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RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MYSTIQUE

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**RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MYSTIQUE**

This Restated Declaration of Covenants, Conditions and Restrictions for Mystique (the "Declaration") is made WL Homes, LLC, a Delaware limited liability company, doing business as John Laing Homes ("Declarant").

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**RECITALS**

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A. Declarant is the owner of certain real property located in the City of Sacramento, Sacramento County, California, which is more particularly described in attached Exhibit "A" ("Phase 1").

B. This Declaration shall initially apply only to Phase 1, as the initial Phase of a multi-phased condominium project known as Mystique. All or portions of the real property more particularly described in attached Exhibit "B" (the "Subsequent Phase Property") may be made subject to this Declaration by annexation in accordance with the terms of Article 13 of this Declaration. As property is annexed, the annexed property shall become part of the "Development", as defined herein. Phase 1 and the Subsequent Phase Property are hereafter referred to as the "Overall Development".

C. Declarant hereby declares that all of the Development shall be held, sold and conveyed subject to the following easements, restrictions, associations, reservations, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Development. These covenants, easements, restrictions, conditions, associations and reservations: (i) create a general plan and scheme for the subdivision development, sale and use of the Development as a "condominium project" as that term is defined in California Civil Code section 1351(f); (ii) are for the benefit and protection of the Development and for the protection and enhancement of the desirability, value and attractiveness of all Units and Common Area located therein; (iii) run with the Development and bind all parties having or acquiring any right, title or interest in the Development or any part thereof; and (iv) inure to the benefit of the successors and assigns of each Owner of any property within the Development.

D. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Development, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

E. Phase 1 consists of 12 Condominium Units with individual garages located within a single building, private driveways, parking spaces, and landscaping. Upon the annexation of all of the Subsequent Phase Property, the Development shall consist of 92 Condominium Units located within 8 buildings.

F. Declarant previously Recorded the Declaration of Covenants, Conditions and Restrictions for Mystique on September 12, 2007, in Book 20070912, at Page 758, Official Records of Sacramento County (the "Prior Declaration"). Pursuant to Section 15.1 of the Prior Declaration, Declarant, having not conveyed a Condominium to a purchaser, may rescind the Prior Declaration. Declarant, by executing and

Recording this Declaration, hereby rescinds and revokes the Prior Declaration. Upon the Recording of this Declaration, the Prior Declaration shall have no force or effect on any portion of the Development.

## ARTICLE 1                      DEFINITIONS

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1.1     Definitions, Generally. When the words and phrases described in this Article are used in the Declaration, they will have the meanings set forth in this Article. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires. The use of the term "may" in this Declaration indicates discretion or choice, and the use of the term "shall" in this Declaration means imperative, mandatory or imposing an absolute duty.

1.2     Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.3     Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, Recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.4     Articles. "Articles" shall mean the Articles of Incorporation of the Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.5     Assessment. "Assessment" shall mean a charge levied by the Association against an Owner and his or her Condominium as provided in Article 6 of this Declaration. "Assessment" shall include any or all of the following:

          (a)     Regular Assessments, which shall have the meaning set forth in Section 6.5 of this Declaration.

          (b)     Enforcement Assessments, which shall have the meaning set forth in Section 6.8 of this Declaration.

          (c)     Reimbursement Assessments, which shall have the meaning set forth in Section 6.7 of this Declaration.

          (d)     Special Assessments, which shall have the meaning set forth in Section 6.6 of this Declaration.

1.6     Association. "Association" shall mean Mystique Community Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.7     Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.8     Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Members and any duly-adopted amendments thereof.



1.9 City. "City" shall mean the City of Sacramento, and its various departments, divisions, employees and representatives.

1.10 Common Area. "Common Area" shall mean all of the property comprising the Development, excluding the Units. Within the Development there are two(2) types of Common Area based on ownership.

(a) Association Common Area. The Association Common Area, as referred to in the Plan, shall be owned in fee by the Association. The Association Common Area includes the entire dwelling structure containing Residences, but excludes the individual Units and Condominium Common Area. As more particularly shown on the Plan, certain portions of the Association Common Area are Exclusive Use Common Area, as more particularly described below. In addition, Lot A, as shown on the Subdivision Map, is Association Common Area.

(b) Condominium Common Area. The Condominium Common Area, commonly referred to as "Cloud" Common Area, are the air spaces between elevations 150 feet and 160 feet above the ground level of each Association Common Area shown on the Plan. The Condominium Common is the real property owned in undivided interests in common by the Owners of the Units. Each Owner shall have, as appurtenant to the Owner's Unit, an equal undivided interest in the Condominium Common Area located above the Owner's Unit. Thus, an Owner of a Unit in building 8, as shown on the Condominium Plan shall have an undivided 1/12<sup>th</sup> interest in Condominium Common Area 8, and the Owners of Units in all other buildings shall have an undivided 1/8<sup>th</sup> or 1/12<sup>th</sup> interest in the Condominium Common Area located above the Owner's Unit.

1.11 Condominium. "Condominium" shall mean an estate in real property as defined in California Civil Code sections 783 and 1351(f), consisting of a fee interest in a Unit, an undivided interest in common in the Condominium Common Area containing the Unit, together with any easements or other interests in the Development or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.

1.12 Condominium Plan. "Condominium Plan" or "Plan" means a condominium plan, as defined by California Civil Code Section 1351(e), prepared and Recorded for the Development that sets forth and describes the three-dimensional plan of the Condominium Buildings and Units built or to be built within the Development.

1.13 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.14 County. "County" shall mean Sacramento County, California, and its various departments, divisions, employees and representatives.

1.15 Declarant. "Declarant" means WL Homes, LLC, a Delaware limited liability company, doing business as John Laing Homes. The term "Declarant" shall also mean any successor or assign of Declarant, provided a certificate, signed by Declarant and Declarant's successor or assign, is Recorded against the portion of the Development which the successor or assign assumes the rights and duties of Declarant.

1.16 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time. If any Supplemental Declarations or Declarations of Annexation are approved and Recorded in accordance with Article 13, below, then following such Recordation any reference to this Declaration shall mean this Declaration as amended and supplemented by the Supplemental Declaration(s) and any Declarations of Annexation.

1.17 Declaration of Annexation. "Declaration of Annexation" means a declaration annexing real property to the Development and subjecting the real property described therein to this Declaration, all as more particularly described in Article 13, below.

1.18 Development. "Development" means (a) Phase 1, and (b) each Phase described in a Declaration of Annexation, together with all Improvements now located or hereafter constructed or installed thereon, and all appurtenances thereto.

1.19 Director. "Director" shall mean a member of the Board of Directors of the Association.

1.20 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit. Locations of internal wiring designed to serve a Unit are Exclusive Use Common Areas allocated to such Unit. Exclusive Use Common Areas also include, without limitation, a patio area, indicated by the letter "P," a garage area, indicated by the letter "G," a deck area, indicated by the letter "D," and the appurtenant Unit number. While such Exclusive Use Common Area may be specifically referred to in the individual grant deed conveying a Condominium, the failure of any such deed to make such reference shall not invalidate the exclusive rights set forth in this Declaration.

1.21 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules, and the policies and resolutions duly adopted by the Board.

1.22 Improvement. "Improvement" shall mean all structures and improvements including without limitation buildings, landscaping, paving, fences, and signs.

1.23 Member. "Member" shall mean an Owner, and refers to membership in the Association.

1.24 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as may be more particularly set forth in the Bylaws.

1.25 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense. "First Mortgage" shall mean any Recorded Mortgage on a Unit with first priority over other Mortgages on such Unit. A "First Mortgagee" shall include any holder (including FHLMC and FNMA), insurer (including FHA), or guarantor (including VA) of a First Mortgage on a Unit or other portion of the Development. "FHA" shall mean the United States Department of Housing and Urban Development, Federal Housing Administration. "VA" shall mean the United States Department of Housing and Urban Development, Veterans Affairs. "FHLMC" shall mean the Federal Home Loan Mortgage Corporation. "FNMA" shall mean the Federal National Mortgage Association. Where any provision of the Governing Documents requires the approval of a First Mortgagee, the approval of the holder, insurer or guarantor of that First Mortgage shall be deemed to be the required approval. "Eligible Mortgagee" shall refer to any

Mortgagee who has requested notice from the Association related to any proposed material amendments to the Governing Documents, as further described in Section 12.7, below.

1.26 Owner. "Owner" shall mean any person, firm, corporation or other entity in which fee title to a Unit is vested as shown by the official records of the office of the County recorder, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation. If a Unit is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. A person or entity is not an Owner due to (a) community property or other equitable rights not shown of Record; or (b) rights of adverse possession not shown of Record. Where the context requires, the term "Owner" shall include the members of the Owner's household and the Owner's guests, tenants/lessees and invitees; provided, however, that such persons are not "Owners" for purposes of exercising voting rights in the Association.

1.27 Phase 1. "Phase 1" means all of the real property described in attached Exhibit "A".

1.28 Phase. "Phase" means each of the following: (a) Phase 1; and (b) all the real property covered by a Declaration of Annexation in accordance with Article 13 below, unless "Phase" is otherwise defined in such Declaration of Annexation.

1.29 Record; Recordation; Filed. "Record," "Recordation", and "Filed" shall mean, with respect to any document, the recordation or filing of such document in the official records of the County Recorder's office.

1.30 Resident. "Resident" shall mean any person who resides in a Unit within the Development whether or not such person is an Owner.

1.31 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Development or any part thereof as adopted and published by the Board of Directors from time to time.

1.32 Simple Majority. "Simple Majority" shall mean a majority of the votes of the Members (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with California Corporations Code Section 7513) in which the number of ballots received equals or exceeds the number required to establish a quorum.

1.33 Subdivision Map. "Subdivision Map" shall mean the "Final Map of JMA North Natomas Parcel 4," Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.

1.34 Supplemental Declaration. "Supplemental Declaration" means any declaration (as defined in California Civil Code Section 1351(h)), Recorded pursuant to Section 13.2, below, which supplements this Declaration and which may affect solely a particular Phase. A Supplemental Declaration may be entitled as an amendment to the Declaration in order to satisfy County Recording requirements.

1.35 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Condominium, excluding any Condominiums as to which an Owner is not then a Member in Good Standing.

1.36 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Development. Each Unit is an individual residence, which is shown, defined and delineated on the Condominium Plan as a separately numbered parcel located within a Condominium Building. The boundaries of each Unit shall be the approximate dimensions set forth on the Condominium Plan and as follows: The interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other finishes) of its perimeter walls, bearing walls, floors, ceilings, windows, and window frames, doors and door frames, and trim, and includes both the portions of the building so-described and the air space so-encompassed. Each Unit specifically includes the oven, garbage disposal, dishwasher, heating conduits, range and fans, interior partitions and plumbing fixtures installed therein. Each Unit specifically excludes the garage areas which are designated Exclusive Use Common Area. In interpreting this Declaration and the Condominium Plan, the existing physical boundaries of the Unit shall be conclusively presumed to be its boundaries rather than the boundaries or other description expressed in the Condominium Plan or this Declaration, regardless of settling or lateral movement of the Association Common Area building structures and regardless of variations between the boundaries shown on the Condominium Plan or the deed and the Declaration and those of the buildings.

## ARTICLE 2                      HOMEOWNERS ASSOCIATION

2.1 Management and Operation. The Association, through the Board of Directors, shall manage and operate the Development in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

2.2 Membership. Every Owner of a Condominium shall be a Member of the Association and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.

### 2.3 Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Condominiums shall vest upon the commencement of Regular Assessments against such Condominiums by the Association.

(b) Classes of Membership. The Association shall have the following two classes of voting membership:

(i) Class A Members. Class A Members shall initially be all Owners except Declarant.

(ii) Class B Members. Declarant shall be the only Class B Member.

(c) Membership Voting Rights. Only Members in Good Standing shall be entitled to vote. The voting rights and other privileges of each class of membership and the conversion of Declarant's Class B membership into Class A memberships shall be as set forth in Article 3 of the Bylaws.

(d) Suspension of Voting Rights. A Member's voting rights may be temporarily suspended under those circumstances described in Section 10.5(b), below.

(e) Limitations on Declarant Voting Rights. With the exception of any membership vote pursuant to Section 3.7, below (relating to the enforcement of bonded obligations), no provision of any Governing Document requiring approval of a prescribed majority of the voting power of the Association other than Declarant is intended to preclude Declarant from casting votes attributable to any Condominiums owned by Declarant. Instead, approval by the Association's Members requires the approval of a bare majority of the Class B voting power as well as the approval of the prescribed majority of the Class A voting power. Once the Class B membership has been converted to Class A membership, the intent is to require the approval of a bare majority of the total voting power of the Association as well as the approval of the prescribed majority of the total voting power of the Association other than Declarant.

2.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

2.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such rules and regulations, which shall be known as "Rules", as the Board deems necessary for the management and operation of the Development and the conduct of business and affairs of the Association. The Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of refuse, minimum standards for maintenance of property, parking and traffic regulations, rental or leasing of Units, the keeping of pets within Units, and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

2.6 Manager and Other Personnel. The Board of Directors shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Development and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

2.7 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of at least a majority of each class of Members. This limitation shall not apply to the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established nor shall it apply to any reconstruction governed by Article 11 of this Declaration.

2.8 Sale or Transfer of Association Property. The Board of Directors shall have the power to sell the Association's property provided that the Board shall not, in any fiscal year, sell property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without approval of at least a majority of each class of Members.

2.9 Transfer or Dedication of Common Area to Public Agency or Utility. The Board of Directors shall have the power to dedicate or transfer all or any part of the Common Area to a public agency, authority or utility or other person or entity for such purposes and subject to such conditions as may be agreed to by the Board, and upon the approval of at least a majority of each class of Members.

2.10 Borrow Money. The Board of Directors shall have the power to borrow money in the name of the Association.

2.11 Mortgage of Association Property. The Board of Directors shall have the power and authority to mortgage, pledge, encumber, or otherwise hypothecate the real and personal property of the Association for money borrowed or debts incurred by the Association.

2.12 Mergers and Consolidations. The Association may (i) participate in mergers and consolidations with other nonprofit corporations organized for the same purposes as the Association, or (ii) annex additional property to the Development, in accordance with Section 13.2, below.

2.13 Dissolution. So long as there is any lot, parcel or area for which the Association is obligated to provide management, maintenance, preservation or control, the consent of all Members must be obtained for the Association to (i) transfer all or substantially all of its assets, or (ii) file a certificate of dissolution.

2.14 Contract with City for Utilities. Unless otherwise established by the City, the Association shall be responsible for obtaining and paying for all water, sewer and drainage facilities services for each Unit and for the Common Area within the Development.

2.15 Limitation of Liability. Neither the Association or its directors, officers, employees, agents or committee members (collectively and individually referred to as the "Released Party") shall be personally liable for damages or in equity to any of the Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or pursuant to the Bylaws, even if such Released Party is negligent, provided that such Released Party has not acted in bad faith. This standard of care and limitation of liability shall extend, without limitation, to matters such as (i) the establishment of the Association's annual financial budget, (ii) the funding of Association reserve accounts, (iii) the discharge of the Association's maintenance, repair and replacement obligations, (iv) the enforcement of the Governing Documents, and (v) to any other fiduciary duties or responsibilities imposed by law or the Governing Documents.

### ARTICLE 3 COMMON AREA

#### 3.1 Ownership of Common Area.

(a) Association Common Area. Declarant shall convey fee simple title to the Association Common Area to the Association prior to, or concurrently with, the first transfer or conveyance by Declarant of a Unit in the Development to a purchaser.

(b) Condominium Common Area. Upon the conveyance of the first Unit within a Phase, each Unit within the Phase shall have either an undivided 1/8<sup>th</sup> or 1/12<sup>th</sup> interest in the Condominium Common Area located above the Unit. The undivided ownership interest in Condominium Common Area appurtenant to the Units shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or

separate conveyance of an undivided interest in the Condominium Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.

3.2 Condominium Ownership. Ownership of each Condominium within the Development shall include (i) a designated Unit, (ii) an undivided ownership interest in the Condominium Common Area as tenant in common, (iii) a Membership in the Association, (iv) the right to the exclusive use or possession of those portions of the Common Area assigned to such Unit as Exclusive Use Common Area, and (v) all applicable easements, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan.

3.3 Owners Non-Exclusive Easements of Enjoyment. Every Owner shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:

(a) Rules. The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and the facilities thereon including, without limitation, Rules (i) limiting the number of guests of Members permitted to use the Common Area and the facilities thereon at any one time, (ii) limiting the hours of use of the Common Area and the facilities thereon, (iii) regulating the use of the Common Area and the facilities thereon for group activities, and (iv) regulating parking upon the Common Area;

(b) Facility Fees. The right of the Board to charge reasonable admission and other use fees for any facilities situated upon the Common Area;

(c) Suspension of Use. The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's right to use the recreational facilities located on the Common Area for (i) any period during which any Assessment against such Owner's Condominium remains unpaid, and/or (ii) for violations of the Governing Documents by an Owner or any person for whom an Owner is responsible;

(d) Granting of Easements. The right of the Board to grant easements and rights of way in, on, over, or under the Common Area;

(e) Transfer to Public Agency. The right of the Board to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility;

(f) Encumber. The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association;

(g) Perform Obligations. The right of the Association or its authorized agents to perform its obligations under this Declaration, including, without limitation, obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area;

(h) Establish Signage. The right of the Association to establish, construct, maintain, repair and replace entrance signs, privacy gates, street signs, lights, maps, directories and other similar improvements upon the Common Area;

(i) Association Use Areas. The right of the Association to establish, construct, maintain, repair and replace facilities upon the Common Area including without limitation storage

facilities and workshops, which may be necessary or convenient in the discharge of the Association's duties and the exercise of its rights under the Governing Documents; and

(j) Development and Sales Rights. The right of Declarant and its employees, sales agents, prospective purchasers, customers and representatives, to enter upon and to use the Common Area for development and sales activities in accordance with Article 14, below. Such use shall not unreasonably interfere with the rights of use and enjoyment of the other Owners as provided herein.

3.4 Assignment of Rights of Use. In addition to an Owner's assignment of Common Area use rights to a tenant as provided in Section 4.15, below, upon occupancy of a Unit by a Contract Purchaser, the Owner shall be deemed to have assigned all such Common Area rights exclusively to the Contract Purchaser of such Unit except that such Owner shall continue to have an easement for ingress and egress to such Owner's Unit to the extent necessary to discharge the Owner's obligations and rights as a landlord. Any Common Area rights of enjoyment assigned pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents. It is the express purpose and intent of the provisions of this section to limit the right of use and enjoyment of the Common Area to Residents and their guests.

3.5 Common Area Construction and Improvements. Following the conveyance of the Association Common Area to the Association, no person or entity other than the Association or its duly-authorized agents (i) shall construct, reconstruct, refinish, alter, or maintain any Improvement upon the Common Area, (ii) shall make or create any excavation or fill upon the Common Area, (iii) shall change the natural or existing drainage of the Common Area, or (iv) shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

3.6 Mechanic's Liens. In the event there shall be Recorded against the Common Area a notice of mechanic's lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner or his or her Unit, such Owner shall immediately cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be granted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

### 3.7 Enforcement of Bonded Obligations.

(a) Board Consideration of Enforcement. If any of the Common Area Improvements within the Development have not been completed when the California Real Estate Commissioner issues a final subdivision public report for the Development, and if the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of Declarant to complete such Common Area Improvements, then the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any Improvements for which a notice of completion has not been filed within sixty (60) days after the



completion date specified for that Improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any Common Area Improvement, the Board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension.

(b) Member's Rights to Call Meeting Regarding Enforcement of Bonds. If the Board fails to consider and vote on the action to enforce the obligations under the bond or decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the Board signed by Members representing not less than five percent (5%) of the total voting power of the Association other than Declarant, the Board shall call a special membership meeting for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The meeting shall be called by the Board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of said petition. Notice of the meeting shall be given to all Owners entitled to vote in the manner provided in the Bylaws for notices of special membership meetings. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall then implement the Owners' decision by initiating and pursuing appropriate action in the name of the Association.

#### ARTICLE 4                      USE RESTRICTIONS

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4.1 Residential Use. Except as specifically provided in Section 4.3, no Unit, or any portion thereof, shall be occupied or used for other than residential purposes.

4.2 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Development except:

(a) Professional and Administrative. Those professional and administrative occupations as may be permitted by, and which are conducted in conformance with, all applicable governmental ordinances provided that there is no external evidence thereof, and further provided that the Board may, in its complete discretion, prohibit the conduct of any such activities which the Board determines to be incompatible with the nature and character of the Development or which, in the Board's opinion, may or does otherwise negatively impact the quality of life and property values within the Development.

(b) Permitted by Law. Those other businesses which by law must be permitted to be conducted within the Development.

4.3 Offensive Conduct, Nuisances, Noise. No noxious, harmful or offensive activities shall be conducted upon or within any part of the Development, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Development, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Units. Without limiting any of the foregoing, no Resident shall permit noise, including without limitation the barking of dogs or excessively loud music, to emanate from the Resident's Unit or the Unit's Exclusive Use Common Area, vehicles, or the vehicles of guests and invitees, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area. Pursuant to Declarant's development rights as described in Article 14, below, Residents may be exposed to construction noise, dust, roadway reconfiguration and increased vehicular and pedestrian

traffic within the property described as the Overall Development, and other activities resulting from the construction and use of the Overall Development, and the Association and each Owner, by accepting the deed to a Unit, acknowledges, accepts and assumes the risk of such noise, traffic and activities.

4.4 Use of the Common Area. All use of the Common Area is subject to the Governing Documents. No alterations or additions to the Common Area shall be made except as authorized by the Board pursuant to Section 2.4. Nothing shall be placed, kept, stored, or parked on the Common Area without the prior written consent of the Board, except by the Association. Without limiting the foregoing, no Owner shall place rubbish, debris, or other unsightly or unsanitary materials on the Common Area. Each Owner shall avoid causing damage to the Common Area.

4.5 Sports Apparatus. Except for sports apparatus installed and maintained by the Association, no sports apparatus, whether portable or fixed, including without limitation basketball standards shall be permitted within the Development. As used in this section, the term "sports apparatus" does not include bicycles, roller skates, roller blades or any other similar unpowered wheeled equipment, provided that the Board of Directors shall have the discretion to adopt Rules governing the use of such unpowered wheeled equipment.

4.6 Window Coverings. Drapes, window shades, or shutters shall be installed in the windows of all Units and garages and shall comply with any Rules adopted by the Board of Directors. In no event shall windows be painted, nor shall aluminum foil, newspaper, bed sheets, cardboard or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.7 Sound Transmissions. No Unit shall be altered in any manner which would result in an increase in sound transmission, resonance or reverberations to any other Unit. Only soft-cover floors may be installed on the lower levels of Units, except for replacement of any hard coverings in kitchen, bath or other areas where such hard coverings were originally installed by Declarant.

4.8 Signs. To the extent permitted by law, the Board may adopt limitations on signs including, without limitation, restrictions on the size of the signs, the duration of their posting, and their location.

4.9 Antennas. No outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals of any kind, are permitted within the Development, except as provided in this section. If a central antenna system is installed by the Declarant or the Association which provides electronic signal reception to individual Units in a manner which complies with Code of Federal Regulations requirements (C.F.R. 1.4000), individual Owners and Residents shall be prohibited from installing or maintaining an antenna, aerial, satellite or similar device within the Development. If no central antenna system is installed, antennas or satellite dishes with a diameter or diagonal measurement not greater than one meter which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Dishes") may be erected, placed or installed within a Unit or the Unit's Exclusive Use Common Area, subject to the following restrictions, provided that the application of these restrictions do not unreasonably delay installation or expense, or preclude reception of an acceptable quality signal:

(a) Not Visible From Streets. All Permitted Dishes shall be placed in locations which are not visible from the streets within the Development.

(b) Preferred Placement List. All Permitted Dishes shall be installed at locations in accordance with a prioritized list of placement preferences, if such a list is adopted by the Board of Directors.

(c) Reasonable Restrictions. All Permitted Dishes shall be installed in accordance with such reasonable restrictions which may be imposed as part of the Rules.

4.10 Trash Disposal. Trash, garbage, accumulated waste plant material and all other waste and refuse shall be deposited only in covered sanitary containers or recycling containers in accordance with the following provisions:

(a) Screened Containers. Except as provided in Section 4.10(b), the containers shall be maintained within each Unit or its Exclusive Use Common Area and shall be screened or otherwise concealed from view from the Common Area, the streets, and the ground floor of any other Residences.

(b) Container Pickup. The containers may be placed for pickup at a reasonable time prior to trash collection and shall be promptly stored as specified in Section 4.10(a) after collection. The Board may adopt Rules regulating the placement of containers for trash collection which Rules may include limitations on the period of time during which containers may be placed for collection, provided that no garbage, trash or refuse receptacles or containers shall remain outside their designated storage locations after 6:00 p.m. of the regular collection day.

(c) Trash Storage. No Owner or Resident shall permit or cause any garbage, trash or other waste or refuse to be kept upon any portion of any Unit, or any Exclusive Use Common Area outside of the Residence or elsewhere in the Development, except in such containers.

4.11 Vehicles and Parking.

(a) Limitations on Types of Vehicles.

(i) Recreational Vehicles. No trailer, motor home, recreational vehicle, camper, or boat, shall be parked, kept or permitted to remain within the Development unless placed or maintained completely within an enclosed garage. The Board, in its complete discretion and upon such basis and terms as it deems prudent, shall have the power to adopt, modify and repeal Rules permitting the temporary use and parking within the Development of vehicles otherwise prohibited by the provisions of this subsection.

(ii) Commercial Vehicles. No truck, van or commercial vehicle shall be permitted within the Development except for such limited times as are necessary for deliveries, the performance of maintenance, repair and replacement of Improvements within the Development and other similar situations, and then subject to any Rules adopted by the Board which may include, without limitation, a limit on the time of day or days of the week when such vehicles may be present within the Development. The term "truck, van or commercial vehicles" shall not include sedans or standard size pickup trucks and vans which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

(b) Condition of Vehicles. No unreasonably noisy vehicles and no vehicles (including, without limitation, scooters, motorcycles or other motorized devices) emitting foul smelling or offensive exhaust fumes shall be operated within the Development. No dilapidated, unsightly, inoperable, or abandoned vehicle shall be parked, kept or permitted to remain upon any area within

the Development unless completely enclosed within a garage. Each vehicle operated or located within the Development shall maintain, and the Board shall have the authority to require written evidence of, current registration which permits the vehicle to be legally operated on public streets.

(c) No Vehicle Repairs. No maintenance or repairs of any kind may be made to vehicles within the Development except such emergency repairs as are necessary to remove the vehicle from the Development.

(d) Parking of Vehicles of Residents. Residents shall park vehicles only within the garage serving the Resident's Unit. In addition, provided that a Resident's garage is occupied by (2) two vehicles subject to this Section, the Resident may park no more than one (1) vehicles per Residence on the public streets serving the Development.

(e) Common Area Guest Parking Spaces. Subject to the limitations further described in this Section, guests and invitees of Residents may park vehicles otherwise permitted by this Section within the Common Area parking spaces. No vehicle of a guest shall be parked overnight for three (3) nights or for more than 72 hours during any period of seven (7) consecutive days in any such parking space provided that the Board may, in its discretion, permit the parking of a vehicle of a guest for such longer period as it deems advisable. The movement of any vehicle for the purposes of preventing the application of this Section shall be ineffective.

(f) No Parking Areas. Except as specified in Section 4.11(e), no vehicle may be parked on any portion of the Common Area. Vehicles parked within marked fire-lanes shall be subject to immediate towing in accordance with Section 4.11(g)(i), below.

(g) Parking Rules and Enforcement. The Development is designed to include a total of ninety (90) parking stalls in addition to each Unit's two (2) garage parking spaces. The ninety (90) parking stalls are expressly intended for non-Resident vehicle parking. In order to prevent or eliminate parking problems within the Development, or to further define and enforce the restrictions contained in this section, the Board shall have the authority to adopt further reasonable rules and restrictions regarding vehicles and parking within the Development as the Board may deem prudent and appropriate. The Board shall also have the power to impose sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such authority and power shall include, without limitation:

(i) Vehicle Towing. The power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Development in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Development shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Condominium Owner responsible or whose household members, tenants, Contract Purchasers, or guests are responsible for the presence of such vehicle.

(ii) Fines. The power and authority to fix and impose fines for violations of this section in accordance with California Civil Code Section 1363.

4.12 Garages.

(a) Garage Condition. Each Owner shall keep his or her garage in a neat, orderly, sanitary, and safe condition.

(b) Closed Doors. Each garage door shall remain closed except during the time required for the entry and exit of vehicles and individuals and when and only for as long as the garage is in active use.

(c) No Conversion. No garage shall be remodeled or used as a workshop, storage space, hobby facility or for any other use or facility which would prevent the parking of vehicles or otherwise interfere with the ability of the Owner of the Unit to comply with the provisions of this Declaration. In no event shall any garage be converted to or used as a living area.

4.13 Compliance with Laws. Nothing shall be done or kept anywhere within the Development which violates any local, state or Federal law, ordinance, statute, rule or regulation.

4.14 Animals.

(a) Household Pets. No animals, reptiles, rodents, birds, fish, livestock, or poultry shall be raised, bred or kept in any Unit or other portion of the Development except that a reasonable number, as determined by the Board, of domesticated birds, cats, dogs or aquatic animals kept within an aquarium, may be kept, provided that they are not kept, bred, or maintained for any commercial purposes and they are maintained under reasonable control at all times, all in conformance with any City ordinances. Each dog and cat must be restrained on a leash held by a responsible person capable of controlling it whenever it is outside of a Unit.

(b) Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Development by such pet. The Board shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to pets, including without limitation fines for failure to remove and dispose of pet waste as required by this section. Each Owner, Resident, and any person bringing or keeping an animal within the Development shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Development by such person or by members of his or her household, tenants, guests, or invitees. Each Owner and Resident shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Development by the Owner or Resident, members of his or her household, guests, tenants, or invitees.

(c) Pet Rules. The Board may adopt and enforce pet Rules in addition to the provisions of this section. Such Rules may include, without limitation, regulations regarding the presence of pets on the Common Area and requirements that pets be registered with the Association. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance or danger to any other person.

4.15 Rental of Condominiums. An Owner shall have the right to rent his or her Condominium subject to the provisions of the Governing Documents, including without limitation the following specific requirements:

(a) Restriction on Number of Units Leased. Not more than twenty percent (20%) of the Units within the Development shall, at any particular time, be leased or rented or occupied by anyone other than an Owner, members of his or her household, or temporary guests, except as provided in this Section 4.15. The restriction on the number or percentage of Units that may be leased or rented as set forth in this Section 4.15 shall not apply to any Unit which is being leased or rented on the date this Declaration is Recorded, but shall apply upon transfer of title to such Unit after this Declaration is Recorded.

(b) Implementation. Upon request from the Board after this Declaration is Recorded, each Owner renting or leasing a Unit shall provide such information as the Board may reasonable require to implement the provisions of this Section 4.15, including but not limited to the names of the tenants and the members of the tenants' household and a copy of the signed lease. Any permitted rental or lease of a Unit commencing after this Declaration is recorded and the renewal of tenancy in effect on the date this Declaration is Recorded shall be pursuant to a written lease or rental agreement in accordance with Section 4.15(m).

(c) Exceptions. The Board of Directors shall have the right but shall not be obligated to waive some or all of the provisions of this Section 4.15 either (i) in case of deserving and unusual hardship or (ii) for a limited term, not to exceed one (1) year upon written request of an Owner representing that he or she will retake possession and occupancy of the Unit as a Resident thereof upon the expiration of such limited term and subject to such other conditions as the Board may determine. The Board shall have the right to review and approve the lease for such limited term. Exceptions as authorized by the Board shall take precedence over the order of priority established pursuant to Section 4.15(i).

(d) Written Application. Any Owner desiring to lease or rent his or her Unit shall submit an application in writing to the Board of Directors, which shall state: the name, mailing address, Unit address, and record of ownership date of the Owner; the proposed lease term; and such other information which the Board of Directors may reasonably require from time to time, provided that the Board shall not inquire regarding the identity of the proposed tenants. Each Owner shall have the further right to appear in person before the Board of Directors and to discuss the request to lease or rent his or her Unit.

(e) Board Review of Application. Within thirty (30) days after receipt of such application to lease or rent, the Board of Directors shall review such application, and approve or disapprove it in a written notice transmitted to the requesting Owner. If the application is disapproved, the notice shall specify the reason(s) for disapproval. The Board shall approve the application, unless doing so will increase the number of Units leased or rented within the Development to more than allowed under Section 4.15(a), or will otherwise result in the violation of any provision of this Section 4.15. The identity of the proposed tenants shall not be considered and shall have no bearing upon the Board's review and decision regarding an application to permit the rental of a Unit.

(f) Rehearing. If the application is disapproved, the Owner concerned shall have a right to rehearing upon written request to the Board of Directors, at its next regular meeting, or as otherwise agreed between the Owner and the Board. The Owner shall have the right to appear at the rehearing and present his or her case. Within ten (10) days after the conclusion of such rehearing, the Board shall transmit its written determination to the requesting Owner and, if again disapproved, shall specify the reasons for such disapproval.

(g) Decision of Board Conclusive. Subject to Section 4.15(f), the decision of the Board of Directors in approving or disapproving and application of an Owner to lease his or her Unit shall be final and conclusive.

(h) List of Rented Units. The Board of Directors shall prepare a list of all Owners currently leasing or renting a Unit, which list shall include the Owner's name, mailing address, Unit address, date of record ownership, and term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board of Directors.

(i) Priority of Applicants. The Board shall establish and maintain a priority list, identifying the name, mailing address, address of Unit, record date of ownership, and date the written application or request of each Owner to lease or rent his or her Unit was submitted to the Board. When the number of Units leased or rented in the Development is less than the number allowed under Section 4.15(a), the Board shall authorize the Owner who submitted the earliest application to lease or rent his or her Unit. Once an Owner obtains permission to lease or rent, he or she may do so to consecutive lessees or renters of for consecutive terms without interruption of more than sixty (60) days or may reoccupy his or her Unit for a period not to exceed sixty (60) days, without having to reapply to the Board for permission to lease or rent.

(j) Owner Responsibility. Each Owner leasing a Unit shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of all Governing Documents. An Owner leasing or renting a Unit shall provide the tenant(s) with copies of the Governing Documents and all subsequent amendments.

(k) Association's Right to Take Legal Action. In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to maintain an eviction action against such tenant to the same extent as the Owner of the Unit, the Association being deemed to be a third party beneficiary of any lease or rental agreement involving any Unit within the Development. The Association's right to maintain an eviction action shall arise only in the event that (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.

(l) Owner's Indemnity Obligation. Every Owner of a Unit that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys fees arising out of the conduct or presence of the occupants of the Unit upon the Development, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

(m) Requirements of Written Rental Agreement. Any rental of any Unit shall be only by written rental agreement which shall expressly provide (i) that it is subject to all of the provisions

of the Governing Documents, (ii) that the tenants of such Unit shall comply with all provisions of the Governing Documents, and (iii) that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such rental agreement. The rental agreement shall not attempt to, nor shall any such agreement be effective to, transfer membership in the Association to the lessee. Any lease or rental agreement entered into between an Owner and a lessee or renter shall be for a minimum term of six (6) months. An Owner renting a Unit shall provide the Association with proof of a current criminal background check and proof of a credit report for each prospective tenant

(n) Requirement of Inclusive Rental Agreement. No Owner may rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Unit.

4.16 Use of Porch/Patio. No laundry shall be hung or stored within a porch or patio area. The Board may also establish Rules regarding the placement of personal property within a porch or patio area.

4.17 Activities Affecting Insurance. Nothing shall be done or kept within the Development which will increase the rate of insurance maintained by the Association without the prior written consent of the Association. No Owner shall permit anything to be done or kept within the Development which would result in cancellation of any insurance policy maintained by the Association or any other Owner.

4.18 Alterations to Units. No Unit shall be altered in any manner which would result in an increase in sound transmission, resonance or reverberations to any other Unit. Only soft-cover floors may be installed on the lower levels of Units, except for replacement of any hard coverings in kitchen, bath or other areas where such hard coverings were originally installed by Declarant.

4.19 No Partition. Except as permitted by Civil Code Section 1359, there shall be no judicial partition of the Development or any part thereof, nor shall any Owner or any person acquiring any interest in the Development or any part thereof seek any judicial partition thereof. Notwithstanding the preceding, if any Condominium is owned by two or more co-tenants as tenants in common or as joint tenants, this section shall not be deemed to prevent a judicial partition by sale as between such co-tenants.

4.20 Variances. The Board shall be authorized to grant reasonable variances from the provisions of Article 4 of this Declaration upon written application from any Owner provided that the Board determines, in its sole discretion, that the specific application of the restriction to such Owner will (i) cause substantial undue hardship to the Owner, or (ii) fail to further or accomplish the common plan for the Development as contemplated by this Declaration. The Board shall have the power to limit any variance granted in scope or duration or otherwise impose such specific requirements as the Board may, in its complete discretion, see fit to require. The Board shall follow the following procedures in acting on any request for a variance:

(a) Initial Board Determination. The Board, in its sole discretion, shall make an initial determination whether or not the variance on its face meets the requirements set forth in this section. If the Board determines that it does not, the variance request shall be denied and the Board shall so notify the applicant within thirty days of the Board's decision. If the Board determines that the variance does, the procedures set forth in the remainder of this section shall be followed.

(b) Board Hearings. The Board shall conduct a hearing on the variance within forty-five days of the receipt of the written request for a variance. Notice shall be given to all Members not less than fifteen days prior to the date of the hearing. Members may submit comments in writing prior to the hearing and/or appear at the hearing. The Board shall establish a reasonable time limit



for Member comments during the hearing. No decision regarding the request for variance shall be made until the conclusion of the hearing.

(c) Board Decision. After the conclusion of the hearing, the Board shall, in its sole discretion, either grant or deny the request for variance in accordance with the standards set forth in this section. As more fully discussed above, if the Board grants the variance request, the Board may impose such conditions as the Board deems appropriate and shall so notify the applicant within thirty (30) days of the Board's decision.

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## ARTICLE 5                      PROPERTY DISCLOSURES

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5.1 Approval by Board. Prior to undertaking any proposed modifications to a Unit or Exclusive Use Common Area which are visible from the exterior of the Unit, including, but not limited to the placement of awnings or other Improvements, the Owner must submit to the Board in writing such proposed modifications to the Board, which may, in its sole discretion, approve or disapprove such proposed modifications.

5.2 Exterior Lighting and Fixtures. All exterior lights shall be adequately and properly shielded from other Units and the Common Area, such that direct rays from the light source are directed downward and to have no off-site glare. All exterior lighting fixtures shall be vandal resistant, downward and do not cross property lines.

5.3 Airport Influence Area. Pursuant to California Civil Code Section 1353, the following notice identifies the Development as an "airport influence area". For purposes of this section, an "airport influence area," also known as an "airport referral area," is the area in which current or future airport-related noise, overflight, safety, or airspace protection factors may significantly affect land uses or necessitate restrictions on those uses as determined by an airport land use commission. Pursuant to California Civil Code Section 1353(a)(3), property located within in an airport influence area does not constitute a title defect, lien, or encumbrance. The required notice is as follows:

### NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you.

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## ARTICLE 6                      ASSESSMENTS AND LIENS

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6.1 Covenant of Owner.

(a) Owner's Assessment Obligation. Each Owner of a Condominium within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Regular Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the

right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens as hereinafter provided.

(b) Owner's Personal Obligation. Each Assessment levied by the Association under this article, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Condominium shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is Record Owner of such Condominium. After an Owner transfers of Record any Condominium he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A Contract Seller of any Condominium shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Condominium is Recorded.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a lien upon the property against which such Assessment is levied, from and after the time that a Notice of Delinquent Assessments is Recorded against the Unit. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Condominium notwithstanding the transfer of Record title to such Condominium, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been Recorded as provided in this Declaration and by law. The priority of all such liens on each Condominium shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Condominium, any sale of such Condominium pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Condominium for succeeding months.

6.3 Purpose of Assessments. The Assessments levied by the Board shall be used exclusively for (i) managing and operating the Development, (ii) conducting the business and affairs of the Association, (iii) maintaining and enhancing the property values of the Owners and Residents of the Development, (iv) improving and maintaining the Common Area and, to the extent provided for in the Governing Documents or by law, the Condominiums situated within the Development, (v) enforcing the Governing Documents, and/or (vi) otherwise benefitting the Owners.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Regular Assessments and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Regular Assessment.

(a) Calculation of Estimated Requirement. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year (including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis) to manage, administer, operate, and maintain the

Development; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration. The funds required by the Association pursuant to this subsection shall be assessed among the Owners of Units within the Development as "Regular Assessments" as further provided in this Section 6.5.

(b) Allocation of Regular Assessment. Regular Assessments shall be allocated and assessed equally among the Condominiums within the Development, except that domestic water service, which is provided by the Association, shall be sub-metered so that the Regular Assessments assessed for each Unit includes a component for domestic water use based on the Unit's proportionate use.

(c) Payment of Regular Assessments. Unless the Board shall designate otherwise, Regular Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

(d) Increases in Regular Assessment. Pursuant to California Civil Code Section 1366(b), except as otherwise provided by law, the Board shall not increase the Regular Assessment for any fiscal year above the amount of the Regular Assessment for the preceding fiscal year by more than twenty percent (20%), except upon the affirmative vote or written consent of a majority of Owners voting on any such increase in the Regular Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Owners of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 1366 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(e) Commencement of Regular Assessment. Regular Assessments shall commence as to each Condominium within the Development on the first day of the first month following the month in which the first conveyance occurs for the sale of a Condominium to a person other than Declarant. Each Condominium within the Development shall thereafter be subject to its share of the then established annual Regular Assessment. The first annual Regular Assessment shall be pro rated, if necessary, according to the number of months remaining in the fiscal year established in the Association's Bylaws.

(f) Partial Assessment Exemption for Uncompleted Common Area. All Owners, including Declarant, shall be exempt from the payment of that portion of any Regular Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Common Area that is not completed at the time Assessments commence. The Assessment exemption provided by this subparagraph shall be in effect only until the earliest of the following events: (A) a notice of completion of the Common Area has been Recorded; or (B) the Common Area has been placed in use.

(g) Partial Assessment Exemption for Uncompleted Units. Any Unit within the Development having no structural improvements for human occupancy shall be 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 the structural improvements. Any such exemption from the payment of Assessments attributed to uncompleted Units shall be in effect only until the earliest of the following events: a notice of completion of the construction of the Unit has

been Recorded; occupation or use of the Unit; or completion of all Building Common Area containing the Unit which the Association is obligated to maintain. The Assessment exemption provided by this section shall include:

- (i) Roof replacement;
- (ii) Exterior maintenance;
- (iii) Any commonly metered domestic water, gas or electricity; and
- (iv) Insurance for the Condominium Building containing the Unit.

(h) Working Capital Fund. A working capital fund may be established for the Development by the contribution to such fund, by the Owners and Declarant, of a sum not to exceed the amount of three (3) months Regular Assessments for each Unit owned. Any amounts paid into this fund should not be considered as advance payments of Regular Assessments. Except as provided in this section, the Association shall collect each Unit's share of the working capital fund at the time of the conveyance of the Unit by Declarant to an Owner, and such share shall be deposited into a segregated fund. Within 60 days after the conveyance of the first Unit by Declarant, Declarant shall pay each unsold Unit's share of the working capital fund to the Association. Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Units are sold.

#### 6.6 Special Assessments.

(a) Purpose of Special Assessments. If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of Improvements located in the Development, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

(b) Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums within the Development in the same manner as Regular Assessments.

(c) Approval of Special Assessments. Except in the case of an emergency situation as defined in California Civil Code Section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws. Any meeting or election of the Association for purposes of complying with California Civil Code Section 1366 shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Condominium (i) if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or

resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Condominium into compliance, or (ii) in the event that the Association has expended funds performing repairs as authorized by Section 7.6 of this Declaration or for any other reasons specifically authorized by the provisions of this Declaration. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Regular Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Regular Assessment fixed for the preceding fiscal year shall be the amount of the Regular Assessment for the ensuing fiscal year until a new Regular Assessment is levied.

6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Association may Record a lien against an Owner's Unit for delinquent Assessments and all Additional Charges as provided in Section 6.12, below, and in accordance with the Davis-Stirling Common Interest Development Act, California Civil Code Section 1350 et seq.

6.12 Assessment Liens.

(a) Notice of Collection and Lien Enforcement Procedure. At least 30 days prior to Recording a lien upon an Owner's Unit to collect an Assessment debt that is past due under this Article 6, the Association shall notify the Owner in writing by certified mail of the following:

(i) A general description of the Association's collection and lien enforcement procedures and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records, pursuant to Corporations Code Section 8333, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed:

**"IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."**

(ii) An itemized statement of the Assessments and Additional Charges owed by the Owner, including items on the statement which indicate the amount of any delinquent

Assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

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

(iv) The right to request a meeting with the Board by submitting a written request to meet with the Board to discuss a payment plan for the Assessment and Additional Charges debt noticed pursuant to Section 6.12(a)(ii).

(v) The right of the Owner to dispute the Assessment and Additional Charges debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program.

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

(b) Payments Made by Owner. Any payments made by the Owner toward the debt set forth shall first be applied to the Assessments owed, and, only after the Assessments owed are paid in full shall the payments be applied to the Additional Charges. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the person who received it. The Association shall provide a mailing address for overnight payment of Assessments.

(c) Meet and Confer Program. Prior to Recording a lien for delinquent Assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) Decision to Record a Lien. The decision to Record a lien for delinquent Assessments, which is otherwise permitted by this Section 6.12, shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board Members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(e) Payment Plan. An Owner may submit a written request to meet with the Board to discuss a payment plan for the debt noticed. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board Meeting within that period, in which case the Board may designate a committee of one or more Members to meet with the Owner. Payment plans may incorporate any Assessments that accrue during the payment plan period. Payment plans shall not impede an Association's ability to record a lien on the Owner's Unit to secure payment of delinquent Assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a

default on any payment plan, the Association may resume its efforts to collect the delinquent Assessments from the time prior to entering into the payment plan.

(f) Recordation of the Notice of Delinquent Assessment. The amount of the Assessment, plus any Additional Charges shall be a lien on the Owner's Unit from and after the time the Association causes to be Recorded, a Notice of Delinquent Assessment, which shall state the amount of the Assessment and Additional Charges imposed, a legal description of the Unit against which the Assessment and Additional Charges are levied, and the name of the Record Owner of the Unit against which the lien is imposed. The itemized statement of the charges owed by the Owner shall be Recorded together with the Notice of Delinquent Assessment.

(i) The Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale.

(ii) The Notice of Delinquent Assessment shall be signed by the President of the Association.

(iii) A copy of the Recorded Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the Unit in the Association's records, and the notice shall be mailed no later than 10 calendar days after Recordation.

(iv) Within 21 days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Unit a copy of the lien release or notice that the delinquent Assessment has been satisfied.

(g) Assessment Liens for Repair of Common Areas. Unless otherwise permitted by law, a Reimbursement Assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Areas and facilities for which the Member or the Member's guests or tenants were responsible may not be characterized nor treated as an Assessment that may become a lien against the Member's Unit enforceable by the sale of the interest pursuant to Section 6.13, below.

(h) Enforcement Assessments and Penalties. An Enforcement Assessment or monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents, except for late payments of Assessments, may not be characterized nor treated as an Assessment that may become a lien against the Member's Unit enforceable by the sale of the interest pursuant to Section 6.13, below.

(i) Assignment of the Association's Lien Right. The Association may not voluntarily assign or pledge the Association's right to collect payments or Assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under Federal or State law, when acting within the scope of that charter or license, as security for a loan obtained by the Association; however, the foregoing provision may not restrict the right or ability of the Association to assign any unpaid obligations of a former Member to a third party for purposes of collection. After the expiration of 30 days following the Recording of a lien, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee. Any sale by the trustee shall be conducted in accordance with California Civil

Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust. The fees of a trustee may not exceed the amounts prescribed in California Civil Code Sections 2924c and 2924d, plus the cost of service for either of the following:

(i) The notice of default pursuant to California Civil Code Section 1367.1(j).

(ii) The decision of the Board to foreclose upon an Owner's Unit as described in California Civil Code Section 1367.4(d)(4).

(j) Actions Against Owners. Nothing in this section or in California Code of Civil Procedure Section 726(a) prohibits actions against the Owner of a Unit to recover sums for which a lien is created pursuant to this section or prohibits the Association from taking a deed in lieu of foreclosure.

(k) Lien Recorded in Error. If it is determined that a lien previously Recorded against a Unit was Recorded in error, the Association shall, within 21 calendar days, Record or cause to be Recorded a lien release or notice of rescission and provide the Owner of the Unit with a declaration that the lien filing or Recording was in error and a copy of the lien release or notice of rescission.

(l) Notice of Default. A notice of default shall be served by the Association on the Owner's legal representative, in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq. The Owner's legal representative shall be the person whose name is shown as the Owner of a Unit in the Association's records, unless the Owner in writing, delivered to the Association in a manner that indicates that the Association receives it, designates another person as his or her legal representative.

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

(n) Failure to Comply with Procedures. If the Association fails to comply with the procedures set forth in this section, the Association shall, prior to Recording a lien, recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Owner of the Unit.

(o) Collection of Delinquent Assessments. If Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount less than One Thousand Eight Hundred Dollars (\$1,800), not including any accelerated assessments, and Additional Charges, the Association shall not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(i) By a civil action in small claims court.



(ii) By Recording a lien on the Owner's Unit which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, and Additional Charges, equals or exceeds One Thousand Eight Hundred Dollars (\$1,800) or the Assessments secured by the lien are more than 12 months delinquent. If the Board of Directors elects to Record a lien under these provisions, prior to Recording the lien, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in California Civil Code Section 1363.810.

(iii) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

#### 6.13 Foreclosure of Association Assessment Liens.

(a) Lien Foreclosure Conditions. Except for Assessments owed to the Association by Declarant, if the Association seeks to collect delinquent Regular Assessments or Special Assessments of an amount of One Thousand Eight Hundred Dollars (\$1,800) or more, not including any accelerated assessments, or Additional Charges, or any Assessments secured by the lien that are more than 12 months delinquent, the Association may use judicial or non-judicial foreclosure subject to the following conditions:

(i) Meet and Confer Program. Prior to initiating a foreclosure on an Owner's Unit, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(ii) Decision to Foreclose. The decision to initiate foreclosure of a lien for delinquent Assessments that has been validly Recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board Members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all Members. The Board shall maintain the confidentiality of the Owner or Owners of the Unit by identifying the matter in the minutes by the Owner's Unit number as shown on the Condominium Plan, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(iii) Notice. The Board shall provide notice by personal service in accordance with the manner of service of summons pursuant to California Code of Civil Procedure Section 415.10 et seq., to an Owner of a Unit who is a Resident of the Unit or to the Owner's legal representative, if the Board votes to foreclose upon the Unit. The Board shall provide written notice to an Owner of a Unit who is not a Resident of the Unit by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Unit may be treated as the Owner's mailing address.

(iv) Right of Redemption. A nonjudicial foreclosure by the Association to collect upon a debt for delinquent Assessments shall be subject to a right of redemption. The redemption period within which the Unit may be redeemed from a foreclosure sale under

this paragraph ends 90 days after the sale. In addition to the requirements of California Civil Code Section 2924f, a notice of sale in connection with the Association's foreclosure of Unit shall include a statement that the Unit is being sold subject to the right of redemption created by California Civil Code Section 1367.4(c)(4).

(b) Declarant Exception. The limitation on foreclosure of Assessment liens for amounts under the stated minimum in this section does not apply to Assessments owed by Declarant.

(c) Recordation of Lien in Error. If it is determined through dispute resolution pursuant to the Association's "meet and confer" program or alternative dispute resolution with a neutral third party that the Association has Recorded a lien for a delinquent Assessment in error, the Association shall promptly reverse all Additional Charges, costs imposed for the notice, and costs of Recordation and release of the lien and pay all costs related to the dispute resolution or alternative dispute resolution.

(d) Small Claims Court. The Association may appear and participate in a small claims action through an agent, a management company representative, or bookkeeper who appears on behalf of the Association.

6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this article shall have priority as of the date of Recording of the original Declaration applicable to the Development over all other liens and encumbrances applicable to the Units; provided, however, that such Assessment lien shall be subordinate to the lien of any First Mortgage Recorded against the Unit; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such First Mortgage, or pursuant to a power of sale contained in any such First Mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.15 Association Funds. All Association accounts shall be maintained in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated as belonging to the Association. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be used for the purposes set forth in Section 6.3, above.

6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this article.

## ARTICLE 7                      MAINTENANCE OF PROPERTY

### 7.1      Association Maintenance Responsibility.

(a) Common Area, Generally. Except as specified in Section 7.4, the Association shall maintain, repair and replace the Common Area and all facilities, improvements, and landscaping thereon, including without limitation (i) the private streets, (ii) the walks and paths, and (iii) all other real and personal property that may be acquired or controlled by the Association, keeping such property in good condition and repair. The Association shall be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in

good condition and repair, including painting of the exterior surfaces of the buildings and such other portions of the Common Area as the Board, in its discretion, determines to be necessary. The Board of Directors shall have the discretion to determine the nature, extent and level of care to be performed by the Association in discharging its obligations under this article.

(b) Non-Exclusive List of Common Area Maintenance Components. The Association's responsibility pursuant to this section shall include, without limitation, the maintenance, repair and replacement of the following Common Area elements:

(i) The exterior surfaces (excluding windows and doors), framing and structural components of the buildings containing the Units.

(ii) The garage doors and garage door frames, except as provided in Section 7.4(c).

(iii) The roof coverings, roof structures, gutters, downspouts.

(iv) The walls and fences facing the Common Area, excluding the fences abutting Exclusive Use Common Area deck or patio area.

(v) The landscaping.

(vi) The sewer, water, storm drain, electrical and other utility lines located within the Common Area up until the point that they serve a single Unit.

(vii) The cluster mailboxes to the extent they are not maintained by another entity.

(viii) The Association shall adopt an inspection and maintenance manual for the periodic inspection and maintenance of the Common Area. Such maintenance inspection may be undertaken by a qualified reserve study analyst as part of the Association statutory reserve study requirement. The Board may, from time to time, make appropriate revisions to any maintenance manual based on the Board's review thereof, to update such manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained.

7.2 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Board is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 7.6. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Unit or any portion of Exclusive Use Common Area to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Unit or Exclusive Use Common Area, any other Unit or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than 24 hours, except in emergency situations.

7.3 Association Liability. Except as specifically provided in this article, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Unit or Exclusive Use Common Area or any Improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

7.4 Owner Maintenance Responsibility. Each Owner shall:

(a) Unit Interior. Maintain, repair, and replace his or her Unit, including without limitation the finished surfaces of the interior walls, ceilings, and floors of the Unit, keeping the same in a clean, sanitary, workable and attractive condition.

(b) Unit Doors. Clean, maintain, repair and replace all doors, windows, window panes and all screens, serving his or her Unit, including door and window frames.

(d) Garage. Clean, maintain, repair and replace the interior of the garage and the automatic garage door opener of the garage appurtenant to his or her Unit.

(e) Fixtures and Appliances. Maintain, repair and replace the internal installations, appliances, equipment, and other features servicing his or her Unit, even though located wholly or partly outside of such Unit, including without limitation (i) garbage disposals, (ii) hot water heaters, (iii) ranges, refrigerators, freezers, dishwashers and other kitchen appliances, (iv) clothes washing machines and dryers, (v) light fixtures and light bulbs, (vi) heating, ventilation and air conditioning units, condensers and equipment, (vii) showers, bathtubs, sinks and toilets, (viii) sewer, water, electrical and other utility lines from the point that they serve only such unit, (ix) solar devices, and (x) telephone facilities.

(f) Deck. Keep the decks assigned as Exclusive Use Common Area to his or her Unit in a clean, swept condition.

7.5 Interior Decorations. Except as limited by Section 4.18, above, each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on the walls, ceilings, floors, and doors, including, without limitation, substitution of paint for paper or paper for paint, substitution of any type of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood. Notwithstanding the preceding, no Owner shall do anything in or about his or her Unit that will affect the structural integrity of the building in which it is located.

7.6 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Development or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within 60 days after notification by the Board to the Owner, the Board may, after written notice to the Owner, and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

7.7 Wood Destroying Pests and Organisms. The Association shall be responsible for all costs involved in operating the inspection and preventive program as well as repairing and replacing the Common Area and Improvements thereon when the need for such maintenance, repair or replacement is the result of

wood destroying pests or organisms. Each Owner shall be responsible for all costs involved in repairing and replacing the improvements, fixtures, appliances, and personal property within a Unit when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms. If the Association adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, on no less than fifteen (15) nor more than thirty (30) days' notice, may require each Owner and any occupants of the Owner's Unit to vacate such Unit to accommodate Association efforts to eradicate such infestation. The notice must state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the Occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Unit by such entry by the Association or by any person authorized by the Association shall be repaired by the Association at its expense.

#### 7.8 Mold Contamination.

(a) Association Maintenance Obligations. In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens (collectively, "mold") within the Development, the Association shall adopt and implement an mold inspection and prevention program which shall include the following steps:

(i) Inspect the Association Common Area and Building Common Area not less frequently than quarterly to check for water leaks, moisture collection, or other breaches of the watertight integrity of the Common Area and for the presence of mold;

(ii) If any water leaks, moisture collection, or mold is detected, immediately take appropriate corrective action to repair the Common Area and remove the mold;

(iii) Maintain proper ventilation and humidity levels within enclosed Common Areas to reduce the risk of mold;

(iv) Periodically inspect the irrigation system to ensure proper water use and to correct any leaks, misdirected, or excessive watering;

(v) Periodically inspect the ground surface around the foundations of Condominium Buildings to ensure that no water is pooling near the foundations; maintain rain gutters and roof drainage systems in a clean and proper operating condition at all times; and

(vi) Take such other prudent steps as may be appropriate to prevent mold and eliminate any existing mold in the Common Areas.

(b) Owner Maintenance Obligations. In order to reduce the presence of molds, fungi, spores, pollens, other botanical substances, or other allergens (collectively, "mold") within the Development, each Owner shall adopt and implement an mold inspection and prevention program which shall include the following steps:

(i) Inspect the Unit not less frequently than quarterly to check for water leaks, moisture collection, or other breaches of the watertight integrity of the Unit and for the presence of mold;

(ii) If any water leaks, moisture collection, or mold is detected, immediately take appropriate corrective action to repair and remove the mold;

(iii) Maintain proper ventilation and humidity levels (particularly in bathrooms and kitchens) within the Unit to reduce the risk of mold;

(iv) Periodically inspect the water fixtures and refrigerator condensation pans for the presence of mold;

(v) Replace HVAC filters semiannually or as recommended by the manufacturer; and

(vi) Take such other prudent steps as may be appropriate to prevent mold and eliminate any existing mold in the Common Areas.

(c) Owner's Cooperative Maintenance Obligations. In the event of any water leak or overflow within a Unit or its Exclusive Use Common Area, the Owner of such Unit shall cooperate with the Association and the other Condominium Building Unit Owners in the inspection and correction of the problem. Cooperation shall include access to the Unit and Exclusive Use Common Area to inspect and repair the problem.

7.9 Owner Liability. In the event the need for any maintenance, repair, or replacement by the Association is caused by the willful or negligent act or omission of an Owner, members of any Owner's household, or an Owner's tenants, Contract Purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

7.10 Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance and repair obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

7.11 Owner Responsibility for Consequential Damage. Except as provided by Article 11 of this Declaration, an Owner is responsible for the cost of repair of those portions of the Owner's Unit which are required to be maintained by the Owner, those portions of Common Area which are to be maintained by the Owners, and the fixtures and personal property located on the Owner's Unit and within any Exclusive Use Common Areas, even if the cause of the damage originates from a source maintained by the Association, unless the cause is the gross negligence of the Association or its agents. As an example, water damage to the interior of a Unit that is caused by a leak in the roof is the responsibility of the Owner even though the repair of the roof is the responsibility of the Association.

## ARTICLE 8                      INSURANCE

8.1 Types of Insurance Coverage. The Association shall, at the discretion of the Board of Directors, purchase, obtain and maintain the following types of insurance, if and to the extent they are available at a reasonable premium cost:

(a) Property Insurance. The Association shall obtain and maintain a master or blanket policy of property insurance, written on all risk, replacement cost basis, that satisfies all of the following conditions:

(i) Property Covered. The policy shall cover the following real and personal property:

- (A) Common Area. All Common Area Improvements, including the building and any additions or extensions thereto; all fixtures, machinery and equipment permanently affixed to the building and not located within a Unit; fences; monuments; lighting fixtures; exterior signs; and personal property owned or maintained by the Association; but excluding land; foundations; excavations; and other items typically excluded from property insurance coverage; and
- (B) Units. The standard fixtures and Improvements within individual Units as originally installed by Declarant and any equivalent replacements thereto, including, but not limited to, interior walls and doors; ceiling, floor and wall surface materials (e.g., paint, wallpaper, mirrors, carpets, and hardwood floors); utility fixtures (including gas, electrical and plumbing); cabinets; built-in appliances; heating and air-conditioning systems; water heaters installed as a part of the original construction of the residence and any equivalent replacements thereto; but excluding any personal property located in the Unit; and excluding any Improvements or upgrades to any of the foregoing to the extent the replacement cost of any such Improvement or upgrade made after completion of the original construction of the Unit exceeds the replacement cost immediately before the installation of the Improvement or upgrade.
- (ii) Covered Cause of Loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent.
- (iii) Dollar Limit. The dollar limit of the policy shall not be less than the full replacement value of the covered property described in Section 8.1(a)(i) above, provided that there may be lower dollar limits for specified items as is customarily provided in property insurance policies.
- (iv) Primary. The policy shall be primary and non-contributing with any other insurance policy covering the same loss.
- (v) Endorsements. The policy shall contain the following endorsements or their equivalents: agreed amount, boiler and machinery (to the extent applicable), inflation guard, plate glass, ordinance or law, and replacement cost, and such other endorsements as the Board in its discretion shall elect.
- (vi) Waiver of Subrogation. The policy shall waive all subrogation rights against any Owner or occupant and their family members and invitees.
- (vii) Deductible. The amount of any deductible shall be paid by the Association and/or Owner pursuant to guidelines adopted by the Board.
- (b) General Liability Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive general liability insurance naming as parties insured the Association, each

member of the Association Board of Directors, any manager, the Owners and occupants of Units. Mortgagees and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to common interest development projects similar in construction, location, facilities, and use.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least One Million Dollars (\$1,000,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance, earthquake insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than one hundred percent (100%) of each year's estimated annual operating expenses and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable.

8.2 Board Authority to Alter Coverage. Subject to the provisions of Section 8.7, the Board shall have the power and right to deviate from the insurance requirements contained in this article in any manner that the Board, in its discretion, considers to be in the best interests of the Association. If the Board elects to materially reduce the coverage from the coverage required in this article, the Board shall make all reasonable efforts to notify the Members of the reduction in coverage and the reasons therefor at least 30 days prior to the effective date of the reduction.

8.3 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection and copy by Owners and their Mortgagees at any reasonable time.

8.4 Individual Owner's Property Insurance. Each Owner shall purchase and at all times maintain a policy of personal liability and property insurance insuring the Owner's Unit, any upgrades or additions to any fixtures or Improvements to the Owner's Unit, and personal property. The Association's insurance policies will not provide coverage against any of the foregoing. Any insurance maintained by an Owner must contain a waiver of subrogation rights by the insurer as to the other Owners, the Association, and any Mortgagee of the Owner's Unit.

8.5 Trustee. All insurance proceeds payable under Section 8.1, above, may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in the County that agrees in writing to accept such trust.



8.6 Adjustment of Losses. Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 8.1, above. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

8.7 Governmental Lender Requirements. Board Notwithstanding anything herein to the contrary, the Association shall maintain such policies, containing such terms, amount of coverage, endorsements, deductible amounts, named insureds, loss payees, standard mortgage clauses, notice of changes or cancellation, and an appropriate insurance company rating that shall satisfy the minimum requirements imposed by the FNMA, FHLMC, FHA, or VA or any successor thereto. If such requirements conflict, the more stringent requirements shall be met. In the event the Board is provided notice that any required insurance policy does not satisfy the minimum requirements imposed by FNMA, FHLMC, FHA, or VA or any successor thereto, the Board shall make all reasonable efforts to satisfy such minimum requirements within thirty (30) days of receiving such notice.

## ARTICLE 9                      EASEMENTS

9.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map, Condominium Plan, and the easements specified in Articles 3 and 14, there are hereby specifically acknowledged, reserved and granted for the benefit of the Condominiums and the Owners in common and for each Condominium and Owner severally, and for the Association, as their respective interests shall exist, the easements and rights of way as particularly identified in this article.

9.2 Utility Easements. Easements over and under the Development or any portion thereof for the installation, repair, maintenance, and replacement of (i) electric, telephone, telecommunications, water, gas, and sanitary sewer lines, meters, and facilities, (ii) cable lines and facilities, (iii) drainage facilities, (iv) walkways, and (v) landscaping, as shown on the Subdivision Map, and as may be hereafter required or convenient to service the Development, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal.

9.3 Easements Granted by Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of (i) constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, telecommunications, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and (ii) for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association. Each purchaser, in accepting a deed to a Condominium, expressly consents to such easements and rights of way. No such easements may be granted if they would unreasonably interfere with the use, occupancy, or enjoyment by an Owner or Resident of his or her Condominium without the consent of the affected Owner of the Condominium.

9.4 General Association Easements for Maintenance, Repair and Replacement. The Association shall have an easement in, on, over or under every Condominium as reasonably necessary to (i) maintain and repair the Common Area, (ii) perform maintenance upon a Condominium which is not performed by its Owner as provided by Section 7.4 and Section 7.6, and (iii) otherwise perform its obligations under this Declaration.

9.5 Utility Maintenance and Repair Easements. Wherever sanitary sewer connections or water connections or electricity, gas or telephone, telecommunications, television lines or drainage facilities are installed within the Development, which connections, lines or facilities, or any portion thereof, lie in or upon Condominiums owned by other than the Owner of the Condominium served by said connections, the Owners of any Condominiums served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter such Condominiums or to have utility companies enter therein, or any portion thereof, to repair, replace and generally maintain said connections as and when the same may be necessary. All utility companies having easements on the property covered by this Declaration shall have easements for cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained service in all underground utility lines, including, when reasonably necessary, the entry into an improvement constructed upon a Condominium for uncovering any such lines. Any Owner or utility company exercising the rights granted in this section shall be obligated to restore the Unit entered to substantially its former condition.

9.6 Encroachment Easements. The Common Area and each Unit within the Development is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of structures, or any other similar cause. There shall be valid easements for the maintenance of such encroachments as long as they shall exist. Notwithstanding the preceding, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if such encroachment occurred due to the wilful misconduct of such Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be valid easements for the maintenance of such encroachments so long as they shall exist.

## ARTICLE 10                      ENFORCEMENT

10.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance. In addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association, its officers, the Board or by any Owner. The Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

10.3 Owners' Responsibility for Conduct and Damages. Each Owner shall be fully responsible for informing members of his or her household and his or her tenants, Contract Purchasers, contractors and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

10.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Condominium.

#### 10.5 Rights and Remedies of the Association.

(a) Enforcement Rights. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive. The Board shall not be obligated to take action to enforce a provision of the Governing Documents if, in the exercise of its discretion, the Board determines that acting to enforce the provision is not likely to foster or protect the interests of the Association and its Members as a whole

(b) Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that such Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board shall give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association. Such Member shall be so notified in writing with a copy given to the Secretary.

(c) Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's household, or his or her tenants, Contract Purchasers, contractors, guests, pets or invitees, the Board shall have the power to impose sanctions against the Owner. Such sanctions may include, without limitation, the imposition of fines and/or the suspension of an Owner's rights as a Member, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Except as provided in Section 10.7 below, imposition of sanctions shall be effective only after the Board has held a hearing as provided in California Civil Code Section 1363. The payment of any such fine may be enforced as an Enforcement Assessment as provided in Section 6.8 of this Declaration as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner, members of such Owner's household, or his or her tenants, Contract Purchasers, contractors, guests, pets or invitees.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the household of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Development to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

(e) Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of such Owner's household, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of

competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this subsection shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

(f) Common Area Claims. With respect to any decisions by the Association to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings in matters pertaining to damage to the Common Area and any warranty claims that may arise with respect to the Common Area, no representative of Declarant on the Board shall vote on the initiation of any claim under California Civil Code Section 895 et. seq., such that from and after the first annual meeting of the Association, Declarant shall have no control over the Association's ability to decide whether to initiate a claim under such statutory provisions and in the event of such a vote, the affirmative vote of the two non-Declarant representatives on the Board shall be binding so long as a quorum of the Board is present at any meeting where such vote is taken. The Association and not the individual Members shall have the power to pursue warranty claims or any claims or other actions using the non-adversarial proceedings for construction defects in Common Area pursuant to Civil Code Section 895 et seq., and any successor statutes or laws. Any recovery by the Association with respect to any damage to or defect in the Common Area shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect.

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

10.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in, and constituting a part of, the Governing Documents.

10.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, or (iii) a threat of material damage to or destruction of the Development or any portion thereof. Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency situation, the Association may undertake immediate corrective action. Hearings with respect to such corrective action shall be held following the corrective action in accordance with California Civil Code Section 1363, and no disciplinary action may be taken without compliance with California Civil Code Section 1363(h).

10.8 Alternative Dispute Resolution. California Civil Code Section 1369.520 shall be complied with respect to any dispute subject to such section.

10.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

10.10 Notices. Any notices required or given under this article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

10.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her household or his or her tenants, Contract Purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the prevailing party shall be entitled to recover the full amount of all costs incurred, including attorneys' fees, in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorneys' fees shall include, without limitation, the imposition of a Reimbursement Assessment as provided in Section 6.7 of this Declaration.

10.12 City Enforcement. In the event the Association fails to maintain the Common Area in accordance with the duties set forth in this Declaration, the City may, at its option, cause the maintenance of the Common Areas to be performed to the extent necessary to satisfy such duties, and charge the Association with the cost of the maintenance.

## ARTICLE 11                      DAMAGE OR DESTRUCTION AND CONDEMNATION

11.1 Damage to the Common Area Buildings and Units. If any portion of the Development is damaged or destroyed by fire or other casualty, all available insurance proceeds shall be paid to or on behalf of the Association, as agreed to by the Board, and the repair and rebuilding of the Development shall be in accordance with the following provisions:

(a) Insurance Proceeds Equal or Exceed 80%. If the amount of available insurance proceeds is at least eighty percent (80%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, or if the deficiency in insurance proceeds does not exceed \$20,000, the Board shall contract to repair or rebuild the damaged portions of the Development, including those portions of the damaged Units which are covered by the Associations' insurance. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and rebuilding, the Board shall levy a Reimbursement Assessment against all Owners to make up any deficiency.

(b) Insurance Proceeds Less Than 80%. In the event of any damage or destruction not subject to Section 11.1(a), the Board shall obtain bids from responsible contractors to restore the Development, including all damaged Units and all damaged portions of the Common Area, to its condition immediately prior to such damage or destruction. Following the receipt of the bids, the Board shall call a special meeting of the Members to consider the bids. At such special meeting, the Impacted Members shall accept or reject such bids by a vote of a Simple Majority.

(i) In the event a bid is accepted, the Board shall levy a Special Assessment against all Owners pursuant to Section 6.6 to make up the deficiency between the total insurance proceeds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such rebuilding or repair.

(ii) In the event all bids are rejected, the Board shall recommend such alternative reconstruction of the damaged or destroyed Improvements at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and voted in the same manner indicated above. In the event that no such alternatives are accepted by the Members, the Board, with the approval of the Mortgagees as provided in Article 12, below, is empowered, as the agent for all Owners, to sell the entire Development, including all Units and the Common Area in its then present condition, on terms satisfactory to the Board. In the event of such sale, the proceeds from the sale and the insurance proceeds received by the Association on account of the destruction of Development shall be distributed by the Association among Owners according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal.

11.2 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation or proceeds from the private purchase, to the extent such award or proceeds is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, shall be paid to the holder or holders of the fee title to such area as their interests may appear according to the respective fair market values of the Units at the time of the taking, as determined by independent appraisal. Any such award to the Association shall be deposited into the operating fund of the Association. The Association shall represent the interests of all Owners in any proceeding relating to such condemnation to the extent such Owners have any interest in the Common Area.

11.3 Appraisals. Where the provisions of this article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser selected in the discretion of the Board.

## ARTICLE 12 PROTECTION OF MORTGAGEES

12.1 Amendments Affecting Mortgages. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage which is made in good faith and for value, if such Mortgage is Recorded prior to the Recording of such amendment.

12.2 Default by Owner; Mortgagee's Right to Vote. In the event of a default by any Owner under a Mortgage encumbering such Owner's Condominium, the Mortgagee under such Mortgage shall, upon: (a) giving written notice to the defaulting Owner; (b) Recording a Notice of Default in accordance with California Civil Code Section 2924; and (c) delivering a copy of such Recorded Notice of Default to the Association, have the right to exercise the vote of the Owner at any regular or special meeting of the Association held only during such period as such default continues.

12.3 Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by Declarant, the Association or any Owner shall impair or invalidate the lien of any recorded Mortgage made in good faith and for value and encumbering any Condominium. Declarant, Owners, and the Association and their successors and assigns, shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes

provided for in this Declaration with respect to any person who acquires title to or any beneficial interest in any Condominium through foreclosure, trustee's sale or otherwise.

12.4 Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Condominium shall have the right, upon written request to the Association, to:

- (a) Association Records. Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;
- (b) Financial Statements. Require the Association to provide an audited statement for the preceding fiscal year at no expense to the requesting entity; and
- (c) Notice of Meetings. Receive a written notice of all meetings of the Association and designate a representative to attend all such meetings.

12.5 Declaration to Conform With Mortgage Requirements. It is the intent of this article that the Governing Documents and the development in general, shall now and in the future meet all requirements of any institutional Mortgagee intending to secure its Mortgage by a Condominium or necessary to purchase, guarantee, insure or subsidize any Mortgage of a Condominium by the secondary lender market, including FNMA, FHLMC, FHA or VA. The provisions of this article may be amended solely by the vote of the Board of Directors in order to conform to any requirements of the secondary lender market.

12.6 Notices of Mortgagees. Upon written request to the Association, any Mortgagee shall be entitled to timely written notice of the following:

- (a) Any proposed termination of the legal status of the Development as a condominium project.
- (b) Any condemnation or casualty loss which affects either a material portion of the Development or any Unit on which there is a Mortgage held, insured or guaranteed by such requesting party.
- (c) Any 60-day delinquency in the payment of Assessments or individual charges owed by an Owner subject to a Mortgage held, insured or guaranteed by such requesting party.
- (d) Any default in the performance by the affected Owner of any obligation under the Governing Documents which is not cured within sixty (60) days.
- (e) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (f) Any proposed action which requires the consent of a specified percentage of Eligible Mortgagees as specified in Section 12.7. Approval of a Eligible Mortgagee will be implied when such Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after the proposal is submitted, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

12.7 FNMA, FHLMC, FHA, VA Mortgages.

(a) Compliance Requirements. Declarant intended that the Development has been created and exists in full compliance with all applicable California legal requirements and all other applicable laws and regulations.

(b) Right of First Refusal. Declarant is not utilizing any right of first refusal with respect to the sale or conveyance of any Units within the Development. In the event any Owner attempts to utilize any right of first refusal, any right of first refusal in the Governing Documents or otherwise shall not apply nor adversely impact the rights of a Mortgagee to:

(i) Foreclose or take title to a Unit pursuant to the remedies in the First Mortgage;

(ii) Accept a deed or assignment in lieu of foreclosure in the event of a default by a Mortgagor; or

(iii) Sell or lease a unit acquired by the Mortgagee.

(c) Approval of Material Amendments. Amendments of a materially adverse nature to Mortgagees be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages. Approval may be assumed when an eligible Mortgagee fails to submit a response to any written proposal for an amendment within sixty days (60) after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(d) Termination of Legal Status. Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or for other reasons to be agreed to by Mortgagees that represent at least fifty-one percent (51%) of the votes of the Units that are subject to Mortgages.

(e) Rights of Mortgagees and Guarantors. Declarant must give Mortgagee and guarantor of the Mortgage on any Unit the right to timely written notice of:

(i) Any condemnation or casualty loss that affects either a material portion of the project or the unit securing its Mortgage;

(ii) Any sixty-day (60) delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the Mortgage;

(iii) A lapse, cancellation or material modification of any insurance policy maintained by the Association; and

(iv) Any proposed action that requires the consent of a specified percentage of Mortgagees.

(f) Mortgagee Priority. No provision in any Governing Document gives the Unit Owner or any other party priority over any rights of the First Mortgagee of the Unit pursuant to its Mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses or a taking of Units and/or Common Area.



(g) Foreclosure Eliminates Unpaid Assessments. Notwithstanding any other provisions in this Declaration, each holder of a First Mortgage lien who comes into possession of the Unit by virtue of foreclosure shall not be liable for more than six (6) months of the Unit's unpaid Regular Assessments or charges accrued before acquisition of the title to the Unit by the Mortgagee. If the Association's lien priority includes costs of collecting unpaid dues, the Mortgagor shall be liable for any fees or costs related to the collection of the unpaid dues.

(h) Compliance with FHA/VA, FHLMC or FNMA Requirements. Declarant intended that the Development should comply with all of the requirements of the FHA, VA, FHLMC and FNMA. All property and liability insurance covering any portion of the Development encumbered by a Mortgage insured by FHA, guaranteed by VA, or held by FHLMC or FNMA, shall therefore conform to the applicable FHA/VA, FHLMC or FNMA requirements. Declarant and all Unit Owners also agree that in the event the Development or the Governing Documents do not comply with the applicable FHA/VA, FHLMC or FNMA requirements, the Board and each Owner shall take any action or adopt any resolutions required by any First Mortgagee to conform such Governing Documents, or the Development, to the FHA/VA, FHLMC or FNMA requirements.

#### **ARTICLE 13                      ANNEXATIONS AND SUPPLEMENTAL DECLARATIONS**

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13.1 Annexation of Subsequent Phase Property. Declarant shall have the right to annex all or any portions of the Subsequent Phase Property to the Development so as to be subject to this Declaration and so that membership in the Association shall be appurtenant to ownership of Condominium within the annexing Phase. Such annexation shall not require the approval of either the Association or the Owners so long as the annexation is in substantial conformance with a detailed plan of phased development submitted to the Department of Real Estate with the Declarant's application for a Public Report for Phase 1.

13.2 Annexation of Other Property. Real property other than Subsequent Phase Property which is not subject to this Declaration may annex to and become subject to this Declaration with the approval by vote or written consent of (1) the property owner, (2) Members entitled to exercise not less than two-thirds of the Voting Power of each class of membership of the Association, and (3) the Board of Directors. After the Class B membership has ceased, the approval of the Members required by this section shall require the affirmative vote of at least two-thirds of the voting power of Members other than Declarant. Upon obtaining the requisite approval of the Members pursuant to this section, the owner of the annexing property shall Record a Declaration of Annexation and, if appropriate, a Supplemental Declaration, as more particularly described in Section 13.4, below.

13.3 Declarations of Annexation. To effectuate an annexation, a Declaration of Annexation shall be Recorded covering the applicable portion of the annexing real property. The Declaration of Annexation shall identify the Units and Common Area, if any, within the annexing property, and shall be signed by the owner of the annexing property and, in cases where Membership and Board approval are required, shall include a certificate, signed by the President and Secretary of the Association attesting to the fact that the required Member and Board approval has been obtained. A Declaration of Annexation may include a Supplemental Declaration which adds or modifies restrictions and rights with respect to the annexing property.

13.4 Supplemental Declarations. A Supplemental Declaration may be Recorded against all or any portion of the annexing property, subject to the same approval requirements for a Declaration of Annexation pursuant to Section 13.1 and 13.2, above. The Supplemental Declaration may include restrictions which are different from the restrictions contained in this Declaration. A Supplemental

Declaration may not alter the general common plan or scheme created by this Declaration, revise any restriction imposed by a governmental entity as a condition of Subdivision Map approval (without the written consent of that entity) or revoke the covenants, conditions and restrictions imposed by this Declaration with respect to portions of the Development already subject to this Declaration.

13.5 Commitment Concerning Reserve Contributions Relating to Rental Programs. If Units in an annexing Phase have been used and occupied under a rental program conducted by the Declarant which has been in effect for a period of at least one (1) year as of the date of closing of escrow for the first sale of a Unit in the annexing Phase, Declarant shall provide a written commitment to pay to the Association, concurrently with the close of escrow for the first sale of a Unit in the annexing Phase, appropriate amounts for reserves for replacement or deferred maintenance of Common Area in the annexing Phase necessitated by or arising out of such use and occupancy.

#### **ARTICLE 14                      DECLARANT'S DEVELOPMENT RIGHT**

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14.1 Declarant's Right to Develop the Development. The Association and Owners shall not do anything to interfere with the right of Declarant to subdivide, sell, or rent any portion of the Development, or the right of Declarant to complete excavation, grading, construction of Improvements or other development activities to and on any portion of Development or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Development so long as any Condominium or any portion of the Overall Development is owned by Declarant. Such right shall include, but shall not be limited to, all grading work as may be approved by the City or other agency having jurisdiction, and erecting, constructing and maintaining on or within the Development such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Owner, by accepting a deed to a Condominium, hereby acknowledges that any construction of additional dwelling structures and the installation of retaining walls, landscaping and other Improvements by Declarant may impair the view from such Owner's Unit, and hereby consents to such impairment.

14.2 Use of Common Area by Declarant. Declarant may enter upon the Common Area to complete the development, improvement and sale of Condominiums and the construction of any landscaping or other Improvement to be installed on the Common Area. Declarant shall also have the right of nonexclusive use of the Common Area without charge, for sales, display, access, ingress, egress, exhibition and occasional special events for promotional purposes, which right Declarant hereby reserves; provided, however, that such use rights shall terminate on the date on which Declarant no longer owns any Condominiums within the Development. Such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein and all direct costs and expenses associated with Declarant's sales and promotional activities (including, without limitation, any costs or expenses required to clean or repair any portion of the Common Area that are damaged or cluttered in connection with such activities) shall be borne solely by Declarant and any other sponsor of the activity or event. The rights reserved to Declarant by this section shall extend to any employee, sales agents, prospective purchasers, customers and/or representatives of Declarant.

14.3 Amendment of Development Plans. Declarant may amend its plans for the Overall Development and apply for changes in zoning, use and use permits, for any property within the Overall Development.

14.4 Termination of Declarant's Rights. If Declarant conveys all of its rights, title and interest in the Overall Development to any person or entity and the acquiring person or entity is designated as a successor Declarant as to all the property conveyed, then Declarant shall be relieved of the performance of

any further duty or obligation hereunder, and successor Declarant shall be obligated to perform all such duties and obligations of Declarant. This section shall not terminate any responsibility of Declarant for acts or omissions occurring prior to the conveyance to such person or entity. However, Declarant may enter into a contract or agreement dealing with such acts or omissions.

14.5 Disclaimer of Declarant's Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth in a Recorded instrument with the County Recorder, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of the Development may or will be carried out, or that any land now controlled or owned or hereafter controlled or acquired by Declarant is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

14.6 No Amendment or Repeal. So long as Declarant owns any portion of the Overall Development, the provisions of this article may not be amended or repealed without the consent of Declarant.

## ARTICLE 15            AMENDMENT

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15.1 Amendment Before First Conveyance. Before the conveyance of the first Condominium within Phase 1 to a purchaser other than Declarant, and subject to the City's approval pursuant to Section 15.2(c), this Declaration may be amended in any respect or revoked by the execution by Declarant by an instrument amending or revoking the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be Recorded.

15.2 Amendment After First Conveyance. After the conveyance of the first Condominium within the Phase 1 to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Member Approval Requirements. Except as provided in this paragraph, any amendment to this Declaration shall be approved by the vote or assent by written ballot of an Absolute Majority, including the holders of not less than a majority of the Total Voting Power of each class of Members. If a two-class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership, as provided in the Association's Bylaws, any amendment thereof will require the vote or assent by written ballot of both: (i) an Absolute Majority of the Association; and (ii) the vote of a majority of the Total Voting Power held by Members other than Declarant. Any amendments to this Declaration made solely to comply with a change in applicable federal, state or local legislation may be made upon majority vote of the Board of Directors only. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(b) Additional Approvals of Declarant for Amendments to Particular Provisions. For so long as Declarant owns a Condominium within the Development, the provisions of Articles 13, 14, 15, and 16 may not be amended without the prior written consent of Declarant.

(c) Additional Approvals of City for Amendments to Particular Provisions. The provisions of Sections 5.3, 5.4, 5.5, 10.12, and this Section 15.2(c) may not be amended without the prior written consent of the City.

(d) Right of Amendment of Requested by Governmental Mortgage Agency or Federally Chartered Lending Institutions. Anything in this article to the contrary notwithstanding, Declarant and the Association reserve the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by Governmental Mortgage Agencies which require such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Condominium. Any such amendment shall be effectuated by the Recordation, by Declarant or the Association, of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant or the Board, as applicable, with their signatures acknowledged, specifying the Governmental Mortgage Agency, or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of Condominiums and Common Area comprising the Development and all persons having any interest therein.

(e) Right of Amendment if Requested by City. Anything in this article to the contrary notwithstanding, Declarant reserves for itself and for the Association the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the City to reflect a modification of the development permits which requires a conforming amendment to this Declaration. Any such amendment shall be effectuated by the Recordation of a Certificate of Amendment duly signed by or on behalf of the authorized agents, or authorized officers of Declarant, or the Association as applicable, with their signatures acknowledged, specifying the City requested the amendment and setting forth the amendatory language requested by the City. Recordation of such a Certificate shall be deemed conclusive proof of the City's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of the real property comprising the Development and all persons having an interest therein.

15.3 Restatements. This section describes the methods for restating the Declaration after an amendment.

(a) General. The Board has the right, by resolution without the necessity of consent by the Members, to restate this Declaration when it has been properly amended pursuant to its requirements for amendment. Such restatement shall be effective upon execution of the restatement by any two (2) officers of the Association and its Recordation. Upon Recordation of the restatement, the restatement shall supersede the prior declaration and its amendments in their entirety, without, however, affecting the priority of the Declaration in the chain of title to all real property subject to the Declaration as established by the Declaration's initial date of Recordation.

(b) Form of Restatement. The restatement shall restate the entire text of the original document, with these exceptions: (i) changes incorporating all amendments approved the Owners; (ii) changes made to rearrange or delete the text for consistency with the approved amendments; (iii) changes made to delete material no longer legally effective or legally required, such as the provisions described in Article 14 once Declarant no longer owns any portion of the Overall Development; (iv) the addition of a statement that the Board has authorized the restatement pursuant to this section; (v) changes made to delete any provision declared illegal by constitutional or statutory enactment, by regulation, or by controlling judicial opinion; and (vi) changes needed to distinguish the restatement from the original document, such as title, section, or subsection numbering changes.

15.4 Department of Real Estate. An amendment to this Declaration, Bylaws, or other governing instruments of the Association shall require immediate notification of the California Department of Real Estate in accordance with section 2800 of the Commissioner's Regulations so long as the Development, or any portion thereof, is subject to an outstanding Final Subdivision Public Report.

15.5 Effective Date of Amendment. The amendment will be effective upon the Recording of a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of this article have been duly met. If the consent or approval of any governmental authority, Mortgagee, or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

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

## ARTICLE 16                      GENERAL PROVISIONS

16.1 Term. This Declaration continues in full force and effect unless an amendment terminating this Declaration is unanimously approved by the Owners and Recorded in accordance with Article 15, above.

16.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

16.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Development for the benefit of the community.

16.4 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

16.5 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

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DATED SEPT 19<sup>th</sup>, 2007.

DECLARANT

WL HOMES, LLC,  
a Delaware limited liability company

By: [Signature]  
VP Finance  
(Name and Title)

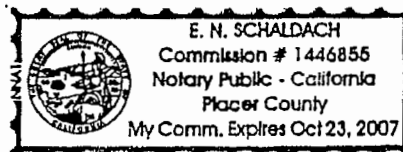
By: \_\_\_\_\_  
\_\_\_\_\_  
(Name and Title)

STATE OF CALIFORNIA )  
COUNTY OF PLACER ) ss.

On September 19<sup>th</sup>, 2007, before me, E. N. Schaldach, a Notary Public, personally appeared Russ Fackrell and N/A, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

[Signature]  
Notary Public



Printed name: E. N. Schaldach

My principal place of business is PLACER, County, State of CALIFORNIA.

My commission No. is 1446855 and expires OCTOBER 23, 2007

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PHASE 1**

All that real property located in the City of Sacramento, County of Sacramento, California, described as follows:

**Parcel 1:**

The Association Common Area Parcels designated A.C.A. 8, Units 81 through 92 inclusive, together with all Exclusive Use Common Areas, easements and all other interests appurtenant to said Units as depicted, described and defined in the Condominium Plan recorded September 12, 2007 in Book 20070912, page 757 of Official Records, being a portion of Lot 1 as shown on the "Final Map of JMA North Natomas Parcel 4", Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.

**Parcel 2:**

The Condominium Common Area designated C.C.A. 8 as depicted, described and defined in the Condominium Plan recorded September 12, 2007 in Book 20070912, page 757 of Official Records, being a portion of Lot 1 as shown on the "Final Map of JMA North Natomas Parcel 4", Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.

**Parcel 3:**

The Association Common Area parcel described as:

Lot A as shown on the "Final Map of JMA North Natomas Parcel 4", Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF THE SUBSEQUENT PHASE PROPERTY**

All of the real property located in the City of Sacramento, Sacramento County, California, more particularly described as follows:

Parcel 1:

The Association Common Area Parcels designated A.C.A. 1 through A.C.A. 7, Units 1 through 80 inclusive, together with all Exclusive Use Common Areas, Easements and all other interests appurtenant to said Units as depicted, described and defined in the Condominium Plan recorded September 12, 2007 in Book 20070912, page 757 of Official Records, being portions of Lot 1 as shown on the "Final Map of JMA North Natomas Parcel 4", Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.

Parcel 2:

The Condominium Common Areas designated C.C.A. 1 through C.C.A. 7 as depicted, described and defined in the Condominium Plan recorded September 12, 2007 in Book 20070912, page 757 of Official Records, being portions of Lot 1 as shown on the "Final Map of JMA North Natomas Parcel 4", Subdivision No. P05-164, filed in the office of the Sacramento County Recorder on August 14, 2006 in Book 194 of Parcel Maps, at page 18.