award.** The arbitration process shall be concluded in a prompt and timely manner, including the issuance of any decision or ruling following the proceeding or hearing. The arbitrator's award 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 arbitrator 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.
- (o) **Attorneys' Fees and Costs.** Each party shall bear its own attorneys' fees and costs (including expert witness costs) in the arbitration.
- (p) **Judgment.** Upon all of the issues considered by the arbitrator, the arbitrator's award is binding upon the Parties, and upon filing of the award with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon.

- (q) Participation in Judicial Proceeding. The initiation of or participation by any party in any judicial proceeding concerning this arbitration provision or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration provision; notwithstanding any provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration provision.
- (r) Standing. Declarant and Declarant Parties shall have the right to enforce the provisions of this Article regardless of whether Declarant or Declarant Parties hold any right, title, or interest in and to the Property or any portion thereof.
- (s) Severability. If any phrase, clause, sentence, section, article, or other portion of this Article shall become illegal, void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, void, or against public policy, the remaining portions of this Article shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

ARTICLE XVI
POWER OF ATTORNEY TO DECLARANT

Article XVI gives Declarant, as the developer of the Project, the power of attorney to prepare and execute documents, which may be necessary by the title insurance company and or any governmental authorities, to complete the development of this Project.

16.01 Power of Attorney to Declarant

- (a) Each Owner of a Condominium, by accepting a deed to a Condominium, shall be deemed to have agreed to constitute and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Property, as such Owner's Attorney-in-Fact, for such Owner and each of such Owner's Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors, and assigns, whether voluntary or involuntary, thereby to have conveyed a power of attorney, coupled with an interest to Declarant as his attorney-in-fact in connection with any modification to the development plans for all or any portion of the Property. Based on the foregoing, each Owner further acknowledges and agrees that this irrevocable power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, may not be terminated by (i) the Owner's revocation of such power of attorney, (ii) Owner's death or (iii) Owner's incapacity to contract. Subject to the limitations and restrictions set forth herein, Declarant shall have the right and power as a duly authorized attorney-in-fact to perform any of the following actions:
- (1) To prepare, execute, acknowledge, and record any Condominium Plan or amendment to any Condominium Plan for all or any portion of the Property, including, without limitation, any amendments necessary to cause such Condominium Plan to conform with the Improvements as actually built, which may be required or permitted by any laws, ordinances, or rules and regulations of any governing authority having jurisdiction over the Property, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any applicable governing authorities and (2) execute, acknowledge, and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;
 - (2) To prepare, execute, acknowledge, and record any map or record of survey affecting the Property, required or permitted by the provisions of the California Subdivision Map Act or any other law, ordinances, or rules or regulations of any governing authority having jurisdiction over the Property, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any applicable governing authorities, (2) appear before any such governing authorities and (3) execute, acknowledge, and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

- (3) To prepare, execute, acknowledge, and file for approval any application for zoning or setback changes or lot line adjustments, or Condominium Plan amendments, or variance or conditional use permits or any other permits or reports required or permitted by any law, ordinances or rules and regulations of any governing authority having jurisdiction over the Property, or which may be required or permitted by any title insurer, and, in connection therewith, to (1) perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any applicable governing authorities and (2) execute, acknowledge, and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;
 - (4) To make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefore required or permitted by federal and state statutes or rules and regulations relating to the sale, lease, transfer, or other disposition of subdivided lands, and, in connection therewith, to (1) perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any applicable governing authorities and (2) execute, acknowledge, and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;
 - (5) To deliver any public reports or property reports, or amendments thereto, obtain receipts, and offer and administer rescission rights required by law;
 - (6) To prepare, execute, acknowledge, and file for approval any registration or application for any permit, approval, exemption, ruling, or entitlement, which registration or application is required or permitted pursuant to any applicable law or regulation in effect as of the date of the recording of this Declaration, and as hereafter enacted or amended by any applicable governing authority, and, in connection therewith, to (1) perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by such governing authority and by any such laws and regulations, (2) appear before any such governing authority, (3) execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations and (4) do all other things now or thereafter permitted or required by any such governing authority and any such laws and regulations;
 - (7) Do any and all things necessary or desirable under the circumstances to effect and accomplish the development of the Property.
- (b) The acceptance or creation of any Mortgage or other encumbrance whether or not voluntary, created in good faith, or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the Power of Attorney described in this Section.

ARTICLE XVII
COUNTY OF SAN BERNARDINO PROVISIONS

Article XVII covers County of San Bernardino Requirements.

17.01 County of San Bernardino Provisions

- (a) The terms of the CC&Rs provide for a minimum term of 60 years.
- (b) Notwithstanding any provision in this Declaration to the contrary, the following provision shall apply: The property owners' association established herein shall manage and continuously maintain the 'common area,' and shall not sell or transfer the 'common area' or any part thereof, absent the prior written consent of the County of San Bernardino or the County's successor-in-interest. The property owners' association shall have the right to assess the owners of each individual unit for the reasonable cost of maintaining such 'common area,' and shall have the right to lien the property of any such owner who defaults in the payment of a maintenance assessment. An assessment lien, once created, shall be paid in full prior to all other liens recorded subsequent to the notice of assessment or other document creating the assessment lien. This Declaration shall not be terminated, "substantially amended," or property deannexed therefrom absent the prior written consent of the County of San Bernardino or the County's successor-in-interest. A proposed amendment shall be considered 'substantial' if it affects the extent, usage, or maintenance of the 'common area' established pursuant to the Declaration. In the event of any conflict between this Declaration and the Articles of Association, the Bylaws, or the property owners' association Rules and Regulations, if any, this Declaration shall control.

ARTICLE XVIII
MISCELLANEOUS PROVISIONS

Article XVIII covers miscellaneous issues not addressed elsewhere in the Declaration.

18.01 Term of Declaration

This Declaration shall be in effect for a term of sixty (60) years from the date of recording. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years unless, within six (6) months before the expiration of the term, Owners representing two-thirds (2/3rds) of the Condominiums approve by formal vote, terminating this Declaration, and a document of termination is signed by two Association officers, reciting the vote of Owner to terminate this Declaration, is recorded with the County Recorder.

18.02 Notices

Any approval, disapproval, demand, document, or other notice which Declarant, the Association, or any Owner may desire to give to another party must be in writing and may be given either by i) personal delivery; ii) by United States mail which shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the mail, first class or registered, postage prepaid, addressed to the person to be notified; or iii) by any other method provided by Civil Code Sections 4040, 4045 and 4050.

18.03 Partial Invalidity

If any term, condition, provision, or other portion 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.

18.04 Number

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

18.05 Attorneys' Fees

If there is a 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.

18.06 Disclosures

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 Units, heating, ventilation air conditioning systems, plumbing, Common Area, garages, etc.

18.07 Declarant's Rights After Sale of All Condominiums in the Project

For a period of ten (10) years after the close of escrow for the sale of the last Condominium 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) 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
- (b) Right to inspect all Common Areas 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 if there is 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.

18.08 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 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.

18.09 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.

18.10 Changing the Project Marketing Name

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

18.11 Conflict Between Declaration and Condominium Plan

If there is any conflict between this Declaration and the Condominium Plan or other Governing Document, this Declaration shall be controlling.

18.12 Deadlines

Unless specifically indicated otherwise herein, all references to time periods or deadlines measured in days will be calculated based on calendar days, not business days.

"Declarant"

SB 24713 6TH, LLC,
a California limited liability company

X *[Signature]*

By: Glenn Elssmann
Its: Manager

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

STATE OF CALIFORNIA
COUNTY OF Riverside ss.

On Feb 22, 2021, before me, P. Boross, Notary Public

Notary Public, personally appeared:

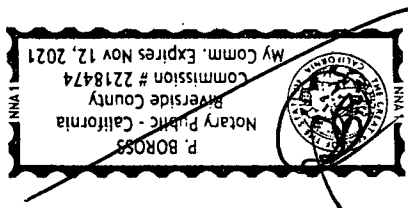
Glenn Elssmann

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

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

WITNESS my hand and official seal.

(SEAL)



P. Boross
Notary Public

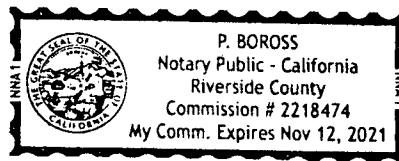


EXHIBIT A

PROPERTY

Lot 1 of Tract No. 20313, in the unincorporated area of the County of San Bernardino, State of California, as per Map filed in Book 358, Pages 25 and 26, of Maps, in the Office of the County Recorder of San Bernardino.

EXHIBIT B

MAINTENANCE RESPONSIBILITIES

(The Association is Responsible for the Maintenance, Repair and Replacement of the Common Area, Including But Not Limited to Those Items Listed in this Exhibit B. Any Discrepancies Between the Budget and this Declaration, the Budget Shall Control)

Items	Association Responsibility	Owner Responsibility
Air conditioning equipment serving a single unit		Maintain and repair
Ceiling surfaces (including any paint, wallpaper and acoustical coatings)		Maintain, repair and replace
Fireplaces		Maintain, repair and replace
Front door – exterior surface	Paint, stain or waterproof surface	Maintain, repair and replace (except paint)
Front door – interior surface		Maintain, repair and replace
Front door – interior casing		Maintain, repair and replace
All exterior door hardware		Maintain, repair and replace
All door weather stripping		Maintain, repair and replace
Doorbell exterior panels, buttons and circuits		Maintain, repair and replace
Doorbell chimes inside the unit		Maintain, repair and replace
Garage door – exterior surface		Maintain, repair and replace
Garage door – interior surface		Maintain, repair and replace
Garage door opening Mechanism and related hardware		Maintain, repair and replace
Patio/yard area doors and door frames (doors leading from unit to exterior)		Maintain, repair and replace
Patio/yard area door – exterior surface (doors leading from unit to exterior)		Maintain, repair and replace
Patio/yard area door – interior surface (doors leading from unit to exterior)		Maintain, repair and replace
Patio/yard area door casing (doors leading from unit to exterior)		Maintain, repair and replace
Dryer duct work		Maintain, repair and replace
Front door light fixture		Maintain fixture controlled by switches in unit or separately metered to unit

Items	Association Responsibility	Owner Responsibility
Front door light bulb		Replace as necessary for fixtures maintained by owner
Patio/yard area light fixture		Maintain, repair and replace
Patio/yard area light fixture - Subsurface	Maintain, repair and replace	
Patio/yard area light bulb		Maintain and replace
Patio/yard area drain - Surface		Maintain, repair and replace
Patio/yard area drain - Subsurface	Maintain, repair and replace	
Exterior stucco/siding	Maintain, repair and replace	
Exterior vents for plumbing and appliances (excluding washer/dryer duct work)		Maintain, repair and replace
Exterior lights, fixtures, and bulbs		Maintain, repair and replace
Roof gutter and downspout	Maintain, repair and replace	
Floor surfaces in unit interior		Maintain, repair and replace
Sub-flooring		Maintain, repair and replace
Gas pipes from exterior shutoff valve throughout unit		Maintain, repair and replace
Heating equipment (including lines, wires, vents, pipes, duct work, platforms and any other related equipment) located inside walls and/or running from the roof down to a unit)		Maintain, repair and replace
Interior wood trim, cabinets and shelves		Maintain, repair and replace
Landscaping – patios (including but not limited to, maintaining, trimming and replacing in a neat and attractive condition and in a manner which does not endanger the Common Area by roots, branches, over-watering or otherwise)		Maintain, repair and replace
Patio fences	Maintain, repair and replace	
Patio floor surfaces		Maintain and repair. Keep patio floor clean and free of debris and trash
Plumbing fixtures inside a unit (including, but not limited to, fixtures, toilets, faucets, bathtubs, tub and shower valves, shower pans, drain lines, and angle stops which exclusively service a unit)		Maintain, repair and replace. An owner may plunge blocked kitchen and bathroom facilities in his unit but may not use a snake or cause a snake to be used, in any pipes unless instructed to do so by the Association
Facia/roofs	Maintain, repair and replace	

Items	Association Responsibility	Owner Responsibility
Security equipment – any locks, intercom equipment and security systems installed by an owner in a unit		Maintain, repair and replace
Telephones (including, but not limited to, lines, jacks and wiring) inside a unit		Maintain, repair and replace
Interior wall surfaces (including any paint, wallpaper, drywall and other finishes)		Maintain, repair and replace
Pipes and drains in walls inside units serving individual units		Maintain portions which are submetered to the unit. An owner may plunge blocked kitchen and bathroom facilities in his unit but may not use a snake or cause a snake to be used, in any pipes unless instructed to do so by the Association
Electrical wires in walls inside units serving individual units		Maintain, repair and replace
Unit's circuit breaker panel		Maintain, repair and replace
Switches and outlets inside the unit		Maintain, repair and replace
Cable TV wiring in walls inside units serving individual units		Maintain, repair and replace
Water heaters		Maintain, repair and replace
Glass, frames, hardware and rollers		Maintain, repair and replace
Window casing		Maintain, repair and replace
Locks and latches		Maintain, repair and replace
Screens and frames		Maintain, repair and replace
Interior caulking		Maintain, repair and replace
Mailbox – cluster	Maintain, repair and replace	Owner is responsible for replacement of key and lock, if there is a lost key

All owner maintenance, repair, and replacements must conform with the Architectural Guidelines.

EXHIBIT C

BUDGET SUMMARY AND RESERVES WORKSHEET

(see attached pages from DRE reviewed Budget)

RE 623

***Need Insurance Proposal and Submetering Proposal**

Page 3 of 15

BUDGET SUMMARY		
PHASE NUMBER 1 of 1	DATE OF BUDGET 6/2/2020	DRE FILE NUMBER TBD
NUMBER OF UNITS 16	TRACT NUMBER 20313	NAME OF PROJECT Sycamore Square

	PER UNIT PER MONTH	TOTAL MONTHLY	TOTAL ANNUALLY
100. FIXED COSTS:			
101. PROPERTY TAXES			
102. CORPORATE FRANCHISE TAX	0.13	2.08	25.00
103. INSURANCE (Attach Proposal)*	32.55	520.83	6250.00
104. LOCAL LICENSE & INSPECTION			
105. ESTIMATED INCOME TAXES			
100. TOTAL:	32.68	522.92	6275.00

200. OPERATING COSTS:			
201. ELECTRICITY	2.40	38.35	460.22
LEASED LIGHTING			
202. GAS N/A			
203. WATER	89.90	1438.47	17261.68
204. SEWER/SEPTIC			
205. CABLE TV/MASTER ANTENNA - None			
207. CUSTODIAL AREA			
No. of Laundry:			
208. LANDSCAPE AREA: 8,679 SF			
GENERAL LANDSCAPE/Supplies	28.13	450.00	5400.00
209. REFUSE DISPOSAL -			
Vendor Name:			
Telephone Number:			
210. ELEVATORS			
Number: Type: N/A			
211. PRIVATE STREETS & DRIVEWAYS			
Parking Area (Acres): Included in #208			
212. HEATING & AIR CONDITIONING			
Area: N/A			
213. Swimming Pool			
Area: N/A			
Number: Size: Mths. Heated:			
Spa			
Number: Size:			
214. TENNIS COURT/ RAQUETBALL MAINTENANCE			
NUMBER: N/A			
215. ACCESS CONTROL			
No. of Motorized Gates: None			
No. of Intercoms/Telephone Entry:			
216. RESERVE STUDY	1.82	29.17	350.00

200. OPERATING COSTS CONTINUED	PER UNIT PER MONTH	TOTAL MONTHLY	TOTAL ANNUALLY
217. MISCELLANEOUS			
Minor Repairs	6.00	96.00	1152.00
Pest Control	1.88	30.00	360.00
Storm/ Drain Maintenance	2.60	41.67	500.00
Fire Sprinklers Inspections	9.38	150.00	1800.00
200. TOTAL:	142.10	2273.66	27283.91
300. RESERVES (See Note 1):			
301 - 313 (SEE RESERVES WORKSHEET)	54.74	875.90	10510.75
300. TOTAL:	54.74	875.90	10510.75
400. ADMINISTRATION:			
401. MANAGEMENT	21.88	350.00	4200.00
402. LEGAL SERVICES	7.81	125.00	1500.00
403. ACCOUNTING	3.91	62.50	750.00
404. EDUCATION	1.56	25.00	300.00
405. MISCELLANEOUS OFFICE EXPENSE	4.00	64.00	768.00
400. TOTAL:	39.16	626.50	7518.00
SUBTOTAL (100 - 400):	268.69	4298.97	51587.66
500. CONTINGENCY:			
501. NEW CONSTRUCTION 3.0%	8.06	128.97	1547.63
502. CONVERSIONS 5%			
503. REVENUE OFFSETS: (Sub-Metering)	77.35	1237.60	14851.20
TOTAL BUDGET:	199.40	3190.34	38284.09

◊ DRE regulations allow the use of variable assessments against unit only if one unit will derive as much as 10 percent more than another unit in the value of common goods and services supplied by the association.

After determining the percentage of benefit derived from services provided (page 14) by the association, an easy chart to follow would be:

Less than 10%	equal assessments
from 10% to 20%	variable or equal
Over 20%	variable assessments

The budget and management documents indicate
 equal assessments
 variable assessments

◊ The inventory and quantities used in the preparation of this budget are normally derived from plans completed prior to construction and may vary slightly from actual field conditions. The calculated budget is a **good faith estimate** of the projected cost and should be deemed reliable for no more than one year. The Board of Directors should conduct an annual review of the Associations actual costs and revise the budget accordingly.

① Depending on the level of service selected by the Association, the amount shown may be insufficient to cover the cost and may be higher.

RESERVES WORKSHEET

DRE FILE NUMBER		16 Units		TRACT NUMBER			Sycamore Square	
Item	(1) <input type="checkbox"/> Sq. Ft or Number	(2) <input type="checkbox"/> Unit Cost HOA Manual	(3) <input type="checkbox"/> Replacement Cost	(4) <input type="checkbox"/> Remaining Life	Yearly Reserve Columns 1x2 or 3 / 4	Cost Per Unit Per Month		
Paint: Exterior*	31983		25000.00	10	2500.00	13.02		
Roof- Type: Composition Shingle*	27897		75000.00	20	3750.00	19.53		
Exterior Light Fixtures	6	10.00			60.00	0.31		
Walkways / Drive Areas Concrete	14,023	0.05			701.15	3.65		
Patio Slabs Concrete	3072	0.05			153.60	0.80		
Pool Re-plaster								
Pool Heater								
Pool Filter								
Pool/Spa Pumps								
Mail Boxes Cluster	1		1500.00	15	100.00	0.52		
Pedestrian Gates	2		1300.00	15	86.67	0.45		
Vinyl Fencing R & R	256	3.00			768.00	4.00		
Tub Steel Gates Paint	96	1.00			96.00	0.50		
Block Walls R & R	500	0.25			125.00	0.65		
Fire Ext./Cabs	4		800.00	10	80.00	0.42		
Sub Meters R & R	16		4800.00	15	320.00	1.67		
Drainage & Sewer Pipes	420	0.25			105.00	0.55		
Drainage Filters	4	100.00			400.00	2.08		
Backflow	2		2500.00	15	166.67	0.87		
Irrigation Controllers	1		250.00	8	31.25	0.16		
Landscape Reserve	8,679	0.05			437.42	2.28		
Trees	14	45.00			630.00	3.28		
TOTAL RESERVE					10510.75	54.74		

Use either Columns 1 and 2 or 3 and 4, but not both for a particular item.

*See proposals

Note: For space purposes, we have included only the components most frequently found in common - interest subdivisions Reserve items should not be limited to the list above, but be tailored to your particular project.