

FIDELITY NATIONAL TITLE COMPANY  
SUBDIVISION DEPARTMENT

RECORDING REQUESTED BY:

Fidelity National Title Company  
Order No. \_\_\_\_\_

WHEN RECORDED RETURN TO:

LEVEN & SELIGMAN  
1900 Avenue of the Stars, Suite 1900  
Los Angeles, CA 90067  
Attn: Linda S. Masada

Certified to be a true and correct  
copy of Declaration of CCR's  
Recorded July 21, 2003  
As Instrument No 03-0273356  
of Official Records of Ventura  
County, California

By Dolan Covenants  
FIDELITY NATIONAL TITLE CO.

\*\*\*\*\*  
5196-2 (KS)

DECLARATION OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS

FOR  
LIGHTHOUSES  
AT  
WESTPORT AT MANDALAY BAY

IF THIS DOCUMENT CONTAINS ANY RESTRICTION  
BASED ON RACE, COLOR, RELIGION, SEX, FAMILIAL  
STATUS, MARITAL STATUS, DISABILITY, NATIONAL  
ORIGIN, OR ANCESTRY, THAT RESTRICTION VIOLATES  
STATE AND FEDERAL FAIR HOUSING LAWS AND IS  
VOID. ANY PERSON HOLDING AN INTEREST IN THIS  
PROPERTY MAY REQUEST THAT THE COUNTY  
RECORDER REMOVE THE RESTRICTIVE COVENANT  
LANGUAGE PURSUANT TO *California Government Code*  
*Section 12956.1(c).*

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DECLARATION  
OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
LIGHTHOUSES  
AT  
WESTPORT AT MANDALAY BAY

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR LIGHTHOUSES AT WESTPORT AT MANDALAY BAY dated as of June 16, 2003, for reference purposes only (this "Declaration"), is made by Beazer Homes Holdings Corp., a Delaware corporation dba Beazer Homes Southern California (herein, "Declarant") with reference to the following:

RECITALS

A. Declarant is the owner of certain real property located in the City of Oxnard, County of Ventura, State of California, more particularly described as follows (the "Project Lots"):

Lots 3 and 4 of Tract 5196-2 in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 147 at Pages 20 through 23, inclusive, of Maps in the Office of the County Recorder of said County.

B. Declarant desires and intends to create a condominium project (as that term is defined in *California Civil Code Section 1351(f)*) (herein, the "Project") on, over, under and through the Project Lots. In connection therewith, Declarant intends to develop and map the Project Lots in Phases by means of recorded Condominium Plans for each such Phase in order to create condominiums (as that term is defined in *California Civil Code Section 1351(f)*) within each such Phase and to establish thereby and hereby a plan of condominium ownership for such portions of the Project Lots as are made a part of the Project from time to time pursuant to Notices of Annexation for the Phases of the Project. There is no guarantee, however, that any phase of development will be completed as originally planned or at all.

C. The initial phase of development shall consist of that portion of the Project Lots identified as the "Phase 1 Module" more particularly described on Exhibit A attached hereto, incorporated herein by this reference (herein, "Phase 1"). Phase 1 consists of sixteen (16) Units, certain Phase Common Area and certain Association Property, and the same is intended to be developed as the first of six (6) Phases within the Project. If completed and developed as currently planned, the Project will include eighty-eight (88) Units together with private streets, walkways, landscaping and recreational facilities and amenities. All Phases shall be made subject to this Declaration as and when annexed hereto as herein provided, and voting rights and certain assessment and maintenance obligations shall only commence as and when provided in this Declaration.

D. In order to protect and preserve the value, desirability, attractiveness and amenities of the Project, Declarant intends hereby, together with the Project Map and Condominium Plans applicable to the Project Lots and herein described and/or contemplated, to create a general plan for the development, use, occupancy, enjoyment and maintenance of the Project, as and when developed and made subject hereto pursuant to the terms hereof. Declarant further intends to develop and convey all portions of the Project subject to the protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges hereinafter set forth and established (collectively, the "Protective Covenants") in accordance with the provisions of the Davis-Stirling Common Interest

DECLARATION  
OF  
CONDITIONS, COVENANTS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
Lighthouses  
AT  
WESTPORT AT MANDALAY BAY

THIS DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR Lighthouses AT WESTPORT AT MANDALAY BAY dated as of \_\_\_\_\_, 2003, for reference purposes only (this "Declaration"), is made by Beazer Homes Holdings Corp., a Delaware corporation dba Beazer Homes Southern California (herein, "Declarant") with reference to the following:

RECITALS.

A. Declarant is the owner of certain real property located in the City of Oxnard, County of Ventura, State of California, more particularly described as follows (the "Project Lots"):

Lots 3 and 4 of Tract 5196-2 in the City of Oxnard, County of Ventura, State of California, as per map recorded in Book 147 at Pages 20 through 23, inclusive, of Maps in the Office of the County Recorder of said County.

B. Declarant desires and intends to create a condominium project (as that term is defined in *California Civil Code Section 1351(f)*) (herein, the "Project") on, over, under and through the Project Lots. In connection therewith, Declarant intends to develop and map the Project Lots in Phases by means of recorded Condominium Plans for each such Phase in order to create condominiums (as that term is defined in *California Civil Code Section 1351(f)*) within each such Phase and to establish thereby and hereby a plan of condominium ownership for such portions of the Project Lots as are made a part of the Project from time to time pursuant to Notices of Annexation for the Phases of the Project. There is no guarantee, however, that any phase of development will be completed as originally planned or at all.

C. The initial phase of development shall consist of that portion of the Project Lots identified as the "Phase 1 Module" more particularly described on Exhibit A attached hereto, incorporated herein by this reference (herein, "Phase 1"). Phase 1 consists of sixteen (16) Units, certain Phase Common Area and certain Association Property, and the same is intended to be developed as the first of six (6) Phases within the Project. If completed and developed as currently planned, the Project will include eighty-eight (88) Units together with private streets, walkways, landscaping and recreational facilities and amenities. All Phases shall be made subject to this Declaration as and when annexed hereto as herein provided, and voting rights and certain assessment and maintenance obligations shall only commence as and when provided in this Declaration.

D. In order to protect and preserve the value, desirability, attractiveness and amenities of the Project, Declarant intends hereby, together with the Project Map and Condominium Plans applicable to the Project Lots and herein described and/or contemplated, to create a general plan for the development, use, occupancy, enjoyment and maintenance of the Project, as and when developed and made subject hereto pursuant to the terms hereof. Declarant further intends to develop and convey all portions of the Project subject to the protective covenants, conditions, restrictions, rights, reservations, easements, equitable servitudes, liens and charges hereinafter set forth and established (collectively, the "Protective Covenants") in accordance with the provisions of the Davis-Stirling Common Interest

Development Act (*California Civil Code Sections 1350 et seq.*) for the mutual benefit of every person now or hereafter owning any interest in the Project.

NOW, THEREFORE, Declarant hereby declares that every portion of the Project (as it exists from time to time) is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following Protective Covenants, all of which are hereby established and declared to be in furtherance of a plan of condominium ownership and the subdivision, development, improvement, protection, maintenance, care, management and sale of the Project, and every portion thereof, and all of which are hereby further established, declared and agreed to be for the purpose of uniformly enhancing, maintaining and protecting the value, desirability and attractiveness of the Project and every part thereof. All of the Protective Covenants shall run with the real property and be binding upon, and inure to the benefit of, all persons (including Declarant) having or acquiring any right, title or interest in the Project or any part thereof, and their respective grantees, heirs, executors, administrators, devisees, successors and assigns. Declarant further declares that that this Declaration is intended to satisfy the requirements of *California Civil Code Section 1354*, or any successor statutes or laws.

## ARTICLE I DEFINITIONS

**Section 1.1      Terms.** Whenever used in this Declaration (including the foregoing Recitals and "Now, Therefore" clause), the following terms shall have the following meanings:

"AAA" shall mean the American Arbitration Association..

"Annexable Property" shall mean and refer to those portions of the Project Lots that are not included within or part of Phase 1, such portions of the Project Lots being more particularly described on Exhibit B hereto. Annexable Property shall be annexed hereto in Phases as Phase Modules, and as and when so annexed, the annexed Phase Module shall be included in the definition of Project hereunder and shall be governed by, and be subject to, each and every provision of this Declaration and any amendments hereto. As and when annexed hereto, the portions of the Phase Module that comprise the Units, Phase Common Area and Association Property shall be identified in the Notice of Annexation to facilitate interpretation hereof.

"Architectural Control Committee" and/or "Committee" shall mean and refer to the committee appointed from time to time under Article VII hereof to administer and enforce the Architectural Guidelines applicable to the Improvements in the Project.

"Architectural Guidelines" shall mean and refer to the design and architectural guidelines for the Project that are formulated and adopted from time to time by the Association.

"Articles" shall mean and refer to the Articles of Incorporation of the Association as filed in the Office of the Secretary of State of the State of California, as the same may be amended from time to time.

"Association" shall mean and refer to Westport Townhome Owners Association, a California nonprofit mutual benefit corporation, its successors and assigns, which has been or will be organized by Declarant to operate and manage the Project as herein provided.

"Association Improvements" shall mean and refer to those Improvements owned by the Association that are situated within the space that comprises a Unit but otherwise beyond the exterior surface of the Building and the Residential Areas of the Unit. Association Improvements specifically include those Improvements that are to be maintained and repaired by the Association pursuant hereto

on a regular basis including, for example, landscaping and walkways situated within any Unit, for which easements over, upon and through the Units are hereby granted to the Association. As and when a new Phase Module is annexed hereto, the term "Association Improvements" as used hereunder shall automatically include the newly annexed Association Improvements within the same and the rights and obligations of the Association with respect thereto shall extend to all such Association Improvements.

"Association Property" shall mean all real property (including Improvements thereon, if any) now or hereafter owned by the Association and annexed hereto pursuant to the provisions of Article XIX hereof. The Association Property in the first Phase of the Project shall consist of the real property identified as such on the Phase 1 Condominium Plan. As and when additional Association Property within a new Phase Module is annexed hereto, the term "Association Property" as used hereunder shall also include such newly annexed Association Property and the rights of Owners of Units then annexed to the Project shall extend to all such Association Property as then and thereafter annexed.

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

"Building" shall mean and refer to a residential structure which contains the dwelling areas (including the garage) of three (3) or four (4) Units, as the case may be.

"Bylaws" shall mean the duly adopted Bylaws of the Association as the same may be amended from time to time.

"Capital Improvement" shall mean and refer to any and all of the following: any Improvement situated on the Association Property, any of the Association Improvements, and each Building including the fixtures related to each of the them.

"City" shall mean and refer to the City of Oxnard, in the County of Ventura, California, and its various departments, divisions, supervisory bodies, officers, employees and representatives.

"Condominium" shall mean and refer to an estate in real property as defined in *California Civil Code Sections 783 and 1351(f)*, consisting of the following: (a) a separate interest in fee simple in a Unit (as defined and delineated on the Condominium Plan) together with all easements and appurtenances thereto, and (b) an undivided fractional fee interest as a tenant in common, together with the other Owners of Units in the applicable Phase Module, in the Phase Common Area shown on the Condominium Plan for said Phase Module.

"Condominium Plan" shall mean and refer to (i) that certain Phase 1 Condominium Plan heretofore recorded in the Official Records pursuant to *California Civil Code Section 1351(e)*, as the same may be modified, revised or amended from time to time and (ii) any subsequently recorded condominium plan or plans for subsequent Phases of the Project, including any amendments thereto, that affect any annexed Phase of the Project. Prior to the annexation of other Phase Modules to the Project, a condominium plan therefor shall be recorded prior to or concurrently with the Notice of Annexation for the same.

"County" shall mean and refer to the County of Ventura, a public entity, its departments, divisions, supervisory bodies, officers, and employees.

"Declarant" shall mean and refer to Beazer Homes Holdings Corp., a Delaware corporation *dba* Beazer Homes Southern California, its successors and assigns, and any person or entity to which it shall have assigned its development rights hereunder, in whole or in part, by express written assignment. Any such assignment may include some or all of the rights of Declarant and may be subject to such conditions or limitations as the original Declarant hereunder may impose in its sole and absolute discretion. Unless

otherwise expressly provided in this Declaration, all actions that may be taken by Declarant may be chosen to be taken by Declarant in its sole discretion. The original Declarant hereunder is a builder as that term is used and defined in *California Civil Code Section 1375*.

"Declaration" shall mean and refer to this enabling Declaration of Conditions, Covenants and Restrictions for Lighthouses at Westport at Mandalay Bay and to all amendments, restatements and/or supplements hereto (including, for example, all Notices of Annexation) that may be recorded from time to time in the Official Records.

"DRE" shall mean and refer to the Department of Real Estate of the State of California which administers the sale of subdivided lands in California pursuant to *California Business & Professions Code Sections 11000 et seq.* or any similar statute hereinafter enacted.

"Election Notice" has the meaning given to it in Section 10.6.1 hereof.

"Eligible Mortgagee" shall mean and refer to the holder of a First Mortgage that encumbers a Condominium in the Project who has provided to the Association a request for written notice that identifies said First Mortgagees mailing address, the recording information for its First Mortgage and the Condominium (by Unit number and address) encumbered by its First Mortgage.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation and/or any successor entity thereto.

"First Mortgage" shall mean and refer to a Mortgage in a first lien position against a Project Condominium that has priority over all other Mortgages, if any that create liens against the same Project Condominium. "First Mortgagee" refers to the holder of such a First Mortgage.

"FNMA" shall mean and refer to the Federal National Mortgage Association and/or any successor entity thereto:

"GNMA" shall mean and refer to the Government National Mortgage Association and/or any successor entity thereto.

"Governing Documents" means and refers to this Declaration, the Articles, the Bylaws, the Architectural Guidelines and the Rules and Regulations of the Association together with the Project Map and the Condominium Plans that affect the Project Lots, all of which govern the operation of the Project and the Association. In the event of any inconsistency among the Governing Documents, the provisions set forth in this Declaration shall control.

"Governmental Agency" shall mean and refer to any local, county, state and/or federal governmental or quasi-governmental agency, authority or regulatory body (including the City, the County, and any public or private utility company including, without limitation, cable television) that has jurisdiction over the Project or any part thereof.

"Improvements" is used herein in its broadest sense and the same shall mean all structures, additions and/or appurtenances within the Project of every kind including, but not limited to, all Buildings, all recreational structures and amenities, walkways, parking areas, swimming pools, spas, cabanas, private streets, street lights, pavements, sidewalks, driveways, walls, fences, decorative or informative signs, retaining walls, mail kiosks, trellises, antennae, patio covers, railings, planters, plantings, storage sheds, bins and areas, common trash receptacles, if any, screening walls, private utility lines and connections, poles, the exterior surfaces of any visible structure and the paint on such surfaces, signs, landscaping and irrigation systems, exterior air conditioning and water-softening fixtures or

equipment as well as permanent and/or portable recreational structures. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any Building (notwithstanding that the same may be contained within the boundaries of a Unit) including, but not limited to, (a) painting the exterior of any Building or other structure, (b) changing the roofing material on any Building, and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, patio covers, patio slabs, balcony covers, decks, gazebos, stairs, screening walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems, and/or altering landscaping or allowing any landscaping to grow in such a way that it violates any of the Rules and Regulations or Architectural Guidelines or ordinances or laws of any applicable Governmental Agency.

"Institutional Lender" shall mean a Mortgagee, which is a bank, savings and loan association, established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

"Invitee" shall mean any person whose presence within the Project is approved by or at the request of a particular Owner, including, but not limited to, lessees, tenants, and the family, guests, employees, licensees or Invitees of Owners, tenants or lessees.

"JAMS" shall refer to the organization known as Judicial Arbitration and Mediation Services.

"Major Components" shall have the meaning given to it in Section 6.2.1(b)(i) hereof.

"Master Association" shall mean and refer to Westport at Mandalay Bay Owners Association, a California nonprofit mutual benefit corporation, that governs all portions of the Master Project of which the Project is a part.

"Master Declaration" shall mean and refer to that certain Master Declaration of Conditions, Covenants and Restrictions for Westport at Mandalay Bay dated as of November 21, 2002, made by LB/L-SunCal Mandalay LLC, a Delaware limited liability company, as declarant thereunder, and recorded in the Official Records on December 20, 2002, as Instrument No. 2002-0324333 and re-recorded on February 5, 2003, as Instrument No. 2003-0038089, against certain real property described therein (including the Project Lots) and all amendments and supplements thereto (including, by way of example only, Subdivision Notices as that term is used and defined in the Master Declaration) as may be recorded from time to time in the Official Records.

"Master Project" shall mean and refer to the real property subject to the Master Declaration and governed by the Master Association that is to be developed as a master planned community with multiple residential product types and some commercial uses.

"Member" shall mean an Owner with a membership in the Association.

"Module" shall mean and refer to a separate three-dimensional volume of land, water (if any), and airspace shown and designated as such on a recorded Condominium Plan, i.e., either as the "Phase Module" for that Condominium Plan or the "Remainder Module" therefor. A Phase Module will include Units within its boundaries as well as Phase Common Area and Association Property.

"Mortgage" shall mean and refer to a deed of trust as well as a Mortgage.

"Mortgagee" shall mean a person or entity to whom a Mortgage is made and shall include the beneficiary of a deed of trust.

"Mortgagor" shall mean a person or entity who mortgages his or its property to another, i.e., the maker of a Mortgage, and shall include the trustor of a deed of trust.

"Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Articles, Bylaws, this Declaration, Architectural Guidelines, or Rules and Regulations of the Association and the opportunity for a hearing before the Board.

"Notice of Annexation" shall mean and refer to an instrument recorded in the Official Records pursuant to the provisions of Article XIX hereof that annexes all or a portion of the Annexable Property by means of Phase Modules that are created by recorded Condominium Plans, thereby subjecting said annexed Phase Modules (and the Units, Phase Common Areas and Association Property identified thereby) to the provisions of this Declaration and to the jurisdiction of the Association.

"Official Records" shall mean and refer to the official real property records maintained by the Office of the County Recorder of the County.

"Owner" shall mean and refer to the record Owner(s), whether one (1) or more persons or entities, of fee simple title to any Condominium within the Project including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

"Owner Maintenance Items" has the meaning given to it in Section 9.2 hereof.

"Owner Work" has the meaning given to it in Section 7.1 hereof.

"Phase" shall mean and refer to all or any increment of the Project together with appurtenant Improvements including the Units, Phase Common Area and Association Property located within the Phase Module shown on the Condominium Plan for the Phase. Phase shall mean and refer to Phase 1 and/or each subsequent Phase of the Project that covers a portion of the Annexable Property described as a Phase Module on a recorded Condominium Plan that is annexed to the Project by a recorded Notice of Annexation and for which a Public Report has been issued by the DRE. Nothing in this Declaration shall be understood or construed to compel or require Declarant to annex to the Project and the jurisdiction of the Association or to develop and construct or cause to be developed or constructed any Phase of the Project after Phase 1.

"Phase Common Area" is defined with reference to each specific Phase Module (whether the Phase 1 Module or a Phase Module hereafter annexed to the Project) and shall mean and refer to the airspace defined and delineated as such on the Condominium Plan for that Module. The fee estate in the Phase Common Area for each Phase shall be owned in undivided fractional interests by the Owners of the Units within that Phase as tenants in common.

"Private Streets" shall mean and refer to those streets, roads, parking areas and drives within the Project that are part of the Association Property.

"Project" shall mean and refer to those portions of the Project Lots that are subject to this Declaration from time to time (including Phase 1 and such other portions thereof that are annexed hereto and defined and delineated on recorded Condominium Plans as a Phase Module for the Phase to be annexed), and the same includes all Improvements thereto and thereon, now existing or hereafter made, installed and/or constructed.

"Project Lots" shall have the meaning set forth therefor in Recital A above.

"Project Map" shall mean and refer to that certain subdivision map of Tract No. 5196-2 recorded in Book 147, Pages 20 through 23, inclusive, of Maps in the Office of the County Recorder of Ventura County, California, that created the Project Lots, as the same may be now or hereafter amended.

"Project Unit" has the meaning given to it in the last sentence of the definition for Unit set forth below.

"Protective Covenants" shall have the meaning set forth therefor in Recital D hereof.

"Public Report" means a Final Subdivision Public Report issued by DRE in compliance with *California Business & Professions Code Sections 11000 et seq.*, as hereafter amended modified, or replaced.

"Residential Areas" means and includes those portions of a Unit that are used as the dwelling and are situated within a Building (in the case of the enclosed garage and other living and/or residential areas) or outside of a Building (in the case of an entry, balcony or exterior yard or patio).

"Right To Repair Law" has the meaning set forth therefor in Section 10.6.1 hereof.

"Rules and Regulations" shall mean and refer to the Rules and Regulations formulated and adopted from time to time by the Association for the operation, use and enjoyment of the Project and/or any part thereof including, for example the Architectural Guidelines.

"Subsequent Builder" has the meaning set forth therefor in Section 10.6.1 hereof.

"Unit" shall mean and refer to a separate interest in space as defined in *California Civil Code Section 1351(f)*. Each Unit is a separate freehold estate as separately shown, numbered and delineated on the applicable recorded Condominium Plan, and each Unit is situated above and below ground and contains earth, air, water (if any), and a portion of a multi-level triplex or quadriplex Building, as the case may be. Each Unit includes all Improvements and fixtures now or hereafter constructed within said space including, by way of example only, a portion of a Building that encompasses the living areas of the Unit, exterior balconies and patios and/or yards of the Unit, its subterranean garage, foundations, footings, utility lines, and entrance ways and the same are subject to all of the easements within and through the same as are reserved in the Declaration and/or otherwise recorded against the Phase Module and affecting the same. No portion of a Unit is owned in common with the Owners of other Condominiums in the Project. The boundaries of each Unit are shown and defined on the Condominium Plan that creates and delineates the same. In interpreting deeds, declarations and plans, the actual physical boundaries of a Unit along its perimeter side that abuts another Unit within the same Building shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plan, or declaration regardless of settling or lateral movement of the Building and regardless of minor variances between the boundaries. Those Units that have been annexed to the Project may be referred to herein as "Project Units" or "Project Condominiums" for ease of reference.

"VA" shall mean and refer to the United States Department of Veteran Affairs or any successor department or agency thereto.

**Section 1.2      Applicability of Terms.** The aforesaid definitions shall be applicable to this Declaration, and to any supplements or amendments hereto filed or recorded pursuant to the provisions of this Declaration, and to any Notice of Annexation for a subsequent Phase, unless otherwise indicated or unless the context shall prohibit such application.

**Section 1.3      Conflict.** In the event of any conflict between the provisions of this Declaration and those contained in the Master Declaration, the provisions of the Master Declaration shall govern and prevail.

## ARTICLE II OWNERSHIP AND EASEMENTS

**Section 2.1      Condominium Ownership.** Ownership of each Condominium within the Project shall include (a) a separate fee estate in a Unit as herein defined and as shown on the Condominium Plan that creates the same, (b) an undivided fractional interest as tenant in common with the other Owners of Units in the Phase in the Phase Common Area designated on said Condominium Plan, and (c) all easements appurtenant to such Unit over, upon, under and/or through the Association Property and/or other Units within the Project as and when annexed, whether herein reserved and/or otherwise described on the Project Map or applicable Condominium Plan and/or in the grant deed transferring title to said Unit to the Owner thereof, and (d) a membership in the Association.

**Section 2.2      No Separate Conveyance.** The undivided fractional fee interest in the Phase Common Area to be conveyed with each Unit in a Phase as an appurtenance thereto may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. No Unit shall be conveyed by any Owner separately from the fee interest of that Owner in the Phase Common Area appurtenant thereto. The conveyance of a Unit shall automatically transfer the appurtenant interest in the Phase Common Area without the necessity of express reference in the instrument of conveyance.

**Section 2.3      No Partition Rights.** Except as otherwise provided in this Declaration, there shall be no judicial partition of any Phase Common Area or the Association Property or any part of any of them, for the term of the Project, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium seek any such judicial partition.

**Section 2.4      Delegation of Use.** Any Owner entitled to the right and easement of use and enjoyment of the Association Property shall delegate, in accordance with the Bylaws, such Owner's right to the use and enjoyment of the Association property to that Owner's tenants, contract purchasers and/or subtenants who reside in the Owner's Unit subject to reasonable regulation by the Association.

**Section 2.5      Association Property.** Declarant hereby covenants for itself, its successors and assigns, that it will convey to the Association fee simple title to, or a nonexclusive easement in or over, the Association Property as and when the same is annexed to the Project, free and clear of all liens and encumbrances but subject to the covenants and obligations of the Association set forth in this Declaration with respect to such Association Property. In the event that improvements proposed to be constructed on any portion of the Association Property within a given Phase have not been completed prior to the close of escrow for the sale of the first Condominium in that Phase to a member of the home-buying public, as evidenced by a notice of completion recorded in the Official Records, then the completion of such improvements shall be assured in accordance with *California Business & Professions Code Section 11018.5* as hereafter amended or replaced. The Association's responsibility to maintain Association Property conveyed to it by Declarant in a given Phase shall commence concurrently with the recordation of the deed from Declarant that conveys the same to the Association, and the Association shall accept title to said Association Property and the maintenance obligations associated therewith upon the recording of said deed and tender of such maintenance by Declarant. The nature, design quality and quantity of all improvements to the Association Property shall be determined by Declarant in its sole discretion.

**Section 2.6      Easements.** The ownership interests of the Association in the Association Property and the Owners in their Units are subject to (a) all easements heretofore or hereafter granted by Declarant, whether by separately recorded instrument or the Project Map or any Condominium Plan, for the installation and/or maintenance of utilities, sewer lines, storm drains, and the like that are necessary for the Project and (b) the easements herein granted and reserved, each of which shall be deemed to be established upon the recordation of this Declaration and thereupon shall be included within the definition of Protective Covenants and shall run with the land that comprises the Project from time to time for the use and benefit of Declarant, the Owners and their Units, and the Association Property, and each of which shall be superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

2.6.1    **Declarant's Non-Exclusive Easements.** Subject to a concomitant obligation to restore, Declarant and its agents, employees and independent contractors shall have and enjoy all of the easements described in this Declaration, whether or not identified as an owner or beneficiary thereof.

2.6.2    **Easements on Condominium Plan.** The Association Property and the Units are subject to the easements and rights-of-way shown on the Condominium Plan and/or the Project Map.

2.6.3    **Easements for Utilities.** There are hereby reserved and granted non-exclusive easements for utility services (including, without limitation, utility cabinets and meters) for the benefit of each of the Units, as the dominant tenements, over, under, across and through the Association Property and every part thereof and each of the other Units, each as the servient tenement.

2.6.4    **Easements for Encroachment and Support.** There are hereby reserved and granted for (a) the benefit of each Unit, as a dominant tenement, over, under, around and across each other Unit and the Association Property, as servient tenements, and (b) for the benefit of the Association Property, as the dominant tenement, over, under, around and across each of the Units, as the servient tenements, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Units and/or the Association Property as are encroached upon, used and occupied by the dominant tenement as a result of any original construction, design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any Building, structure, or other Improvements or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easements shall exist for any replacement structure which is rebuilt pursuant to the original construction design. The easements for the maintenance of the encroaching Improvement shall exist for as long as the encroachments exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.6.5    **Access Easements.** Subject to the rights, restrictions and other provisions of this Declaration, the Bylaws, Rules and Regulations and Architectural Guidelines, every Owner shall have, for himself or herself and his/her Invitees, a nonexclusive easement of vehicular and pedestrian access, ingress, egress, use and enjoyment of, in, to and over the Association Property and such portions of all other Project Units that are outside of (i.e., not situated within) the Residential Areas thereof, and such easement shall be appurtenant to and shall pass with title to every Unit in the Project.

2.6.6    **Access to Association Property.** The Association shall have an easement of access through the Phase Common Area within each annexed Phase Module in order to obtain access to the Association Property situated above the same at a higher elevation.

2.6.7 Limitation on Rights. Nothing contained herein shall be construed to grant to any Owner any right, interest or easement in the Phase Common Area of any Phase Module other than the Phase Common Area in the Phase Module of which the Owner's Unit is a part.

2.6.8 Easements and Entry by Association. The Association and the Association's agents shall have an easement with right of entry at all times over, upon, under and through all those areas of each Project Unit that are situated outside of a Building in order to perform its maintenance and/or repair obligations hereunder with respect to such Project Unit and/or Building together with the right to enter (i) upon and into the Residential Areas of each Project Unit to the extent necessary to perform any maintenance and/or repair obligations with respect thereto following notice to the Owner thereof (except in the case of an emergency when no notice shall be required) and (ii) upon and into the Residential Areas of each Project Unit after Notice and Hearing (except in the event of an emergency in which case no prior notice need be given) and only to the extent necessary in order to enforce the provisions of this Declaration.

2.6.9 Easements for Association Duties. There is hereby reserved by Declarant for the benefit of Declarant and its duly authorized agents and representatives and granted to the Association and its duly authorized agents and representatives such easements within the Project and over, upon, under and through the Project Units as are necessary to perform the duties and obligations of the Association as are set forth in the Governing Documents.

2.6.10 Access to Annexable Property. Declarant shall have and hereby expressly reserves a non-exclusive easement over and across all portions of the Association Property and those portions of Project Units that are not part of the Residential Areas thereof in order to access Annexable Property until all of said Annexable Property is annexed to the Project and all Improvements including all of the Units are constructed thereon and annexed to the Project.

2.6.11 Easements for Public Services. Declarant shall have and expressly grants, reserves and establishes for itself with the right to grant the same to any Governmental Agency for the benefit of the Project or any part thereof easements for public services provided by any such Governmental Agency including, but not limited to, water, sewer, gas, electric, telephone, cable television, and all public services of the City and/or County including the right of the police and fire departments to enter upon any part of the Project for the purpose of carrying out their official duties, whether with respect to the Project and/or the Annexable Property.

2.6.12 Easements for Clustered Mailboxes. In order to comply with the various requirements of the City and the United States Postal Service, clustered mailboxes may be installed within the Project. Easements are hereby created on and over the affected portions of the Project and granted in favor of all Owners and the United States Postal Service for delivery, deposit and retrieval of mail.

2.6.13 Easements for Drainage. There are hereby created, granted and reserved over the Association Property and the Project Units easements for drainage according to the established patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage (including, but not limited to, easements to accommodate any "cross-lot drainage," whereby water runoff from one or more Units drains across or through another Owner's Unit on the surface of the ground or in a pipe under the ground as originally installed by Declarant). Each Owner shall maintain his respective Unit in such a manner to ensure that no water collects or ponds in any location adjacent to any walls or fences, if any, of the immediately adjacent Unit. Without limiting potential liability as a result of other activities or actions, each Owner shall be liable for any damage that occurs to an adjacent Unit as a result of modifications to such Owner's respective Unit (e.g., yard or patio area). Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with the drainage patterns of waters over the yard or patio area of his Unit (including but not

limited to the sub-drain lines and inlet structures initially installed by Declarant within portions of the yard areas of the Units) or, in the alternative, that in the event it is necessary and essential to alter said drainage patterns, the Owner will make adequate provisions for proper drainage and submit such plans for written approval by the Architectural Review Committee. Notwithstanding the foregoing, if any portion of the drainage system is damaged or destroyed as a proximate result of any act or omission of any Owner, or any member of his family, guests, tenants, lessees and/or invitees (without regard to fault), such Owner shall immediately repair and/or rebuild such drainage system, and shall bear all of the costs thereof, including any cost and/or expense related to personal injury or property damage to any person or Unit in the Project.

2.6.14 Easements for Lighting, Landscaping. Declarant hereby reserves for its benefit and for the benefit of the Association easements over the Association Property and those portions of Project Units that are not within the Residential Areas thereof for the maintenance of and access to the Association Improvements thereon including, for example, the lighting and landscaping and irrigation systems for the Project.

2.6.15 Maintenance of Association Improvements. Declarant hereby reserves, creates and grants to the Association an easement for the installation, maintenance, repair and restoration of Association Improvements on and within those portions of the Units that are situated outside of the Buildings and the Residential Areas thereof.

2.6.16 Committee Easements. Each Owner, by accepting title to his Condominium, hereby agrees that each member of the Architectural Control Committee and the Board of Directors and any agent or employee of either of them shall have and enjoy during reasonable hours, subject to reasonable notice, an easement of ingress and egress upon, over, through and across his Unit for the purpose of inspection, rectification of nonconforming conditions and/or compliance with the provisions of the Governing Documents.

2.6.17 Easements for Building Systems. Declarant hereby reserves for the benefit of the Owners of Units that include each Building as well as for the benefit of the Association in performing its obligations and exercising its rights hereunder reciprocal easements upon, within and through those Units for the installation, operation, maintenance, and repair of common systems that service the entire Building as a whole and the Units that include the same such as the fire sprinkler system installed for each Building.

2.6.18 Easements Extended upon Annexation. The easements herein reserved for the benefit of Declarant, the Association, and/or the Owners of Project Units over the Association Property and the Units then part of the Project shall be automatically extended upon the annexation of a Phase Module to cover and include the Association Property, Phase Common Area and Units within that newly annexed Phase Module.

2.6.19 Easements for Master Association. The Project is a part of the larger Master Project and all portions of the Project are subject to the easements reserved in the Master Declaration for the benefit of the declarant thereunder and/or for the Master Association and the performance of its obligations under the Master Declaration. The Project is a private community, however, and is not open to access by members of the public or by other members of the Master Association.

**Section 2.7 Community Facilities Districts.** One or more Community Facility Districts (individually, a "CFD") have or will be formed to maintain certain public areas in or adjacent to the Master Project (including, for example, the parks, trails and recreational areas, certain landscaping accessible to the public such as parkway trees adjacent to or within public streets and the Marine Channels, as defined in the Master Declaration) and the cost of such maintenance shall be assessed to the

Owners of Project Units on their secured real property tax bills. Each Owner of a Project Unit, by acceptance of a deed therefor, hereby acknowledges and agrees that all Units within the Project (whether or not regular annual assessments have commenced as to such Project Units in accordance with the terms and provisions of Article V of this Declaration) shall be subject to such secured CFD taxes as well as certain additional assessments as set forth in the Master Declaration (therein, "Contingent Assessments").

**Section 2.8 Amendments.** Anything in this Declaration to the contrary notwithstanding, this Article shall not be amended, modified or rescinded until Declarant has conveyed the last Condominium within the Project or unless, prior to such last conveyance, (a) Declarant's written consent to such amendment is first had and obtained and (b) said written consent is recorded in the Official Records.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

**Section 3.1 Formation.** Declarant, at its sole expense, has caused or will cause the Association to be formed upon and with the filing of the Articles in the office of the Secretary of State of the State of California. From and after the earlier of (a) the transfer by deed to the Association of any part of the Association Property or (b) the closing of the first sale of a Unit by Declarant to an Owner, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration as to the Project then subject to this Declaration and any of the Project Lots thereafter made subject to this Declaration.

**Section 3.2 Membership.**

3.2.1 Qualifications. Each Owner of a Unit which is subject to assessment by the Association, including Declarant, shall be a Member of the Association. Each Owner shall remain a Member of the Association until his or her ownership or ownership interest in all Units in the Project ceases at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Unit merely as security for performance of an obligation are not to be regarded as Members.

3.2.2 Members: Rights and Duties. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, the Bylaws, and the Rules and Regulations, as the same may from time to time be amended.

3.2.3 Transfer of Membership. The Association membership of each Owner shall be appurtenant to his/her Unit, and the same shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to the Unit and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall operate automatically to transfer the appurtenant membership right in the Association to the new Owner.

**Section 3.3 Classes of Membership; Voting Rights.** The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of Declarant, and they shall be entitled to one vote for each Condominium owned and subject to assessment by the Association. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Condominium.

Class B. The Class B Member shall be Declarant who shall be entitled to three (3) votes for each Condominium owned and then subject to assessment by the Association. The Class B membership shall cease and be converted to Class A membership on the first to occur of the following:

- (a) The second (2<sup>nd</sup>) anniversary of the first conveyance of a Condominium from Declarant to a new Owner in the most recent Phase of the Project; or
- (b) The fourth (4<sup>th</sup>) anniversary of the first conveyance of a Condominium from Declarant to a new Owner in the first Phase of the Project.

Any provision in the Articles, Bylaws, or this Declaration calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, shall, during the time that there are two (2) outstanding classes of membership, expressly require the vote or written assent of the prescribed percentage of each class of membership. Any requirement elsewhere in the Articles, the Bylaws or this Declaration, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of the Class B membership to Class A membership, and the same shall be read as requiring the vote of the prescribed percentage of the Class A Members and the vote of the prescribed percentage of the Class A Members other than Declarant.

Section 3.4 Special Voting Rights of Declarant. Notwithstanding the provisions of Sections 3.3 and 3.6 hereof to the contrary but only for so long as Declarant owns an interest in either of the Project Lots or any portion thereof or of the Project, Declarant shall have the right to elect a majority of the members of the Board until the first to occur of the following events:

- (a) The election of the Board immediately following the conveyance by Declarant to a new Owner of the last Condominium in the Project (including those to be created within the Annexable Property) to be sold to a member of the home-buying public pursuant to a Public Report;
- (b) The third (3<sup>rd</sup>) anniversary of the most recent conveyance of a Condominium from Declarant to a new Owner in any Phase of the Project pursuant to a Public Report; or
- (c) The sixth (6<sup>th</sup>) anniversary of the first conveyance of a Condominium in the Project from Declarant to a new Owner pursuant to a Public Report.

Section 3.5 Joint Owner Votes. The voting rights for each Unit may not be cast on a fractional basis. If the joint Owners of a Unit are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Unit, it will be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Unit. If more than one person or entity exercises the voting rights for a particular Unit, their votes shall not be counted and shall be deemed void.

Section 3.6 Accrual of Voting Rights. Subject to the provisions of Section 3.4 above to the contrary, no voting rights shall accrue to any Owner until assessments have first commenced for such Owner's Unit.

Section 3.7 Membership Meetings. Meetings of the Members shall be conducted in accordance with a recognized system of parliamentary procedure and otherwise in accordance with the provisions and requirements of the Bylaws including Article 6 thereof.

## ARTICLE IV POWERS & DUTIES OF THE ASSOCIATION

**Section 4.1 Powers and Duties.** The Association has all of the powers of a California nonprofit mutual benefit corporation subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. Subject to the Governing Documents, the Association has the express and implied power to perform any and all lawful acts which may be necessary or proper for, or incidental to the exercise of, any of the express powers and/or duties of the Association. Subject to the foregoing provisions, the Association, acting through the Board, has the following powers and/or duties, and the obligations of the Association herein set forth shall be discharged when and in such manner as the Board determines in its judgment to be appropriate.

4.1.1 Association Property. The Association shall have the sole and exclusive right and duty to manage, operate, control, insure, repair, maintain, rebuild, replace and/or restore all of the Association Property and all Improvements thereon including, by way of example only, the Project's recreational facilities, all trees, shrubbery, plants and grass, storm drains, sewers, detention basin(s), walks and gates, if any, private driveways, guest parking areas, Private Streets and underground utilities, street lights and Project fences and walls situated upon the Association Property. The Association's responsibility to maintain the Association Property shall commence with the recordation of an instrument in the Official Records pursuant to which the Association acquires title (in fee or by way of an easement) to the applicable Association Property.

4.1.2 Buildings. Notwithstanding that fee title to the Units will be owned by individual Owners, the Association shall have the sole and exclusive right and obligation (a) to maintain the exterior surfaces of the Buildings (including the roofs, patio and balcony floors and other publicly visible surfaces of the Building as well as rain gutters and downspouts but excluding the Owner Maintenance Items) in first class condition including painting and repairing those surfaces on a periodic basis and overseeing the replacement of decorative treatments, (b) to repair and maintain in good condition and repair the utility lines and systems that service individual Units including all lines, wiring, and pipes within the walls of each Building and those which connect to the main lines within the Private Streets; (c) to repair and maintain in good condition and repair all structural, mechanical, electrical, and other elements of the Buildings (other than the Owner Maintenance Items); (d) to obtain fire and extended coverage insurance on the Buildings (including the Owner Maintenance Items but not the personal property of any Owner therein) for their full replacement value and to obtain such industry-standard endorsements thereto (excluding earthquake coverage unless otherwise approved by the Members pursuant to Section 13.2 hereof) as any Institutional Lender with a lien against any Unit may reasonably require, (e) following damage to or destruction of any Building, to restore, rebuild and/or replace the same (including the Owner Maintenance Items and all services and systems therefor) to the extent that such damage or destruction is caused by a peril or event required to be covered by insurance pursuant hereto, (f) to the extent that any damage or destruction to any Building is not required to be insured by the Association pursuant hereto, then to proceed in accordance with the provisions of Section 14.2 hereof.

4.1.3 Association Improvements. The Association shall have the sole and exclusive right and duty to manage, operate, control, insure, repair, maintain, rebuild, replace and/or restore all of the Association Improvements, the same to be maintained and repaired by the Association on a regular basis in first-class condition. The Association's responsibility with respect to the Association Improvements within a Phase shall commence upon the close of the first escrow for the sale of a Condominium within that Phase to a homebuyer.

4.1.4 Assessments. The Association shall have the right and power to levy and collect assessments and to collect and enforce payment thereof in accordance with the provisions of Article V hereof.

4.1.5 Association Taxes. The Association shall pay the taxes and assessments, if any, which may be levied by any Governmental Agency on the Association Property or any part thereof.

4.1.6 Bank Accounts. The Association shall maintain a bank account or accounts for funds coming under the control of the Association.

4.1.7 Governing Documents. The Association shall have the right and power to enforce the provisions of the Governing Documents; provided, however, nothing contained in this Declaration shall be construed to prohibit enforcement of the same by any Owner.

4.1.8 Other Insurance. The Association has the right and power to contract for and maintain fire, casualty, liability, worker's compensation, medical, hospital, and other insurance insuring the Association, the Association Property, the Owners, members of the Board, officers, employees and other persons.

4.1.9 Services. The Association has the right and power to contract, provide and pay for (a) maintenance, utilities, gardening and other services of benefit to the Project; (b) services of persons necessary to accomplish the obligations of the Association; and (c) legal, accounting and other consulting services.

4.1.10 Damage to Association Property, Improvements. The Association has the right and power to contract for and pay for reconstruction of any portion or portions of the Association Property and/or the Association Improvements which are damaged or destroyed.

4.1.11 Delegation. The Association has the right and power to delegate its powers to others where such delegation is proper.

4.1.12 Legal Proceedings. The Association has the right and power to prosecute or defend, under the name of the Association, any action affecting or relating to the Project, the Association Property, the Association Improvements or any action in which all of the Owners have an interest in the subject matter of the action. Notwithstanding the foregoing, without the prior vote or written assent of a majority of the voting power of the Association, the Board may not institute any legal proceeding (including any arbitration or judicial reference proceeding) against any person or entity the cost of which could reasonably be expected to exceed Two Thousand Five Hundred Dollars (\$2,500.00). In estimating the costs, the Board shall include all normal and customary court costs and attorneys' fees without regard to the possibility of recovering costs and fees if the Association were to prevail.

4.1.13 Borrow Money. Subject to the vote or written assent therefor from sixty-seven percent (67%) of the voting power of the Association (excluding the vote of Declarant), the Association may borrow money and may mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

4.1.14 Real and Personal Property. The Association has the right and power to contract for the purchase of tools, equipment, materials, supplies and other personal property and services for the maintenance and repair of the facilities and Improvements forming a part of the Association Property and/or the Association Improvements and/or for which the Association is otherwise responsible hereunder. The Association may also acquire by gift or purchase or otherwise own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage or otherwise encumber, dedicate for public use, or

dispose of real and/or personal property in connection with the business of the Association; provided, however, that the Association shall not acquire or sell any real or personal property having an individual or aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year by purchase or lease without first obtaining the vote or written assent therefor of a majority of the voting power of the membership (excluding the vote of Declarant).

4.1.15 Actions re: Members. The Association shall have the right and power to suspend a Member's voting rights and the right to use the recreational facilities within the Project for any period during which any assessment against his Unit remains unpaid and delinquent; and for a period not to exceed thirty (30) calendar days for any single infraction of the Rules and Regulations, provided that any suspension of such voting rights or right to use said recreational facilities, except for failure to pay assessments, shall be made only by the Board or a duly appointed committee thereof, after Notice and Hearing given and held in accordance with the Bylaws. The Association may not cause a forfeiture of an Owner's right to use and enjoy his Unit for failure of such Owner to comply with the provisions of this Declaration, or the Bylaws or Rules and Regulations except (1) by judgment of a court or decision arising out of arbitration, or (2) on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association as set forth in Article V hereof.

4.1.16 Other Lawful Actions. The Association may take any and all lawful action which may be advisable, proper, authorized or permitted by the Association under and by virtue of any condition, covenant, restriction, reservation, charge or assessment affecting the Project, or any portion thereof, and to do and perform any and all acts which may be either necessary for or incidental to the exercise of any of the foregoing powers, or for the peace, health, comfort, safety or general welfare of its Members.

4.1.17 Monetary Penalties. The Association may impose monetary penalties upon Members as a disciplinary measure in connection with any or all of the following: (a) for failure of a Member to comply with any of the Governing Documents; (b) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Association Property and/or the facilities thereon for which the Member is allegedly responsible; (c) to bring a Member or its Unit into compliance with the Governing Documents.

4.1.18 Third Party Easements. The Association may grant and convey to any third party easements and licenses for use and rights-of-way in, on, over or under any Association Property conveyed or otherwise transferred to the Association or under its jurisdiction in accordance with the provisions of this Declaration.

4.1.19 Parking. The Association is hereby empowered to establish "parking," "guest parking," "delivery parking," and "no parking" areas and speed signs upon the Association Property, in accordance with *California Vehicle Code Section 22658.2*, or any similar statute hereafter enacted, and the Association shall be responsible to enforce these parking limitations and maintain speed signs by all means lawful for such enforcement, including the installation of speed bumps and/or the removal of any violating vehicle by those so empowered. To the extent that parking is allowed on the Association Property, the Association shall cause signs stating said conditions and regulations to be properly posted.

4.1.20 Fidelity Bond. The Association shall maintain a fidelity bond or insurance in accordance with the requirements of Section 13.3 hereof if greater and otherwise in an amount at least equal to the sum of three (3) months' assessments on all Project Units that names the Association as obligee or beneficiary and insures against loss by reason of acts of members of the Board, officers and employees of the Association and any management agent and its employees, whether or not such persons are compensated for their services.

4.1.21 Association Manager. The Association shall have the power to hire a professional manager employed as an independent contractor with their offices maintained at their own place of business.

4.1.22 Declarant's Bonds. Subject to the provisions hereof, the Association shall have the power and duty to execute any and all documents necessary to exonerate any bond, letter of credit or other consideration posted by Declarant with respect to any portion of the Project or any Improvement thereto or thereon upon satisfaction of the obligation for which such security was posted.

4.1.23 Promulgation of Rules, Guidelines. The Association shall have the right and power to promulgate, adopt and enforce the Architectural Guidelines and the Rules and Regulations for the Project.

**Section 4.2 Declarant's Reserved Rights.** For so long as Declarant is entitled to exercise any right or avail itself of any exemption herein set forth, neither the Association, the Board, nor any Owner shall take any action which is inconsistent with, or which would abrogate, any such right or exemption.

**Section 4.3 Prohibited Activities.** Notwithstanding any other provision of this Declaration or the other Governing Documents, the Association is expressly prohibited from expending or otherwise utilizing its funds or resources for any purpose which might impair the preferential tax status with the Internal Revenue Service or the Franchise Tax Board. Furthermore, the Association may not enter into any contract binding for a term longer than one (1) year from the effective date thereof without the vote or written assent of a majority of the voting power of the Members of the Association (other than the Declarant) except as specifically authorized herein or in the Bylaws.

**Section 4.4 Meetings of the Board.** Meetings of the Board and committees of the Association shall be conducted in accordance with a recognized system of parliamentary procedure and otherwise in accordance with the provisions and requirements of the Bylaws including Article 8 thereof.

## ARTICLE V ASSESSMENTS

**Section 5.1 Assessments; Liens; Personal Obligation.** Declarant, for each Project Unit owned, hereby covenants, and each Owner of a Project Unit by acceptance of a grant deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and to agree to pay to the Association: (a) annual assessments or charges, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Association Property, the Association Improvements, and the Buildings and (b) special assessments as provided in Section 5.4 below, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each such assessment is made, the lien to be effective upon recordation of a Delinquency Notice (defined in Section 5.8.1 below). Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment fell due.

**Section 5.2 Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Project, for the improvement and maintenance of the Association Property, the Buildings and other Improvements for which the Association is responsible pursuant hereto and such other purposes as set forth in this Declaration and the Bylaws.

**Section 5.3 Maximum Annual Assessment.** Until January first (1<sup>st</sup>) of the year immediately following the conveyance of the first Condominium in the Project to an Owner, the maximum annual assessment for each Unit shall be as provided for in the budget approved by the DRE and disclosed in the Public Report for the particular Phase of the Project and any amendment thereto. The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those elements of the Association Property, the Association Improvements and the Buildings that must be maintained, repaired or replaced on a periodic basis, and such reserve shall be funded by annual assessments.

5.3.1 From and after January first (1<sup>st</sup>) of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January first (1<sup>st</sup>) of each year by the Board without a vote of the membership, provided that (i) any such increase shall not be more than twenty percent (20%) of the previous year's assessment, and (ii) the Board of Directors has complied with Section 6.2 below with respect to that fiscal year, including, but not limited to, the preparation and distribution of a pro forma operating statement to all Members of the Association as provided in such Section 6.2, or has obtained the approval of Members, constituting a quorum, casting a majority of the votes present at a meeting of the Association conducted in accordance with *California Corporations Code Sections 7613 & 7510 et seq.* Such annual assessment shall continue in effect for the following twelve (12) calendar months, which period shall be deemed to be the assessment period.

5.3.2 From and after January first (1<sup>st</sup>) of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased above the amount provided in Subsection 5.3.1 by the vote or written assent of at least a majority of Members in the Association present at a meeting of Members (in person or by proxy) where a quorum (as defined below) has been established, provided that the Board of Directors has prepared and distributed a pro forma operating statement to all Members of the Association as provided in Section 6.2 below. For purposes of this Section 5.3, "quorum" means more than fifty percent (50%) of the Members of the Association. The Association shall provide notice by first-class mail to each Owner of any increase in the regular assessments of the Association not less than thirty (30) nor more than sixty (60) calendar days prior to the increased assessment becoming due.

5.3.3 Said maximum assessment may be reduced by maintenance and/or subsidy agreements, if any, between Declarant and the Association that have been approved by the DRE and are reflected in the Public Report for a Phase of the Project.

**Section 5.4 Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment(s) applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a Capital Improvement, provided that any such assessment(s) for Capital Improvements which total, in the aggregate, more than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall require the vote or written assent of a majority of the Members, constituting a quorum. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing the Member and his Unit into compliance with the provisions of the Governing Documents, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of *California Corporations Code Section 7341* as set forth in the Bylaws. The above provisions requiring the requisite vote of the membership with respect to special assessments do not apply in the case where a monetary penalty is imposed against a Member as a disciplinary measure by the Association for the following reasons: (1) for failure of an Owner to comply with the Governing Documents, or (2) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to Association Property, the Association Improvements and/or the Buildings for which damage the Owner is allegedly responsible, or (3) to bring an Owner or its Unit into compliance with provisions of the Governing Documents and any amendments thereto. The Association shall provide notice by first-class mail to each

Member of the levying of any special assessments of the Association, not less than thirty (30) nor more than sixty (60) calendar days prior to the increased assessment becoming due.

**Section 5.5      Notice and Quorum for Sections 5.3 and 5.4.** Any action authorized under Sections 5.3 and 5.4 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) nor more than ninety (90) calendar days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of Members entitled to vote on such action. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) calendar days from the date of such meeting.

**Section 5.6      Uniform Rate of Assessment.** Both annual and special assessments, except as may be otherwise provided in Section 5.4 hereof, shall be fixed at a uniform rate for all Units and shall be collected on a monthly basis.

**Section 5.7      Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall be payable in monthly installments in advance and shall commence as to all Units in a particular Phase on the first (1<sup>st</sup>) day of the month following the conveyance of the first Unit in that Phase to an Owner. The first (1<sup>st</sup>) annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Unit at least thirty (30) calendar days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner of each Unit within the Project.

**Section 5.8      Effect of Non-Payment; Association Remedies.** Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Unit from the time the assessment is due. With respect to each assessment not received by the Association within fifteen (15) calendar days after its due date, the Board may, at its election, require the Owner to pay a late charge in a sum to be determined by the Board, but not to exceed ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent assessment, but it shall not eliminate or supersede charges imposed on prior delinquent assessments. If any such assessment is not paid within thirty (30) calendar days after the date said assessment is due, the assessment shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, and in addition thereto, or in lieu thereof, may foreclose the lien provided for herein against the Unit.

**5.8.1** Any assessment not received by the Association within fifteen (15) calendar days after the due date shall be delinquent. The amount of any such delinquent assessment or installment, together with all accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties, as provided for in this Declaration, shall be and become a lien on the Unit against which the assessment is levied when the Association causes to be recorded a Notice of Delinquent Assessment (herein, the "Delinquency Notice") in the Official Records. The Delinquency Notice shall describe the amount of such delinquent assessment or installment and such other charges thereon as may be authorized by this Declaration, a description of the Unit against which the same has been assessed, the name of the Owner, and, if the lien is to be enforced by the power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. Such Delinquency Notice shall be signed by the president or vice-president and the secretary or assistant secretary of the Association or any employee or agent of the Association authorized to do so by the Board. Unless the Board considers the immediate recording of the Delinquency Notice to be in the best interests of the

Association, the Delinquency Notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment to the delinquent Unit Owner. Furthermore, at least thirty (30) days prior to recording any such Delinquency Notice, the Association shall notify the affected Owner in writing by certified mail and provide the information required to be delivered pursuant to *California Civil Code Section 1367.1(a)*. The Association shall in any event comply with all other requirements of *California Civil Code Section 1367.1* in connection with delinquent assessments.

5.8.2 The Board may enforce any assessment lien provided for in this Section 5.8, by filing an action for judicial foreclosure or, if the Delinquency Notice contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in *California Civil Code Section 2924c(b)(1)* to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of *California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h* that apply to nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the Delinquency Notice or by a trustee substituted in accordance with the provisions of the *California Civil Code*. The Association may bid on the Unit at the sale, and may hold, lease, mortgage, and convey the acquired Unit. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a "Notice of Satisfaction and Release of Lien," and on receipt of a written request by the Owner, a "Notice of Rescission" of the Notice of Default and Demand for Payment. Suit to recover a money judgment for unpaid assessments, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

5.8.3 A monetary penalty imposed by the Association as a disciplinary measure (a) for failure of an Owner to comply with the Governing Documents, or (b) as a means of reimbursing the Association for costs incurred by the Association in the repair of damages to the Association Property, the Association Improvements and/or the Buildings for which damage the Owner is allegedly responsible, or (c) to bring an Owner or its Unit into compliance with the Governing Documents shall not be treated as an assessment which may become a lien against the Owner's Unit enforceable as provided in *California Civil Code Section 1356*. This Paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

5.8.4 In addition to the lien power described herein, each Owner vests in the Association, its successors and assigns, the right and power to bring all actions at law against such Owner or other Owners for the collection of delinquent assessments. In lieu of bringing an action at law to collect delinquent assessments, the Association may submit the matter to a form of alternative dispute resolution such as mediation or arbitration pursuant to *California Civil Code Section 1354(b)*. The Association and the Owner shall comply with any applicable provisions of *California Civil Code Section 1366.3*.

**Section 5.9 Policies for Assessment Collection.** The Board of Directors shall annually distribute, within sixty (60) calendar days prior to the beginning of the fiscal year, a statement of the Association's policies and practices for enforcing its remedies against Members for defaults in the payment of annual and/or special assessments, including the recording and foreclosing of liens against Members' Units. Such statement shall include, at a minimum, the notice required by *California Civil Code Section 1365.1*.

**Section 5.10 Subordination of Assessment Lien to First Mortgages.** The lien for the assessments provided for herein shall be subordinate to the lien of any First Mortgage upon any Unit. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage or any conveyance in lieu thereof shall extinguish

the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from lien rights for any assessments thereafter becoming due. Where the First Mortgagee or other purchaser or acquirer of a Unit obtains title to the same as a result of the foreclosure or conveyance in lieu of any First Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Unit that became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Project Units, pro rata, including such acquirer, his successors and assigns.

**Section 5.11 Estopel Certificate.** The Association shall furnish, or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit is binding upon the Association as of the date of its issuance.

**Section 5.12 Personal Liability of Owner.** No Member may exempt himself or herself from personal liability for assessments, nor any part thereof, levied by the Association, nor release the Unit owned by him and/or her from the liens and charges hereof by waiver of the use and enjoyment of the Association Property and/or the Association Improvements or by abandonment of his Unit.

**Section 5.13 Exempt Property.** All properties dedicated to and accepted by a local public authority, and all properties owned by a charitable nonprofit organization exempt from taxation by the laws of the State of California shall be exempt from the assessments created herein. However, no real property or Improvements devoted to dwelling use shall be exempt from said assessments.

**Section 5.14 Assessment Limitation Not Applicable.** The limitation on percentage increases of annual assessments shall not limit assessment increases by the Board for the following emergency situations:

- (a) An extraordinary expense required by an order of court;
- (b) An extraordinary expense necessary to repair or maintain the Association Property and/or the Association Improvements and/or the Buildings, or any part of any of them for which the Association is responsible, where a threat to personal safety is discovered; or
- (c) An extraordinary expense necessary to repair or maintain the Association Property, the Association Improvements and/or the Buildings or any part of any of them for which the Association is responsible, that could not have been reasonably foreseen by the Board in preparing and distributing the pro-forma operating budget pursuant to Article VI hereof. However, prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolutions shall be distributed to the Members with the notice of assessment.

**Section 5.15 Association Statement at Transfer of Title.** At the request of any Owner transferring title to such Owner's Unit, the Association shall provide (i) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon the Owner's Unit which are unpaid on the date of the statement, and (ii) any change in the Association's current regular and special assessments and fees which have been approved by the Board of Directors but have not become due and payable as of the date disclosure is provided pursuant to this Section.

**Section 5.16 Exemptions from Assessments.** Notwithstanding any other provision hereof to the contrary, the following exemptions from assessments shall apply in the circumstances described.

(a) Any Unit having no structural improvements for human occupancy shall be exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. For example, such exemption may include the following improvements and/or expenses, among others: (1) roof replacement, (2) exterior maintenance, (3) walkway and carport lighting, (4) refuse disposal, (5) cable television, and (6) domestic water supplied to living units. Such exemption shall be in effect until the first to occur of the following events: (A) recordation of a notice of completion of the structural improvements; (B) occupation or use of the Unit; or (C) completion of all elements of the residential structures that the Association is obligated to maintain.

(b) Furthermore, Declarant and any other Owner of a Unit are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility forming a part of the Association Property and/or the Association Improvements that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the first to occur of the following events: (A) a notice of completion of said common facility has been recorded; or (B) said common facility has been placed into use.

**Section 5.17 Master Association Assessments.** In order to reduce management costs and fees and/or to simplify the assessment payment and collection process, the Association shall have the right and power, but shall not be obligated, to include in the regular assessments payable by Owners pursuant hereto the amount of the regular assessment payable by each such Owner to the Master Association pursuant to the Master Declaration. Upon the collection of such assessments due to the Master Association, the Association shall forward the same to the Master Association and shall identify the Project Units that have paid the same.

## ARTICLE VI ACCOUNTINGS

**Section 6.1 Books and Records.** The Association shall maintain books of account of all its receipts and expenditures. Each Member shall be entitled at reasonable times to inspect the books and records of the Association and to have such books and records examined at such Member's expense by an attorney or an accountant representing such Member, and may make excerpts or copies of such books and records or portions thereof, and each such Member, at his own expense, shall have the right to have such books independently audited by an accountant.

### Section 6.2 Budget.

6.2.1 Except as provided in Section 6.2.2, a pro forma operating statement and budget (collectively, the "Budget") for each fiscal year shall be prepared and distributed to each Member not less than forty-five (45) calendar days nor more than sixty (60) calendar days prior to the beginning of the fiscal year. The Budget shall contain the following information:

(a) The estimated revenue and expenses of the Association for the upcoming fiscal year on an accrual basis;

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 6.2.4 below, 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 Capital Improvement and each major component of the Association Property, the Association Improvements and/or the Buildings (collectively, the "Major Components") for which the Association is responsible hereunder;

(ii) As of the end of the fiscal year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the Major Components;

(B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain Major Components;

(iii) The percentage that the amount determined for purposes of clause (B) of subparagraph (ii) above is of the amount determined for purposes of clause (A) of subparagraph (ii) above;

(c) A statement as to whether the Board of Directors 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;

(d) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to Major Components.

6.2.2 In its sole discretion, and in lieu of the procedure set forth in Section 6.2.1, the Board of Directors may elect to distribute a written summary of the Budget (the "Summary") to all Members not less than forty-five (45) calendar days nor more than sixty (60) calendar days before the beginning of the fiscal year. In addition to the Summary, the Board of Directors shall include a written notice, in at least 10-point bold type on the front page of the Summary stating that: (a) the Budget is available for review at a location so designated within the Project or at the office of the management company for the Association; and (b) upon the written request of a Member, the Association shall mail one copy of the Budget to said Member. Such Budget shall be mailed at the Association's expense by pre-paid first class mail and shall be delivered within five (5) calendar days from the date of the receipt of such Member's written request.

6.2.3 The summary of the Association's reserves disclosed pursuant to Section 6.2.1 shall not be admissible in evidence to show improper financial management of the Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision.

6.2.4 At least once every three (3) years the Board of Directors shall cause to be conducted a reasonably competent and diligent visual inspection of the accessible areas of the Major Components as a part of a study of the reserve account requirements of the Project to be conducted if the current replacement value of the Major Components is equal to or greater than one-half ( $\frac{1}{2}$ ) of the gross Budget of the Association for any fiscal year which excludes the Association's reserve account for that period. 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 required hereunder shall at a minimum include:

- (a) Identification of the Major Components which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (b) Identification of the probable remaining useful life of the Major Components identified in Clause 6.2.4(a) above as of the date of the study;
- (c) An estimate of the cost of repair, replacement, restoration, or maintenance of each Major Component identified in Clause 6.2.4(a) above during and at the end of its useful life;
- (d) An estimate of the total 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.

6.2.5 As used in this Article, "reserve accounts" means moneys that the Board of Directors has identified for use to defray the future repair or replacement of, or additions to, the Major Components.

6.2.6 As used in this Article, "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore the Major Components.

**Section 6.3 Initial Financial Report.** A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of the closing of the first sale of a Unit in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) calendar days after the accounting date. The operating statement shall include a schedule of assessments received and receivable, identified by the number of the Unit and the name of the record Member so assessed.

**Section 6.4 Annual Report.** An annual report consisting of the following shall be distributed to each Member within one hundred twenty (120) calendar days after the close of the fiscal year:

- (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 under *California Corporations Code* Section 8322; and
- (e) A review of the annual report for the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy, ("Independent Accountant"), for any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000).

**Section 6.5 Independent Preparation.** Ordinarily the annual report referred to in Section 6.4 above shall be prepared by an Independent Accountant for each fiscal year.

**Section 6.6 Copy of Financial Statement To Prospective Buyers.** Within ten (10) calendar days of receipt of any written request therefor, the Board of Directors shall furnish any Member or prospective

Member with a copy of the Governing Documents, all as amended to date, together with a copy of the Association's most recent annual financial reports as described in Section 6.4 hereof, and a true statement of any delinquent assessments, penalties, late charges, attorneys' fees or other charges under this Declaration on such Member's Unit as of the date the statement is issued. The Board of Directors may charge a reasonable fee for providing such documents and reports not to exceed the reasonable cost to prepare and reproduce same.

**Section 6.7      Association Officer Statement.** If the report referred to in Section 6.4 above is not prepared by an Independent Accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the report was prepared without audit from the books and records of the Association.

**Section 6.8      Association's Policies and Practices Statement.** A statement describing the Association's policies and practices to enforce collection of delinquent assessments and to enforce lien rights and/or to exercise other legal remedies for default in payment of its assessments against its Members shall be annually delivered to the Members during the sixty (60) calendar day period immediately preceding the beginning of the Association's fiscal year.

**Section 6.9      Reconciliation of Accounts.** The Board of Directors shall do the following at least quarterly:

- (a) Cause a current reconciliation of the Association's operating accounts to be made and review the same;
- (b) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;
- (c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;
- (d) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and
- (e) Review an income and expense statement for the Association's operating and reserve accounts.

**Section 6.10      Reserve Account.** Withdrawal of funds from the Association's reserve account shall require the signatures of either: (a) two (2) members of the Board of Directors, or (b) one (1) member of the Board of Directors and an officer of the Association who is not also a member of the Board of Directors. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, Major Components and for which the reserve fund was established.

**Section 6.11      Transfer of Title.** The Board of Directors shall not impose or collect any assessment, penalty or fee in connection with the transfer of title or any other interest except the Board of Directors' actual costs to change its records and the fee for providing documents pursuant to Section 6.6.

## ARTICLE VII ARCHITECTURAL CONTROL

**Section 7.1      Limitations on Owner Work.** Notwithstanding that a Unit contains, among other things, the structural and other elements of a portion of a Building as well as the air and earth outside of and below that portion of a Building (including the exterior Residential Areas of a Unit such as the entry, balconies and yards or patios), no Owner shall have any right to alter, disturb or perform any work or install or modify any Improvement on any portion or element of a Unit situated inside or outside of a Building or within the Residential Areas of a Unit without first obtaining the written approval of the Association pursuant hereto. As used herein, "Owner Work" shall mean and refer to any alteration or modification of a Unit and/or the installation of any Improvement (including any fixture, appliance, utility service or system) in or with respect to any Unit and/or any work with respect to the walls, floors, ceilings and/or fixtures (including doors and windows) of the Residential Areas of a Unit. Owner Work shall not be construed to include repainting the surfaces of the interior Residential Areas of a Unit or the normal and proper maintenance and repair of Owner Maintenance Items by an Owner unless the same involves work within the walls, floors or ceilings of a Unit or Building. Each Owner shall be responsible for obtaining all necessary approvals and/or permits from applicable Governmental Agencies with respect to any Owner Work and shall comply with all laws, codes and regulations concerning the Owner Work.

**Section 7.2      Architectural Control Committee.** The Association through the Committee or through its Board (if no Committee has been appointed) is hereby authorized and vested with the rights and powers set forth in this Article. Said Committee shall consist of three (3) or more, but not to exceed five (5), members. Declarant may appoint all of the original members of the Committee and all replacements until the first (1<sup>st</sup>) anniversary of the original issuance of the Public Report for the first Phase of the Project. Thereafter, Declarant may appoint a majority of the members of the Committee and their replacements until ninety percent (90%) of the Condominiums in the overall Project (including the Annexable Property) have been sold or until the fifth (5<sup>th</sup>) anniversary of the original issuance of the Public Report for said first Phase, whichever first occurs. To the extent not appointed by Declarant, the members of the Committee shall be appointed by the Board of Directors. Members appointed to the Committee by the Board of Directors shall be from the membership of the Association. Members appointed to the Committee by the Declarant need not be Members of the Association. References herein to the Committee and/or the Association shall mean the Board if no Committee has been appointed.

**Section 7.3      Submissions and Approval Required.** Any Owner wishing to perform any Owner Work shall submit to the Committee detailed plans and specifications showing the nature, type, kind, size, shape, width, color scheme, materials and location of the proposed Owner Work and the estimated timing for commencement and completion of the same. The Committee shall consider and act upon all plans and specifications submitted for its approval that comply with the provisions hereof and shall perform such other duties as the Board assigns to it including, for example, inspection of construction in progress to assure conformance with plans approved by the Committee. The Committee may designate an agent (e.g., an architect or engineer) for the purpose of assisting in the review of proposed Owner Work and the plans submitted for the same and may charge the Owner making the submission the costs incurred for such agent's review. The Committee may also condition its approval of proposed Owner Work upon the following: (a) the furnishing to the Association of security acceptable to the Association to protect against mechanic's liens or other encumbrances which may be recorded against the Project or any portion thereof (other than the Owner's Unit) as a result of such owner Work; (b) such changes to the proposed Owner Work as the Committee deems appropriate; (c) the Owner's agreement to grant appropriate easements to the Association for maintenance; (d) the Owner's agreement to install at its sole cost necessary or appropriate utility meters to measure increased consumption, (e) the Owner's agreement to reimburse the Association for the cost of increased Association maintenance occasioned by the proposed Owner Work, and/or (f) the Owner's agreement to complete the proposed Owner Work

within a stated period of time. In addition, the Committee may require submission of additional plans and specifications or other information prior to approving or disapproving the proposed Owner Work. Until all such materials are received, the Committee may postpone review of any proposed Owner Work submitted for approval. The Committee shall consider for approval proposed Owner Work that is either (i) limited to the interior portions of the Residential Areas of a Unit and/or (ii) contemplates an addition or change to the exterior Residential Areas of a Unit (*i.e.*, the entry, balconies and patios) that is otherwise specifically identified as a permitted addition or change pursuant to the Architectural Guidelines for the Project established from time to time by the Association and/or the Committee. Unless and until the Architectural Guidelines identify those permitted additions or changes to the exterior Residential Areas of a Unit, no addition or change to the same shall be permitted. If the Committee fails to disapprove the proposed Owner Work in writing within forty-five (45) days after receipt of all materials submitted to, and all additional materials requested by, the Committee, then such proposed Owner Work shall be deemed to have been approved. In any case, approval by the Association may be granted or withheld in its sole and absolute discretion and may be based upon aesthetic as well as other considerations including, for example, that the proposed Owner Work involves or affects any structural, mechanical, electrical, or other system of the Building or could compromise the use and enjoyment of the Building by the Owners of other Units containing portions of the same and/or the use and enjoyment of the Project by other Owners.

**Section 7.4     Inspection Rights; Remedy for Noncompliance.** The Committee shall also have the right to inspect all Owner Work submitted for approval pursuant hereto. Such inspection right includes the right to require an Owner to take such action as may be necessary to remedy any non-compliance with the Committee-approved plans for the Owner Work or with the requirements of this Declaration. The Committee's inspection rights and rights to notify Owners as to non-compliance shall terminate sixty (60) days after the Owner Work has been completed and the Committee has received written notice from the Owner that the Owner has been so completed. If an Owner fails to remedy any such noncompliance noticed by the Committee, then the Committee shall notify the Board in writing of the same. Upon Notice and Hearing, the Board shall determine whether there is any such noncompliance and if so the nature thereof and the estimated cost of correcting or removing the same. If any such noncompliance is determined to exist by the Board, then the Owner shall remedy or remove the same within forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, then the Association shall have the right (a) to enter Owner's Unit and to cause the noncompliance to be corrected and the cost of the same shall be reimbursed to the Association by the Owner and if not timely reimbursed, then the Association shall be entitled to pursue any and all legal rights and remedies against the Owner including the levying of a special assessment for the same against the Owner's Condominium as herein permitted or (b) the Association may bring an action for damages or injunctive relief to remedy the same.

**Section 7.5     Non-Liability of Committee Members.** Neither Declarant, the Association, the Board, the Architectural Control Committee or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration, by reason of mistakes in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Committee, its designated representatives or members. The Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such guidelines as may be promulgated by the Committee, and the Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and/or conformance with building or other codes.

**Section 7.6     Compensation of Members.** The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association, pursuant to Board approval, for expenses incurred in the performance of such members' duties hereunder.

Section 7.7 No Waiver of Future Approvals. The approval of the Architectural Control Committee of any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval by any Owner.

Section 7.8 Exemptions from Architectural Control. Except as otherwise provided herein, all Improvements shall be subject to architectural approval by the Association in accordance with this Declaration and the Architectural Guidelines. Notwithstanding the foregoing, Declarant shall be exempt from compliance with the provisions of this Article that relate to the original construction and development of the Project pursuant to plans approved by the Governmental Agency having jurisdiction over the same.

Section 7.9 Master Association Approval Required. All Owner Work shall also be subject to approval by the Master Association in accordance with the provisions of the Master Declaration.

## ARTICLE VIII USE RESTRICTIONS

Section 8.1 Leasing of Condominiums. Any Owner may lease his Condominium subject to the following:

- (a) No Owner shall be permitted to lease his Condominium for transient or hotel purposes (i.e., for periods less than thirty (30) calendar days).
- (b) No Owner may lease less than the entire Condominium.
- (c) Any lease agreement is required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Bylaws and any Rules and Regulations adopted by the Association and that any failure by the lessee to comply with the terms of such documents shall constitute a default under the lease.
- (d) All leases shall be in writing and copies shall be submitted to the Association.

Section 8.2 Use Restrictions. In addition to all other covenants and provisions contained herein, the use and enjoyment of the Project and each Condominium shall be subject to the following:

8.2.1 Residential Purposes Only. No Unit shall be occupied and used except for residential purposes by the Owners, their tenants, and social guests, except that Declarant may use any Condominium(s) in the Project which they own for model purposes and a sales office until the last Condominium in the Project and/or the Annexable Property is sold.

8.2.2 No Commercial Use. Apart from the rights of Declarant as set forth in Section 8.2.1, and subject to any local ordinances, no trade or business may be conducted in or from any Unit, except that an Owner may conduct business activities within the Unit in conjunction with his residential use of that Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Condominium; (b) the business activity conforms to all zoning requirements for the Project; (c) the business activity does not involve door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the

Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board.

The terms "business" or "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Condominium shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by Declarant with respect to its development and sale of Condominiums or its use of any Condominium which it owns within the Project.

8.2.3 Signs. No sign or billboard of any kind (including but not limited to commercial signs) shall be displayed to the public view on or from any Condominium or other interest or area appurtenant thereto, except for:

(a) directional signs established by Declarant or the Association;

(b) such signs as may be required for legal proceedings;

(c) signs advertising Condominiums "for sale" or "for rent" that are of customary and reasonable dimensions and of a professional type and dignified appearance. If at the time of any such desired use, the Association is providing "for sale" or "for rent" signs for the use of Owners, only the sign provided by the Association shall be used and only in the location designated by the Association;

(d) during the time of construction of any improvement, a job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three (3) square feet; and

(e) signs, billboards and other advertising devices or structures used by Declarant in connection with the development, subdivision, advertising and sale of the Project and Condominiums therein.

8.2.4 Nuisances. No noxious or offensive activity shall be carried on in any Unit or any other part of the Project, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Condominium or which shall in any way increase the rate of insurance carried by the Association.

8.2.5 Temporary Structures. No tent, shack or trailer, garage, outbuilding, mobile home or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

8.2.6 Animals. An Owner may keep and maintain in his Unit domesticated pets such as dogs, cats, birds or other usual and ordinary household pets, not to exceed two (2) in number. All animals shall be kept either within an enclosure or portion of the Unit or on a leash being held by a person capable of controlling that animal. Except as provided above, no animals, livestock, birds or poultry shall be brought within the Project or kept in any Unit thereof or area appurtenant thereto. Owners keeping pets shall be accountable to the other Owners for the acts of such pets, and should any Owner be unable to

control barking or other noise or acts of his pets which disturb his neighbors, he shall be required to remove such pet from the Project. Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition, caused by any animal residing with or visiting said Owner. Every person bringing an animal upon or keeping an animal at the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal.

8.2.7 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted within the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted within the Project.

8.2.8 Trash. All rubbish, trash and garbage shall be regularly removed from the Project and shall not be allowed to accumulate thereon. All clotheslines, refuse containers, wood-piles, storage areas, machinery and equipment shall be prohibited within the Project unless obscured from the view of adjoining or nearby Units and/or the Association Property.

8.2.9 Antennae. No alteration to or modification of the radio and/or television antenna system originally installed in or for the Unit shall be permitted. Furthermore, except for an Authorized Antenna (defined below), the proposed installation site for which is first submitted to and approved by the Committee to ensure minimal visibility to other Owners, no Owner shall have any right to install any antenna or other reception system on the exterior of any residence or other structure or otherwise upon any Building or any other part of the Association Property or any area within a Unit. An "Authorized Antenna" means an antenna that is (A) one meter or less in diameter (or, if not circular, then less than one meter measured on the diagonal) and (B) designed to receive either (i) direct broadcast satellite service (including direct-to-home satellite service) or (ii) video programming service (including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service) or (iii) television broadcast signals. In considering any application for an Authorized Antenna within any Unit or any component thereof, the Committee may require that the location thereof be changed; provided, however, that the location of any Authorized Antenna as determined by the Committee shall not unreasonably delay or prevent, or unreasonably increase the cost of, the installation, maintenance or use of an Authorized Antenna or otherwise preclude reception of an acceptable quality signal. Notwithstanding the foregoing, the Committee shall have the right to prohibit any Authorized Antenna for any safety related reason established by the Committee - for example, if its installation, location, maintenance or use adversely affects the safety of managers, agents or employees of Declarant, the Committee and/or Owners and/or their invitees. Any provision hereof to the contrary notwithstanding, no Owner shall have any right to install an Authorized Antenna on the roof or balcony of any Building or on property which the Owner does not own or is not otherwise entitled to use on an exclusive basis.

8.2.10 Recreational Facilities. The recreational facilities within the Project shall be used only by Owners, their guests or lessees (when leasing is permitted under Section 8.1 hereof), all of whom shall abide by the Rules and Regulations regulating the use thereof, as the same, may, from time to time, be amended and posted at or near said facilities and areas.

8.2.11 Association Improvements, Property. No Owner, his agents, invitees, guests, employees or lessees shall remove, alter, damage or injure in any way any portion of the Association Improvements or the Association Property including, but not limited to, all Improvements thereto and thereon and all personal property located thereon. Any Owner who violates this Section shall reimburse the Association for all expenses incurred by it in remedying the damage caused by said Owner's violation of this Section.

8.2.12 Private Streets; Parking. In accordance with applicable law and the requirements of the local fire agency having jurisdiction over the Project, except for those portions designated and marked as parking spaces by or at the direction of Declarant and/or the Association, all other portions of the Private Streets, including any cul-de-sacs, and rights-of-way, providing vehicular access to the Units and within the Project are hereby designated to be "fire lanes" and as such they shall be kept clear of all vehicles and other obstructions at all times and shall not be used at any time for the parking or maintenance (temporary or otherwise) of vehicles of any type, including, without limitation automobiles, vans, trucks, motorcycles, RV's, campers, boats, trailers or other commercial vehicles (each a "Vehicle"). The Association, through its directors, officers, committees and agents, is hereby empowered to establish and to designate specific portions of the Association Property and/or areas of the Units on or in which any Association Improvements are situated for guest and delivery parking and such other parking areas as the Association may determine to be necessary or appropriate from time to time, in its sole discretion; provided, however, that no parking shall be permitted within or upon any fire lane within or providing access to the Project or any portion thereof. This Section shall not be amended so as to permit parking of any Vehicle within any fire lane, except with the prior written consent and approval of the local fire agency. No garage portion of a Unit may be sold, transferred, or assigned to or retained in the ownership of any person who is not an Owner, and no garage may be rented or leased to a non-Owner except in connection with the permitted rental or lease of the entire Condominium of which the same is a part. No Vehicle shall be parked or left for any period within the Project in a manner that obstructs any sidewalk or encroaches or extends into or upon any of the Private Streets or any public street. Furthermore, no Vehicle shall be parked or left upon any Association Property other than in designated parking areas or for a period in excess of forty-eight (48) hours without the prior written approval of the Association, and evidence of such approval shall be displayed on the permitted Vehicle. The Association is hereby empowered to enter into annual agreements with a licensed and bonded towing company to remove, without notice, in accordance with *California Vehicle Code Section 22658.2(c)* or any successor statute, any Vehicle which is parked, stopped or otherwise left unattended or which encroaches into or upon any fire lane within or providing access to the Project or any portion thereof. The Association is also hereby empowered to establish and post speed limits and other signs upon the Association Property including the Private Streets and at the entrances thereof and to enforce the parking and speed restrictions applicable to the Project as permitted by and in accordance with the provisions of applicable laws including, without limitation, *California Vehicle Code Sections 21107.7, 22658, 22658.2, and 22853*.

8.2.13 Windows. No window in any Unit shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Architectural Control Committee; provided, however, an Owner may use plain white cloth or bed sheets to cover windows for a period not to exceed six (6) months after the close of the purchase escrow for his Unit pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. The Board or the Committee may adopt reasonable guidelines concerning the type, color and design of permitted window coverings. Curtains, draperies, blinds, shades and other materials installed, or to be installed, which face public view shall be white or off-white in color so as to preserve the aesthetic integrity and attractiveness of the Project.

8.2.14 No Hazardous Activities. No activities shall be conducted on any portion of the Project that are or might be unsafe or hazardous to any person or property. Consequently, no exterior fires whatsoever shall be permitted in the Project (except for those gas/electric barbecues upon a Unit's patio that are specifically identified, if at all, as permitted in the Architectural Guidelines), subject to first obtaining the prior written approval of the Architectural Control Committee for the same unless otherwise permitted pursuant to the Architectural Guidelines. Under no circumstances may explosives, fireworks or highly flammable materials such as gasoline, kerosene, oil, oil-based paints, solvents or other similar materials be stored in any Unit or elsewhere in the Project.

8.2.15 Structural Integrity. Nothing shall be done in, to or on any Unit or any part thereof that will impair the structural integrity or mechanical systems or lessen the support of any portion of any Building or other Improvements within the Project.

8.2.16 Improvements. There shall be no construction, alteration, or removal of any Improvement in the Project (other than repairs or rebuilding done by the Association pursuant hereto) without the approval of the Architectural Control Committee. No Improvement shall be constructed upon any portion of the Association Property other than those Improvements constructed by (a) Declarant or (b) the Association pursuant to the provisions hereof.

8.2.17 Floor Coverings. Floor coverings within Units are deemed to be Improvements and, consequently, no change in flooring materials other than the reinstallation of carpet shall be made without the prior written approval of the Architectural Control Committee prior to the installation thereof, and approval may be withheld if the Committee determines, in its sole and absolute discretion, that sound attenuation standards in the Unit's Building will or could be compromised.

8.2.18 No Heavy Installations. No jacuzzi tubs, hot tubs, water beds, aquariums in excess of twenty (20) gallons, or other similarly heavy devices may be installed in any area of a Unit.

8.2.19 Exterior Water Use. No Owner shall be permitted to hose off any balcony or patio or any portion of the Unit such as the garage. The only permitted use of water outside of the Residential Areas of any Unit shall be the watering of plants situated upon a balcony or patio and then only if no water runoff will occur. No vehicle shall be permitted to be washed or hosed off within any garage or upon any other area of the Project unless and until the Association identifies special areas for the same.

8.2.20 Post-Tension Slabs. Some Buildings constructed by Declarant within the Project may utilize a post-tension concrete system in the foundation, and each Owner shall have a duty to determine if the portion of the Building within such Owner's Unit utilizes such a system. Such a system involves the placement of steel cables under high tension within the concrete slab foundation beneath the Building. Any attempt to alter or to pierce this foundation (for example, by saw cutting drilling or the installation of a subterranean floor safe) could damage the integrity of the system and/or cause serious injury and/or damage to persons and to property. No Owner shall alter in any way the foundation of any Building as originally constructed, and no Owner shall permit or allow anyone to cut into or tamper with any post-tension slab beneath any Building. Furthermore, each Owner shall fully and promptly disclose the existence of the post-tension concrete slab beneath the structures within the Unit to all of the following: all tenants, occupants and users of the Unit, all subsequent purchasers of the Unit and all contractors and other persons who may hereafter perform work on or around said Owner's Unit.

**Section 8.3      Disclaimer: No View Easements**. Notwithstanding anything contained herein to the contrary, no representations are or have been made by any person on behalf of Declarant or the Association or the members, representatives, employees or consultants of any of them concerning the view, if any, that a particular Unit, any Building or other Improvement may have or will enjoy. There are no express or implied easements whatsoever appurtenant to any Unit for view purposes or for the passage of light or air across, over or through any other Unit or other property outside of the Project. Each Owner, by accepting a deed to a Condominium, hereby expressly acknowledges and agrees that Improvements now or hereafter constructed at or near the Project by Declarant and/or others may impair the view from such Owner's Unit, and each Owner hereby expressly consents to any such impairment. Each Owner of a Condominium further acknowledges, understands and agrees, by acceptance of a deed therefor, that properties within and surrounding the Project may be developed or redeveloped in accordance with the ordinances and/or laws of Governmental Agencies. Concerns pertaining to the future development of surrounding properties should be addressed with the Governmental Agencies having jurisdiction over the same.

**Section 8.4 Declarant Exempt.** Nothing in this Article or elsewhere in this Declaration shall restrict, abridge or limit in any manner whatsoever Declarant's right to complete the planning, development, construction, advertising, marketing, and sales of the Condominiums.

## ARTICLE IX REPAIR AND MAINTENANCE OBLIGATIONS

**Section 9.1 Repair and Maintenance by Association.** The Association shall be responsible for the maintenance, repair, restoration, management, care and preservation, in a safe and first-class condition, of the exterior appearance of the Project and all of the Association Property, including all of the Improvements thereon and thereto, and all of the Association Improvements and the Buildings (other than the interior Residential Areas of the Units). Unless otherwise provided herein, all costs and expenses for such maintenance by the Association shall be included in the Budget of the Association.

**Section 9.2 Repair and Maintenance by Owner.** Except to the extent expressly allocated as a responsibility and duty of the Association pursuant to the provisions hereof, Owners shall be individually responsible for the repair and maintenance of all other areas of their Units including (a) the improvements (e.g., hardscape, landscaping and other features including hose bibs and exterior lighting serving only the Owner's Unit) within the exterior Residential Areas (i.e., the patios and/or yards) of their Units and (b) the following items that are situated within the interior Residential Areas of their Units (herein, collectively, the "Owner Maintenance Items"): all doors (interior and exterior, including the garage door and any opening device therefor), windows (interior and exterior), all locks and screens, all fixtures (including cabinets, shelving, lighting and plumbing fixtures), appliances, all floor, wall and ceiling coverings and/or surfaces, fire places and chimneys, interior walls, and all electrical, plumbing, telephone, cable and other utility systems and services that service the Unit but only from the point of entry into the Residential Areas. Carpet and other floor coverings, dishwashers, garbage disposals, plumbing, electrical facilities (including the switches and outlets), ranges and ovens which may be included within the interior Residential Areas of any Unit shall be deemed to be fixtures and attached to the realty, and the maintenance, repair and replacement thereof shall be the responsibility of the Unit Owner and not of the Association unless otherwise provided herein to the contrary. Any provision hereof to the contrary notwithstanding, Owner Maintenance Items shall include the replacement of all light bulbs in fixtures that are metered separately to an Owner's Unit but shall not include light bulbs or fixtures that are metered to a Building as a whole. Light fixtures attached to a Building shall be maintained (and the bulbs replaced) by the Association provided that the same are metered to the Building and paid by the Association. Alterations of certain Owner Maintenance Items may require prior approval by the Committee as otherwise provided in this Declaration.

**Section 9.3 Association's Right To Enter.** The agents or employees of the Association shall have the right, upon prior reasonable telephonic or written notice (except in the case of emergency), to enter upon and into any Unit and areas appurtenant thereto where necessary in connection with its obligations hereunder.

**Section 9.4 Repairs.** In the event that an Owner fails to maintain or repair his Unit or the Owner Maintenance Items therein or otherwise comply with the provisions of this Declaration, the Bylaws, the Architectural Guidelines or the Rules and Regulations, the Association shall have the right, but not the obligation, to bring the Unit into compliance with the provisions of said documents and the cost incurred therefor shall be assessed to that Owner as a special assessment as set forth in this Declaration.

**Section 9.5 Damage to Association Property.** In the event the need for repair of the Association Property or the Association Improvements is caused through the reckless or willful misconduct of an

Owner or his guests or Invitees, the Association shall have the right, but not the obligation, to make such repairs and the liability of the Owner and the cost of repair shall be assessed to that Owner as a special assessment as set forth in this Declaration.

**Section 9.6      Indemnification.** Each Owner shall be liable to the remaining Owners for any damage to the Association Property, the Association Improvements or to any other Unit that may be sustained by reason of the negligence or reckless or willful misconduct of that Owner, or the Owner's Invitees, but only to the extent that any such damage is not covered by insurance of the Association. Each Owner, by acceptance of his or her deed, agrees for such Owner and for the Owner's Invitees, to indemnify each and every other Owner, and to hold each other Owner harmless from, and to defend each such other Owner against, any claim of any person for personal injury or property damage caused by the negligence or reckless or willful misconduct of such Owner, unless the injury or damage occurred by reason of the negligence or reckless or willful misconduct of any other Owner of the Association or is fully covered by insurance carried by the Association.

## ARTICLE X ENFORCEMENT; DISPUTE RESOLUTION

**Section 10.1      Scope.** The Protective Covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of the value of the Project and (ii) the benefit of all Owners. The Protective Covenants are and shall be covenants running with the land or equitable servitudes, as the case may be, and the same shall be subject to the provisions and requirements of *California Civil Code Section 1354*. Unless otherwise provided to the contrary herein or in any Election Notice or other recorded instrument binding upon the Association, any Owner, and/or Declarant or any Subsequent Builder, Declarant, the Association, and each Owner shall each have the right, but not the obligation, to enforce by any proceeding at law, in equity or as otherwise available hereunder, all of the Protective Covenants now or hereafter imposed by the provisions of this Declaration as amended, if at all, from time to time.

**Section 10.2      Remedies.** Unless otherwise provided to the contrary herein or in any Election Notice or other recorded instrument binding upon the Association, any Owner, and/or Declarant or any Subsequent Builder, each remedy provided for in this Declaration shall be cumulative and not exclusive and otherwise in addition to all other remedies now or hereafter existing at law, in equity or hereunder. The result of, or condition caused by, any violation of any of the provisions of this Declaration is and shall be a nuisance, and every remedy in law or equity now or hereafter available against public or private nuisance may be exercised by any person affected thereby.

**Section 10.3      Notice Prior to Action.** Any provision hereof to the contrary notwithstanding, no action to enforce this Declaration against any Owner, Declarant or the Association shall be instituted unless and until a written notice of such breach setting forth the facts of such breach has been delivered by certified mail to said Owner, Declarant or Association, as the case may be.

**Section 10.4      No Waivers.** Failure to enforce any provision or term hereof shall not be deemed a waiver of the right to enforce the same thereafter or to enforce any other provision hereof. Failure to enforce any of the Protective Covenants in the past shall not, in and of itself, constitute a defense to any action brought against any Owner for the violation of any of the Protective Covenants. Each Owner, by acceptance of a deed to a Condominium, acknowledges that the enforcement of the Protective Covenants may vary on a case-by-case basis as a result of changing conditions, circumstances or other reasons and agrees that the failure of Declarant, any Owner, or the Association to enforce any of the Protective Covenants shall not be deemed a waiver of the right to enforce the same or any other Protective Covenant thereafter under the same or different circumstances.

**Section 10.5 Attorneys' Fees.** Subject to the other provisions hereof, in the event the Association or any Owner(s) should commence litigation to enforce any of the provisions of this Declaration, that party, if he should prevail, shall be entitled to have judgment against and recover from any defendant in such litigation such attorneys' fees (other than nominal) as the court may adjudge reasonable and proper. Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and Declarant, each party shall bear its own attorneys' fees, and this provision shall be binding upon the parties in all legal and other proceedings used to resolve and/or settle disputes including, for example, arbitrations, judicial reference, and other alternative dispute resolution procedures.

**Section 10.6 Exempt Disputes.** Certain disputes are exempt from the provisions of Section 10.8 hereof as provided below in this Section 10.6.

**10.6.1 Construction Defect Disputes.** In connection with the construction and sale of Condominiums at the Project, the original Declarant herein named (herein, the "Original Builder") has elected to be governed by, and thereby to obtain the benefits of, Title 7 of Part 2 of Division 2 of *California Civil Code, Sections 895 et seq.* (the "Right To Repair Law"). To that end, the Original Builder has caused or will cause to be recorded against the Project or Phases thereof from time to time a certain Notice of Election and Binding Covenants re: Construction Defect Disputes (herein, an "Election Notice"). Disputes between any Owner and/or the Association, on the one hand, and the Original Builder, on the other hand, that are within the purview of the Right To Repair Law shall be exempt from the provisions of Section 10.8 below and shall be resolved as provided in the Right To Repair Law and otherwise pursuant to the provisions and conditions of the Original Builder's Election Notice(s). If the Original Builder transfers any portion of the Project to another developer or builder, then that other developer or builder (a "Subsequent Builder") shall have the right, at its election, to record its own Election Notice against the portion of the Project so purchased, and disputes concerning construction defects between any Owner and the Association, on the one hand, and any such Subsequent Builder, on the other hand, shall be subject to the terms, provisions and conditions set forth in said Subsequent Builder's Election Notice, if any.

**10.6.2 Certain Association Claims.** Disputes between the Association and the Original Builder and any Subsequent Builder as to construction defects and/or the design or development of the Project that are not otherwise governed by the Right To Repair Law and any applicable Election Notice are exempt from the provisions of Section 10.8 below and shall be governed by and resolved in accordance with the provisions of *California Civil Code Section 1375*, as amended and/or extended from time to time, for so long as said *Civil Code Section 1375* remains in effect. If said *Civil Code Section 1375* is repealed or terminates pursuant to its terms, then disputes between the Association and Declarant (including assignees and successors to the Original Builder such as a Subsequent Builder) with respect to construction defect claims and/or the design or development of the Project shall be governed by and resolved pursuant to the provisions of Section 10.8 below.

**10.6.3 Delinquent Assessments.** The procedures and requirements set forth in Section 10.8 hereof shall not apply to any action taken by the Association against Declarant for delinquent assessments, which action shall be governed by Section 5.8 of this Declaration.

**Section 10.7 Owner Disputes; Election to Arbitrate.** If there is a dispute (other than disputes involving Declarant) between two or more Owners ("Disputing Owners") concerning the enforcement or application of any of the Protective Covenants set forth in this Declaration, all Disputing Owners by unanimous consent shall be entitled to elect to resolve such dispute by arbitration in accordance with this Section 10.7.

10.7.1 Owner's Arbitration Panel. The Disputing Owners may elect that the dispute be resolved by arbitration before a panel composed of three (3) Owners ("Arbitration Panel"). If there are only two (2) Disputing Owners, each such Owner shall select one (1) uninvolved Owner ("Selected Owner") to sit on the Arbitration Panel and the two (2) Selected Owners shall select a third uninvolved Owner to complete the Arbitration Panel. If there are more than two (2) Disputing Owners the Arbitration Panel shall be composed of two (2) uninvolved Owners selected by a majority of the Disputing Owners, and one (1) uninvolved Owner selected by the two (2) Selected Owners. Within five (5) calendar days after selection of the Arbitration Panel, all Disputing Owners shall submit to the Arbitration Panel written consents (a) agreeing to be bound by the Arbitration Panel's determination regarding the dispute and (b) containing a statement of facts surrounding the dispute and issues to be resolved ("Owner Consents"). Within five (5) days after the Arbitration Panel receives the Owner Consents from all Disputing Owners, the Arbitration Panel shall deliver to all Disputing Owners a written summary of the facts and issues included in the Owner Consents, and any additional information, facts or statements deemed appropriate by the Arbitration Panel ("Panel Notice"). The Panel Notice shall also include a date which shall be no more than ten (10) calendar days after the date of the Panel Notice on which the Arbitration Panel shall conduct a hearing on the Dispute, and at which all interested parties shall have the opportunity to be heard. The foregoing Panel Notice requirement shall be deemed satisfied as to any Disputing Owner if the Disputing Owner attends the hearing. Within five (5) days following the hearing, the Panel shall meet to deliberate in good faith on a resolution of the Dispute, and within such time period shall deliver to each Disputing Owner a written statement as to the Arbitration Panel's decision.

10.7.2 Arbitration Before AAA. The Disputing Owners may elect in the alternative that the dispute be resolved by arbitration in accordance with the Commercial Arbitration Rules of the AAA before an arbitrator(s) selected from the panels of the arbitrators of the AAA. Any fees or costs in initiating arbitration which must be paid prior to such arbitration shall be borne equally by the Disputing Owners, provided, however, that all such costs or fees and all other costs of the arbitration, including without limitation, reasonable attorneys' fees, shall be borne by the Disputing Owners in such amounts and such proportions as shall be determined by the AAA arbitrator(s).

10.7.3 Effect of Arbitration. The decision of the Arbitration Panel or AAA arbitrator(s), as applicable, shall be binding upon all Disputing Owners (except where the Arbitration Panel fails to act in good faith or acts arbitrarily or capriciously) and may, as long as not otherwise prohibited by applicable law, be entered as a judgment or order in any court of competent jurisdiction. The cost for the entry of such judgment shall be borne by the Disputing Owner or Owners that do not prevail in such arbitration. No members of the Arbitration Panel shall be entitled to any form of compensation for serving on the Arbitration Panel, nor shall they be reimbursed for any costs incurred in connection therewith, unless the amount and manner of allocation shall be agreed to in writing by all Disputing Owners.

**Section 10.8 Other Disputes with Declarant.** If not otherwise exempt from the provisions of this Section 10.8, then all other disputes, actions and/or claims between or among the Association or any Owner, on the one hand, and Declarant (including the Original Builder and any Subsequent Builder) or any director, officer, partner, member, employee, agent or predecessors-in-interest of Declarant, or any contractor, subcontractor, design professional, engineer or supplier who provided labor, services or materials to the Project and who is bound or has agreed to be bound by the following dispute notification and resolution procedure (collectively, the "Declarant Parties"), on the other hand, relating to or arising out of the Project, this Declaration or other governing documents for the Association, or any other agreements between the Declarant Parties and an Owner (unless any such agreement specifies another form of dispute resolution), the sale of any Condominium, the use or condition of the Project or the design or construction of or any condition on or affecting any Condominium or the Project, including, but not limited to construction defects, surveys, soils conditions, grading, specifications, installation of improvements or disputes which allege fraud, misrepresentation or breach of implied or express warranties as to the condition of any Condominium or the Project where the amount in controversy is

greater than Twenty-Five Thousand Dollars (\$25,000.00) or in which non-monetary relief is sought that cannot be granted by a Municipal Court in the State of California as of January 1, 1998 (collectively, "Dispute(s)"), shall be subject to the provisions set forth in this Section 10.8.

10.8.1 Initial Notice & Rights. The Association and each Owner covenants and agrees that each shall forbear from commencing any action against any of the Declarant Parties until they have complied with the procedures described in subparagraphs (a), (b) and (c) of this Section 10.8.1. If the Association or any Owner breaches the foregoing covenant, the Declarant Parties may obtain an appropriate order compelling the Association and/or Owner to comply with the procedures described in this Section 10.8.1.

(a) Notice. Any person with a Dispute claim shall notify Declarant and each applicable Declarant Party, in writing of the claim, which writing shall describe the nature of the claim and any proposed remedy (the "Claim Notice").

(b) Right to Inspect and Take Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the claimant shall meet at a mutually-acceptable place within or near the Project to discuss the Dispute claim. At such meeting or at such other mutually-agreeable time, Declarant (and any applicable Declarant Parties) and their respective representatives shall have full access to the Condominium and the Project that is subject to the Dispute claim and shall have the right to conduct inspections, testing and/or destructive or invasive testing of the same in a manner deemed appropriate by Declarant (and any applicable Declarant Parties), which rights shall continue until such time as the Dispute is resolved as provided in this Article. The parties to the Dispute shall negotiate in good faith in an attempt to resolve the claim. If Declarant (and any applicable Declarant Parties) elects to take any corrective action, Declarant (and any applicable Declarant Parties) and their respective representatives and agents shall be provided full access to the Project to take and complete corrective action.

(c) Mediation. If the parties to the Dispute cannot resolve the claim pursuant to the procedures described in subparagraphs (a) and (b) above (including, if applicable, *Civil Code Section 1375 procedures*), then the matter shall be submitted to mediation and shall be subject to the provisions of Section 10.8.2 below.

10.8.2 Mediation Procedure. Any mediation required to be utilized pursuant to the provisions of this Article X shall be conducted in accordance with this Section 10.8.2 and otherwise pursuant to the mediation procedures adopted by JAMS (except as such procedures are modified by the provisions of this Section) or any successor thereto or to any other entity offering mediation services that is mutually acceptable to such parties. No person shall serve as a mediator in any Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties to the Dispute participating in the mediation. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process. The mediation shall otherwise be subject to the following:

(a) Position Memoranda; Pre-Mediation Conference. Within ten (10) days of the selection of the mediator, each party to the Dispute participating in the mediation shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties to the Dispute participating in the mediation shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties to the Dispute participating in the mediation mutually agree to extend the mediation period. The

mediation shall be held in the County or such other place as is mutually acceptable to the parties to the Dispute participating in the mediation.

(b) Conduct of Mediation. The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the Dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the Dispute participating in the mediation and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the Dispute, provided the parties to the Dispute participating in the mediation agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties to the Dispute participating in the mediation.

(c) Exclusion Agreement. Prior to the commencement of the mediation session, the mediator and all parties to the Dispute participating in the mediation shall execute an agreement pursuant to *California Evidence Code Section 1115 et seq.* and any successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to *California Evidence Code Section 1115 et seq.* the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. The provisions of *California Evidence Code Sections 1115 through 1128* shall also be applicable to such mediation process.

(d) Persons Permitted at Sessions. Persons other than the parties to the Dispute participating in the mediation, their representatives and the mediator may attend mediation sessions only with the permission of the parties to the Dispute participating in the mediation and the consent of the mediator; provided, however, that such permission and consent shall not be required to allow participation of such parties' insurer in the mediation to the extent required under such parties' liability insurance policy. Confidential information disclosed to a mediator by such parties or by witnesses in the course of the mediation while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(e) Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof or expert advice produced at the direct request of the mediator, shall be borne equally by the Declarant Parties involved in the Dispute participating in the mediation unless they agree otherwise. Each party to the Dispute participating in the mediation shall bear its own attorneys' fees and costs in connection with such mediation.

10.8.3 Effect of Non-Resolution. If a Dispute remains unresolved after the mediation required by this Section 10.8 is completed, then any of the parties to the Dispute may file a lawsuit or pursue any other legal or equitable remedy in order to resolve the same.

Section 10.9 Statutes of Limitation. Nothing in this Declaration shall be considered to toll, stay, reduce or extend any applicable statute of limitations; provided, however, that Declarant Parties or the Association or any Owner shall be entitled to commence a legal action which in the good faith determination of the Declarant Party or the Association or any Owner is necessary to preserve any

Declarant Party's, the Association's or any Owner's rights under any applicable statute of limitation, provided that the Declarant Party, the Association or any Owner shall take no further steps in processing the action until it has complied with the procedures described in Section 10.8.1(a) and (b) above.

**Section 10.10 Majority Vote Required.** Notwithstanding anything herein to the contrary, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of the voting power of the membership. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article V hereof, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant or is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 10.11 Inadmissible Communications.** Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle any claim or dispute shall be considered communications undertaken in the course of effecting a settlement or compromise and as such shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any such purpose in any action or proceeding.

**Section 10.12 Notices to Members.** In addition to all other applicable requirements set forth in this Article X, before the Association files any civil action against Declarant for alleged damage to the Association Property, the Association Improvements or any Unit, the Board shall provide, at least thirty (30) days prior to the filing of such action, written notice to each Member who appears on the records of the Association at the time notice is given, specifying (a) that a meeting of Members will be held to discuss problems that may lead to the filing of a civil action, (b) the options, including civil action and alternative dispute resolution, that are available to address the problems, and (c) the time and place of the meeting. If the Board has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, then the Board may give the foregoing notice within thirty (30) days after the filing of the action.

**Section 10.13 Damage Awards.** Any and all amounts awarded to a claimant on account of a claimed construction or design defect in the Project or the Improvements comprising any part thereof or any damage suffered as a result of any such defect shall be expended by such claimant to pay for the attorneys' fees and costs of the proceeding for which said claimant is liable and for the repair, rehabilitation and/or remediation of the claimed defect or damage.

## ARTICLE XI DEVELOPMENT RIGHTS

**Section 11.1 Limitations on Restrictions.** Declarant is undertaking the work of developing Condominiums and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Condominiums is essential to the establishment and welfare of the Project as a first-class condominium community. In order that the work may be completed nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

**Section 11.2 Rights of Access and Completion of Construction.** For so long as Declarant owns any part of or Unit within the Project and/or any portion of the Annexable Property, Declarant, its contractors and subcontractors shall have the rights set forth herein.

11.2.1 Access. Declarant, its contractors and subcontractors shall have the right to obtain reasonable access over, under, across and through the Association Property and the non-Residential Areas of the Units and/or to do within any Unit owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project and the marketing and maintenance thereof.

11.2.2 Construct Improvements. Declarant, its contractors and subcontractors shall have the right to erect, construct and maintain on the Association Property, the non-Residential Areas of the Units, and any Unit owned by it such structures or Improvements, including, but not limited to, sales offices and signs, as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Condominiums by sale, lease or otherwise, as determined by Declarant in its sole discretion and to perform or complete any work to Improvements required for Declarant to obtain a release of bonds posted by Declarant with any Governmental Agency.

11.2.3 Grant Easements. Declarant, its contractors and subcontractors shall have the right to establish and/or grant over and across the Association Property and the non-Residential Areas of the Units such easements and rights of way, on, over, under or across all or any part thereof in or for the benefit of any Governmental Agency or cable television provider, for the purpose of constructing, erecting, operating and maintaining facilities and Improvements thereon, therein or thereunder at that time or at any time in the future, including (i) roads, streets, walls, driveways, parkways, trails and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Project and for the necessary attachments in connections therewith; and (iii) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Association Property shall be subject to any dedication stated in the Project Map of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Association Property. Said public utilities easement shall inure and run to all franchised utility companies and to the applicable Governmental Agency and shall include the right of ingress and egress over the Association Property by vehicles of said Governmental Agency and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the Governmental Agency for maintenance or operation of any of the Association Property or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or Governmental Agency of the utility facilities for which they are responsible. The Association Property and the non-Residential Areas of the Units shall also be subject to those easements, if any, granted by the Declarant to any public or private entity for cellular, cable or other similar transmission lines. Except for lawful and proper fences, structures and facilities placed upon the Association Property by utility companies, the Association Property subject to the public utility easement shall be kept open and free from buildings and structures. The Governmental Agencies having jurisdiction over the Project are hereby granted an easement across the Association Property and any Private Streets for ingress and egress for use by their emergency vehicles.

Section 11.3 Size and Appearance of Project. Declarant shall not be prevented from increasing or decreasing the number of Condominiums that may be annexed to the Project or from changing the exterior appearance of Association Property, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

Section 11.4 Marketing Rights.

11.4.1 General Rights. Subject to the limitations of this Declaration, Declarant shall have the following rights all to the extent reasonably necessary, in the opinion of the Declarant, for the sale of the

Condominiums: (i) to maintain model homes, sales offices, storage areas and related facilities in unsold Condominiums on an exclusive basis and or upon any Association Property on a nonexclusive basis, (ii) to post flags, banners and signs in and about the Project and upon the Association Property on a nonexclusive basis; (iii) to make reasonable use of the Association Property and facilities on a nonexclusive basis; and (iv) to conduct its business of disposing of Condominiums by sale, lease or otherwise.

**11.4.2 Agreement for Extended Use.** If following the fifth (5<sup>th</sup>) anniversary of the original issuance of a Public Report for the most recent Phase of the Project Declarant requires exclusive use of any portion of the Association Property for marketing purpose, Declarant may use the Association Property only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration for the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Association Property on a nonexclusive basis or any Condominium owned by Declarant as an Owner on an exclusive basis.

**Section 11.5 Title Rights.** This Declaration shall not be construed to constitute a limitation on Declarant's title rights to Annexable Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of Annexable Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument including, without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself, to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

**Section 11.6 Amendment.** The provisions of this Article may not be amended without the consent of Declarant until all of the Annexable Property has been annexed to the Project and all of the Condominiums in the Project owned by Declarant have been sold.

## ARTICLE XII ENTRY GATES

**Section 12.1 Entry Gates.** Vehicular and pedestrian access into the Project may be controlled by electronically operated entry gates located at the main entrance to Private Streets within the Project. In addition, a gate may also be located at the secondary exit from the Project that will also serve as a secondary entrance for Governmental Agencies such as the local police and fire departments. Entry gates will not be staffed, except that interim staffing may be provided by Declarant at its sole cost and discretion as a part of development and marketing operations at the Project. Interim gate staffing may be modified or eliminated at any time without notice.

**Section 12.2 Entry Gate Operations.** Each Owner of a Condominium which is part of the Project acknowledges by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other instrument, that Declarant has a substantial interest in assuring unrestricted access to the Project to accommodate the construction and marketing of the Condominiums and development of the Project. Therefore, notwithstanding any other provision of this Declaration, until the earlier to occur of (i) the close of escrow for the sale of the last Condominium in the Project (*i.e.*, after all Annexable Property has been annexed to the Project) to a home buyer pursuant to a Public Report or (ii) ten (10) years following the first close of escrow for the sale of a Condominium in the first Phase (herein, the "Marketing Period"), Declarant is entitled to control the operation of the entry gates which provide vehicular and pedestrian access to the Project. During the Marketing Period, Declarant may

establish and change the hours of gate operation in its sole discretion without notice, and require that the entry gates be open to the general public to accommodate construction and marketing activities. Declarant reserves the right to limit the operation of any vehicular entry gates during the Marketing Period when Declarant is offering Condominiums for sale. During the Marketing Period, the entry gates will be open to the general public from approximately 7:00 a.m. to 7:00 p.m., seven days a week. Declarant may change the hours of gate operation in its sole discretion and without notice in order to accommodate construction and marketing activities.

**Section 12.3 Security and Privacy Disclaimer.** Entry gates and entry gate staffing services are not intended to provide security for persons, personal property or Condominiums within the Project. Declarant and the Association do not undertake to provide security for the Project nor do they make any representation or warranty whatsoever concerning the effect the gate staffing may have on vehicular and pedestrian access through the Project or the privacy and safety of the Project.

## ARTICLE XIII INSURANCE

**Section 13.1 Public Liability Insurance.** The Association shall purchase as promptly as possible following the election of the Board of Directors at the first (1<sup>st</sup>) annual meeting of the Members from a Qualified Insurer (defined below) a comprehensive public liability insurance policy or policies (with cross-liability endorsement, if available, to cover negligent injury by one Owner to another) insuring the Association, its directors and members of the Committee, the Association's management agent for the Project, the Members and Declarant (for so long as Declarant owns any Condominium within the Project and/or any Annexable Property) and the agents and employees of each of them against any liability to any member of the public or any Owner, his family, tenants, guests and invitees, arising from or incident to the ownership, occupation, operation, use, management, maintenance and/or repair of the Association Property, the Association Improvements and the Buildings and from lawsuits related to employment contracts to which the Association is a party. The limits of liability of such insurance shall be no less than Three Million Dollars (\$3,000,000) combined single limit for bodily injury to any one person or property damage for any one occurrence. The limits of liability under this Section shall be reviewed and set by the Board at least annually and increased or decreased at the discretion of the Board; provided, however, if FNMA and/or FHLMC participate in the financing of Condominiums in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations for bodily injury including deaths of person and damage to property arising out of a single occurrence unless said limits are determined by the Board to create too great a financial burden.

**Section 13.2 All-Risk Casualty Insurance.** The Association shall also purchase from a Qualified Insurer (defined below) a master or blanket policy or policies of all-risk casualty and fire insurance with extended coverage endorsement (excluding earthquake coverage unless the same is approved by sixty-five percent (65%) of each class of Members) providing coverage equal to, as nearly as possible, one hundred percent (100%) of the current replacement cost (without deduction for depreciation or co-insurance) of all Association Property, the Association Improvements, all of the Buildings including all fixtures therein and thereto and all service and mechanical equipment upon or within any of the Association Property, the Improvements thereon and/or the Buildings (collectively, the "Insured Property"). Replacement cost may exclude land, foundations, excavation, and other items normally excluded from coverage. Said policies shall be primary and maintained for the benefit of the Association, the Owners and the Mortgagees as their interests appear and shall waive the right of subrogation against Owners, if obtainable. Also if obtainable, the deductible shall be the lesser of Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy face amount.

13.2.1 The policy shall also contain the following endorsements if required and if obtainable: (a) an agreed-amount and inflation guard endorsement, (b) construction code endorsements (e.g., demolition cost endorsement), (c) a contingent liability from operation of building laws endorsement, (d) increased construction endorsement if there is a construction code provision that could become operative and require changes to undamaged portions of the insured Property, (e) a clause to permit cash settlement covering the full value of the Insured Property in the event of partial destruction and a decision not to rebuild, and (f) any other special endorsements applicable to condominiums that may be available or required.

13.2.2 The proportionate interest of each Owner in any insurance proceeds in relation to the other Owners shall be based upon a ratio of each Condominium's fair market value to the fair market value of the entire Project. The "fair market value" in both instances, shall be determined by an independent appraiser. In the event that the insurer under said all-risk hazard insurance policy shall cease to be licensed in the State of California or shall cease to be approved by the FHLMC (so long as insurers continue to be so approved), the Association shall exercise its best efforts to obtain from another Qualified Insurer a replacement hazard policy comparable to the prior hazard policy, including all required endorsements.

13.2.3 Said policy shall cover all Units including, but not limited to, insurance for all Owner Maintenance Items and such property as wall and floor coverings, cupboards, cabinets, fixtures and built-in appliances installed by Declarant. Personal property of an Owner and additional fixtures added by an Owner shall be insured separately by that Owner.

13.2.4 All policies of hazard and physical damage insurance may provide, only if available at a reasonable cost to the Association as determined by the Board, in its sole discretion, for waiver of the following rights to the extent that the respective insurers would otherwise have such rights without such waivers:

- (a) any defense based on co-insurance;
- (b) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (c) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner or arising from any act, neglect or omission of any named insured or the respective agents, contractors and/or employees of any insured;
- (d) any right of the insurer to repair, rebuild or replace and, in the event the Condominium is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the insured improvements or the fair market value thereof;
- (e) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and
- (f) any right to require any assignment of any Mortgage to the insurer.

**Section 13.3 Fidelity Bonds.** The Association shall maintain errors and omissions insurance coverage for its officers and directors and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibility on behalf of the Association including, but not limited to, officers, directors, trustees and employees of the Association and the officers, employees and agents of any management company

employed by the Association, which management company personnel handle or are responsible for the administration of the Association's funds. Such coverage shall be in an amount deemed reasonably appropriate by the Board but shall not be less than the estimated maximum funds in the custody of the Association (or its management company) or twenty-five percent (25%) of the estimated annual operating expenses of the Project plus reserves, whichever is greater. In addition, if the Association enters into an agreement for professional management of the Project, then the Association shall require that such management company submit evidence of its fidelity bond coverage to the same extent as the Association's coverage and the Association shall be named as an additional obligee in the management company's bond.

**Section 13.4 Premium Payments.** All premiums for the insurance required or elected to be carried by the Association pursuant hereto shall be paid from assessments levied against the Members and their Condominiums and the Budget of the Association shall reflect the same.

**Section 13.5 Association as Trustee.** The Association is hereby appointed and shall act as trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds payable under such policies shall be paid to the Board acting for the Association as trustee, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal with the same as provided in Article XIV hereof. In the event repair or reconstruction is authorized, the Board shall have the duty to contract for such work, as provided in Article XIV hereof.

**Section 13.6 Other Insurance.** The Association may, and if required by any institutional First Mortgagee shall, purchase and maintain in force at all times demolition insurance in adequate amounts to cover demolition in the event of destruction and a decision not to rebuild. Such policy, if purchased, shall contain a determinable demolition clause or similar clause, to allow for the coverage of the cost of demolition in the event of destruction and a decision not to rebuild. The Association shall also purchase and maintain worker's compensation insurance to the extent that the same shall be required by law for employees or Owners. The Association may also purchase and maintain insurance on commonly owned personal property and such other insurance as it deems necessary, the premium thereof to be paid out of the monies collected from the assessments, including, but not limited to, umbrella or excess liability coverage. Until the Federal Emergency Management Agency releases areas previously located within the 100-Year Flood Plain Boundary per Flood Boundary and Floodway Map 1792-04FVI: U.S. Department of Housing & Urban Development Flood and Insurance Administration, the Association and each Owner affected thereby shall obtain all necessary and appropriate flood insurance.

**Section 13.7 Limitation on Owner's Insurance.** Except as provided in this Section 13.7, no Owner shall separately insure his Unit against loss by fire or other casualty that is covered by any insurance carried by the Association pursuant to Sections 13.2 and 13.6 hereof. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Sections 13.2 and/or 13.6 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. An Owner can insure his personal liability against loss. In addition, any improvements made by an Owner to his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant improvements." In addition, an Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and institutional First Mortgagees of such Condominium.

Section 13.8 Right of Mortgagees. With respect to insurance coverage under Sections 13.2 and 13.3 hereof and subject to applicable law, any Mortgagee of record shall have the option to apply insurance proceeds payable to him to reduce the obligation secured by his Mortgage.

Section 13.9 Qualified Insurer; Annual Review. As used herein, "Qualified Insurer" means any insurance company licensed in the State of California having a Best's Insurance Reports rating of (a) a "B" general policyholder's rating and a III financial size category, or (b) an "A" general policyholder's rating and a II financial size category. The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the public liability and casualty insurance referred to in Sections 13.1 and 13.2 above. The Board shall obtain a current appraisal of the full replacement value of the Insured Property except for foundations and footings, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

Section 13.10 Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon to have been paid) purchased by the Association shall be maintained by the Association and open for inspection by Owners at all reasonable times. All insurance policies shall (a) provide that they shall not be cancelable or substantially modified by the insurer without first giving at least ten (10) days' prior notice in writing to the Association and (b) contain a waiver of subrogation by the insurer(s) against the Association, First Mortgagees, the Board and Owners. In addition to the foregoing, the Association shall provide such information regarding the insurance of the Association as may be required by applicable law or under the Bylaws.

Section 13.11 Insurance Summary. The Association shall cause to be prepared and distributed to all Members, within sixty (60) days prior to the beginning of the Association's fiscal year, a summary of the Association's property, general liability and earthquake and flood insurance policies that includes all of the following information about each such policy: (a) the name of the insurer, (b) the type of insurance, (c) the policy limits of the insurance, and (d) the amount of any deductible. To the extent that any of the foregoing disclosure information is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of the Members. In addition, the summary distributed pursuant hereto shall contain, in at least 10-point boldface type, the statement required by *California Civil Code Section 1365(e)(4)*. If any of said summarized policies lapse, are canceled or are not immediately renewed, restored or replaced or if there is a significant change in coverage (such as a reduction in coverage or limits or any increase in the deductible), then the Association shall, as soon as reasonably practicable, notify the Members by first class mail of the same. If the Association receives any notice of nonrenewal of any such policy and if replacement coverage will not be in effect by the date the existing coverage will lapse, then the Association shall immediately notify its Members of the same.

Section 13.12 Adjustment of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association pursuant to this Article. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and execute releases in favor of any insurer.

Section 13.13 Compliance with Federal Regulations. Notwithstanding any other provision contained herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, GNMA, and FHLMC, so long as any of said entities is a Mortgagee or an Owner of a Condominium, except to the extent such coverage is not available or has been waived in writing by the applicable entity.

**ARTICLE XIV**  
**DESTRUCTION OF IMPROVEMENTS AND CONDEMNATION**

**Section 14.1    Proceeds Greater Than Eighty-Five Percent (85%) of Repair Costs.** In the event of total or partial destruction of any of the Improvements in the Project (including, without limitation, the Buildings, the Association Property and/or the Association Improvements), and if the available proceeds of the insurance required to be carried pursuant to this Declaration are sufficient to cover at least eighty-five percent (85%) of the cost of repair or reconstruction thereof, the same shall be promptly repaired and rebuilt unless, within ninety (90) calendar days from the date of such destruction, seventy-five percent (75%) of each class of Members present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) calendar days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

**Section 14.2    Proceeds Less Than Eighty-Five Percent (85%) of Repair Costs.** If the proceeds of such insurance are less than eighty-five percent (85%) of the cost of reconstruction, such reconstruction shall nevertheless but promptly take place unless, within ninety (90) days from the date of said destruction, sixty-seven percent (67%) of the total voting power of each class of Members present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If reconstruction is to take place, the Board of Directors shall be required to execute, acknowledge, file and record, not later than one hundred twenty (120) calendar days from the date of said destruction, a certificate declaring the intention of the Owners to rebuild.

**Section 14.3    Additional Contributions From Owners.** If the Owners determine to rebuild, pursuant to either of Section 14.1 or 14.2, then each Owner shall be obligated to contribute such funds as shall be necessary to pay his proportionate share of the cost of reconstruction over and above the insurance proceeds, and the proportionate share of each Owner shall be based upon the ratio of the square footage of the floor area of the Residential Areas of each Unit to the total square footage of the floor area of the Residential Areas of all Units. In the event of failure or refusal by any Owner to pay his proportionate share, after notice to him, for a period of sixty (60) calendar days from the due date thereof, the Board of Directors may levy a special assessment against such Owner, which may be enforced under the lien provisions contained in this Declaration.

**Section 14.4    Association To Contract For Rebuilding.** If the Owners determine to rebuild, then the Board of Directors shall obtain bids from at least two (2) reputable contractors and shall award construction work to the lowest bidder who otherwise meets the requirements set forth by the Association in soliciting bids. The Association shall have the authority to enter into a written contract with said contractor for such reconstruction and the insurance proceeds held by the trustee shall be disbursed to said contractor according to the terms of the agreement. It shall be the obligation of the Association to take all steps necessary to insure the commencement and completion of such reconstruction at the earliest possible date.

**Section 14.5    Authority To Effect Changes.** If the Association is to rebuild any Improvement pursuant to Section 14.1 or 14.2 above, then the repair or reconstruction may be performed in a manner that alters the boundaries of the Units, the Buildings and/or the Association Property provided that the following conditions are satisfied:

- (a)      The alteration has been approved by the Board of Directors, by Members holding a majority of the total voting power of the Association, and by First Mortgagees to the extent required by this Declaration;

(b) . The Board has determined that the alteration is necessary in order to comply with current building code requirements, to meet current building construction standards and procedures and/or to improve the conditions and quality of the Building or Improvement;

(c) The alteration does not materially change the location of any Unit or materially change the size of any Unit without the consent of the Unit Owner and the holders of any First Mortgages on that Unit. For purposes of this Declaration, a material change in the size of the Unit shall mean any alteration that increases or decreases the square footage of the interior Residential Areas of the Unit by more than five percent (5%) from the original square footage of the interior Residential Areas of the Unit;

(d) The Board of Directors has determined that any alteration that will relocate or reduce the Association Property will not unreasonably interfere with the rights of the Owners and occupants to use the Association Property;

(e) The Condominium Plan or Plans is/are amended to reflect the alteration to the Units, the Buildings, and/or the Association Property.

Each Owner irrevocably grants to the Association as that Owner's attorney-in-fact and irrevocably grants to the Association the full power in the name of the Owner to effect any alteration to any Unit, Building or Association Property as authorized above including, but not limited to, the execution, delivery and recordation of any Condominium Plan amendments, deeds or other instruments.

**Section 14.6 Insufficient Vote To Rebuild.** If the vote of the Owners shall be insufficient to authorize rebuilding, pursuant to either of Section 14.1 or 14.2 above, then the following provisions shall apply as provided below:

14.6.1 Purchase of Uninhabitable Units. If the Owners determine not to rebuild and if, prior to expiration of one hundred twenty (120) days from the date of destruction, Owners holding seventy-five percent (75%) of the total voting power of each membership class consent in writing or by a vote at a duly constituted meeting and seventy-five percent (75%) of institutional First Mortgagees with First Mortgages encumbering Condominiums in the Project consent, then the Association shall have the right to purchase the Condominiums that have been rendered uninhabitable by such damage or destruction at their fair market value immediately prior to the damage or destruction using the available proceeds of insurance for such purchase. Any shortage of insurance proceeds shall be made up by a special assessment levied against all remaining Owners in the manner described in Section 14.3 (but without the consent or approval of Owners, despite any contrary provisions in this Declaration). The Board's decision as to whether a Unit is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of that Owner's Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell his/her/their Condominium and to convey it by grant deed to the Association as provided in this Section 14.6.1. Concurrently with such purchase, the Association or individual authorized by the Board, acting as the attorney-in-fact of all Owners, shall amend the Condominium Plan, the Project Map (if necessary), and this Declaration to eliminate from the Project the Condominiums so purchased and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Condominiums in the Project, and the Association shall convey either (a) to each remaining Owner in the Phase in which Condominiums have been purchased or (b) if all of the Condominiums in a Phase have been purchased, then to the remaining Owners in the other Phases, a proportionate share of the undivided interests in the Phase Common Area previously a part of the Condominiums so purchased. This proportion shall be in the ratio that each remaining Owner's undivided interest in the applicable Phase Common Area bears to either (x) the undivided interest of all remaining Owners in the Phase in which Condominiums have been

purchased or (y) if all Condominiums in a Phase have been purchased, then the undivided interest of all remaining Owners in the other Phases.

14.6.2 Other Units To Be Repaired. Notwithstanding the determination not to rebuild uninhabitable Units pursuant to Section 14.6.1, if the uninhabitable Units are to be purchased by the Association, then any Unit that has not been rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be paid for: first from the insurance proceeds, if any, remaining after the purchase of uninhabitable Units and second from a special assessment levied against all remaining Owners in the manner described in Section 14.3 (but without the consent or approval of Owners, despite any contrary provision in this Declaration).

14.6.3 Apportionment If Purchase Not Authorized. If the Owners elect not to rebuild and if the required seventy-five percent (75%) of all Owners and institutional First Mortgagees do not consent to purchase those Condominiums the Units of which were rendered uninhabitable, then an appraiser shall determine the relative fair market values of all Condominiums in the Project in accordance with the provisions in Section 14.8 as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners and their respective Mortgagees in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) calendar days of the date of such loss, to execute, acknowledge and record a certificate setting forth the determination of the Owners not to rebuild, and shall promptly cause to be prepared and filed such revised maps and other documents as may be necessary to show the conversion of the Project to the status of unimproved land or to show the elimination of one or more of the Condominiums, as a result of such destruction. Any sale of any part or all of the Project or any Condominium thereafter shall be effected by means of an action for judicial partition, and upon recordation of such certificate, the right of any Owner to partition his Condominium through legal action shall forthwith revive.

**Section 14.7 Minor Repair and Reconstruction.** The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One Hundred Thousand Dollars (\$100,000.00).

**Section 14.8 Fair Market Value.** Whenever in this Article XIV, reference is made to a determination of the fair market value of one or more Condominiums by an appraiser, this means the fair market value of such Condominiums as of a date immediately prior to any damage or destruction as determined by an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

**Section 14.9 Condemnation.** In the event that an action for condemnation is proposed or commenced by any governmental body having the right of eminent domain, the following provisions shall apply:

14.9.1 Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Project is proposed or threatened by any Governmental Agency having the right of eminent domain, then, upon the unanimous written consent of all Owners and all institutional Mortgagees, the Project or a portion of it may be sold and conveyed to the condemning authority by the Association or its designee acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a condominium grants to the Association and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners and/or institutional Mortgagees do not consent to a sale of all or a portion of the Project and

the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

14.9.2 Total Sale or Taking. If there is a total sale or taking of the Project, meaning a sale or taking (a) that renders more than fifty percent (50%) of the Units uninhabitable (such determination to be made by the Board in the case of a sale and by the court in case of a taking) or (b) that renders the Project as a whole uneconomical as determined by the vote or written consent of sixty-seven percent (67%) of those Owners and their respective institutional Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in Section 20.2 shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Project, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking or partition action, shall be paid to all Owners and to their respective Mortgagees in proportion to the fair market value of all Condominiums in the Project. The fair market value of Condominiums shall be determined in the condemnation action, if such be instituted, or by an appraiser pursuant to Section 14.8 hereof.

14.9.3 Partial Sale or Taking. In case of a partial sale or taking of the Project, meaning a sale or taking that is not a total taking as described in Section 14.9.2 above, the proceeds from the sale or taking shall be paid or applied in the following order of priority, and any judgment of condemnation shall include the following provisions as part of its terms:

(a) first, to the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the court to be paid from the amount awarded; then

(b) to Owners and their respective Mortgagees, as their interests may appear, whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominium as determined by the court in condemnation proceedings or by an appraiser selected by the Board who is qualified under the provisions of Section 14.8 hereof, less such owner's share of expenses paid pursuant to the preceding clause (a) (which share shall be in proportion to each Owner's undivided interest in the applicable Phase Common Area). After such payment, the recipient shall no longer be deemed an Owner, and the Board or individuals authorized by the Board, acting as the attorney-in-fact of all Owners shall amend the Condominium Plan, Project Map (if necessary), and this Declaration to eliminate from the Project the Condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in their respective Phase Common Area based upon the ratio that each remaining Owner's undivided interest in each Phase Common Area bears to all the remaining Owners' undivided interests in that Phase Common Area; then

(c) to any remaining Owner and to his Mortgagees, as their interests may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all Condominiums, as determined pursuant to Section 14.8, but as of a date immediately after any announcement of condemnation, an amount up to the total diminution in value; then

(d) to all remaining Owners and to their respective Mortgagees, as their interests may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the court in the condemnation proceeding or by an appraiser pursuant to Section 14.8 hereof.

## ARTICLE XV

### MORTGAGEE PROTECTIONS

Section 15.1 Mortgagee Protections. Notwithstanding any other provision in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Condominiums in the Project, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control):

15.1.1 No breach of any of the Protective Covenants herein contained, nor the enforcement of any lien provision herein, shall defeat or render invalid the lien of any First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

15.1.2 Each First Mortgagee is entitled, upon written request, to timely written notification from the Association of any default by the Mortgagor of such Condominium in the performance of such Mortgagor's obligations under this Declaration, the Bylaws or Rules and Regulations that is not cured within sixty (60) calendar days. Any Institutional Lender holding a First Mortgage shall be entitled to prior written notice of certain proposed actions of the Association as set forth in Section 15.1.5 below provided that such Institutional Lender furnishes the Association with a written request for notice which request sets forth the particular Institutional Lender's mailing address and identifies the Condominium on which it holds an encumbrance.

15.1.3 Each First Mortgagee which obtains title to a Condominium pursuant to: (a) remedies provided in its First Mortgage, or (b) by accepting a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, shall be exempt from any right of first refusal that may be contained in the Declaration or the Bylaws. Further, any such right of first refusal shall not impair the rights of a First Mortgagee or interfere with a subsequent sale or lease of a Condominium so acquired by the First Mortgagee.

15.1.4 Each First Mortgagee, or third party foreclosure purchaser, which obtains title to a Condominium pursuant to foreclosure of the First Mortgage, shall take the Condominium free of any claim for unpaid dues, assessments or charges against the Condominium which accrue prior to the time such holder obtains title to such Condominium (except for claims for a share of such assessments or charges resulting from a reallocation of such dues, assessments or charges among all Condominiums, including the mortgaged Condominium). The lien assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon a Condominium subject to assessment; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure or trustee sale. Such sale or transfer shall not release such Condominium from liability for assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

15.1.5 In addition to the requirements of Sections 15.2 and 16.1 and unless a greater percentage is expressly required by the Governing Documents or by law, approval by Members who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgagees (based upon one vote for each First Mortgage owned) who represent at least fifty-one percent (51%) of the votes of Condominiums that are subject to First Mortgages held by Eligible Mortgagees must be obtained prior to adoption of any amendment of a material nature affecting any of the following matters:

- (a) voting rights;

- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens or the priority of assessment liens;
- (c) reductions in reserves for maintenance, repair and replacement of Association Property or Association Improvements;
- (d) responsibility for maintenance and repair;
- (e) redefinition of any Unit boundary;
- (f) convertibility of Units into Association Property or Phase Common Area or of Association Property or Phase Common Area into Units;
- (g) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (h) hazard or fidelity insurance requirements;
- (i) imposition of restrictions on the leasing of Units;
- (j) imposition of any restriction on the right of any Owner to sell, transfer, or otherwise convey his or her Condominium;
- (k) restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration;
- (l) any provision that expressly benefits Mortgagees, insurers or guarantors;
- (m) any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (n) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee.

If Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of the mortgaged Condominiums must agree. If any Eligible Mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail with a return receipt requested, the Eligible Mortgagee shall be considered to have granted approval.

15.1.6 In addition to the requirements of Sections 15.2 and 16.1, unless fifty-one percent (51%) of First Mortgagees have given their prior written approval, neither the Association nor the Owners shall be entitled:

- (a) By act or omission, to seek to abandon or terminate the Project except for abandonment provided by statute in case of substantial loss to the Units and the Association Property;
- (b) To change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner or to change the pro rata interest or

obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the Phase Common Area unless the change is due to the annexation of additional Phases as authorized by this Declaration;

(c) To partition or subdivide any Condominium or any of the Association Property;

(d) By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property or Association Improvements unless due to the annexation of additional Phases as authorized by this Declaration. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Association Property by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause;

(e) To use hazard insurance proceeds for losses to any Association Property, Association Improvements or any Building for other than repair, replacement or reconstruction of such Association Property, Association Improvements and/or Building, except as provided by statute in case of substantial damage to the same;

(f) By act or omission, to change, waive or abandon the provisions of this Declaration, or the enforcement of any of them, pertaining to architectural design or control of the exterior appearance of Buildings, the maintenance thereof, the maintenance of the Association Property, the Association Improvements or the Buildings, party walls or common fences and driveways, or the upkeep of lawns and plantings in the Project;

(g) To fail to maintain fire and extended coverage on the Association Property, Association Improvements and/or the Buildings on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(h) To amend any part of this Article XV.

15.1.7 Eligible Mortgagees shall have the right to examine the books and records of the Association during normal business hours and the right to require the submission of financial data concerning the Association including annual audit report, budgets, and operating statements as furnished to Owners.

15.1.8 The annual assessments shall include an adequate reserve fund for maintenance, repair and replacement of the Association Property, Association Improvements, and the Buildings and those portions thereof that must be replaced on a periodic basis, and shall be payable in annual assessments rather than by special assessments.

15.1.9 All taxes, assessments and charges which may become liens prior to First Mortgages under local law shall relate only to individual Condominiums, and not to the Project as a whole.

15.1.10 No Owner or any other party shall have priority over any right of Institutional Lenders who are First Mortgagees in case of a distribution of insurance proceeds or condemnation awards for losses to or a taking of Condominiums or Association Property or Association Improvements. Any provision to the contrary in this Declaration or the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Institutional Lender who is a First Mortgagee naming the Mortgagees as their interests may appear. Furthermore, in the event of substantial damage to

or destruction of any Condominium or any element of the Association Property or possible condemnation or eminent domain procedure, the Institutional Lender under any First Mortgage is entitled to timely written notice of any such damage, destruction or proposed acquisition.

15.1.11 All amenities (such as parking, recreation and service areas) and Association Property and Association Improvements shall be available for use by Owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Association Property. All such amenities shall be owned by the Association free of encumbrances except for easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners and/or by the Association.

15.1.12 Any agreement for professional management of the Project, or any other contract providing for services by the Declarant shall provide for termination by either party without cause or payment of a termination fee upon thirty (30) calendar days' written notice, and that the term of any such contract shall not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. If the Project is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of sixty-seven percent (67%) of the voting rights of each class of Members or of all Members if only one (1) class exists, and of fifty-one percent (51%) of First Mortgagees.

15.1.13 The Association shall, upon the written request of any Institutional Lender under a First Mortgage on a Condominium: (i) give written notice of all meetings of the Association and permit the Institutional Lender to designate a representative to attend all such meetings, and (ii) transmit to such Institutional Lender an annual audited financial statement of the Association within ninety (90) calendar days following the end of any fiscal year of the Association.

15.1.14 If any Owner is in default under any provision of this Declaration or under any of the other Governing Documents and the default is not cured within sixty (60) days after written notice to the Owner, the Association shall give to the Eligible Mortgagee of such Owner written notice of such default and of the fact that the sixty (60)-day period has expired.

15.1.15 Mortgagees of Condominiums may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of policy for Association Property, Association Improvements and/or Buildings and upon making any such payments, such Mortgagees shall be owed immediate reimbursement from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and on request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

15.1.16 No breach of any provision of this Declaration shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, but in the event that any one or more of these provisions shall be violated, then Declarant, its successors and assigns, or the Association, or any Owner shall commence a legal action in any court of competent jurisdiction to enjoin or abate said violation, or to recover damages; provided, however, that any such violation shall not defeat or render invalid any Mortgage made in good faith and for value as to said Condominium or any part thereof. Covenants shall be binding upon and effective against any Owner whose title is acquired by inheritance, trustee's sale or otherwise.

15.1.17 Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this provision that is noncurable or of a type that is not practical or feasible to cure.

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

15.1.19 Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of Members and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

15.1.20 No right of first refusal or similar restriction on the right of any Owner to sell, transfer, or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of that Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm or entity) shall not impair the rights of a First Mortgagee (a) to foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage or (b) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage or (c) to sell or lease the Condominium acquired by the Mortgagee.

**Section 15.2 Amendments to Conform with Mortgage Requirements.** It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Condominium in the Project by FNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the close of escrow for the first sale of a Condominium by recording a written instrument, provided that the amendment is necessary to cause this Declaration to comply with the requirements of FNMA; provided, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to FNMA which is, or has agreed to be, a holder, insurer or guarantor of a First Mortgage, and Declarant does not, within thirty (30) days thereafter, receive notice of disapproval from FNMA. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

## ARTICLE XVI AMENDMENTS

**Section 16.1 Amendments.** At any time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended upon and following the approval and vote of at least two-thirds (2/3) of the voting power of each class of Members of the Association. After the conversion of Class B membership in the Association to Class A membership, this Declaration may be amended upon and following the approval and vote of (i) at least two-thirds (2/3) of the total voting power of the Association, and (ii) at least two-thirds (2/3) of the voting power of the Association other than Declarant. Any such amendment hereto shall be effective upon the recording in the Official Records of a written instrument setting forth the particulars thereof and the requisite vote approving the same, which written instrument shall be signed and certified by at least two (2) members of the Board. In no event, however, shall the percentage of the voting power necessary to amend a specific provision of this Declaration be less than the percentage of affirmative votes prescribed for action to be taken under said provision.

16.1.1 For so long as Declarant owns or controls twenty-five percent (25%) or more of the voting power of the Association, any amendment of this Declaration which would defeat the obligation of the Association to maintain the Association Property and/or the Buildings or reallocate any interest in the Association Property must receive the written approval of the DRE prior to the recordation thereof.

16.1.2 Any amendment of this Declaration which would modify, cancel, terminate or delete the liability/property insurance requirements described in this Declaration must receive a vote of a majority of the Board of Directors.

16.1.3 Notwithstanding anything contained herein to the contrary, Declarant may unilaterally amend this Declaration (i) at any time prior to the first close of escrow for the sale of a Condominium by an instrument in writing signed by Declarant and (ii) at any time provided that Declarant owns a Condominium in the Project and such amendment is for the purpose of conforming this Declaration to the requirements of FNMA or the DRE. Furthermore, before the close of the first escrow in any Phase of the Project to a purchaser other than Declarant, any Notice of Annexation recorded pursuant to Section 19.3 with respect to such Phase may be amended unilaterally by Declarant by an instrument in writing signed by Declarant.

16.1.4 Furthermore, notwithstanding the foregoing, so long as Declarant, owns any portion of the Project Lots, the Project and/or Annexable Property or any interest therein, any amendment that affects the rights, powers, duties or obligations of Declarant hereunder (including, for example, the special voting rights of Declarant under Section 3.4 above) shall require the written consent of Declarant.

16.1.5 All amendments or revocations of this Declaration shall comply with all applicable provisions of *California Business & Professions Code Section 11018.7*.

**Section 16.2 Effectiveness of Amendment.** From and after its effective date, each amendment made pursuant to the preceding paragraph shall be effective as to all of the Condominiums and Lots and every other portion and area of the Project, the Owners thereof and their successors in interest.

**Section 16.3 Petition the Superior Court.** Nothing in this Declaration shall restrict the ability of any Owner at any time to petition the Superior Court in the County to amend this Declaration as provided under *California Civil Code Section 1356*.

## ARTICLE XVII GENERAL PROVISIONS

**Section 17.1 Term.** The provisions of this Declaration shall run with the land and bind the Project and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Condominium or other interest subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the provisions of this Declaration shall be automatically extended for successive periods of twenty (20) years, unless a termination agreement approved by at least ninety percent (90%) of the then Owners of Condominiums and signed by at least two (2) members of the Board has been recorded within six (6) months of the anticipated termination date. The contents of such instrument shall contain the agreement to terminate this Declaration as it may be supplemented in whole or in part.

**Section 17.2 Severability.** In the event any limitation, restriction, condition, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

**Section 17.3 Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community.

**Section 17.4 Assignment by Declarant.** Declarant may assign all of its rights and delegate all of its duties under this Declaration to any other person or entity. From and after the date of such assignment and/or delegation, said assigning Declarant shall have no further rights and/or duties hereunder. Successors or assigns of Declarant shall execute an instrument assuming the rights and duties of Declarant hereunder and thereafter shall be entitled to exercise all the rights of Declarant and shall not be liable in any manner for any act or omission committed or omitted by Declarant before the date such successor or assign succeeded to the rights of Declarant hereunder.

**Section 17.5 Number, Gender.** The singular shall include the plural and the plural the singular unless the context requires to the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

**Section 17.6 Non-Liability of Declarant.** Each Owner, by acceptance of a deed, shall be deemed to have agreed that Declarant shall have no liability whatsoever resulting from any term or provision thereof having been held to be unenforceable in whole or in part.

**Section 17.7 Grantees Subject to this Declaration.** Each grantee of a conveyance or purchaser under a contract or agreement of sale, by accepting the deed or contract of sale or agreement of purchase, accepts the same subject to all of the limitations, restrictions, conditions and covenants, and agreements set forth in this Declaration, and agrees to be bound by the same.

**Section 17.8 Headings.** The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

**Section 17.9 Discrimination.** No Owner shall execute or cause to be recorded any instrument that imposes a restriction on the sale, leasing or occupancy of the Owner's Condominium on the basis of race; sex, marital status, national ancestry, color or religion.

**Section 17.10 Reservation of Grant of Easements.** Easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in any deed to any Condominium.

**Section 17.11 Notices.** Any notice permitted or required by this Declaration shall be considered received on the date the notice is personally delivered to the recipient or forty-eight (48) hours after the notice is deposited in the United States mail, first-class, registered or certified mail, postage prepaid and addressed to the recipient at the address which the recipient has provided to the Association for receipt of notice, or if no such address was provided, at the recipient's Condominium address in the Project. For purposes of notice hereunder, the address of the Association shall be: Westport Townhome Owners Association, c/o Beazer Homes Southern California, 1100 Town & Country Road, Suite 100, Orange, California 92868, or such other address as is later designated by Declarant, in writing, and mailed to the Owners in accordance herewith. Notices to the Committee shall be addressed to the Association to the attention of the Architectural Control Committee.

**Section 17.12 Conflict of Law.** If there is a conflict between this Declaration and any laws, statutes or codes of any Governmental Agency, such laws, statutes and codes shall prevail.

## **ARTICLE XVIII NON-COMPLETION BOND**

**Section 18.1 Non-Completion of Improvements.** In the event that Improvements to or at the Project have not been completed prior to the issuance of the Public Report for any particular Phase of the Project,

and the Association is obligee under a bond or other security (herein, the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

18.1.1 The Board of Directors shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

18.1.2 In the event that the Board of Directors determines not to initiate action to enforce the obligations under the Bond or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association.

18.1.3 The only Members entitled to a vote at such meeting of Members shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

**Section 18.2 Exoneration upon Completion.** The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any Bond in favor of the Association upon completion of the improvements.

## ARTICLE XIX ANNEXATION

**Section 19.1 Annexation of Subsequent Phases.** All or any portion of the Annexable Property may be annexed into the Project and added to the scheme of this Declaration and be subjected to the jurisdiction of the Association by Declarant without the consent of the Association or its Members, provided that the proposed annexation substantially conforms with the plan of phased development submitted to the DRE with the application for a Public Report for the first Phase and said plan of phased development through annexation submitted to the DRE otherwise satisfies the requirements of Regulation 2792.27(b), Title 10, California Code of Regulations (as amended from time to time). Such requirements shall be deemed satisfied upon the issuance of a Public Report for the Phase which is the subject of the annexation.

**Section 19.2 Annexation by Approval.** Upon the vote or written assent of at least two-thirds (2/3) of the voting power of the Members, excluding the voting power or written assent of Declarant, the owner of any real property who desires to add such property to the scheme of this Declaration and to subject the same to the jurisdiction of the Association, may file of record a Notice of Annexation which shall extend the scheme of this Declaration to such property.

**Section 19.3 Annexation Procedure.** The annexation of additional real property authorized under this Article shall be made by filing of record a Notice of Annexation, or similar instrument, signed by

Declarant covering said additional real property, which Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional real property. The Notice of Annexation may contain such complementary additions to and modifications of the covenants set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property and provided that the same are consistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the covenants, conditions and restrictions set forth in this Declaration. Any annexation pursuant to the provisions of this Article shall be effective only upon the close of escrow for the sale of the first Condominium in a Phase of the Project which has been so annexed.

**Section 19.4 Rights and Obligations of Owners.** The obligation of Owners in the annexed property to pay assessments levied by the Association and the right of such Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following the close of the first sale of a Condominium by Declarant in that particular Phase. After the required annexation procedures are fulfilled, all Owners in the Project shall be entitled to the use of any Association Property in such Phase, subject to the provisions of this Declaration, and the Owners of such annexed property shall thereupon be subject to this Declaration.

**Section 19.5 Association Property.** Upon the annexation of any Phase or portion of the Annexable Property, any portion thereof that is intended or required to be Association Property shall be conveyed to the Association prior to the close of the first sale of any Condominium in the Phase to an Owner other than Declarant.

**Section 19.6 De-Annexation.** Declarant hereby reserves the right to de-annex any property which may be annexed to the Project and to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided, and on condition, that the de-annexation shall be made prior to the closing date of the sale of the first Condominium in the annexed property which is sought to be de-annexed.

## ARTICLE XX PARTITION AND SEVERABILITY OF INTERESTS

**Section 20.1 Suspension.** The right of partition is suspended pursuant to *California Civil Code Section 1359* as to the Project.

**Section 20.2 Partition.** Notwithstanding the foregoing, judicial partition shall be permitted as follows:

20.2.1 **No Partition.** There shall be no termination of the Project and the Association Property shall remain undivided with no judicial partition thereof except:

(a) With the approval, whether after substantial destruction or condemnation of the Project occurs or for other reasons, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgagees who represent at least seventy-five percent (75%) of the Condominiums that are subject to First Mortgages held by Eligible Mortgagees; or

(b) As allowed by California law, including *Civil Code Section 1359*, as the same may be amended from time to time.

An Eligible Mortgagee who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with return receipt requested.

20.2.2 Nothing in this Section 20.2 shall be deemed to prohibit partition of a cotenancy in a Condominium.

**Section 20.3 Distribution of Proceeds.** Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as specified or apportioned in the judgment of partition or, if not so specified, as their interests appear in proportion to the fair market value of the Condominiums at the date of the sale as determined by an independent appraisal conducted by a member of the American Institute of Real Estate Appraisers with the designation of a Member Appraisal Institute (M.A.I.) or if such Institute no longer exists, an appraiser of comparable experience.

**Section 20.4 Power of Attorney.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under *California Civil Code Section 1359* or any successor statute or law. The power of attorney shall:

- (a) be binding on Owners, whether or not they assume the obligations under this Declaration;
- (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of sixty-seven percent (67%) of the Owners and seventy-five percent (75%) of all First Mortgagees; and
- (c) be exercisable only after recordation in the Official Records of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

**Section 20.5 Conveyances.** After the initial sales of the Condominiums, any conveyance of a Condominium by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from creating an estate for life or years, cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## ARTICLE XXI RIGHT OF DECLARANT TO REDESIGN PROJECT

**Section 21.1 Right of Declarant To Redesign Project.** Subject to the restrictions and limitations set forth in this Article, Declarant, on its own behalf and on behalf of its successors and assigns, does hereby reserve the right, in its sole discretion, from time to time, within a period of five (5) years from the date of recording of this Declaration, or until one hundred percent (100%) of all annexed Condominiums have been sold, whichever is longer, to redesign the Project or any portion or aspect thereof, including but not limited to any Improvement constructed or proposed to be constructed in or at the Project and in connection with such redesign, to effect the following changes in the Project:

- (a) To alter the vertical or horizontal boundaries, or both, of any Improvement;

- (b) To alter the shape, configuration, floor plan and/or location of any Phase, Module, Phase Common Area, Unit and/or Building;
- (c) To alter the number, size, shape, and configuration of any Phase, Module, Unit, Phase Common Area, Association Property, and/or Building;
- (d) To adjust the location or configuration or both, of any Phase, Module, Unit, Phase Common Area, Association Property and/or Building boundary lines;
- (e) To alter the size, shape, configuration, floor plan, and/or location of any and all of the parking spaces;
- (f) To effect nominal deviations from any Condominium Plan which result during the actual construction; and
- (g) To change the configuration of any Improvement.

**Section 21.2 General Restrictions on Redesign.** The rights of Declarant set forth in this Article shall and are hereby made subject to the following additional restriction and limitation that the redesign of any portion of the Project shall in no event physically modify, affect or change any Condominium which as of the date of such redesign, is the subject of an agreement of sale, or is owned by an Owner other than Declarant, unless the purchaser or Owner of such Condominium shall consent to such redesign in writing, and in no event shall the recreational facilities constructed or to be constructed in the Association Property be redesigned to contain less than what is currently described in the Condominium Plan.

**Section 21.3 Amendment of Condominium Plan.** In the event a redesign of all or any portion of the Project affects any Condominium so as to necessitate the preparation of an amendment to the Condominium Plan, including any amendment necessary to cause the Condominium Plan to comply with the Improvements as actually built, Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment to the Condominium Plan. The amendment to the Condominium Plan shall, when recorded, have the effect of:

- (a) Relocating the Association Property, the Phase Common Area, each Module, each Unit and/or the Phase to the extent set forth on the amendment of the Condominium Plan;
- (b) Divesting each Owner (except Declarant) of all right, title and interest to any Condominium, other than each Owner's Unit, depicted on the amendment to the Condominium Plan;
- (c) Vesting in each holder of a Mortgage an undivided interest (to the extent of the interest in the Phase Common Area owned by the Owner of the Condominium which is the subject of such Mortgage) in the Phase Common Area as depicted on the amendment to the Condominium Plan; and
- (d) Divesting each holder of a Mortgage of all right, title and interest to each Condominium (other than Owner's Condominium which is the subject of such Mortgage) depicted on the amendment to the Condominium Plan.

The adjustment of any Mortgage in accordance with the provision of this Section 21.3 shall not affect the priority of any such Mortgage with respect to any other matter affecting title to the Condominium which is the subject thereof.

**Section 21.4 Power of Attorney.** Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, for a period of five (5) years from the date of the recording of this Declaration, Declarant as his attorney-in-fact and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to effect the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the *California Subdivision Map Act* in effect on the date of recordation of this Declaration and as thereafter amended and any ordinances, rules and regulations of the City and any other governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any Improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval and record or cause to be recorded any amendment to any Condominium Plan, including any amendment necessary to cause any Condominium Plan to comply with the Improvements as actually built, and/or Unit(s) as redesigned, which may be required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of the City and any other governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state, and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any Improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To prepare or cause to be prepared, execute, acknowledge and file or cause to be filed for approval, any application for zoning or setback changes or variance or special use permits or any other permits and/or reports required or permitted by the laws of the State of California as in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulation of any governmental entities and authorities having jurisdiction over the Project as in effect on the date of recordation of this Declaration and thereafter enacted or amended and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any Improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(d) To make application for any property reports or public reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the general public and, in connection therewith, to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligation contained therein;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval, any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration or as hereafter enacted by any federal, state and local government entities and authorities in connection therewith, to perform all conditions, undertake any obligations, and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and to do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deed, waiver, release, reconveyance, or documentation which may be permitted or required to clear title to any Condominium, whether constructed or to be constructed in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

**Section 21.5 Indemnification of Owners on Exercise of Power of Attorney.** Declarant shall indemnify and hold each Owner harmless from all liabilities, including attorneys' fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the power of attorney and right to redesign above set forth.

**Section 21.6 Encumbrances Take Subject to Power of Attorney.** The acceptance or creation of any Mortgage or other encumbrance, whether voluntary or involuntary, and whether or not created in good faith, and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the power of attorney described in this Article.

**Section 21.7 Owner Concurrence and Consent.** Each and every Owner and each of their respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, shall be deemed to have expressly agreed, assented and consented to each and all the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed Declarant as his attorney-in-fact to carry out the powers described in this Article, and such power of attorney shall be deemed to continue to be coupled with an interest.

## SUBORDINATION OF REPURCHASE OPTION

The undersigned (herein, collectively, "Master Developer") is the Optionee under that certain Memorandum of Repurchase Option dated as of December 17, 2002 (the "Option Memo"), by and between Optionee and Declarant hereunder as Optionor that was recorded in the Official Records of Los Angeles County, California, on January 3, 2003, as Instrument No. 03-0001330. Master Developer does hereby: (1) consent to each and all of the provisions contained in the foregoing Declaration of Conditions, Covenants and Restrictions for Lighthouses at Westport at Mandalay Bay to which this page is appended and of which this page is a part (together with all amendments, modifications, supplements and replacements thereof or thereto whether now or hereafter made, collectively, the "Declaration"); and (2) agree that the Option Memo together with the rights and obligations of Master Developer and Declarant thereunder and under Article 19 of that certain unrecorded Purchase Agreement and Escrow Instructions dated September 25, 2001, to which the Option Memo refers, shall be, and are hereby made, subject, subordinate, and junior, in all respects, to the Declaration as now or hereafter supplemented and/or amended.

This Subordination may be executed in counterparts and collated to form a single instrument executed by all of the parties who comprise Master Developer hereunder.

Executed in counterparts by each of the undersigned and/or its duly authorized officer, agents or representatives as of the date first written above.

"Master Developer"

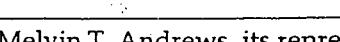
LB/L-SunCal Mandalay LLC, a Delaware limited liability company

By: LB/L-SunCal Master LLC, a Delaware limited liability company,  
its Manager

By: SunCal of Northern California, LLC, a Delaware limited liability company,  
its Operating Member

By:   
Bruce Elieff, its representative

By: LB/L Lakeside Capital Partners, LLC, a Delaware limited liability company,  
its Manager Member

By:   
Melvin T. Andrews, its representative

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This Subordination may be executed in counterparts and collated to form a single instrument executed by all of the parties who comprise Master Developer hereunder.

Executed in counterparts by each of the undersigned and/or its duly authorized officer, agents or representatives as of the date first written above.

### "Master Developer"

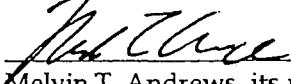
LB/L-SunCal Mandalay LLC, a Delaware limited liability company

By: LB/L-SunCal Master LLC, a Delaware limited liability company,  
its Manager

By: SunCal of Northern California, LLC, a Delaware limited liability company,  
its Operating Member

By: \_\_\_\_\_  
Bruce Elieff, its representative

By: LB/L Lakeside Capital Partners, LLC, a Delaware limited liability company,  
its Manager Member

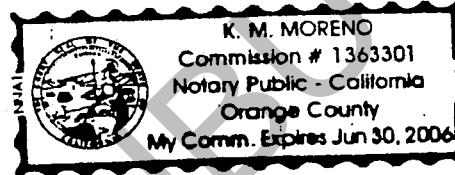
By:   
Melvin T. Andrews, its representative

STATE OF CALIFORNIA )  
COUNTY OF Orange ) ss.  
                        )

On July 1, 2002 before me, the undersigned, a Notary Public in and for said State, personally appeared Dawn Jeff, 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 such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

K. M. Moreno  
NOTARY PUBLIC



STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ ) ss.  
                        )

On \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ 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 such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

                          
NOTARY PUBLIC

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ ) ss.  
                       )

On \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, 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 such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles ) ss.  
                       )

On July 2, 2003 before me, the undersigned, a Notary Public in and for said State, personally appeared MELVIN T. ANDREWS, 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 such he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures 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.

O. Arsenault  
\_\_\_\_\_  
NOTARY PUBLIC

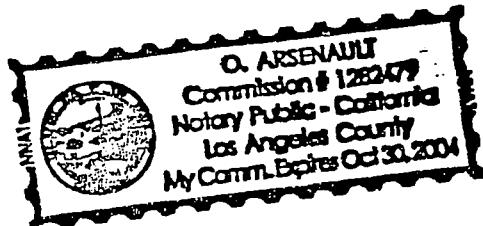


Exhibit A

Description of the Phase 1 Module

That certain real property located in the City of Oxnard, County of Ventura, State of California, more particularly described as:

That portion of Lot 3 of Tract 5196-2, in the City of Oxnard, County of Ventura, State of California, as per Map recorded in Book 147, Pages 20 through 23, inclusive, of Miscellaneous Records (Maps) of Ventura County, California, more particularly described and identified as the Phase 1 Module on that certain Phase 1 Condominium Plan for Lighthouses at Westport at Mandalay Bay recorded on July 18, 2003 as Document No. D3-02468903 Official Records of said County.

Exhibit B

Annexable Property

That certain real property located in the City of Oxnard, County of Ventura, State of California, more particularly described as:

Parcel A

That portion of Lot 3 of Tract 5196-2, in the City of Oxnard, County of Ventura, State of California, as per Map recorded in Book 147, Pages 20 through 23, inclusive, of Miscellaneous Records (Maps) of Ventura County, California, more particularly described and identified as Remainder Module A on that certain Phase 1 Condominium Plan for Lighthouses at Westport at Mandalay Bay recorded on July 18, 2013 as Document No. 03D248703, Official Records of said County.

Parcel B

Lot 4 of Tract 5196-2 in the City of Oxnard, County of Ventura, State of California, as per Map recorded in Book 147, Pages 20 through 23, inclusive, of Miscellaneous Records (Maps) of Ventura County, California.