

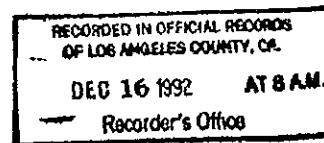
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**DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
STONEMAN COURT - TRACT NO. 49546
(A Condominium Project)**

[CCR.CS - 4-17-92]

4/21/08-LS

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EXECUTION PAGE

SUBORDINATION BY LIENHOLDER

EXHIBIT A - PROPERTY

**DECLARATION OF COVENANTS, CONDITIONS
RESTRICTIONS AND EASEMENTS FOR
STONEMAN COURT**

THIS DECLARATION is made this 25th day of JUNE,
1992, by FUDGE/VAN SCHAICK CORPORATION, a California corporation,
("Declarant").

RECITALS:

- A. Declarant is the owner of that certain real property ("Property") in the City of Alhambra, County of Los Angeles, State of California, as described in attached Exhibit "A".
- B. Declarant intends to develop the Property into a Condominium project under the provisions of California Civil Code Section 1350, et seq.
- C. The governmental entity with primary jurisdiction over this project is the City of Alhambra in the County of Los Angeles. The Association shall abide by codes and/or ordinances of the primary jurisdiction above stated and the State of California, and the Board of Directors shall be bound, in favor of the City of Alhambra, to the following covenants and conditions.

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

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ARTICLE I

DEFINITIONS

The following definitions apply unless otherwise required by the context:

"Approval" - Prior written approval.

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

"Assessments" - All types of Association charges and Assessments levied against the Owners.

"Association" - The Stoneman Court-Alhambra Homeowners Association, Inc., California nonprofit mutual benefit corporation formed (or to be formed) to govern the Project, its successors and assigns, including its agents, the Board or any committee as applicable.

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

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

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

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

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

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

"Condominium Building" - A building or structure containing any portion of any Condominium Unit(s).

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

"Declarant" - The person(s) or entity identified in the introductory paragraph of this Declaration; also, Declarant's successors and assigns, if specifically granted such authority by official instrument recorded in the Office of the County Recorder.

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"Declaration" - This instrument and any amendments.

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

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

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

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

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

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

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

"GNMA" - The Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successors to such association.

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

"Manager" or "Managing Agent" - The person(s), firm or corporation contractually engaged by the Association or Declarant and charged with the management of the Common Area(s) and the performance of other duties of the Association as provided for in this Declaration.

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

"Mortgage" - A Mortgage or deed of trust.

"Mortgages" - A Mortgagee, beneficiary or holder of a deed of trust.

"Mortgagor" - A Mortgagor or trustor of a deed of trust.

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

"Occupant" - An Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession.

"Owner" or "Owners" - The person(s) or legal entity holding a fee simple interest in a Unit, or the purchaser(s) of a Unit under an executory contract of sale. "Owner" does not include any person or entity having an interest in a Unit merely as security for the performance of an obligation.

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

"Project" - That portion of the real property described in Paragraph "A" of the Recitals to this Declaration, which is divided or to be divided into Condominiums, including the Common Area and the Units therein. The Project is a "Condominium Project" as defined in Section 1351(f) of the California Civil Code.

"Property" - The real property described in Paragraph "A" of the Recitals to this Declaration, and any improvements constructed upon it at any time. The Property is a "Common Interest Development" as defined in Section 1351(c) of the California Civil Code.

"Restrictions" - All of the terms, provisions and restrictions set forth in the Governing Documents.

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

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

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

ARTICLE II
DESCRIPTION OF PROPERTY
DIVISION OF PROPERTY

The Condominium Property consists of Units and Common Area(s) (including Exclusive Use Common Areas).

2.01 Units.

- (a) Each Unit consists of all elements and areas identified as such on the Condominium Plan.
- (b) Existing physical Unit boundaries (re)constructed in substantial accordance with the original plans will be the presumed boundaries (rather than the figures in the deed or Condominium Plan) regardless of a building's settling, lateral movement or other minor variance.
- (c) Any Condominium conveyed while a structure(s) shown on the Condominium Plan has not yet been built will be deemed to have the boundaries shown on the Condominium Plan, subject to paragraph (b) above.

2.02 Common Area(s).

The Property not constituting the Units is the Common Area.

Each Unit Owner will receive the following undivided interest in the Common Area: one/sixteenth (1/16).

2.03 Exclusive Use Common Area(s).

- (a) Declarant hereby allocates and reserves Exclusive Use Common Areas, if any, as shown on the Condominium Plan for the exclusive use of the appurtenant Unit.
- (b) Internal and external telephone wiring designed to serve a Unit (located outside Unit boundaries) are Exclusive Use Common Area(s) pursuant to Civil Code Section 1351(i)(2) allocated exclusively to the relevant Unit.
- (c) Use of the Exclusive Use Common Area(s) are subject to reasonable restrictions contained in any Governing Documents.

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- (d) Exterior surfaces (perimeter walls, floors, windows and doors) adjoining any Exclusive Use Common Area(s):
 - (1) Constitutes a portion of the Exclusive Use Common Area boundary; but
 - (2) Do not constitute a part of the Exclusive Use Common Area itself.
 - (e) Any other Exclusive Use Common Area(s) are as shown on the Condominium Plan.

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ARTICLE III

OWNERS GENERAL USE RESTRICTIONS

3.01 Unit Use.

- (a) Each Unit shall be used solely as a private residential dwelling and for no other purpose, subject to rights reserved herein by Declarant for development of the Property.
- (b) An Owner may rent a Unit for single family residential purposes provided:
 - (1) There is a written agreement;
 - (2) The rental term is longer than thirty (30) days; and
 - (3) The lease states it is subject to all the provisions of the Governing Documents.
- (c) Occupations and businesses that do not interfere with the residential nature or character of the Property or quiet enjoyment by other Owners may be carried on within a Unit, provided that all applicable laws, ordinances, zoning regulations and rules are satisfied and that there is no external evidence of any such occupation.

3.02 Common Area Use.

Common Area(s) and Exclusive Use Common Area(s) may only be used for purposes which are compatible with usages customarily associated with common areas located within residential developments in California, and subject to the limitations described in this Declaration and other Governing Documents.

3.03 Nuisances.

- (a) Illegal, offensive, obnoxious actions, or noxious odors that interfere with any Occupant's quiet enjoyment, or may impair the structural integrity of any building, are not permitted anywhere on the Property.
- (b) An Occupant may not cause the level of noise or sound from the Unit to interfere with the quiet enjoyment of an Occupant of another Unit (i.e., loud music or television, shouting, slamming of doors, and other such actions.)
- (c) The Board shall have the right to determine if any action, odor, noise or other conduct constitutes a nuisance, and to appropriately deal with the situation.

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- (d) The City of Alhambra may undertake and complete such corrective measures as are necessary to remedy a public nuisance on the property and assess the cost thereof against the Association as a lien in accordance with the provisions of the Alhambra Municipal Code relating to the abatement of public nuisances.

3.04 Exterior Clothes Lines.

Exterior clothes lines may not be erected and clothes may not be dried out-of-doors.

3.05 Exterior Apparatus Regulations.

Electrical or telephone wiring, antennas, air-conditioning units, etc., are not permitted to protrude through the exterior walls or roof, unless authorized by the Board.

3.06 Window Covers.

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

3.07 Debris, Trash and Refuse.

- (a) Weeds, rubbish, debris, objects or materials of any kind that are unsanitary, unsightly, or offensive may not be placed or permitted to accumulate in any Unit or the Common Area(s).
- (b) Rubbish or storage containers, woodpiles, machinery, equipment and other unsightly objects are prohibited if they can be seen from other Units or Common Area(s).
- (c) Rubbish containers may be placed temporarily for pick-up (subject to the Rules and Regulations).
- (d) Owners must prevent their vehicles from dripping oil on the driveways and other Common Areas.

3.08 Signs.

- (a) The Declarant may erect and maintain any signs, advertising devices or structures to conduct development, improvement, subdivision, sale or leasing operations on the Property for up to three (3) years from the date of the first conveyance after issuance of the original DRE public report (as long as the activities do not unreasonably interfere with any Owner's use of the Property).

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- (b) Subject to Civil Code Sections 712 and 713, and any local ordinance, an Owner may advertise a Condominium for sale or lease with one (1) real estate sign with a standard format previously approved by the Board, and with a maximum face area of six (6) square feet, and placed in a location approved by the Board.
 - (c) The display of any sign of any kind displaying or advertising any service, business or other commercial project or venture in the development is prohibited. No other sign, poster, display, or advertising device may be displayed anywhere on the Property visible outside a Unit without the prior written consent of the Board.

3.09 Use Affecting Insurance Rates.

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

3.10 Rights Reserved by Declarant.

While any Unit remains unsold and for no longer than three (3) years from the date of recordation of this Declaration (and without unreasonably interfering with other Owners), the Declarant has authority to do the following:

- (a) Complete excavation, grading and construction of improvements on the Property, or to alter the foregoing or its construction plans and designs on any Common Areas, or on any portion of the Property owned solely or partially by Declarant. Any such alteration by Declarant shall require prior approval of VA and FHA if such alteration is inconsistent with the general plan of development of the Property previously submitted to and approved by the VA and FHA;
- (b) Use any unsold Unit or Model Unit as a construction, real estate sales, leasing or decoration office;
- (c) Use the Common Area(s) as reasonably needed for ingress, egress, development, sales and construction purposes; and
- (d) Construct additional improvements Declarant deems advisable in the cause of development of the Property.

3.11 California Vehicle Code.

All applicable provisions of the California Vehicle Code will be enforced on any private streets on the Property in accordance with California Vehicle Code Section 22658.2 (or successor statute).

3.12 Animal Regulations.

- (a) A maximum of two (2) ordinary household pets (such as domestic dogs, cats, birds) may be kept, provided they are not kept, bred or raised for commercial purposes and they are kept under reasonable control at all times.
- (b) Animals that bother or annoy other Owners or residents (e.g., excessively barking dogs) may not be kept on the Property or in a Unit.
- (c) A dog may only enter the Common Area(s) while on a leash which is held by a person capable of controlling it.
- (d) Owners must prevent their pets from soiling the Common Area(s), and are solely responsible for any required clean-up.

3.13 Parking and Vehicle Restrictions.

- (a) The Association may establish parking Rules and Regulations, including the establishment of "parking", "no parking" and "guest parking" areas within the Property.
- (b) The Association has the right and obligation to enforce all parking restrictions and to remove any violating vehicles in accordance with the California Vehicle Code, or other applicable laws.
- (c) The relevant City or County has the right (but not the duty) to enforce parking restrictions in accordance with the California Vehicle Code and all other applicable laws.
- (d) Only passenger motor vehicles may be parked in the parking spaces.
- (e) Restoring or repairing vehicles on the Property, or any repair activity the Association deems a nuisance is not permitted at any time.
- (f) Buses, trailers, campers, boats, watercraft, mobile homes, recreational vehicles, inoperable vehicles, and the like, or any vehicle the Association deems a nuisance are not permitted on the Property.
- (g) Garage doors, if any, may not be left open, except as temporarily necessary or while used for exiting or entering.

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- (h) Each Unit shall have the exclusive right to use not less than two (2) designated parking spaces of the kind required by the Alhambra Municipal Code.

3.14 Repair and Maintenance by Owner.

- (a) In accordance with the Governing Documents, each Owner must maintain and repair all of the following:
- (1) All of the Owner's Unit in a clean, sanitary and attractive condition;
 - (2) The Unit's Exclusive Use Common Area(s), if any, in a clean, sanitary and attractive condition;
 - (3) The interior and exterior surfaces of all Unit windows in good, clean condition. Any window replacement must be with similar glass color and quality to the window glass supplied with the Unit;
 - (4) Any hot water heater that solely and exclusively services the Owner's Unit;
 - (5) Any air conditioning equipment that solely and exclusively serves the Owner's Unit; and
 - (6) Any damage to the Common Area(s) caused by an Owner, his family or guest, even if the damage is to an area otherwise maintained by the Association. All the repairs shall be subject to prior approval of the Architectural Committee.
- (b) Except as otherwise provided herein, each Owner has the exclusive right to paint, wallpaper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, floors, and doors within the Unit (including furniture and furnishings), without prior approval of the Architectural Committee. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee.
- (c) An Owner may not do anything that unreasonably increases the level of noise. If an Owner does anything to the Unit that may increase the level of noise or sound that can be heard outside the Unit during normal use and occupancy of the Unit (for example, replacing carpeting with tile or other hard surface), the Owner must take all reasonable measures (at own expense) to deaden, insulate or otherwise decrease the level of such noise to the minimum level reasonably possible.
- (d) If a patio, balcony or deck adjoins a Unit, the Owner's rights and responsibilities are as follows:
- (1) Owner must maintain the patio, balcony or deck in a clean and sanitary condition;

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- (2) Owner may furnish the patio, balcony or deck with outdoor furniture for reasonable family use and in keeping with the aesthetics of the Property, with the prior consent of the Architectural Committee;
 - (3) Owner may not paint, alter, remodel or enclose any patio, balcony or deck without prior approval of the Architectural Committee; and
 - (4) Owner may not place or store unsightly objects on a patio, balcony or deck that can be seen by the public or other Owners from their Units, patios, balconies, or Common Area.
- (e) Any change to the exterior appearance of a Unit must be in accordance with the Governing Documents and applicable laws.
 - (f) An Owner may not make any improvement which impairs the structural integrity or mechanical systems, or lessens the support of any portion of the Property.
 - (g) Subject to this Declaration and California Civil Code Section 1360 (or any successor statutes), an Owner may do the following:
 - (1) Make any improvement or alteration within the Unit and its Exclusive Use Common Area (if any) that does not impair the structural integrity or mechanical systems, or lessen the support of any portion of the Property.
 - (2) Modify a Unit and its Exclusive Use Common Area (if any) to eliminate hazards and facilitate access for disabled persons (including the route from the public way to the Unit door) subject to the following conditions:
 - (A) The modifications must be consistent with applicable building code requirements.
 - (B) The modifications must be consistent with applicable provisions of the Governing Documents regarding safety and aesthetics.
 - (C) External modifications to the Unit or its Exclusive Use Common Area may not prevent reasonable passage by other Owners, and must be removed by the Owner when the Unit is no longer occupied by the person(s) requiring the modifications.
 - (D) Plans and specifications must be submitted to the Architectural Committee for review to determine compliance with the provisions of this paragraph.

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- (E) The Architectural Committee may not deny approval of the proposed modifications without good cause.
- (h) Notwithstanding anything herein to the contrary, Declarant may install hard floor surfaces in a Unit or in the Common Area, (including without limitation, wood, marble, granite, or tile, regardless of its noise impact on any other Unit or Owner).
- (i) An Owner may not alter any structure or landscape portions of any Unit visible from the street or Common Area(s) without the prior approval of the Architectural Committee.

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ARTICLE IV

ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

4.01 Membership.

Every Unit Owner is automatically an Association Member.

4.02 Membership Classes.

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

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

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

- (1) The total outstanding votes held by Class A Membership equals the total outstanding votes held by Class B Membership (tripled); or
- (2) Two (2) years after the first conveyance after issuance of the original DRE public report.

4.03 Joint Ownership.

- (a) Each joint Unit Owner has an indivisible interest in a single Membership.
- (b) Each Unit is entitled to one (1) vote.
- (c) Each Unit's vote is cast as a single unit, without fraction.
- (d) If joint Unit Owners cannot unanimously agree how to cast their vote, they forfeit their right to vote on the matter in question.
- (e) If a joint Owner casts a vote representing a certain Unit, it will be presumed for all purposes to be a vote with the authority and consent of all other joint Owners of the Unit.

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4.04 Voting Rights and Requirements.

- (a) Voting rights shall commence for each Unit within the Project when Assessments against the Unit have been levied by the Association.
- (b) After Notice and Hearing, the Association has the right to suspend the voting rights of any Owner delinquent in the payment of Assessments.
- (c) If Membership approval of a prescribed majority of the voting power (other than Declarant) is required, the following rules apply:
 - (1) If both Class A and Class B Members exist, the required vote is a bare majority of Class B voting power, and the prescribed majority of Class A voting power; or
 - (2) After conversion to all Class A memberships, the required vote is a bare majority of the total voting power of the Association, and the prescribed majority of the total voting power of Members other than Declarant.
- (d) Unless otherwise specifically required, Membership approval requires the affirmative vote of a majority of a quorum of each class of Membership (and after conversion, approval of Class A only).

4.05 Transfer of Membership.

- (a) Membership of each Owner shall be appurtenant to the Condominium owned, and may only be (and is automatically) transferred upon conveyance of title to a Condominium to the new Owner.
- (b) The Association may not collect or impose any fee, Assessment, interest, or other restriction relating to a title transfer other than the Association's actual costs to change its records.
- (c) The California Civil Code Section 1368 provides in part that an Owner shall as soon as practicable before transfer of title give to a prospective purchaser a copy of the Governing Documents along with a true statement in writing from the Board of Directors detailing delinquent Assessments, a copy of the most recent financial statement pursuant to Civil Code Section 1365, and a statement concerning limitations, if any, on occupancy, residency, or use on the basis of age.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION5.01 Commencement of Duties.

The Association's responsibility for the management, maintenance and administration of the Property in accordance with the Governing Documents commences when the first Condominium is sold.

5.02 Specific Association Duties and Powers.

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

- (a) Obtain refuse collection, gardening, janitorial, water, sewer, electrical, gas and other services for the benefit of the Common Area(s), to be paid for by Assessments levied and collected for the services.
- (b) Adopt reasonable Rules and Regulations consistent with this Declaration relating to use of the Common Area(s) and facilities, and to implement the provisions of this Declaration.
- (c) Discharge by payment any lien against the Common Area(s), including any property taxes and assessments which may become liens, and assess all costs and fees to the Member(s) responsible for the lien. Such a property tax or assessment may be contested or compromised by the Association, provided that it is paid, or a bond insuring its payment is posted prior to the disposition of any property to satisfy the payment of taxes.
- (d) Obtain management services (the "Manager") to manage the Common Area(s), and hire accountants, lawyers, and any other personnel needed to perform the duties and responsibilities deemed advisable by the Association.
 - (1) If there are more than twenty (20) Units in the Property, or if there are any VA loans outstanding for the Project, the Manager must be covered by a fidelity bond equal to a three (3) month Assessments of all the Units which provides for a ten (10) day written notice to the Association and each FNMA Mortgage serviced before the bond is cancelled or modified for any reason.

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- (2) If the Association enters into a management contract before the conversion of Class B to Class A memberships, the contract must include a right of termination without cause that the Association may exercise at any time after conversion (with an advance notice of thirty (30) days and without payment of any penalty).
- (e) Construct or demolish (with Board approval) improvements to the Common Area(s), and levy a Special Assessment for the work, in accordance with the provisions of this Declaration (with VA approval, if applicable).
- (f) Establish and maintain working capital, reserve and/or contingency funds in reasonable amounts determined by the Board.
- (g) Enforce the applicable provisions of the Declaration, Articles, Bylaws, Rules and other instruments for the ownership, management and control of the Project.
- (h) Contract for goods and/or services for the Common Areas, facilities, and interests, or for the Association subject to the limitations set forth below.
- (i) Exercise any powers normally exercised by residential homeowner associations under the laws of the State of California.

5.03 Board Powers and Limitations

Except as to matters requiring the approval of Owners, the affairs of the Association shall be conducted by the Board consistent with the law applicable to mutual benefit non-profit corporations.

The Board may not ordinarily take any of the following actions unless approved by a majority of the voting power of Members (other than Declarant):

- (a) Enter into a contract for a term longer than one (1) year with a third person who furnishes goods or services for the Common Area(s) or the Association, with the following exceptions:
 - (1) A management contract with terms approved by the FHA or VA;
 - (2) A contract with a public utility company if the Public Utilities Commission regulates rates charged for materials or services, provided that the contract term does not exceed the shortest term for which the supplier will contract at the regulated rate;

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- (3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy permits short-rate cancellation by the insured;
 - (4) Lease agreements for laundry room fixtures and equipment not to exceed five years duration, provided that Declarant's ownership interest in the lessor under the agreement does not exceed ten percent (10%);
 - (5) Agreements for satellite dishes or cable television services and equipment, not to exceed five (5) years duration, provided that the Declarant's ownership interest in the entity does not exceed ten percent (10%); and
 - (6) Agreements for sale, lease, installation or services of burglar and fire alarm equipment, not to exceed five (5) years duration, provided that Declarant's ownership interest in any entity involved does not exceed ten percent (10%).
- (b) Incur capital improvement expenditures for Common Area improvements in excess of five percent (5%) of the Association's budgeted gross expenses for that fiscal year.
 - (c) Sell Association property whose aggregate fair market value is more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
 - (d) Pay compensation to Association Officers, Board Members or the Board for services performed, except as reimbursement of costs incurred in the conduct of the Association's business.

5.04 Insurance.

Subject to the Section entitled, "Government Financing Programs", it is the Association's duty to obtain and maintain insurance coverages as mandated in this Section.

Blanket insurance policy premiums are a Common Expense to be included in the regular Assessments.

The policies shall name as insureds the Owners, their Mortgagees, the Association, and the Declarant (while Owner of any Condominium), with a loss-payable endorsement naming the Association as Trustee.

The Board must maintain the following insurance coverages:

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- (a) Fire insurance for one hundred percent (100%) of the full replacement value of all improvements on the Property, including the Condominiums and Common Area(s), without deduction for depreciation or coinsurance. It is recommended that individual Owners maintain their own insurance for personal property.
- (b) Extended coverage that includes vandalism, malicious mischief, and replacement costs.
- (c) At least ONE MILLION DOLLARS (\$1,000,000) in comprehensive general liability insurance that covers the Association, Board, Declarant, Managing Agent, Owners, and any other agents or employees incident to the Common Area(s) against physical injury, death and property damage, and which contains:
 - (1) A "severability of interest" endorsement to preclude the insurer from denying an Owner's claim due to a negligent act by other Owners or the Association; and
 - (2) If available, a cross liability to each insured.
- (d) If available, an extended coverage endorsement clause known as "All Risk", and a clause that permits a cash settlement to cover the full value of improvements in case of destruction and a subsequent decision not to rebuild.
- (e) There shall be a deductible of no more than Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy, provided it is acceptable to the First Mortgagees named as insured.
- (f) Each hazard insurance policy must be written by a carrier who meets FNMA requirements for a "Best Rating".
- (g) Workers' compensation insurance in compliance with all applicable laws.
- (h) If the Secretary of Housing and Urban Development identifies the Property as having special flood hazards:
 - (1) A "blanket" flood insurance policy must be maintained to the maximum coverage available under the appropriate National Flood Insurance Administration program, or 100% of the insurable value of the facilities, whichever is less; and
 - (2) The maximum deductible for the policy is FIVE THOUSAND DOLLARS (\$5,000) or one percent (1%) of the policy's face amount, whichever is less.

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- (i) A fidelity bond that insures the Association for the estimated maximum amount (or at least three (3) months aggregate Assessments on all Units and reserve funds) that could be affected by the dishonest act of any person who handles funds for the Owners' benefit. (Mandatory for a Property with more than twenty (20) Units, and at the option of the Association for a Property with less Units).
- (j) The Association (acting through the Board of Directors) is trustee of all named insureds under policies maintained by the Association, with proceeds payable to the Association. The Board has authority to:
 - (1) Receive and deal with the proceeds as provided for in this Declaration;
 - (2) Negotiate loss settlements with insurance carriers (with first Mortgagees' participation, for those who have filed written requests for notice) within ten (10) days after receiving notice of any damage or destruction; and
 - (3) Name a representative as insured (with whom the Association may enter into an insurance trust agreement) who will have exclusive authority to negotiate any losses.
- (k) Any two (2) Association officers may sign loss claim forms and release forms regarding a settlement, and their signatures will be binding on all named insureds.
- (l) Insurance and fidelity bonds must provide for a ten (10) day written notice of modification or termination to any insurance trustee, and to each FNMA servicer who has filed a written request with the carrier for such notice.
- (m) Any insurance policy the Association deems appropriate.
- (n) Association insurance policies shall contain the following provisions, ("Special Condominium Endorsements") as appropriate:
 - (1) Statements that the policies are primary and non-contributing, even if an Owner has other insurance;
 - (2) Statements that an Owner's conduct will not constitute grounds for avoiding liability;
 - (3) A waiver of the carrier's right of subrogation against any Owner or family member, the Association, the Board, the Manager, the Board, the Declarant, and any of their agents or employees;
 - (4) Insurance Guard Endorsement, if obtainable at a reasonable cost;
 - (5) Any Insurance Trust Agreement will be recognized;

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- (6) If a construction code requires changes to undamaged portions of a building when any part of the building is destroyed by an insured hazard, then a Construction Code Endorsement, typically including endorsements for demolition cost, increased cost of construction, and contingent liability from building operation laws;
- (7) If the property has central heating or cooling, Steamed Boiler and Machinery Coverage Endorsement should provide a minimum liability per accident of \$2,000,000, or the insurable value of the building housing the boiler or machinery, whichever is less;
- (8) The Association is not obligated to provide intra-Unit public liability insurance or any protection against risks customarily covered under "apartment owners" or "condominium owners" package policies. Owners may individually insure against such risks; and
- (9) Standard mortgage clause and name as mortgagee either FNMA or servicers (if applicable).
- (o) At least annually, the Board must review the Association's insurance policies.
- (p) If economically feasible, prior to each annual review the Board shall obtain a current appraisal of the full replacement value of Improvements on the Property (except for foundations and footings) without deduction for depreciation.

S.05 Budget, Financial Statements and Governing Documents.

- (a) The Board of Directors of the Association must perform all of the following on at least a quarterly basis:
 - (1) Review the income and expense statement for the Association's operating and reserve accounts;
 - (2) Cause a reconciliation of the Association's operating and reserve accounts, and a review thereof;
 - (3) Review the current year's actual reserve revenues and expenses compared to the current year's budget; and
 - (4) Review the most current account statements from the financial institutions handling the Association's operating and reserve accounts.
- (b) The Board must regularly distribute the following budgets and financial statements to each Association Member:

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- (1) A pro-forma operating statement (budget) for the immediately ensuing fiscal year not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year, which shall include the following:
 - (A) The estimated revenue and expenses on an accrual basis;
 - (B) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:
 - (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - (ii) As of the end of the fiscal year for which the study is prepared:
 - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components.
 - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components.
 - (iii) The percentage that the amount determined for purposes of clause (2) of sub-paragraph (ii) above is of the amount determined for purposes of clause (1) of sub-paragraph (ii) above.
 - (C) A general statement of procedures the Board uses to calculate and establish reserves to defray costs of repair, replacement or additions to major components of the Common Area and facilities for which the Association is responsible.
- (2) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

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- (3) In lieu of the pro-forma budget described in subparagraph (b)(1) above, the Board may distribute a budget statement summary to all Members, accompanied with a written notice in at least 10-point bold type on the front page of the statement summary advising that the complete statement is available at a location on the Property and a copy will be furnished upon request at the Association's expense, delivered by first-class United States mail within five (5) days.
- (4) Within sixty (60) days of the following accounting date, balance sheet with:
 - (A) An accounting date the last day of the month nearest to six (6) months from the closing date of the first Unit sale; and
 - (B) A schedule of Assessments identified by Unit number and the name of the person assessed.
- (5) An operating statement for the period from the closing date of the first sale.
- (6) Within one hundred twenty (120) days after the close of a fiscal year, an Annual Report must be distributed by the Association and include all of the following:
 - (A) A balance sheet as of the end of the fiscal year;
 - (B) An operating (income) statement for the fiscal year;
 - (C) A statement of changes in financial position for the fiscal year;
 - (D) Any information required to be reported by California Corporations Code Section 8322, concerning indemnifications and transactions with interested persons.
 - (E) For any fiscal year in which the gross income to the Association exceeds seventy-five thousand dollars (\$75,000), a copy of the review of the Annual Report prepared in accordance with generally accepted accounting principals by a licensee of the California State Board of Accountancy.
- (7) If the Annual Report referred to in number (6) above is not prepared by an independent accountant, it must be accompanied by the certificate of an authorized Association officer that the statement was prepared from the Association's books and records without independent audit or review.

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- (8) If there are fifty (50) or more Units, the Association must provide an audited statement for the preceding fiscal year when a written request is submitted by the holder, insurer, or guarantor of any first Mortgage.
- (9) If there are fewer than fifty (50) Units and no audited statement is available, a Mortgage holder is permitted (at own expense) to have an audited statement prepared.
- (10) A statement of the Association's policy for enforcement of lien rights or other legal remedies for default of Assessment payments against the Members including the recording and foreclosing of liens against a Member's Condominium, which must be delivered within sixty (60) days prior to the beginning of the next fiscal year.
- (c) The summary of the Association's reserves disclosed in sub-paragraph (b)(1)(B)(ii) above shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.
- (d) As used in this Section, "reserve accounts" means money that the Board has identified for use to defray the costs of future improvements or repairs to areas the Association is obligated to maintain. Withdrawal of funds from the Association's reserve account requires the signatures of either:
 - (1) Two (2) Board members; or
 - (2) One (1) Board member and an Officer of the Association who is not a Board member.
- (e) The Board may only expend reserve funds to repair, restore, replace, and maintain the major components for which the Association is obligated (including any related litigation) and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements of other expenses, provided:
 - (1) The transferred funds must be restored to the reserve fund within three (3) years of the date of the initial transfer; unless
 - (2) Based on documentary support, the Board determines that a delay in restoration of the reserve fund would be in the best interests of the Project. In case of such determination, the Board must:
 - (A) Restore the fund at the time which the Board reasonably determines to be necessary;

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- (B) Exercise prudent fiscal management in delaying restoration of the reserve fund; and
 - (C) If necessary, levy a Special Assessment (not Subject to the limitation imposed by California Civil Code Section 1366) to recover the full amount of the expended funds within the time limits required by this Section.
- (f) At least once every three (3) years, the Board shall cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components for which the Association is obligated to repair, replace, restore or maintain is at least one-half (1/2) of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review. The study must at a minimum include the following:
- (1) Identification of the major components which the Association is obligated to repair, replace, restore or maintain and which have a remaining useful life of less than thirty (30) years as of the date of the study;
 - (2) Identification of the probable remaining useful life of the components identified in paragraph (f)(1) above as of the date of the study;
 - (3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in paragraph (f)(1) above during and at the end of its useful life; and
 - (4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.
- (g) As used in the Section, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.
- (h) Within ten (10) days of receipt of a written request, the Association shall provide an Owner with a copy of the documents listed below. The Association may charge a reasonable fee to the Owner for the Association's cost to prepare and reproduce these documents.
- (1) The Governing Documents;

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- (2) If an age restriction limits occupancy, residency, or use of a separate interest different from Civil Code Section 51.3 or federal law, a statement that specifies the applicable provisions of Section 51.3, and that the restriction is only enforceable to the extent permitted by Section 51.3 or federal law;
 - (3) A copy of the most recent financial statement (distributed pursuant to Civil Code Section 1365);
 - (4) A written statement from an authorized Association representative revealing the amount of the Association's current Regular and Special Assessments and fees, as well as any unpaid Assessments levied on the Owner's Condominium (including information on late charges, interest, and costs of collection which may be a lien on the Owner's Condominium under Civil Code Section 1367); and
 - (5) Any change in the Association's current Regular and Special Assessments and fees which has been approved by the Board but has not become due and payable as of the date disclosure is provided pursuant to this Section.
- (i) The Association shall make the following documents available for inspection and copying by a Member or his duly appointed representative at the office of the Association upon request during normal business hours or under other reasonable circumstances:
- (1) The Membership register, mailing addresses, telephone numbers, books of account and minutes of meetings of the Board for any purpose reasonably related to a Member's interest.
 - (2) For Owners, lenders, holders, insurers and guarantors of a first Mortgage on any Unit, current copies of all Governing Documents, books, records, and financial statements of the Association;
 - (3) The Association may charge a fee to the requesting party for this service which may not exceed the reasonable cost to prepare and reproduce the requested items.

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5.06 Association Performance of an Owner's Obligations.

If an Owner fails to accomplish any maintenance or repair required by this Declaration, the Association has the right (but not the obligation) to cause such maintenance or repair to be accomplished according to the following regulations:

- (a) The Board must give the offending Owner a Notice of Deficiency that outlines the problem and sets a date for a hearing before the Board or its appointed Committee ("Board").
- (b) A hearing must be held from fifteen (15) to thirty (30) days after the Notice of Deficiency's delivery date and must be conducted as follows:
 - (1) According to reasonable rules and procedures adopted by the Board;
 - (2) Owners may present evidence and cross-examine any person offering evidence against the Owner;
 - (3) A decision rendered against the Owner must set a date by which the Owner is to correct the deficiency; and
 - (4) A committee decision may be appealed to the Board, but a decision by the Board is final.
- (d) If the deficiency continues after the time limit imposed by the Board, such maintenance or repair may be accomplished according to the following regulations:
 - (1) After a written Notice of Action by the Board, the Owner has no more than ten (10) days to select a day(s) when such maintenance or repair may be accomplished;
 - (2) The Owner must select a date between fifteen (15) and forty-five (45) days from the final day of the ten (10) day Notice of Action period;
 - (3) If the offending Owner does not select a day(s), the Board may select dates to accomplish the work, between twenty-five (25) and fifty-five (55) days from the last day of the ten (10) day Notice of Action period; and
 - (4) Unless the Owner and Board otherwise agree, such maintenance or repair may take place during daylight hours Monday through Saturday, excluding national holidays.
- (e) Any Association payments for such maintenance or repair must be reimbursed by the Owner within thirty (30) days.

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5.07 Penalties for Non-Compliance.

- (a) In recognition of the need for a reasonable means of encouraging and insisting upon compliance with the provisions of the Governing Documents without resorting to suits for injunctive relief, the Board is authorized to do the following:
- (1) Establish a reasonable policy of reasonable penalties, including monetary penalties (which specifies the amounts of potential monetary penalties); and
 - (2) Assess any Owner found to be in violation of any provision of the Governing Documents.
 - (3) Temporary suspensions of an Owner's voting rights as a Member of the Association for so long as the violation continues.
- (b) Notice and Hearing relating to the imposition of any penalties in this Section must be made in the following manner and at a minimum:
- (1) Notice must be given to the relevant Owner's most recent address in the Association's records at least fifteen (15) days before the proposed effective date of the penalty;
 - (2) Notice must set forth details of the violation itself, the proposed penalty, and the date, time and place of the Hearing;
 - (3) The penalized Owner may be heard (either orally or in writing) at a Hearing held at least five (5) days before the effective date of the proposed penalty;
 - (4) Hearing will be held by the Board of Directors, and their decision is final and binding upon the Owner; and
 - (5) Following the Hearing, the Board must decide whether or not the Owner should in fact be penalized, and the nature of the penalty.
- (c) If an Owner fails to comply with a penalty imposed pursuant to the provisions of this Section, the Board may seek judicial enforcement of the penalty in any court of competent jurisdiction, with the Owner liable for all costs (collection costs, court costs, attorney's fees, etc.). However, such penalties and costs shall not be treated as an assessment that may become a prejudgment lien enforceable by Civil Code Section 2924.
- (d) Notwithstanding the foregoing, the Owner shall be given, at a minimum, the rights set forth in Corporations Code Section 7341 or any successor statute.

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5.08 Right of Entry.

- (a) The Association has the right to enter any Unit or Common Area(s) to determine compliance with the Governing Documents.
- (b) In case of emergency, a Unit may be entered immediately. Otherwise, a Unit may only be entered at reasonable hours after the Owner has received three (3) days notice.
- (c) Entry must be made with as little inconvenience as possible to the Owner, and any damage caused must be repaired by the entering party.

5.09 Utility Easements.

The Association may grant easements and rights of way through the Common Area(s) for water, sewer, telephone and cable lines, storm drains, underground conduits, sprinkler systems, and other purposes intended to maintain the health, safety, convenience and enjoyment of the Units and Common Area(s).

5.10 Repair and Maintenance by the Association.

Subject to the Owner's maintenance and repair obligations provided for in this Declaration, the Association (and not individual Owners) is solely responsible for:

- (a) Maintaining the Common Areas in a first-class condition, making necessary repairs, modifications and improvements.
- (b) Repairing and maintaining the Common Area(s) as necessitated by wood-destroying pests or organisms. If the Board considers it economically feasible, the Association shall perform a periodic inspection and preventative program of pest eradication.

5.11 Wood-Destroying Pests.

If the Association is responsible for maintenance and repair necessitated by wood-destroying pests or organisms, the procedure will be as follows:

- (a) The affected Owner must pay all costs of temporary relocation during the repair and maintenance of the area(s) within the Association's responsibility;
- (b) The Association may cause the temporary removal of an occupant from a Unit for a period of time necessary for prompt, effective treatment of wood-destroying pests or organisms; and
- (c) The Association must serve a notice of temporary relocation at least fifteen (15) days prior to the effective date, which states:
 - (1) The reason for relocation;
 - (2) The dates and times of the commencement and termination of treatment; and
 - (3) That the occupants will be responsible for their own accommodations during the temporary relocation.

5.12 Unsegregated Real Property Taxes.

- (a) The Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property that are not assessed to or paid by the Owners.
- (b) If all the Units are taxed under a blanket tax bill covering the entire Project, each Owner shall pay their proportionate share of any installment to the Association at least ten (10) days prior to the delinquency date.
- (c) The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date.
- (d) Blanket taxes for the Project shall be allocated equally among the Owners and their Condominiums, based upon the total number of Units to be constructed in the Project.
- (e) The Association shall deliver the following to each Owner at least forty-five (45) days prior to the delinquency date of any blanket tax installment:
 - (1) A copy of the tax bill; and
 - (2) A written notice setting forth the Owner's obligation to pay their proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply.
- (f) The Association shall pay the taxes on behalf of any Owner who does not pay their proportionate share.

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- (g) The Association shall add the following charges to the Annual Assessment of a delinquent Owner:
- (1) The amount of any sum advanced;
 - (2) Interest at an annual rate of ten percent (10%); and
 - (3) Any amount necessary to reimburse the Association for any penalty or late charge resulting from the delinquent Owner's failure to make timely payment of their proportionate share of the taxes.
- (h) Prior to the close of escrow for the sale of ninety percent (90%) of the Condominiums in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

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ARTICLE VI

COVENANTS FOR ASSESSMENT

6.01 General Purpose of Assessments.

- (a) Assessments may be levied by the Association for improvement and maintenance of the Common Area(s), administration of the Property, and to promote the recreation, safety, and welfare for the common good of all the Owners.
- (b) The Association may not collect an Assessment fee in excess of the amount needed for the purpose levied.
- (c) The Association shall provide notice by first-class mail to the Owners of the separate interests of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased Assessment becoming due.
- (d) Annual increases in Regular Assessments for any fiscal year, as authorized in Section 6.03(c), may not be imposed unless:
 - (1) The Board has complied with Section 5.05(b) with respect to that fiscal year; or
 - (2) The Board has obtained the approval of a quorum of Owners (more than fifty percent (50%) of the Owners in the Association) casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

6.02 Creation of the Lien and Personal Liability.

- (a) Declarant, and its successor in interest, if any, for each Condominium owned by it, and each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in any deed, covenants and agrees to pay to the Association:
 - (1) Regular Assessments or charges;
 - (2) Special Assessments;
 - (3) Reconstruction Assessments; and
 - (4) Extraordinary charges/Assessments.

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- (b) Assessments and related interest, collection costs, and reasonable attorneys' fees are the personal obligations of the Owner and binds heirs, devisees, representatives, successors and assigns, but does not pass to successors in title unless expressly assumed by them.

6.03 Regular Assessments.

- (a) Regular Assessments levied annually by the Association may be collected and used for:
- (1) Maintenance and operation of the Common Area(s);
 - (2) Administration of the Property and the Association;
 - (3) Establish reserves for Common Area maintenance and repairs;
 - (4) For purposes reasonably determined by the Board.
- (b) Until January 1 following the first sale of a Condominium, the Regular Monthly Unit Assessment will be subject to the Association budget approved by DRE in connection with the issuance of the most recent Public Report for the Property. Beginning January 1 following the first sale of a Condominium, the Board will annually determine the Regular Monthly Unit Assessment after giving due consideration to current maintenance and operating costs, anticipated future needs, reserves, and all relevant facts.
- (c) Except as provided in "Extraordinary Charges" below, the Board may not increase a regular annual Assessment per Unit more than twenty percent (20%) of the Regular Assessment for the Association's preceding fiscal year unless there is a vote of approval of Owners, constituting a quorum casting a majority of the votes at a meeting or vote without a meeting of the Association conducted in accordance with California Corporations Code Section 7510 et seq. and 7613 et seq., as amended from time to time. For purposes of this section, quorum means more than fifty percent (50%) of the Members of the Association.
- (d) Monthly Unit Assessments for a partial year must be annualized to determine whether proposed Assessments for the Association's first full calendar year exceed a twenty percent (20%) annual increase over the previous Assessment.

6.04 Special Assessments.

- (a) The Board may levy Special Assessments in any year to defray the costs of:
- (1) Capital improvements to be made on the Property by the Association;

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- (2) Other special common expenses; and
- (3) Any Association undertaking for which funding is not otherwise provided.
- (b) Except as provided in "Extraordinary Charges" below, Special Assessments may not exceed in the aggregate five percent (5%) of the Association's budgeted gross expenses in that fiscal year without the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or vote without a meeting of the Association conducted in accordance with California Corporations Code Section 7510 et. seq. and 7613 et. seq. as amended from time to time. For purposes of this section, quorum means more than fifty percent (50%) of the Members of the Association.
- (c) Written notice of any Special Assessment amount must be:
 - (1) Sent to every Owner;
 - (2) Include the date payment is due.
- (d) Special Assessments will be levied on the same basis as Regular Assessments, to the extent reasonably possible.

6.05 Extraordinary Charges.

Notwithstanding any other provision contained in this Article, the Board may levy a special assessment for the following:

- (1) A court order;
- (2) Repair or maintenance in any area of Association responsibility that poses a threat to personal safety; or
- (3) Repair or maintenance in any area of Association responsibility that was unforeseen by the Board while preparing the proforma operating budget. However, prior to the imposition or collection of such charge, the Board must first pass and distribute a written resolution with the Notice of Assessment to all Members containing written findings as to the necessity for the charge, and why it was not or could not have been reasonably foreseen in the budgeting process charges.
- (b) The provisions relating to Special Assessments notwithstanding, each Owner agrees to pay the Association the following charges:
 - (1) Extra maintenance and repair costs caused by the willful or negligent act of the Owner, (family, guests, tenants, lessees, licensees or invitees) and not caused by ordinary wear and tear;

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- (2) Costs to bring the relevant Condominium and Owner into compliance with the provisions of the Restrictions.
- (c) Written notice of an Extraordinary Charge passed by the Board must be delivered to the responsible Owner, and contain the basis and due date for the charge.
- (d) An Extraordinary Charge not paid when due is subject to the same interest and late charges provided for Delinquent Assessments.
- (e) An Extraordinary Charge, late charges, interest, collection costs and reasonable attorneys' fees may be established by the Board and enforced by the relevant civil courts.

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6.06 Uniform Assessment Rate.

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

6.07 Commencement Date of Regular Assessments;
Due Dates of Assessments.

- (a) Regular Assessments commence on the first of the month immediately after conveyance of the first Unit to a purchaser.
- (b) Except for the partial first year, Regular Assessments will be:
 - (1) Levied on a calendar year basis;
 - (2) Due and payable in advance on the first day of every month, or in any other manner established by the Board.

6.08 Assessment Duties of the Board of Directors.

- (a) At least thirty (30) days before each calendar year, the Board of Directors must:

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- (1) Set Regular Annual Assessment amounts for each Unit; and
 - (2) Prepare an Annual Roster of Units that includes relevant Assessments and is made available for inspection by any Owner during normal business hours.
- (b) Written notice of Regular Assessments must be sent to every Owner as follows:
- (1) Annually;
 - (2) At least thirty (30) days before the applicable calendar year; and
 - (3) Specifying when installment payments are due and payable.
- (c) If for some reason a Regular Assessment is not prepared as required, terms of the Regular Assessment in place for the previous year will continue unchanged until the Board enacts a new or supplementary Assessment.
- (d) Upon demand by an Owner (or Mortgagee) whose Condominium is liable for any Assessment, the Association will furnish a written certificate (constituting conclusive evidence of any payment of Assessments) signed by an Association officer that sets forth:
- (1) The nature and extent of the Assessment(s);
 - (2) Due dates and whether any delinquency exists.
 - (3) The Board may impose a reasonable charge for issuing the certificate.

6.09 Effect of Nonpayment of Assessments;
Delinquency and Remedies of the Association.

- (a) An Assessment is delinquent ("Delinquent Assessment") if not paid within fifteen (15) days after the due date. A Delinquent Assessment includes:
- (1) A late charge imposed by the Board to the maximum amount in accordance with California Civil Code Section 1366 (or any successor statutes);
 - (2) Reasonable collection costs and attorney's fees; and
 - (3) Interest on all costs and charges at an annual rate of twelve percent (12%), commencing thirty (30) days after the Assessment is due.
- (b) Delinquent Assessments and related costs will be a continuing lien on the relevant Condominium when a "Notice of Delinquent Assessment" is recorded against an Owner's fee interest in a Condominium.

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This lien is prior and superior to all other monetary liens on the Owner's fee interest except:

- (1) Taxes, bonds, Assessments and other levies that are superior by law; and
- (2) The lien or charge of any first Mortgage of record made for value in good faith.
- (3) The lien for Assessments which were due and payable prior to the transfer of an Owner's interest in a Condominium shall be deemed extinguished upon the transfer of said interest as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first Mortgage.

(c) In addition to all other legal rights and remedies, the Association may:

- (1) Bring legal action against an Owner who is personally obligated to pay the Assessment and charges (without foreclosing or waiving any lien security);
- (2) Judicially foreclose the lien against the Condominium, including the Assessment, interest, collection costs and late charges;
- (3) Foreclose the lien by power of sale in accordance with California Civil Code Sections 2924-2924h, or any other lawful manner;
- (4) Bid on the Condominium through authorized agents at the foreclosure sale, to acquire, hold, lease, Mortgage or convey; or
- (5) Temporarily suspend the voting rights of the Owner in accordance with the provisions of this Declaration.

(d) Foreclosure action may not proceed until thirty (30) days after a Notice of Claim of Delinquent Assessment is duly recorded with the relevant County Recorder that sets forth:

- (1) The amount claimed (including all charges provided for above);
- (2) Sufficient legal description of the assessed Condominium;
- (3) The name of the record owner;
- (4) The name and address of the Association as claimant; and
- (5) The name and address of the trustee authorized by the Association to enforce the lien by nonjudicial sale.

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- (e) A copy of the Notice of Claim of Delinquent Assessment must be sent by certified or registered prepaid United States mail, addressed to the Owner or his designated agent previously given in writing to the Association at the Condominium (or an address that the Owner has previously given in writing to the Association which address must be within the United States).
- (f) Upon an Owner's timely payment of a default and all related fees, Association officers may prepare and record (at the Owner's cost) a release of the Notice of Delinquent Assessment.
- (g) No transfer of an Owner's interest in a Condominium as a result of a foreclosure or exercise of a power of sale shall relieve the new Owner whether it be the former beneficiary of the first mortgage or another person, from liability for any assessment thereafter becoming due or from the lien thereof.

6.10 Nonuse and Abandonment.

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

6.11 Waiver of Exemptions.

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

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ARTICLE VII

ARCHITECTURAL CONTROL

7.01 Approval by the Committee.

- (a) An Architectural Committee composed of three Members for the control of structural, and landscaping architecture, and design within the Property is hereby established as set forth below.
- (1) The Declarant shall appoint all of the original members of the Architectural Committee and all replacements until the first anniversary of the issuance of the original public report for the Project. The Declarant reserves to himself the power to appoint a majority of the members of the Committee until 90% of all the Condominiums in the Project have been sold or until the fifth anniversary of the original issuance of the final public report for the Project, whichever first occurs.
 - (2) After one year from the date of issuance of the original public report for the Project, the Board shall have the power to appoint one member to the Architectural Committee until 90% of all of the Condominiums in the Project have been sold or until the fifth anniversary date of the original issuance of the final public report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee.
 - (3) Members appointed to the Architectural Committee by the Board shall be from the membership of the Association and may be members of the Board.
- (b) Any exterior alteration or improvement or change to the exterior of a Unit anywhere on the Property (and any Common Area) or any interior alteration or improvement affecting the structure must first be approved in writing by the Architectural Committee.
- (c) Complete plans and specifications must be submitted in writing showing plot layout, materials, sizes, color, design and landscaping, and with the signature of the Owner.

7.02 Certain Procedures for the Committee.

- (a) The Committee shall meet from time to time as necessary.

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- (b) If any Member is unable (or unwilling) to serve on the Committee, the remaining Member(s) will have authority to approve or reject any proposed construction or alteration.
- (c) If the Committee fails to rule on a proposal within thirty (30) days after complete plans and specifications have been submitted as outlined below, the plans will be considered automatically approved.
- (d) Complete plans and specifications must be either:
 - (1) Personally delivered to a Committee Member; or
 - (2) Mailed postage prepaid, certified mail, return receipt requested to the Committee at its current address.

7.03 Enforcement by Owners.

If the Association fails to take corrective action within a reasonable period of time after knowledge of a violation, an Owner may take legal action to enforce these provisions.

7.04 No Waiver.

Committee approval of a proposal does not limit the Committee's right to withhold approval for similar proposals.

7.05 No Liability.

The Association, and Board (including officers, directors, employees, agents and Members) are not liable in any way for loss, damage or injury connected with the Committee's duties, unless there is evidence of willful misconduct or bad faith (in which case only the guilty person(s) are liable).

7.06 Review Standards.

- (a) The Committee must approve or reject plans and specifications submitted for proposed construction or alteration based on:
 - (1) Aesthetic aspects of design, placement, landscaping, color, finish, materials, and harmony with existing structures; and
 - (2) Overall benefit or detriment to the Property and the area immediately surrounding the Unit involved.

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- (b) The Committee is not responsible for approval of plans from the standpoint of structural safety or conformance with building codes.
- (c) Committee approval of solar heating units may not be withheld unreasonably.

7.07 Rules and Regulations.

The Committee may adopt, amend and repeal reasonable Rules and Regulations to implement the provisions hereof.

7.08 Compensation of Members.

Committee Members may not receive compensation for services rendered, (other than reimbursement for reasonable expenses incurred in carrying on the business of the Association unless approved by a vote or written assent of a majority of the Association members), unless approved by a majority vote of Association Members.

7.09 Appeal.

- (a) After the Declarant has lost the right to appoint a majority of Members of the Committee, all decisions of the Committee are subject to review by the Board.
- (b) Unless the composition of the Membership of the Committee is identical to the Board, the Board must review and decide upon the proposal within forty-five (45) days after the decision by the Committee.

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ARTICLE VIII
MORTGAGEE PROTECTION

8.01 Subordination of Lien and Foreclosure.

(a) Any lien created or claimed in this Declaration:

- (1) Is subject and subordinate to the rights of any first Mortgage that encumbers any part of the Property made for value in good faith; and
- (2) May not in any way impair or invalidate the obligation or priority of a first Mortgage unless expressly subordinated in writing by the Mortgagee.

(b) Foreclosure of any Assessment lien created by any provision of this Declaration shall not operate to impair any lien encumbered by a first Mortgage made for value in good faith.

(c) Upon foreclosure of a first Mortgage, the acquirer of title:

- (1) Will take the Condominium title free of any Assessment lien accrued up to the time of the foreclosure sale (provided that nothing herein is intended to impair the rights of the Association to receive payment on any Assessment lien in the event the net sale proceeds are in excess of what is owed on all encumbrances prior to the Assessment lien);
- (2) Is only obligated to pay Assessments or other Association charges accruing after the Unit title is acquired; and
- (3) Where the Mortgagee obtains title with a deed in lieu of foreclosure, any Assessment lien will not be extinguished.

8.02 Mortgagees Are Not Required to Cure Certain Breaches.

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

8.03 Effect of Breach of Declaration.

(a) Breach of this Declaration may not:

- (1) Cause any forfeiture or reversion of title; or
- (2) Bestow any right of reentry.

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- (b) Breach of this Declaration may be enjoined or abated by court action by the Association, Declarant, or any Unit Owner, and damages may also be awarded provided that:

- (1) The violation does not impair or invalidate the Mortgage lien or deed of trust made for value in good faith; and
- (2) This Declaration binds any Owner whose title is derived through foreclosure, trustee's sale or otherwise.

8.04 Exemption From Right of First Refusal.

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

8.05 Restrictions on Certain Changes.

Eligible First Mortgagees are holders of First Mortgages who have requested the Association to notify them of specified proposals and changes to the Governing Documents.

At least sixty-seven (67%) percent of Owners and at least fifty-one percent (51%) of the votes of Eligible First Mortgagees must give written approval before the Association may, by act or omission, do any of the following:

- (a) Abandon, partition, subdivide, encumber, sell or transfer any portion of a Common Area (other than granting easements as specified in this Declaration);
- (b) Alter the method of determining Assessments or other charges levied against an Owner;

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- (c) Partition or subdivide any Condominium;
- (d) Seek to abandon or terminate the Condominium Property, (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (e) Use hazard insurance proceeds for losses to the Property (Unit or Common Area) for other than repair, replacement or reconstruction of the relevant Property (except as provided by statute in case of substantial loss to the Units or Common Areas);
- (f) Change, waive or abandon any regulations or enforcement pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Area(s).
- (g) Fail to maintain Fire and Extended Coverage on insurable Common Area(s) as specified in this Declaration.
- (h) Amend any provision of the Governing Documents concerning:
 - (1) Voting rights;
 - (2) Rights to use the Common Area(s), and reallocation of interests in the Common Area (including Exclusive Use Common Areas);
 - (3) Reserves and responsibility for maintenance, repair and replacement of the Common Property;
 - (4) Unit boundaries;
 - (5) Owners' interests in the Common Area;
 - (6) Convertibility of Common Area into Units or Units into Common Area;
 - (7) Unit leasing;
 - (8) Establishment of self-management by the Association where professional management has been required by any beneficiary, insurer or guarantor of a first Mortgage;
 - (9) Annexation or deannexation of real property;
 - (10) Assessments, Assessment liens, or the subordination of such liens;
 - (11) Casualty and liability insurance (or other insurance or fidelity bonds);
 - (12) Imposition of a right of first refusal or similar restriction of an Owner's right to sell, transfer or otherwise convey the Unit;

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- (13) Restoration or repair of the Property after hazard damage or partial condemnation;
 - (14) Action to terminate the legal status of the Property after substantial destruction or condemnation; and
 - (15) Any provisions that are for the express benefit of first Mortgagees, insurers or governmental guarantors of first Mortgages.
- (i) Change, waive or abandon the provisions of this Declaration (and their enforcement) pertaining to architectural design and control of the exterior appearance of structures, maintenance of the Common Area(s), walks, fences, driveways, lawns and plantings on the Property.

When Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Property, written approval of approximately 67% of Eligible First Mortgagees must be given.

If an amendment or change is not considered material, an Eligible First Mortgagee's approval will be considered granted if a negative response is not delivered to the Board within thirty (30) days after it receives notice of the proposed amendment, provided notice was delivered personally or by certified or registered mail, return receipt requested.

8.06 Inspection of Association Books and Records.

Any first Mortgage holder has the right to examine the books and records of the Association.

8.07 Condemnation Awards and Insurance Proceeds.

- (a) First Mortgagees have priority over any other party (including the Owner) pursuant to their Mortgage in a case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Units or Common Areas. Any provision to the contrary in this Declaration, the Bylaws, or other Governing Documents is to such extent void.
- (b) All applicable fire, physical loss or extended coverage insurance policy must contain loss payable clauses acceptable to the affected first Mortgagee, naming them Mortgagees as their interests may appear.

8.08 Mortgagee's Right to Attend Meetings.

Any Mortgagee may appear at Association and Board meetings, but is not eligible to vote.

8.09 Payments by Mortgagees.

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

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

(b) Upon making such payments, the Association:

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

8.10 Loss Payable Endorsement.

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

8.11 Notices to Mortgagees.

(a) The holder, insurer or guarantor of the mortgage on any Unit is entitled to timely written notice of:

- (1) Any condemnation or casualty loss that affects a material portion of the Project or the Unit securing its mortgage;
- (2) Any sixty-day delinquency in the payment of Assessments or charges owed by the Owner of any Unit on which it holds the mortgage;
- (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

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(4) Any proposed action that requires the consent of a specified percentage of Eligible First Mortgage Holders.

- (b) To obtain the information above, the mortgage holder, insurer or guarantor must send a written request to the Association, stating both its name and address and the unit number or address of the unit it has the mortgage on.

8.12 Governmental Financing Programs.

- (a) It is the intent of Declarant that the Governing Documents and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Condominium in the Project by the Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association or FHA/VA (if the Declarant is submitting for approval or these agencies). The Association and each Owner shall promptly take any action and/or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration or the Project to the requirements of any of these entities or agencies. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant as his Attorney-in-Fact, for himself and each of his Mortgagees, heirs, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a Power of Attorney coupled with an interest to Declarant as his Attorney-in-Fact for the purpose of amending the Governing Documents to conform with any new requirements. This Power of Attorney shall expire two years after the recording of this Declaration.
- (b) These steps include the requirement that, when available, the Association must maintain certain types of insurance coverage issued by carriers who meet the requirements of the relevant governmental financing program.
- (c) Hazard insurance policies required by this Section must contain (or attach) the standard Mortgagee clause commonly accepted by private institutional Mortgage investors for similar properties in the locale (except when a separate policy covering the Common Area(s) is maintained).
- (d) If there are any such loans, the Association will give written notice to FHLMC (or its designated representative) of the following:
- (1) Any loss to the Common Area in excess of Ten Thousand Dollars (\$10,000.00); or
 - (2) Damage to a Condominium covered by a first Mortgage purchased (in whole or in part) by the FHLMC in excess of One Thousand Dollars (\$1,000.00).

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ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

9.01 Restoration of the Property.

- (a) In case of destruction, the Association will repair and restore to its former condition any area for which it has responsibility.
- (b) Insurance proceeds for reconstruction or repair may only be used for those purposes (unless otherwise stated in this Declaration).
- (c) The Board is authorized to prepare any necessary documents to begin reconstruction as promptly as practical.
- (d) The Property must be restored in substantial accordance with the Condominium Plan and original construction plans, unless changes recommended by the Board have been approved in writing by seventy-five percent (75%) of the Owners and the same percentage of first Mortgagees.
- (e) If insurance proceeds cover at least eighty-five percent (85%) of restoration costs, the Association will cause to be repaired the damage and levy a Reconstruction Assessment against Owners to raise funds for the rebuilding or major repair of the structural Common Area housing units of the Project which shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed.
- (f) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs, then the vote (or written assent) of seventy-five percent (75%) of the Owners and first Mortgagees must approve a Reconstruction Assessment levied by the Board in order to proceed with restoration.
- (g) If the Owners and Mortgagees determine that restoration costs would be substantial and not in their best interests, the Owners may proceed as provided below.

9.02 Sale of Property and Right to Partition.

- (a) If insurance proceeds cover less than eighty-five percent (85%) of restoration costs, a certificate of the resolution authorizing reconstruction must be recorded within six (6) months from the date of destruction, or it will be conclusively presumed that the Owners have determined not to rebuild.

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- (b) An Owner may not partition his or her interest in the Condominium, and there may be no judicial partition of the Property, except:
 - (1) If a certificate of a resolution to rebuild has not been recorded within six (6) months of the destruction; or
 - (2) If restoration has not begun within six (6) months and the vote (or written consent) of sixty-seven percent (67%) of the Condominium Owners is given, then conditions for partition as set forth in Subdivision (4) of California Civil Code Section 1359(b) will be deemed satisfied.
- (c) In case of partition, the Association (acting through a Board majority) must promptly record a certificate that states:
 - (1) That a Board majority has irrevocable power of attorney to sell the Property for the Owners' benefit (except the VA) and for whatever documents are necessary for the Association to sell the Property for the best price, either in its damaged condition, or after damaged structures have been razed; and
 - (2) That the certificate is conclusive evidence of authority for any person relying upon it in good faith.
- (d) Net proceeds from sale, condemnation award (affecting all or a part of the Structural Common Area which is not apportioned among Owners by court judgment or by agreement between condemning authorities and each of the Owners) and/or Association Insurance must be divided proportionately among the Owners according to an appraised fair market value of the Condominiums (as of a date immediately prior to destruction or condemnation), computed by dividing the value of each Condominium by the total value of all Condominiums. Appraiser(s) hired by the Board for this purpose will be paid as an Association Common Expense.
- (e) The balance due on any valid encumbrance of record will be paid in order of priority before the distribution of any proceeds to the relevant Owner.
- (f) Except as provided above, each Owner (and successors) agree:
 - (1) To waive all rights, interests and causes of action for judicial partition of tenancy in common ownership; and
 - (2) To take no judicial action for partition.

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9.03 Interior Damage.

Restoration and repair of any interior damage to a Unit is the individual expense of the relevant Owner, except for any casualty or damage insured against by the Association.

9.04 Notice to Owners and Listed Mortgagees.

Immediately upon learning of any material damage or destruction to the Common Property or any Unit, the Board must notify all Owners, and Beneficiary, insurer or guarantor of any relevant Mortgage who have filed a written request for Board notice (see "Mortgagee Protection" Article).

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ARTICLE X

EMINENT DOMAIN

10.01 Representation by the Board in Condemnation Proceedings.

In case any Condominium is taken by condemnation or sale by eminent domain:

- (a) The Board will be the sole representative of all Members in any action to recover awards and all aspects of condemnation proceedings (subject to Mortgagees who have requested to join the Board in the proceedings); and
- (b) Members may not challenge the Board's good faith in fulfilling these duties.

10.02 Distribution of Award.

- (a) In case of condemnation or sale by eminent domain, the Board must distribute any award according to these provisions (after deducting fees and expenses related to the condemnation proceedings).
- (b) Any award must first be applied toward payment of any balance due on any Mortgages of record, in order of priority.
- (c) If condemnation judgment apportions the award among the Owners and Mortgagees, the Board will distribute the remaining amount (after deductions above) according to the terms of the judgment allocation.
- (d) If by sale under threat of condemnation (or if the judgment of condemnation fails to apportion the award), the Board will distribute the award based upon relative values of the affected Condominiums as determined by an independent M.A.I. appraiser(s) hired by the Board.
- (e) The determination of the appraiser(s) of each Condominium's value and degree of affect by the proceedings will be final and binding on all Owners and Mortgagees.
- (f) An Owner does not have priority over a Mortgagee for the condemnation award allocated to the Condominium.
- (g) An award may not be distributed to an Owner or Mortgagee in excess of the allocated amount.

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10.03 Inverse Condemnation.

The Board may bring an inverse condemnation action, in which case these provisions apply with equal force.

10.04 Revival of the Right to Partition.

- (a) If condemnation or sale by eminent domain renders more than twenty percent (20%) of the Units incapable of substantial restoration to prior condition (of at least ninety-five percent (95%) of the floor area):
- (1) The Board must call an Owners' meeting within sixty (60) days by mailing notice to each Owner at the address in the Association records; and
 - (2) The Owners may permit sale and partition of the entire Property (by a sixty-seven percent (67%) vote or written consent of the Owners, based on one (1) vote per Unit), in which case an Owner's right to partition through legal action is revived.
- (b) The Board will determine whether Condominiums partially taken are capable of being restored, and their decision is final and binding.

10.05 Awards for Members' Personal Property and Relocation Allowances.

- (a) In case of condemnation or sale by eminent domain, each Owner has exclusive right to claim:
- (1) All of the award made for the Member's personal Property; and
 - (2) Relocation and moving expenses.
- (b) The Board shall represent each Member in an action to recover awards regarding the Members' personal property, and must allocate the proportional amount of any award attributable to the appropriate portion of each Members' personal property.

10.06 Notice to Members.

As soon as the Board learns of any potential condemnation or sale by eminent domain, it must notify all Members and First Mortgagees who have filed a written request for notice (see "Mortgagee Protection" Article).

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10.07 Change of Condominium Interest.

- (a) In case of condemnation or sale by eminent domain, the Board may amend the Condominium Plan to reflect changes (subject to this Declaration).
- (b) If the Board records such an amendment, all relevant Owners and security interest holders must:
 - (1) Execute and acknowledge the amendment in compliance with California Civil Code Section 1351 (or any similar statute in effect); and
 - (2) Execute other documents and take other actions required to make the amendment effective.
- (c) The Board must send a notice of Condominium Plan change to each Owner and Mortgagee within ten (10) days after the amendment is filed in the relevant County Recorder's Office.

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ARTICLE XI

COVENANT AGAINST PARTITION AND RESTRICTION ON SEVERABILITY OF CONDOMINIUM COMPONENT INTEREST

11.01 No Partition; Exceptions; Power of Attorney.

- (a) The right of partition is hereby suspended (except that the right to partition revives and the Property may be sold as a whole when the provisions of this Declaration concerning Destruction and Eminent Domain are met).
- (b) Upon prior written approval of the First Mortgagee, an Owner may bring an action for partition by sale as provided in California Civil Code Section 1359 (or any similar statute in effect at the time).
- (c) These provisions do not prevent a judicial partition between co-tenants of a Unit.
- (d) The Association (through its Board) has irrevocable power of attorney (coupled with an interest) for the following circumstances:
 - (1) To sell the Property for the benefit of Owners and Mortgagees when partition takes place under California Civil Code Section 1359;
 - (2) To the maximum legal extent regarding Destruction or Eminent Domain; and
 - (3) Only after a certificate executed by a majority of Board Members is recorded which states that power of attorney is duly exercisable under the circumstances.

11.02 Proceeds of Partition Sale.

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

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- (c) In case of partition and sale, provisions of all Mortgages and Assessment liens extend to each Owner's interest in the resultant proceeds.
- (d) An Owner's interest may only be distributed upon prior payment of any Mortgage or Assessment encumbering the proceeds.

11.03 No Separate Conveyance of Condominium Components.

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

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ARTICLE XII

EASEMENTS

12.01 Certain Rights and Easements Reserved to Declarant.

- (a) This Declaration may not be amended to modify or eliminate easements or rights reserved to Declarant without prior written approval of Declarant.
- (b) Any easement reserved to Declarant in this Article is nonexclusive, unless otherwise specified.
- (c) Declarant reserves the right to grant and transfer easements for:
- (1) Installation and maintenance of "Systems" (e.g., drainage facilities, sewer, water, electricity, gas, telephone, cable television other utility lines and facilities, and heating and air conditioning systems); and
 - (2) Public services of the city.
- (d) Any such easement may not interfere with an Owner's use and enjoyment of the Units and Common Area(s).
- (e) As long as any Unit remains unsold, and for no longer than five (5) years from the date the original DRE public report is issued, the Declarant and its representatives reserve easements and rights for the following purposes without the need to seek or obtain Board or Architectural Committee approval:
- (1) To complete excavation, alteration, grading and construction of improvements;
 - (2) To construct, alter or make additional improvements Declarant deems advisable in the course of Property development;
 - (3) To use any Unit as an office for construction, decoration, real estate sales and leasing; and
 - (4) To make reasonable use of any Common Areas for ingress, egress, development, sales and construction purposes.

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12.02 Certain Easements for Owners.

- (a) Owners served by Systems connections have easement rights to the full extent necessary for use, repairs, and maintenance as needed (including to enter upon other Units, provided that the responsible Owner or utility company promptly repairs any Unit damage caused by such entry as promptly as possible).
- (b) Easement access to other Units is subject to Association approval (which may not be unreasonably withheld) according to reasonable conditions imposed by the Association.
- (c) Declarant grants nonexclusive easements for ingress, egress, pedestrian walkway and general recreation purposes over and upon the Common Area (except Exclusive Use Common Areas) to all Owners, subject to Governing Documents and Declarant rights in this Declaration.
- (d) Declarant reserves the right to grant and transfer easements over those portions of the Common Area(s) (the servient tenement) depicted on the Condominium Plan as an "Exclusive Use Common Area".
- (e) Declarant reserves the right to grant and transfer drainage easements over the Common Area (from the drainage line initially constructed by Declarant).

12.03 Certain Easements for Association.

Declarant grants to the Association nonexclusive easements permitting the Association to discharge its obligations as described in this Declaration.

12.04 Encroachment.

Declarant, the Association and Owners of contiguous Units have a reciprocal easement appurtenant to each of the Units and Common Areas for the following purposes:

- (a) Accommodating any existing encroachment of a wall or structure; and
- (b) Maintaining any structure and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling.

12.05 Creation of Easements.

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

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ARTICLE XIII

UTILITIES

13.01 Owner's Rights and Duties.

Owner rights and duties regarding "Systems" (e.g., drainage facilities, sewer, water, electricity, gas, telephone, cable television other utility lines and facilities, and heating and air conditioning systems) are:

- (a) Easement for Systems that lie on Units or Common Area(s) is granted to the full extent necessary for utility companies and the Association to install, maintain and repair the Systems;
- (b) If a utility System serves more than one Unit, each Owner served is entitled to reasonable use and enjoyment of all necessary portions of the System;
- (c) Systems easements may not interfere with an Owner's use and enjoyment of any of the buildings originally constructed on the Property; and
- (d) Reserved by Declarant (successors and assigns, including the Association) to grant and transfer, provided that the easements do not unreasonably interfere with the Owners' use and enjoyment of the Units and Common Areas.

13.02 Association's Duties.

The Association must:

- (a) Maintain all utility installations located in the Common Areas, except for those maintained by public, private or municipal utility companies; and
- (b) Pay all charges (as a Common Expense) for utilities supplied to the Property, except those metered or charged separately to the Units.

(6)

ARTICLE XIV

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

14.01 **Special Provisions Relating to Enforcement of Declarant's
Obligation to Complete Common Area Improvements.**

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

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ARTICLE XV
AMENDMENT

15.01 Amendment.

- (a) Before the first Unit is sold, Declarant may unilaterally amend this Declaration (subject to the Article entitled "Mortgagee Protection") by recording an instrument of amendment in the relevant County Recorder's Office.
- (b) After the first Unit is sold, this Declaration may only be amended in the following ways (and subject to the Article entitled "Mortgagee Protection"):
- (1) If there is only one Membership Class:
- (A) A signed, written instrument from sixty-seven percent (67%) of Association Members (other than Declarant); or
- (B) A signed, written instrument by two Association officers certifying that the relevant amendment has been approved by at least sixty-seven percent (67%) of Association Members (other than Declarant).
- (2) If Class B Membership exists:
- (A) A signed, written instrument from sixty-seven percent (67%) of the voting power of each class of membership; or
- (B) A signed, written instrument by two Association officers certifying that the amendment has been approved by at least sixty-seven percent (67%) of each class of membership.
- (c) Any amendment must be properly recorded in the relevant County Recorder's Office.
- (d) The percentage of Association Members needed to amend this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under the relevant provision.
- (e) An Owner or the Association may petition the Superior Court for an order reducing the percentage of affirmative votes needed to amend this Declaration (pursuant to Civil Code Section 1356, or any successor statutes).
- (f) Notwithstanding the foregoing provisions of this Article, for as long as Class B membership exists, any amendment to this Declaration requires prior approval by the Department of Veterans Affairs. (A draft of the amendment must be submitted to the VA for its approval prior to recordation.)

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- (g) Without the prior written consent of the City of Alhambra, the Association shall not amend this Declaration in such a manner which would delete, reduce or affect the rights, privileges and status of the City of Alhambra, as contained in this Article or elsewhere in the Declaration.

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ARTICLE XVI

MISCELLANEOUS PROVISIONS

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16.01 No Rights Given to Public.

This Declaration does not grant any portion of the Property to the general public or for any public use whatsoever.

16.02 Enforcement.

- (a) An Owner or the Association may enforce by legal action all restrictions, conditions, covenants, reservations, liens, Assessments, fees and penalties imposed by this Declaration for violations committed by any offending party.
- (b) Failure to take action does not constitute a waiver of the right to take action.

16.03 Termination of any Responsibility of Declarant.

If Declarant conveys fee title to all of the Property to any entity or individual(s), then:

- (a) Declarant will be relieved of the performance of any further duty or obligation in this Declaration; and
- (b) Such entity or individual(s) will be obligated to perform all such duties and obligations of Declarant.

The rights and duties of Declarant hereunder may be assigned in whole or in part by Declarant to any successor in interest by a written assignment, after which Declarant shall not be responsible for any acts or omissions of its successor in interest.

16.04 Term of Declaration.

- (a) This Declaration is binding upon all parties for sixty (60) years after the recording date.
- (b) After sixty (60) years, the Declaration will automatically be extended for successive ten (10) year periods, unless the Owners (heirs, successors, representatives) of a majority of subject Units record a signed, written instrument:

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- (1) At least one (1) year before the beginning of any ten (10) year period;
and
- (2) Agreeing to change or terminate this Declaration.

16.05 Notices.

- (a) Any required notice must be given by:
 - (1) Personal delivery; or
 - (2) Mailing by first-class, or registered, or certified pre-paid U.S. mail (deemed given upon deposit in the mail); or
 - (3) Other means of written communication (deemed given upon delivery of common carrier for transmission).

16.06 Partial Invalidity.

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

16.07 Number.

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

16.08 Attorneys' Fees.

In any legal action by an Owner(s) or the Association to enforce any provision of the Governing Documents, the prevailing party shall be awarded reasonable costs (including attorney's fees).

16.09 City of Alhambra Conditions.

- (a) **Right of Entry.** The City of Alhambra, California, shall have the right, but not the duty, to enter upon the development for purposes of inspecting same and correcting or abating any public nuisance or violation of the Health and Safety Code or the State of California or the Alhambra Municipal Code.

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- (b) **Compliance with City Ordinances.** The development shall be maintained in compliance with, and the Association and each owner occupant of a Unit within the development shall comply with all applicable ordinances of the City of Alhambra, California.
- (c) **Conflict of City Conditions with Other Provisions of the Declaration or Other Governing Instruments.** To the extent any City of Alhambra provisions conflict with the provisions of this Declaration or other instruments governing the development, the provisions of the City of Alhambra shall control.
- (d) **Consent to Declaration.** The trustees or beneficiaries of all deeds of trust or other encumbrances on the tract shall consent to and subordinate their interests to this Declaration. Said consent shall be in writing, attached to the Declaration and recorded with it.

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IN WITNESS WHEREOF, the undersigned, being the Declarant, has executed this Declaration for Tract No. 49546 on the day and year first written above.

"Declarant"

FUDGE/VAN SCHAICK CORPORATION,
a California corporation

x Mark R. Fudge
By: MARK R. FUDGE
its: President

x David Van Schaick
By: DAVID VAN SCHAICK
its: Vice-President

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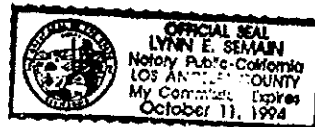
STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

On June 25, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Mark R. Fudge and David Van Schaick * * * * *

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 signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public

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SUBORDINATION BY LIENHOLDER

FRANK J. NOVARRO as Trustee for the FRANK J. NOVARRO TRUST dated 7/16/84; ALLEN FOSTER VAN SCHAICK and ARDEN FINOCCHIO VAN SCHAICK as Trustees for the VAN SCHAICK TRUST dated 11/9/76; JACK D. FUDGE and ELINE M. FUDGE, as Individuals, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 49546 to which this instrument is attached, hereby approves and consents to the recording of this Declaration of Covenants, Conditions, Restrictions and Easements, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest.

Deed of Trust recorded on August 27, 1991 as Instrument No. 91-1347295 of the Official Records of the Los Angeles County Recorder.

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FRANK J. NOVARRO as Trustee
for the FRANK J. NOVARRO TRUST
dated 7/16/84

x 
FRANK J. NOVARRO, Trustee

ALLEN FOSTER VAN SCHAICK and ARDEN FINOCCHIO VAN SCHAICK
as Trustees for the VAN SCHAICK TRUST dated 11/9/76

x 
ALLEN FOSTER VAN SCHAICK,
Trustee

x 
ARDEN FINOCCHIO VAN SCHAICK,
Trustee

x 
JACK D. FUDGE, an Individual

x 
ELINE M. FUDGE, an Individual

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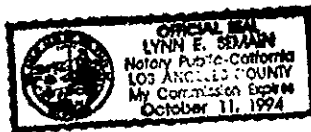
STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On June 25, 1992, before me, the undersigned, a
Notary Public in and for said State, personally appeared Frank J. Novarro, Allen
Foster Van Schaick, Arden Finocchio Van Schaick

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 signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public

92 2361193

STATE OF CALIFORNIA)
COUNTY OF) ss.

On June 25, 19 92, before me, the undersigned, a
Notary Public in and for said State, personally appeared Jack D. Fudge
and Elene M. Fudge

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 signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public

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SUBORDINATION BY LIENHOLDER

MARIE FINOCCHIO and ANTHONY FINOCCHIO as Trustees for the FINOCCHIO TRUST dated 9/3/76; FRANK J. NOVARRO, as Trustee for the FRANK J. NOVARRO TRUST dated 7/16/84; ALLEN FOSTER VAN SCHAICK and ARDEN FINOCCHIO VAN SCHAICK as Trustees for the VAN SCHAICK TRUST dated 11/9/76; JACK D. FUDGE and ELINE M. FUDGE, as individuals, as Beneficiary under the following Deed(s) of Trust which cover(s) the real property described in the Declaration of Covenants, Conditions, Restrictions and Easements for Tract No. 49546 to which this instrument is attached, hereby approves and consents to the recording of this Declaration of Covenants, Conditions, Restrictions and Easements, and agrees that the lien(s) of said Deed(s) of Trust shall be subordinated to and subject to each and every provision of the Declaration and any future amendments not affecting the beneficial interest.

Deed of Trust recorded on August 27, 1991 as Instrument No. 91-1347296 of the Official Records of the Los Angeles County Recorder.

MARIE FINOCCHIO and ANTHONY FINOCCHIO
as Trustees for the FINOCCHIO TRUST dated 9/3/76

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Marie Finocchio *Anthony Finocchio*
MARIE FINOCCHIO, Trustee ANTHONY FINOCCHIO, Trustee

FRANK J. NOVARRO as Trustee
for the FRANK J. NOVARRO TRUST
dated 7/16/84

Frank J. Novarro
x FRANK J. NOVARRO, Trustee

ALLEN FOSTER VAN SCHAICK and ARDEN FINOCCHIO VAN SCHAICK
as Trustees for the VAN SCHAICK TRUST dated 11/9/76

Allen Foster Van Schaick *Arden Finocchio Van Schaick*
x ALLEN FOSTER VAN SCHAICK, x ARDEN FINOCCHIO VAN SCHAICK,
Trustee Trustee

Jack D. Fudge *Eline M. Fudge*
x JACK D. FUDGE, an individual x ELINE M. FUDGE, an individual

STATE OF CALIFORNIA)
COUNTY OF Los Angeles) ss.

On June 25, 1992, before me, the undersigned, a Notary Public in and for said State, personally appeared Marie Finocchio, Anthony Finocchio, Frank J. Novakro, Allen Foster Van Schaick and Arden Finocchio Van Schaick

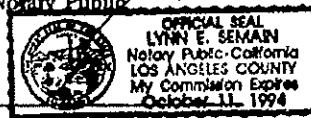
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their signature(s) on the instrument the person(s) or the entity upon behalf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

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public



STATE OF CALIFORNIA)
COUNTY OF) ss.

On June 25, 19 92, before me, the undersigned, a Notary Public in and for said State, personally appeared Talk D. Fudge and Eline M. Fudge

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 signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)



[Signature]
Notary Public

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EXHIBIT "A"

**Lot 1 of Tract 49546, as per Map filed in Book
1194 _____, Pages 26 to 28 _____, Inclusive
of Maps, in the Office of the County Recorder
of Los Angeles County.**

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