



**Murieta Homeowner's Association**  
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**AMENDED & RESTATED DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS  
OF  
MURIETA  
A CONDOMINIUM PROJECT**

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IMPORTANT RENTAL  
RESTRICTIONS!**

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**AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
MURIETA  
CONDOMINIUM PROJECT**

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IMPORTANT RENTAL  
RESTRICTIONS!**

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**AMENDED & RESTATED DECLARATION OF  
COVENANTS, CONDITIONS & RESTRICTIONS OF  
MURIETA A CONDOMINIUM PROJECT**

**RECITALS**

**R1.** Murieta Owners' Association is the successor to Duffel Financial and Construction Company, which as Declarant, executed a Declaration of Covenants, Conditions and Restrictions of Murieta A Condominium Project, recorded on June 14, 1984, as Instrument No. 84-116372, in the Official Records of the County of Alameda, State of California, and a Declaration of Annexation and Supplemental Restrictions for Murieta A Condominium Project recorded on November 19, 1984 as Instrument No. 84-231110 in the Official Records of the County of Alameda, State of California.

**R2.** The above-referenced Declaration of Covenants, Conditions and Restrictions and Declaration of Annexation established a plan of common interest ownership with certain limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in that certain parcel of real property consisting of three hundred twenty-four (324) Units and various common areas located in the City of Newark, County of Alameda, State of California, and more particularly described as follows:

Lot 1 and Lot 2 as described on that certain map entitled "Tract 5201" filed January 12, 1984 in Book 142 of Maps, page 47 in the Official Records of Alameda County, State of California.

**R3.** The Members of Murieta Owners' Association, consisting of at least seventy-five percent (75%) of the total voting power of Murieta Owners' Association, desire to amend, modify and change and otherwise restate the limitations, easements, covenants, restrictions, conditions, liens and charges which run with and are binding upon all parties having or acquiring any right, title or interest in the parcel of real property described above,

**R4.** Therefore, the Members of Murieta Owners' Association, constituting at least seventy-five percent (75%) of the total voting power of Murieta Owners' Association, do hereby declare that the above-referenced limitations, easements, covenants, restrictions, conditions, liens and charges set forth in the declarations described above, and all amendments and supplements thereto, be and are hereby AMENDED AND RESTATED in their entirety, as set forth in this Amended and Restated Declaration of Covenants, Conditions & Restrictions of Murieta A Condominium Project.

**R5.** It is further hereby declared that all of the real property described herein constitutes a "Condominium Project" within the meaning of Section 1351(f) of the California Civil Code.

**R6.** It is further hereby declared that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, assigned, rented, hypothecated, encumbered, leased, used, occupied and improved subject to the following Declaration of Covenants, Conditions & Restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving and enhancing the value, desirability and attractiveness of the said real property and every part thereof and of fostering the development, management, improvement, enjoyment, use and sale of the said real property and any part thereof.

**R7.** It is further hereby declared that all of the Covenants, Conditions and Restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Section 1354 of the California Civil Code.

and shall constitute covenants that shall run with the real property and shall be binding upon and inure to the benefit of each Owner of any portion of the real property or of any interest therein, each party having or acquiring any right, title or interest in and to the real property or any part thereof and their heirs, successors and assigns.

**R8.** It is further hereby declared that each Owner, by acceptance of a deed to a Unit, shall be deemed to have agreed, for any and all purposes, for Owner and for the members of Owner's Family, Owner's contract purchasers, tenants or lessees, guests, invitees and/or licensees to abide by, and to be bound by, each and every provision of this Declaration of Covenants, Conditions and Restrictions that subjects such Owner or other person to a contractual, fiduciary or other duty, obligation or agreement for the benefit of other Owners or occupants of the Murieta development, either individually or as a class, Murieta Owners' Association or the public generally, regardless of whether the deed refers specifically to this Declaration of Covenants, Conditions and Restrictions or to any such duty, obligation or agreement.

## **ARTICLE I: DEFINITIONS.**

**Section 1.1.** "**Articles**" means the Articles of Incorporation of Murieta Owners' Association, which are filed in the Office of the Secretary of State of the State of California, as such Articles may be amended from time to time.

**Section 1.2.** "**Assessment**" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article V of this Declaration.

**Section 1.3.** "**Association**" means Murieta Owners' Association, a California nonprofit mutual benefit corporation, its successors and assigns. Murieta Owners' Association is an "Association" as defined in California Civil Code Section 1351(a).

**Section 1.4.** "**Association Rules**" means the rules, regulations and policies adopted by the Board of Directors of the Association (or in the case of Architectural Rules and Policies by the Design Review Committee) pursuant to this Declaration, as the same may be in effect from time to time.

**Section 1.5.** "**Balcony**" means each portion of the Building Common Area that is shown on the Plans as an individually numbered parcel designated with the letter "B". The perimeter boundaries of each Balcony are to the interior finished surfaces of the fences and/or railings and to the exterior finished surfaces of any Common Area walls enclosing the Balcony. The vertical boundaries of each Balcony are to the interior unfinished surface of the floor and to a plane extended from the ceiling of the Unit that adjoins the Balcony. The approximate dimensions of each Balcony are shown on the Plans. Each balcony includes the airspace encompassed within the boundaries.

**Section 1.6.** "**Board of Directors**" or "**Board**" means the Board of Directors or the governing body of the Association.

**Section 1.7.** "**Building**" means a structure located on the Development that contains residential Units.

**Section 1.8.** "**Building Common Area**" means each individual parcel of real property upon which a Building containing Condominium Units sits and all Improvements thereon that are not expressly made a part of a Unit.

**Section 1.9. "Bylaws"** means the Bylaws of the Association, as such Bylaws may be amended from time to time.

**Section 1.10. "Carport"** means each portion of the Common Area that is shown on the Plans as an individually numbered parcel designated with the letters "CP". The perimeter boundaries of each Carport are to the interior finished surfaces of the walls, floors and ceiling. The vertical boundaries are to the interior finished surface of the floor and the ceiling, if in existence, or to a horizontal plane seven (7) feet from the finished floor. The approximate dimensions of each Carport are shown on the Plans. Each Carport includes the airspace encompassed within the boundaries.

**Section 1.11. "Common Area"** includes both Project Common Area and Building Common Area, unless otherwise specified.

**Section 1.12. "Common Expense"** means the actual, estimated, or expected costs, charges, or other financial liabilities of the Association, including, without limitation: (a) all costs or charges incurred by or on behalf of the Association for the management, maintenance, administration, operation, repairs, additions, alterations or reconstruction of Common Area, Common Facilities, or any portion of the Units for which the Association has maintenance or repair obligations; (b) all costs or charges reasonably incurred to procure insurance for the protection of the Association and its Board; (c) any amounts reasonably necessary for reserves to maintain, repair or replace the Common Area or Common Facilities, any portion of the Units for which the Association has maintenance or repair responsibility or to cover unpaid (delinquent) assessments; and (d) any other costs or charges necessary for the Board to perform its functions and fulfill its responsibilities under the Governing Documents.

**Section 1.13. "Common Facilities"** means all Improvements located within, under, above or upon the Common Area except utility, plumbing and/or drainage lines belonging to a public utility or other party having a valid easement. The Common Facilities include but are not limited to: swimming pool(s), apron area, pool storage and pump house, recreational buildings/clubhouses, trees, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, concrete driveways, walkways and red tile areas.

**Section 1.14. "Condominium"** means an estate in real property as defined in Sections 783 and 1351(f) of the California Civil Code and that consists of an undivided interest in common in a portion of real property coupled with a separate interest in space called a Unit together with any easements or other interests in the Development or any portion thereof as described in this Declaration of Covenants, Conditions and Restrictions and/or in the Deed.

**Section 1.15. "Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions of Murieta a Condominium Project, as recorded in the Office of the County Recorder of Alameda County, California and as it may be amended or supplemented from time to time.

**Section 1.16. "Development"** means all real property and the improvements located thereon that comprises the Murieta common interest development and are intended to create a condominium project as described in California Civil Code Section 1351(f).

**Section 1.17. "Director"** means a member of the Association's board of directors.

**Section 1.18. "Eligible First Mortgagee"** means a First Mortgagee who has sent a written request for notice to the Association, stating its name and address and the Unit number or address of the Unit on which it has the Mortgage. Starting as of the recording date of this Declaration, the Association shall maintain such information in a book entitled "Mortgagees of Condominiums."

**Section 1.19.** "Exclusive Use Common Area" means any portion of the Common Area that is set aside, allocated, assigned and restricted for the exclusive use of the Residents/Owners of a particular Unit. Exclusive Use Common Area includes, but is not limited to, Assigned Parking Spaces, Balconies, Carports, Patios, and Water Heater Closets.

**Section 1.20.** "Family" means two or more persons who live together and maintain a common household in a Unit whether or not they are all related to each other by birth, marriage or legal adoption.

**Section 1.21.** "First Mortgagee" means any person or entity, including, but not limited to, banks, savings and loan associations, insurance companies and other financial institutions, holding a recorded mortgage that constitutes an encumbrance upon one or more Condominiums first in priority of lien over all other encumbrances upon said Condominium(s) securing payment of money other than this Declaration and liens for real estate taxes and assessments.

**Section 1.22.** "General Common Area" means all of the Common Area except for Exclusive Use Common Area.

**Section 1.23.** "Governing Documents" is a collective term that means and refers to this Declaration and to the Association's Articles, Bylaws, Association Rules and the policies and resolutions adopted by the Board and distributed to the Members.

**Section 1.24.** "Improvement" means an addition to or alteration of the real property comprising the Development or any portion thereof and includes, but is not restricted to, any Building, outbuilding, structure, shed, driveway, Parking Space or parking area, paving, walk, fence, wall, stair, arbor, deck, balcony, patio, pole, sign, tank, ditch, landscaping (including trees, hedges, plantings, lawns, shrubs), landscape structures, berms, fencing, pond, solar heating equipment, antennas, utilities, utility lines, gates, statues, markers, pipes, lines, lighting fixtures, and anything deemed to be a "work of improvement" as defined in Section 3106 of California Civil Code or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects that are restricted to the interior of a Unit, so long as such projects do not involve modifications to load bearing walls or the structural framing of a Building, and do not interfere with other Members' use and enjoyment of their property.

**Section 1.25.** "Lien" means any lien, whether voluntary or involuntary.

**Section 1.26.** "Maintenance" means the exercise of reasonable care to keep Buildings, landscaping, lighting and other Common Area(s), Common Facilities, Improvements and/or real or personal property in which the Association or an Owner holds an interest in a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall include the exercise of regular fertilization, irrigation or other garden management practices necessary to promote a healthy and weed free environment.

**Section 1.27.** "Map" means the map of Tract 5201 filed on January 12, 1984, in Book 142 of Maps at page 47 *et seq.*, in the Official Records of the County of Alameda.

**Section 1.28.** "Member" means each person (or entity) who is named as an Owner on the recorded grant deed (or other valid title document) for any Unit within the Development. However persons (or entities) who hold an interest in a Unit merely as security for the performance of an obligation (e.g., banks and other types of mortgage lenders) are not Owners or Members. When more than one person is an Owner of a Unit, all such persons shall be Members. Although in no event shall more than one vote be cast with respect to any Unit.

**Section 1.29.** "Member in Good Standing" means a Member of the Association who is current in the payment of all dues, assessments, fines, penalties and other charges imposed in accordance with the Governing Documents and who is in compliance with all of the provisions of the Governing Documents (*i.e.*, not being disciplined Under Article XIV of this Declaration for Governing Documents violations).

**Section 1.30.** "Mortgage" means any security device encumbering all or any portion of the Development, including any deed of trust. The terms mortgage and deed of trust may be used interchangeably. "First Mortgage" means a Mortgage having priority over all other Mortgages. "Mortgage Lien" means the lien or charge or equivalent security interest of any mortgage or deed of trust. "Mortgagor" shall refer to the trustor under a deed of trust, as well as a mortgage. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as to a mortgagee in the conventional sense.

**Section 1.31.** "Owner" means the person(s) and/or entity(s) shown as owning (*i.e.*, holding fee simple title to) any Unit that is a part of the Development and contract purchasers during the contract purchase period. However the term Owner shall not include persons (or entities) who hold an interest in a Unit merely as security for the performance of an obligation (*e.g.*, banks and other types of mortgage lenders). "Owner of Record" and/or "Member of the Association" includes an Owner and means any person, firm, corporation or other entity in which title to a Condominium is vested according to Association records.

**Section 1.32.** "Parking Area" means each Parking Space, Carport and all uncovered open parking wherever located within the Project.

**Section 1.33.** "Parking Space" means each portion of the Common Area that is shown on the Plans as an individually numbered parcel designated with the letter "P". The perimeter boundaries of each Parking Space consist of the vertical planes extended from the floor to the ceiling along the dimension lines shown on the Plans. The vertical boundaries of each Parking Space are to the interior finished surface of the floor and to a horizontal plane seven feet (7') above the floor. The approximate dimensions of each Parking Space are shown on the Plans. Each Parking Space includes the airspace encompassed within the boundaries.

**Section 1.34.** "Patio" means each portion of the Building Common Area that is shown on the Plans as an individually numbered parcel designated with the letters "PT". The perimeter boundaries of each Patio are to the interior finished surfaces of the fences and/or railings and to the exterior finished surface of any Common Area walls enclosing the Patio. The vertical boundaries of each Patio are to the interior surface of the ground and a horizontal plane extended from the ceiling of the Unit that adjoins the Patio. The approximate dimensions of each Patio are shown on the Plans. Each Patio includes the airspace encompassed within the boundaries.

**Section 1.35.** "Plans" mean those certain condominium plans prepared in accordance with Section 1351 of the California Civil Code and attached as Exhibit "B" to the Declaration of Covenants, Conditions and Restrictions of Murieta A Condominium Project, recorded on June 14, 1984 and as Exhibit "D" to the Declaration of Annexation and Supplemental Restrictions for Murieta A Condominium Project recorded November 19, 1984, as more specifically described in Recital R1 above.

**Section 1.36.** "Project Common Area" means the real property within the Development as described in the Map that is not a Unit or Building Common Area, and all Improvements thereon. Project Common Area is owned and maintained by the Association for the use and enjoyment of its Members.

**Section 1.37.** "Regular Assessment" means an Assessment levied on an Owner and his or her Condominium in accordance with Section 5.2 hereof.

**Section 1.38.** "Special Assessment" means an Assessment levied on an Owner and his or her Condominium in accordance with Section 5.3 hereof.

**Section 1.39.** "Special Individual Assessment" means an Assessment made against an Owner and/or his or her Condominium in accordance with Section 5.4 hereof.

**Section 1.40.** "Unit" means that portion of the Development that is shown on the Plans as an individually numbered parcel. The boundaries of each Unit shall be to the interior unfinished surfaces of the walls, floors, ceilings, doors, windows and fireplace (if any). Each Unit includes the airspace encompassed by its boundaries but does not include load bearing walls and walls containing utility conduits. Fixtures and appliances located within the boundaries of a Unit are also part of a Unit. The approximate dimensions of each Unit are shown on the Plans; however, the existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries.

**Section 1.41.** "Water Heater Closets" means each portion of the Building Common Area that is shown on the Plans as an individually numbered parcel designated with the letter "W". The perimeter and vertical boundaries of each Water Heater Closet are to the interior finished surfaces of the doors, walls, floor and ceiling. The approximate dimensions of each Water Heater Closet are shown on the Plans. Each Water Heater Closet includes the airspace encompassed within its boundaries.

## **ARTICLE II: OWNERS' PROPERTY RIGHTS & OBLIGATIONS.**

**Section 2.1. Elements of Condominium.** Ownership of each Condominium within the Development includes:

(a) **Unit.** A separate Unit , as defined and described herein.

(b) **Building Common Area.** Each Owner of a Unit situated within a parcel described as Building Common Area shall be conveyed an undivided interest in that Building Common Area parcel as a tenant-in-common with the other Owners of Units situated in that Building Common Area. The tenancy-in-common interest of each Owner shall be determined by a fraction, the numerator of which is one (1) and the denominator of which is the total number of Units contained within a particular Building Common Area parcel. Exhibit A hereto sets forth the ownership interest in each Building Common Area by the Owner of Units within the Building.

(c) **Nonexclusive Easements.** Nonexclusive easements appurtenant to the Unit for the use and enjoyment of the Common Area and as more particularly described in Section 2.2.

(d) **Exclusive Easements.** Exclusive easements appurtenant to the Unit for the use and enjoyment of Exclusive Use Common Area as more particularly described in Section 2.3.

All of the above interests in real property shall be subject to all of the covenants, conditions, restrictions, easements, limitations, reservations, liens, and charges contained elsewhere in this Declaration, the Articles, the Bylaws, and the Association Rules.

**Section 2.2. Owners' Right to Use and Enjoy Common Area.** Subject to the provisions of this Declaration, the Common Area shall be held and maintained for the use and enjoyment of the Members of the Association, their families, tenants, lessees, resident contract purchasers and/or guests as provided in the Governing Documents. There shall be no use of the Common Area except by the above specified persons. (See Section 2.5, below, regarding use by non-members).

**(a) Nonexclusive Easements.** Every Owner (and Owner's Family, resident contract purchasers, lessees, tenants, and/or guests) shall have a nonexclusive right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the rights and restrictions set forth in this Section.

**(b) Limitations on Nonexclusive Easements.** The Owners' nonexclusive easements for use and enjoyment of the Common Area as described above are subject to the following limitations and restrictions:

**(i)** The right of the Association to adopt Association Rules as provided in Section 4.6(a)(ii)(E) hereof, regulating the use and enjoyment of the Development for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights and/or right to use the Common Facilities, by any Owner and/or the Owner's Tenants and guests, subject to compliance with the due process requirements of Section 14.6 hereof.

**(ii)** The right of the Association, in accordance with this Declaration, and/or the Association's Articles and Bylaws, to borrow money for the purpose of improving, restoring or maintaining the Common Area and Common Facilities and/or the interests of the Owners and/or for the benefit of the Association, and in aid thereof, to mortgage said property; provided, however, that the rights of any such Mortgagee in said property shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 5.3 hereof.

**(iii)** The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Unit. Said instrument may be executed in counterparts so long as each counterpart is in recordable form. The Association shall, without a vote of the Members, have the right to grant licenses and/or right of entry to the Common Area and/or easements through the Common Area for purposes consistent with the purposes of the Association and that do not interfere with the use and enjoyment of the Common Area by the Members.

**(iv)** The non-exclusive easements granted herein shall be subordinate to and shall not interfere with exclusive easements, if any.

**(v)** The right of any Owner to the full use and enjoyment of any mechanical or electrical service connections as may serve the Owner's Unit in conjunction with other Units within the Development. The Owner of each Unit served by a sanitary sewer, water, gas, electric, telephone, television line or connection, heating or air conditioning conduit, duct, flue, or system, or similar utility/service connection shall be entitled to the full use and enjoyment of such portions of said connections as service Owners' Unit.

**(vi)** The right of the Association to charge reasonable admission, use and/or other fees for the use of the Common Area or any portion thereof.

**(c) Waiver of Right to Sever.** No Owner, or other person, may by conveyance, transfer or any other action, including an action at law for partition, sever any Unit or Units from the Common Area or from the Association. Each Owner, by acceptance of a deed to a Unit hereby expressly waives all rights to do so.

**Section 2.3. Exclusive Use Common Area.** There are reserved and granted to each Unit and each Owner of a Unit exclusive appurtenant easements for the use, possession and enjoyment of the Water Heater Closet and the Patio and/or Balcony designated on the Plans that bear(s) a number that corresponds to the number of the Unit. Such Exclusive Use Common Areas may also be specifically designated in the individual Condominium grant deed. The Association shall assign to each Owner the exclusive use of at least one (1) Parking Space or Carport. All easements or assignments to Exclusive Use Common Area are subject, however, to the right of the Association to enter in and upon Exclusive Use Common Area for the purpose of maintaining and repairing Exclusive Use Common Area and for enforcing the terms of this Declaration. The grant of any easement for a Patio shall include the area beneath the surface of the earth that is necessary for the cultivation, landscaping and drainage of the Patio.

**Section 2.4. Persons Subject to Governing Documents.** All present and future Owners, tenants, lessees, contract purchasers and/or occupants of Units within the Development (on behalf of themselves, their Family, guests, tenants, invitees, agents, servants, employees, licensees and/or any other persons that might use the facilities of the Developments in any manner, etc.) shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (*i.e.*, Owners, tenants and invitees).

The mere accepting of a deed to any Condominium; the entering into a lease, sublease or contract of sale with respect to any Unit; the occupancy of any Unit; and/or the acceptance of any guest pass shall constitute the consent and agreement of such Owner, tenant, occupant, guest and/or invitee that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

The liability and obligation of any Owner for performance of any one and all provisions of the Governing Documents with respect to any Condominium shall terminate upon the sale, transfer, or other divestiture of such Owner's entire interest in that Condominium with respect to obligations arising hereunder from and after the date of such divestiture.

**Section 2.5. Delegation of Use.**

**(a) Delegation of Use and Membership Rights and the Leasing or Sale of Units.**

**(i) Assignment of Rights to Family Members.** Any Owner may delegate the Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's Family residing at the Development.

**(ii) Use by Invitees and Guests.** The invitees and guests of a Member shall have the right to use and enjoy the Common Areas and Common Facilities within the Development, as long as the guest or invitee is in the company and supervision of the Member. Any such guest or invitee shall be subject to the same obligations imposed on the Member to observe the Rules, restrictions, and regulations of the Association as set forth in the Governing Documents.

**(iii) Assignment of Rights to Tenants/Lessees.** Any Member who has leased or rented the Member's Unit to another person or persons shall in all events be deemed to have delegated to his or her tenants all rights of use and enjoyment of the Common Area. (Any such lease or rental shall be subject to any additional restrictions, limitations and/or requirements set forth in this Declaration or the other Governing Documents.). It is the express purpose and intent of the provisions of this Subsection 2.5(a) to limit the right of use and enjoyment of the Common Area to residents of the Development and members of their household and their guests. During any period when a Unit has been rented or leased, the Owner-lessor,

his or her Family, guests and invitees shall not be entitled to use and enjoy the Common Areas or Common Facilities of the Development, except to the extent reasonably necessary to perform the Owner's responsibilities as a lessor of the Unit, provided that this restriction shall not apply to an Owner-lessor who is contemporaneously residing in another Unit within the Development.

**(iv) Assignment of Rights to Contract Purchasers.** Further, any Member who has sold that Member's Unit to a contract purchaser shall be entitled to delegate to such contract purchaser Member's rights and privileges of membership in the Association. Such Member shall be deemed to have delegated all rights to use and enjoyment of the Common Area to a contract purchaser who has assumed occupancy of said Unit. No delegation of any membership rights or privileges to a non-resident contract purchaser shall be binding, however, until the Board of Directors has been notified in writing pursuant to Section 2.7, below. Notwithstanding any delegation, until fee title to the Unit has been transferred of record, a contract seller shall remain liable for all assessments, fines and other charges imposed by the Board and for compliance with the Governing Documents by all Residents of Member's Unit.

**(b) Association Rules.** The right of any person to use and enjoy the Association Common Area and Common Facilities shall at all times be subject to the regulations, policies, limitations, and restrictions set forth in the Association Rules, in this Declaration, and in the other Governing Documents.

**Section 2.6. Merger of Units.** The Association shall have the right, but not the obligation, to grant to the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to effect internal access from one Unit to another through the walls or other portions of the Common Area that separate and divide the individual Units (such Units shall, for all purposes of the Governing Documents, remain and be treated as two (2) separate Units). The Association shall also have the right, but not the obligation, to grant the Owner of two (2) or more adjacent Units those easements necessary or appropriate to permit such Owner to separate and divide Units previously joined hereunder.

All of such work shall be done at the expense of the Owner, and any such Owner shall indemnify the other Owners and the Association against and hold them harmless from, any cost, loss, liability, damage, or injury to property or persons arising from, or caused by, such work. As a condition to the grant of any such easement, the Association may impose such reasonable terms and conditions with respect thereto as the Board deems necessary or appropriate including, without limitation, a requirement that the Owner obtain lien and completion bonds to assure lien-free completion of the work.

**Section 2.7. Obligations of Owners.** Owners of Condominiums within the Development shall be subject to the following:

**(a) Owner's Duty to Notify Association of buyers, transferees, and lessees.** Within ten (10) days of the execution of any agreement for sale of an Owner's Unit or any other transaction that will result in a change in the record ownership of the Unit, and/or within five (5) days of the execution of any lease of a Unit, the Unit Owner shall notify the Association in writing of the name and mailing address of the buyers, transferees or lessees, the name, address of any escrow holder for any sale or transfer, the escrow number of any escrow, and the date when the buyer, transferee or lessee will take possession of the Unit.

**(b) Effect of Failure to Notify.** Until such time as the Association receives the notification required in Subsection (a), above, a transferee or lessee shall be deemed to have received any and all notices or other communications required or permitted to be given by the Association hereunder that are duly provided to the transferor or lessor. The Board shall have the power to adopt Association Rules consistent with this Declaration relating to enforcement of these notice requirements and/or to impose penalties, including fines, for failures to give timely notice.

**(c) Contract Purchasers.** As provided in Section 2.5(a) above, a contract seller may delegate the seller's member rights, including voting rights. Notwithstanding any delegation of rights to the contract purchaser, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

**(d) Notification Regarding Governing Documents.**

**(i)** As more particularly provided in the California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Condominium, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (c) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Condominium being sold; (D) 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 (if any) and fees; and (E) a notice of any change in the Association's current Regular or Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

**(ii)** The Association (or its managing agent) shall, within ten (10) days of the mailing or delivery of a request for the information described in Subsection (c)(i), above, provide the Owner with copies of said documents. The Association (or its managing agent) shall be entitled to impose a fee for providing copies of those documents equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of Condominium.

**(e) Payment of Assessments and Compliance With Association Rules.** Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Condominium and shall observe, comply with and abide by any and all Association Rules set forth in, or promulgated by the Board pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

**(f) Responsibility for Conduct of Others.** Each Owner shall be fully responsible for informing members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees of the provisions of the Governing Documents and shall be fully responsible for any violation of the provisions of the Governing Documents by members of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees. Each Owner shall further be fully responsible for the conduct and activities of Owner's pets and the pets of Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees and/or licensees.

**(g) Indemnification for Damage & Injury.** Each Owner shall be liable to the remaining Owners and the Association for any damage to the Common Area that may be sustained by reason of the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees. Each Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, and licensees, shall indemnify each and every other Owner and/or the Association against, and hold them harmless from, and defend them against, any claim of any person for personal injury or property damage occurring within the Development due to the willful misconduct, negligent act or omission of the Owner, Owner's Family, contract purchasers, lessees, tenants, servants, employees, guests, invitees, or licensees.

Each Owner, by acceptance of his or her deed, agrees personally and for Family members, contract purchasers, tenants, guests, and invitees, to indemnify each and every other Owner, and to hold such Owner(s) harmless from, and to defend them against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner, including Exclusive Use Common Area, if any, except to the extent the injury or damage occurred by reason of the willful or negligent act or omission of the Association or another Owner or other person temporarily visiting said Owner's Unit or the Development. No decision resulting in the liability of an Owner pursuant to this Subsection 2.7(g) shall be reached without providing such Owner with notice and hearing pursuant to Subsections 14.6(f) and (g).

**(h) Discharge of Assessment Liens.** Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Condominium.

**(i) Joint Ownership of Condominiums.** In the event of joint ownership of any Condominium, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (h) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

**(j) Prohibition on Avoidance of Obligations.** No Owner, by non-use of the Common Area or Common Facilities, renunciation or abandonment of the Owner's Condominium, any other act of renunciation or abandonment or otherwise, may avoid the burdens and obligations imposed on such Owner (by virtue of being an Owner or Association Member) by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Condominium pursuant to this Declaration. Nor may any Owner divest itself of any such burden or obligation by attempting to assign responsibility therefore to a tenant, manager or any third person.

**(k) Obligation To Permit Entry by Association and/or Adjacent Owners.** Each Owner shall be obligated to permit the Owners of adjacent Units or the representatives of such adjacent Owners to enter the Owner's Unit for purposes of performing installations, alterations or repairs to mechanical or electrical services that are reasonably necessary for the use and enjoyment of his or her Unit, provided that the adjacent Owner furnishes the Owner whose Unit is being entered upon with at least twenty-four (24) hours written notice of his or her intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform his or her use and schedule his or her entry in a manner that respects the privacy of the persons residing within the Unit and the convenience of the Owner of the Unit. Each Owner shall also honor the right of the Association and its agents to enter Units as provided in Section 4.5(b) of this Declaration.

**Section 2.8. Transfer or Conveyance of Condominium Terminates Obligations.** Upon the conveyance, sale, assignment or other transfer of a Condominium to a new Owner, the transferring Owner shall not be liable for any Assessments levied with respect to such Condominium after the date of recording of the deed evidencing said transfer. No person, after the termination of said person's status as an Owner and prior to said person again becoming an Owner, shall incur any of the obligations or enjoy any of the benefits of an Owner under this Declaration. The voluntary conveyance of a Condominium to a new Owner, however, will not extinguish any obligations of the transferring Owner for unpaid Assessments that were levied against said Condominium prior to the subject transfer.

## **ARTICLE III: RESTRICTIONS & USE OF PROPERTY.**

### **Section 3.1. Residential Use.**

**(a) Occupancy.** No more than two (2) persons per bedroom, plus one (1) additional person, not including temporary guests, may reside in any Unit. In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations

**(b) Restriction on Businesses.** Each Unit shall be used exclusively for residential purposes except as provided in this Section. No business of any kind shall be established, maintained, operated, permitted or conducted within the Development except home offices and/or such professional or administrative businesses as may be permitted by applicable statutes and/or ordinances provided, however, that there shall be no external evidence of such business/home office (*i.e.*, no increased pedestrian and/or vehicular traffic, no signs, and no activities that are apparent or detectable by sight, sound or smell from outside of the Unit) and such activities do not increase Association's insurance obligations and/or premiums, and/or such activities are not inconsistent with residential nature of the Development.

**Section 3.2. Rental of Units.** As used in this Article III, the terms "lease" or "rental" shall mean any and all agreements, including, but not limited to leases, subleases and/or rental agreements, for the occupancy of any Unit. Any Owner who wishes to lease the Owner's Unit must comply with all of the provisions of this Section 3.2 and any Association Rules and Board policies adopted pursuant to this Section 3.2.

**(a) All Leases to be in Writing.** All leases for a Unit within the Development shall be in writing.

**(b) No Short-Term Leases/Subleases/Rentals and No Hotel Services.** No Owner, contract purchaser, tenant or lessee shall be permitted to lease or sublease a Unit for transient or hotel purposes (*i.e.*, a rental for any period less than thirty (30) days and/or a rental that includes providing the occupants with customary hotel service such as room service for food and beverage, maid service, laundry and linen service, or bellboy service).

**(c) All Lessees and Tenants Subject to Governing Documents.** Any lease or rental of any Unit within the Development shall be subject to all provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the lease or rental agreement. Each Owner-lessor shall provide any tenant or lessee with a current copy of all Governing Documents and all subsequent Amendments. Each Owner shall be responsible for compliance by such Owner's tenant(s) or lessee(s) with all of the provisions of the Governing Documents during the tenant's or lessee's occupancy and use of the Unit. The failure of any tenant or lessee to comply with the terms of the Governing Documents shall be a default under the lease/rental agreement and a failure to perform a condition and covenant of the lease/rental agreement.

**(d) Discipline of Lessors.** An Owner who leases his or her Condominium to any person or entity shall be responsible for assuring compliance by the lessee and any other occupants with the provisions of the Governing Documents, including but not limited to, all Association Rules, easements, reservations, restrictions, assessments, liens and charges created in accordance with this Declaration, all as amended and supplemented from time to time during the tenant's or lessee's occupancy and use of the Unit. Subject to the notice and hearing requirements set forth in Article XIV of this Declaration, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include the imposition of fines and penalties against the Owner and/or a legal action against the Owner, the tenant or both. If the Association prevails in any legal action to remedy a tenant's violation of the Governing Documents, the Owner shall be responsible for paying the Association's costs for any such litigation, including reasonable attorney's fees. Any fine or penalty levied pursuant to this Section shall be considered

a Special Individual Assessment as defined in Section 5.4, below. In appropriate circumstances, the Association may also evict the tenant pursuant to subsection (f) below. If a Special Individual Assessment is imposed as a result of the conduct of a renter or lessee, any renter or lessee charged with a violation of the Governing Documents is entitled to the same notice and hearing rights to which the Owner is entitled under Article XIV of this Declaration.

**(e) Discipline of Lessees.** The Association may, after the notice and hearing required in Article XIV of this Declaration, deprive any lessee who is in violation of the Governing Documents of the right to use the Common Area including the Common Facilities.

**(f) Percentage Limits on Non-Owner Occupancy.** In order to preserve the character of the Development as a stabilized community of owner-occupied Units, to preserve property values and the quality of life of the Residents of the Development, and to comply with eligibility criteria for financing residences in the secondary mortgage market which require that most of the residences within a development be owner-occupied, the Association imposes the following rental restriction: Subject to the grandfather and waiver exceptions set forth below, at all times, the maximum percentage of Units that may be leased at any time is twenty-five percent (25%). At no time shall the number of leased Units in the Complex exceed twenty-five percent (25%) or eighty-one (81) Units. For purposes of this Section 3.2, a Unit is not considered leased when at least one (1) of the residents of the Unit is an Owner of that Unit and/or qualifies as an Owner's Immediate Family. "Immediate Family" shall be defined as the Father, Mother, Husband, Wife, Son or Daughter of an Owner.

**(i) Authority to Lease.** Any Owner (other than those grandfathered in under subsection iii below) desiring to lease his or her Unit shall apply to the Association for authority to do so. Unless the total number of leased Units exceed the maximum number permitted in this section, such authority shall be granted.

**(ii) Priority.** The Association shall keep a list of all leased Units. If at any time the number of leased Units meets or exceeds the eighty-one (81) Units maximum set forth above, the Association shall keep a list of Owners requesting the Association's authority to lease that Owner's Unit (hereinafter "waiting list"). Names of Owners shall be placed upon the waiting list in the order that the Owner's written request for authority to lease is received by the Association. Subject to the waiver exceptions in Subsection (a)(iii), below, the Owner at the top of the waiting list shall be given the next available vacancy. Once the Association has granted an Owner authority to lease the Owner's Unit, that Owner shall thereafter have the right to continue leasing the Unit to consecutive renters as long as the Owner complies with the provisions of this Section 3.2. However, if the Unit is not renter occupied for a period in excess of sixty (60) days, then that Unit loses its lease status and that Owner must re-apply for and receive Association authority before leasing said Unit.

**(iii) Grandfather Provision.** The lease restriction set forth in this Section shall not apply to those Units that were currently being leased or rented as of the date that this Declaration is recorded with the County Recorders' Office. However, any such Units shall be counted in determining the total number of Units leased for purposes of this subsection. Upon sale or transfer of such a Unit, the right to lease shall terminate, and the new owner shall be required to apply for and receive authority to lease the Unit from the Association before entering into any lease or rental agreement.

**(iv) Waivers.** The Board of Directors has the power and authority and may, in its discretion, grant waivers and exemptions to the restriction on leasing to those Owners who request such a waiver/exception and demonstrate a special circumstances hardship. Owners must provide the Board with a written request for a waiver from the provisions of this subsection. In the written request, the Owner must

outline the special circumstance such as the Owner's illness, death and/or other extreme financial hardship such as loss of job or transfer that warrant the requested waiver.

No waiver shall be granted by the Board to an Owner whose hardship is as a result of that Owner's failure to obtain and to read the Association's rental restrictions as set forth in this Declaration and other Governing Documents, including Rules and Regulations, if any.

Within thirty (30) days of receipt of an Owner's written request, the Board of Directors shall review such request and provide a written notification to the Owner(s) stating whether the written request has been approved or disapproved, including the specific reason(s) for any disapproval. Within fifteen (15) days after the date of the Board's written notification, the Owner(s) may request a right to a rehearing before the Board. The rehearing shall be conducted in compliance with the notice and hearing provisions of Section 14.6.

**(v) Association Rules on Leasing.** The Board may adopt Association Rules establishing the procedure and/or forms for implementing the provisions of this subsection and to clarify the requirements set forth above, so long as such Association Rules do not conflict with the provisions of this subsection.

**(g) Owners' Duty of Notification.** Owners of Units shall disclose to potential buyers the existence of the rental restriction provisions set forth in this Section 3.2. Further, Owners of all leased Units shall disclose to potential buyers that upon the sale or transfer of ownership of any leased Unit, said Unit ceases to be eligible for leasing unless and until the Owner of the Unit applies for and receives the Board of Directors' approval to lease said Unit under the terms of this Section 3.2. Each Owner shall notify the Secretary of the Association or the Association's general manager, if any, of the names of any tenant or lessee of the Owner's Unit pursuant to Section 2.7(a).

**Section 3.3. Sublease of Parking Space.** Notwithstanding any other provision of this Declaration, any Owner may sublease any Parking Space that is part of the Exclusive Use Common Area for the Owner's Unit, so long as the requirements of Section 3.2 are met. Association Rules may be adopted that specify additional conditions to be met in subleasing Parking Spaces.

**Section 3.4. Offensive Conduct, Nuisance, Obstructions, Hazards or Drilling.** The following activities are prohibited and shall not be performed on, upon or within the Development:

**(a)** Activities that are nuisances, or that cause unreasonable embarrassment, disturbance or annoyance to any residents of the Development, Owners, Board Members and/or Association agents, service providers and/or employees or that shall, in any way, interfere with residents' use and enjoyment of their Units, Exclusive Use Common Area and/or the Common Area and facilities thereon, provided, however, that the Board may decline to involve itself or the Association in disputes concerning adjacent Unit Owners if such dispute does not involve the Common Area or any other Owner or resident of the Development and if the Board determines that in view of the possible expenditure of time, effort and costs involved in attempting to resolve the dispute, it would not be in the best interests of the Association to become involved;

**(b)** Activities that will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association;

**(c)** Activities that are in violation of any governmental statute, ordinance, rule and/or regulation, including specifically the brandishing and/or discharging of firearms within the Development;

**(d)** Drilling, refining, quarrying or mining operations of any kind;

(e) Use of machinery or equipment of any kind, except such machinery or equipment as is usual or customary in connection with the use, maintenance or repair of a private residence or appurtenant structures within the Development;

(f) Activities that impede, alter or otherwise interfere with the drainage patterns or facilities in, over, under, across and through the Development, including the drainage patterns and facilities from or through any Exclusive Use Common Area, without the prior written consent of the Board and all public authorities with jurisdiction;

(g) Activities or conditions that would induce, breed, or harbor infectious plant diseases, noxious insects, rodents and/or vermin;

(h) The emission of unreasonable levels of exhaust fumes and/or noise and/or the parking or storage of dilapidated, unlicensed, non-operational and/or disabled vehicles; and

(I) Harassment, or physical or verbal abuse of the Association's contractors, employees, agents, or manager, or any obstruction or interference with such persons while they are performing duties for the Association.

Without limiting any of the foregoing, no Owner or other resident shall permit noise, sound(s) or sight(s) that would unreasonably disturb another's enjoyment of his or her Unit and/or the Common Area.

**Section 3.5 Animals.** An Owner may keep one (1) dog, cat or other customarily uncaged household pet within his or her Unit. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. The Association Rules may increase the number and type of animals that may be kept. The Board shall specifically have the right to prohibit the maintenance of any pet that, after notice and hearing, is found to be a nuisance to other owners.

**Section 3.6. Use of Common Area.** All use of Common Area is subject to the Association Rules. There shall be no use of the Common Area except by Owners and their invitees. All persons residing within the Development may enjoy the use of all Common Facilities as long as they abide by the terms of the Governing Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area(except Exclusive Use Common Area) without the prior written consent of the Board. No alterations or additions to Common Area shall be permitted without the written approval of the Board. Nothing shall be done or kept in the Common Area that will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Common Area or in any other part of the Development that might result in the cancellation of insurance on any Unit or any part of the Common Area, that would interfere with the rights of other Owners, or that would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area. Access to roofs shall be restricted to persons authorized by the Board.

**Section 3.7. Parking.** Vehicles shall not be parked anywhere in the Development except wholly within Parking Areas. All Parking Areas shall be used solely for the parking and storage of motor vehicles used for personal transportation. No boat, trailer, camper, golf cart, commercial vehicle, mobile home, other recreational vehicle or any dilapidated vehicle shall be parked or stored in any Parking Area. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing except in an emergency. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle that is in violation of this Declaration.

**Section 3.8. Signs.** No signs of any type shall be placed upon the General Common Area without the prior written consent of the Board. No commercial signs except one "For Sale" or "For Lease" sign not over five (5) square feet; noncommercial signs and posters that are not more than nine (9) square feet and noncommercial flags or banners that are not more than fifteen (15) square feet that are visible from other Units or Common Area are permitted within any Unit or Exclusive Use Common Area within the Development. Signs displayed by the Association to identify the Development and signs required by legal proceedings are not covered by this restriction.

**Section 3.9. Storage of Waste Materials.** All garbage, trash and accumulated waste material shall be placed in appropriate covered trash containers. No exterior individual trash containers or receptacles shall be permitted unless garbage pickup service is billed directly to individual Condominiums. In that event, the containers may be placed on Common Area only on the week day that pick-up is to occur.

**Section 3.10. Antennas.** No owner shall construct, install and/or use and operate any radio and/or television antenna, satellite dish, other signal reception or transmission devices or related equipment within the General Common Area except with the express written permission of the Board. No satellite dish or antenna greater than one meter (39.4 inches) in diameter shall be installed within any Unit or Exclusive Use Common Area so as to be visible at ground level from any adjacent Unit or Common Area. Unit owners shall notify the Board of the installation of any other antenna, satellite dish or signal reception or transmission device (except those installed within the interior of the Unit and) and shall comply with all Association rules regarding installation, safety and maintenance of such equipment. All such Association rules shall conform to the requirements of state and federal law.

**Section 3.11. Window Coverings.** All drapes, window shades or other window coverings installed in the windows of Units that are visible from the exterior of the Unit shall comply with the Association Rules, if applicable. Any drapes or other window covering installed in compliance with the Architectural Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after close of escrow for the Unit.

**Section 3.12. Air Conditioners.** Air conditioning equipment may be installed within a Unit and on Balconies and Patios so long as the equipment meets the following minimum standards. The maximum noise level shall not exceed 72 decibels. The air conditioner must use a rotary compressor; piston driven compressors are not allowed. The efficiency rating of the air conditioner (SEER) must be at least 13. Any compressor or heat exchanger placed in a patio must be mounted on a anti-vibration pad. Appropriate permits from the City of Newark must be obtained before installation is begun, and the installation must comply with all building codes of the City of Newark and other applicable statutes, ordinances and regulations. Once installed, the equipment must be inspected and approved by the City of Newark Building Department.

**Section 3.13 Floor Coverings.** No alteration of the floor coverings within any Unit may be made that will result in an increase in sound transmission into any other Unit. Only soft-cover floors may be installed on floor levels located above and adjacent to any other Unit, except for replacement of any hard coverings in kitchen, bath or other areas where such hard coverings were originally installed at the time of the initial sale of the Condominium.

**Section 3.14. Termination of Mechanics' Lien Rights and Indemnification.** No labor performed or materials furnished to and incorporated in a Unit with the consent or at the request of the Owner thereof, Owner's Family, lessees, tenants, or contract purchasers, or any of their agents, contractors, or subcontractors, shall be the basis for filing a lien against the Unit of any other Owner if said Owner has not expressly consented to or requested the same, or against the Common Area.

Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all liability arising from the claim of any lien against the Unit of any other Owner or against the Common Area for construction performed, or for labor, materials, services, equipment, or other products incorporated into the Owner's Unit, at such Owner's request or with its consent.

The provisions of this section shall not apply to any labor performed or materials furnished at the request of the management agent or the Board. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed or to which materials were furnished, through Special Individual Assessments against said Unit, the amount necessary to discharge any such lien, including all costs incident thereto.

**Section 3.15. Variances.** Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article III, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article VIII for the granting of architectural variances.

**Section 3.16. Enforcement of Property Use Restrictions.**

(a) **Attempt to Obtain Voluntary Compliance.** The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and other residents with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 14.6 hereof, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her appeal rights.

(b) **Board's Discretion Not to Pursue Enforcement.** The Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to undertake an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association.

**ARTICLE IV: HOMEOWNERS ASSOCIATION.**

**Section 4.1. Management and Operation.** The Association shall manage and operate the Development in accordance with applicable provisions of the Governing Documents and California Law, including law applicable to non-profit mutual benefit corporations and common interest developments.

**Section 4.2. Association Membership.** Every record Owner of a Unit shall be a Member of the Association. The Owner(s) of a Unit shall hold jointly one membership in the Association for each Condominium owned. The membership shall be appurtenant to each Unit and may not be separated from ownership of the Unit to which it relates. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Condominium through foreclosure or deed. Tenants who are delegated rights of use pursuant

to Section 2.5 hereof do not thereby become Members, although the tenant and members of the tenant's Family shall, at all times, be subject to the provisions of all Governing Documents.

Each Owner shall remain a Member of the Association until his or her ownership in every Unit in the Development ceases, at which time his or her membership in the Association shall automatically cease. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically to the purchaser upon recording of a deed evidencing transfer of title to the Unit.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Unit, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

**Section 4.3. Voting.** Only Members shall be entitled to vote, and votes shall be cast for each Unit owned by said Member, as more particularly set forth in Section 4.2 of the Bylaws. Voting rights may be temporarily suspended under those circumstances described in Section 14.6, below.

**Section 4.4. One Class of Membership.** The Association shall have one class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

**Section 4.5. Powers and Authority of the Association.**

**(a) Powers Generally.** The Association shall have the responsibility of managing and maintaining the Common Areas and Common Facilities and shall discharge all duties and responsibilities imposed on the Association by the Governing Documents and applicable California law. In the discharge of such responsibilities and duties, the Association and its Board shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

The Association and its Board of Directors shall have the power to do any and all lawful things that may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts that may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in this Declaration and Section 5.1 of the Bylaws.

**(b) Association's Limited Right of Entry.**

**(i) Scope of Right.** In the Board's discretion, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Unit, including Exclusive Use Common Area(s), to perform the Association's obligations under this Declaration, including (I) exterior maintenance or repair obligations; (ii) obligations to enforce the architectural and land use restrictions of Article III and Article VIII hereof; (iii) any obligations with respect to construction, maintenance and repair of adjacent Common Areas, Common Facilities, utilities and/or other services; or (iv) to make necessary repairs that an Owner has failed to perform that, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

**(ii) Notice Requirement.** The Association's rights of entry under this Subsection (b) shall be immediate in case of an emergency originating in or threatening the Unit where entry is required, or any

adjoining Units or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or Owner's lessee is present. In all non-emergency situations, the Association or its agents shall furnish the Owner or Owner's lessee with at least twenty-four (24) hours written notice of the Association's intent to enter the Unit, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Unit.

**(iii) Transfer of Right.** The Association's rights of entry under this Subsection (b) shall expressly include the right to transfer said rights of entry to others (including, but not limited to employees, contractors and/or service providers retained by the Association) by permit, license, easement, or otherwise, for the benefit of the Association and the Owners of Condominiums within the Development.

**(c) Association as Attorney-in-Fact for Owners.** Without limiting the generality of the foregoing, the Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Unit to (I) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) deal with Development upon its destruction or obsolescence as hereinafter provided; and (iii) deal with and handle insurance and insurance proceeds, as provided in Articles IX and X hereof, and condemnation and condemnation awards, as provided in Article XI hereof. The acceptance by any person or entity of any interest in any Unit shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

**Section 4.6. Board of Directors.** The affairs of the Association shall be managed by or under the direction of the Board. The number and qualifications of the Directors shall be as established in the Bylaws.

**(a) Powers of the Board.** The Board shall have all of the powers and duties set forth in the Governing Documents:

**(i) Exclusive Power.** Except as expressly otherwise provided herein, the powers and duties of the Association that the Governing Documents do not reserve to Members shall be exclusively exercised and performed by the Board (or such Committees or officers as the Board may establish, elect or appoint pursuant to the provisions of the Bylaws). Any power to be exercised or duty to be performed by the Association shall not be exercised or performed by any Owner individually without the written consent of the Board.

**(ii) General Powers of the Board.** Without limiting any powers of the Board conferred elsewhere in the Governing Documents, the Board shall have the following powers:

(A) To call meetings of the Members.

(B) To appoint and remove at pleasure all officers, committees (including the Nominating and Design Review committees), agents and employees of the Association, prescribe their duties, fix their compensation (subject to Section 4.7(c)); and require of them such security or fidelity bonds as it may deem expedient. Nothing contained in this Declaration shall be construed to prohibit the employment by the Association of any Member, Director or officer of the Association in any capacity whatsoever.

(c) To establish, fix, levy, assess and collect assessments against the Owners of Condominiums within the Development and to enforce payment of such Assessments in accordance with Article V of this Declaration. Any Assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of the Governing Documents.

(D) To authorize and cause the Association, subject to Section 4.7, to: (1) enter into management contracts and contracts for the day-to-day operation of the Association and the discharge of its responsibilities and obligations; or (2) enter into lease, license or other agreements for the use of property or facilities not a part of the Common Area. No contract for professional management shall have a term of more than three (3) years and each such contract shall be subject to all the other provisions hereof and shall be terminable by either party without cause or payment of a termination fee on sixty (60) days written notice.

Any reference to the "term" of a contract as used in this Subsection 4.6(a)(ii)(D) shall not include any option or automatic renewal or extension period so long as the term of the contract may not be renewed or extended if notice is given by the Association pursuant to provisions contained within the contract.

(E) To adopt, amend, and repeal Association Rules, consistent with this Declaration and the requirements of Civil Code Sections 1357.100 - 1357.150 or comparable superceding statutes, relating to use of the Common Area including Exclusive Use Common Area and the Units, the conduct of Owners, and their families, tenants, guests and invitees within the Development and such other matters as authorized by the Governing Documents. The Association Rules shall be considered as part of the Governing Documents of the Association and may be enforced in the same manner as any other Governing Document. However, no Association Rule shall restrict any rights of Owners or residents established by the other Governing Documents (Articles, Bylaws and this Declaration), and in the event of any conflict between an Association Rule and any other Governing Document, the provisions of the other Governing Document shall control.

(F) To delegate its powers to committees, officers, or employees of the Association.

(G) To incur debt for the purpose of maintaining and improving the Common Area, and to encumber property and/or member assessments of the Association as security for the repayment of such debt.

(H) To grant easements on, over, under, across, and through the Development for public utility and other purposes consistent with the provisions of this Declaration and the intended use of the Development as a condominium project.

(I) Except as expressly otherwise provided herein, the Board shall have the exclusive right and obligation to manage and administer the Common Area and to contract for all goods, services, and insurance, payment for which is to be made from the assessments hereinafter provided.

(J) Open bank accounts on behalf of the Association and designate the signatories to such bank accounts.

(K) Bring and defend actions on behalf of two or more Members or the Association to protect the interests of the Members or the Association, as such, as long as the action is pertinent to the operations of the Association, and to assess the Members for the cost of such litigation. However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs. Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association. Prior to filing litigation regarding any disciplinary action against a Member, the Board shall comply with the requirements set forth in Section 14.6.

**(iii) No Active Business.** Nothing contained in this Declaration, however, shall be construed to give the Board authority to conduct an active business for profit on behalf of the Association, all of the Owners, or any of them. The Board shall have no such power or authority. However, this Subsection (iii) shall not prohibit the Association and/or its Board from acquiring, owning, leasing and/or selling any Unit within the Development.

**(b) Duties of the Board.** The Board shall:

**(i) Association Duties.** Cause all duties imposed on the Association by Governing Documents to be properly performed.

**(ii) Records.** Cause a complete record of all its acts and corporate affairs to be kept, and to prepare budgets and financial statements for the Association.

**(iii) Supervise.** Supervise all officers, agents and employees of the Association and to see that their duties are properly performed. The Board shall at all times, subject to all provisions of this Declaration, retain professional management for the Development.

**(iv) Assessments.** With reference to assessments of the Association:

**(A)** Fix, levy and collect assessments pursuant to the provisions of Article V of this Declaration.

**(B)** Approve the annual budget and fix the amount of the assessment against each Member for each assessment period in compliance with the provisions of Civil Code Section 1365, *et seq.*, or comparable superseding statute;

**(C)** Prepare a roster of the Members and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member;

**(D)** Send written notice of each assessment to every Member subject thereto; and

**(E)** Issue or cause an appropriate officer to issue certificates as required by Sections 5.12 and 8.16.

**(v) Insurance.** Contract for casualty, liability and other insurance, sureties and/or bonds (including indemnity bonds) on behalf of the Association with such coverages and in such amounts as required by this Declaration and as deemed necessary by the Board.

**(vi) Vacancies.** Fill a vacancy or vacancies on the Board except for a vacancy created by the removal of a Board Member by a Member recall.

**(vii) Discharge of Liens.** Pay any amount necessary to Bond or discharge any claim that may be or become a lien or encumbrance levied against the Development as a whole or any part thereof that constitutes a lien against the Common Area, rather than merely against the interest therein of particular Owners; provided, however, that where one or more Owners are responsible for the existence of such lien, they shall jointly and severally be liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be assessed against each such Owner and its Condominium as provided in Section 5.4. No decision resulting in such liability or assessment shall be reached before providing the Owner or Owners with notice and hearing satisfying the requirements of Section 14.6 of this Declaration.

**(viii) Enforcement.** Commence and maintain, in the name of the Association and on its behalf, or in the name and on behalf of any Owner who consents thereto, actions for damages arising from, or to restrain and enjoin, or to take any reasonable action necessary to prevent, any actual or threatened violation of the provisions of this Declaration, the Articles, the Bylaws, the Association Rules; the orders and awards of arbitration, or resolutions of the Board, or to enforce, by mandatory injunction or otherwise, the provisions of the foregoing.

However, the Board shall have the discretion to decide whether or not it is in the Association's best interest to pursue any such enforcement action, including taking into consideration the potential benefits to the Association (and/or its members) resulting from any such enforcement action as compared with the anticipated financial costs.

Where the Board, in its discretion, determines that it is not in the Association's best interest to file an enforcement action, the Board shall notify, in writing, any Member(s) who have requested enforcement by the Association.

In addition, the Board may suspend the voting rights of an Owner or suspend the privileges of an Owner or its Family, tenants, or lessees, or their guests, invitees, or licensees to use the recreational facilities located on the Development, or assess monetary penalties against any Owner or other person entitled to exercise such privileges for any violations of the provisions of the foregoing; provided that the accused Owner or other person is given fair notice and the opportunity to be heard (in satisfaction of the minimum requirements of Section 14.6 of this Declaration) with respect to the alleged violation before a decision to impose discipline is made. The Board may delegate some or all of its enforcement rights to a Disciplinary Committee.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of its Unit, including access thereto over and across the Common Area, except when such loss or forfeiture is the result of (A) a judgment of a court, (B) a decision arising out of arbitration, (c) on account of a foreclosure (judicial or under the power of sale herein granted) for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include all costs of collection, court costs and reasonable attorneys' fees.

**(ix) Operating Requirements.** Obtain any other material, supplies, furniture, property, labor, services, maintenance, repairs, construction, reconstruction, structural alterations, insurance, taxes, or assessments that the Association is required to secure or pay by law, local requirement, or pursuant to the terms of this Declaration, or as is necessary for the operation of the Development, or for the enforcement of this Declaration; provided, however, that if any such materials, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are provided for particular Units, the costs thereof shall, as is reasonable, be assessed to such Units and the Owners thereof as provided in Section 6.3 or as provided in the Bylaws.

**Section 4.7. Limitations on Powers of The Association.** Neither the Board nor the Association shall have the power to take, and both are hereby expressly prohibited from taking, any of the following actions without the vote or written assent of a majority of the voting power of the Association's Members:

**(a) Contracts With Third Parties.** Entering into a contract with a third person to furnish goods or services for the Common Area, the Units or the Association for a term longer than one (1) year with the following exceptions:

(i) A management contract as long as such contract contains provisions that allow the Association to terminate the management services under the contract upon a notice period that does not exceed sixty (60) days.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission (and contracts with utility districts, sanitary services providers, energy providers, telephone service providers and/or cable or satellite dish or comparable service provider); provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits for short-rate cancellation by the insured.

(iv) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years' duration.

(v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not to exceed five (5) years duration.

For purposes of this Subsection (a) of Section 4.7 the one (1) year maximum "term" of a contract does not include any option period(s), renewal period(s) and/or extension(s) of time to the contract term so long as the contract contains provisions allowing the Association to non-renew and/or cancel the contract upon the expiration of said term.

(b) **Sale of Association Property.** Selling, during any fiscal year, property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(c) **Compensation to Officers or Directors.** Paying compensation to Directors or officers of the Association for services performed, except that the Board may authorize reimbursement to a Director or officer for expenses incurred in carrying on the business of the Association.

(d) **Vacancies on the Board.** Filling a vacancy on the Board caused by the removal of a Director by the Members.

**Section 4.8. Nonliability of Officials.** To the fullest extent permitted by law, neither a Director, officer, Committee of the Association or Member of a Committee of the Association, nor the Board (collectively and individually referred to as the "Released Party"), shall be liable to any Member, Owner, the Association or any other party for any damage, loss, claim, liability or prejudice suffered or claimed on account of any decision, approval, disapproval, course of action, act, inaction, omission, error, negligence or the like made in good faith and that such person or entity reasonably believed to be within the scope of its duties.

(a) **Claims Regarding Breach of Duty.** No Released Party shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

**(b) Other Claims Involving Tortious Acts and Property Damage.** No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Member of the Board or volunteer officer of the Association shall recover damages from such Board Member or officer if all of the following conditions are satisfied:

- (i)** The Board Member or officer is an Owner of no more than two Units;
- (ii)** The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii)** The act or omission was performed in good faith;
- (iv)** The act or omission was not willful, wanton, or grossly negligent;
- (v)** The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance equal to the amounts specified in Civil Code Section 1365.7(a)(4)(B) or comparable superseding statute (current limits are \$500,000.00).

The payment of actual expenses incurred by a Board Member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board Member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from a financial institution that acquired a Unit within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code Section 1365.7. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this Subsection (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor code provision.

**(c) Indemnification of Directors, Officers, Employees and/or Agents.** The indemnification rights (including the right to advancement of expenses) of Directors, Officers, employees and/or agents shall be governed by the provisions of Corporation Code Section 7237 or comparable superseding statute.

As set forth in Article IX hereof, the Association has the right to purchase and maintain insurance on behalf of its Directors, Officers, employees and/or agents against liability asserted against or incurred by any Director, Officer, employee and/or agent in its capacity or status as such.

## **ARTICLE V: ASSESSMENTS.**

### **Section 5.1. Assessments Generally.**

**(a) Covenant to Pay Assessments.** Each Owner of one (1) or more Units, by acceptance of a deed or other conveyance of such Unit (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (I) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments levied by the Association as hereinafter provided, together with all additional charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each such Assessment shall be established and collected as hereinafter provided.

#### **(b) Extent of Owner's Personal Obligation for Assessments.**

**(i) Obligation Runs With the Land.** The obligation to pay Assessments and charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Unit within the Development shall, in turn, become liable to pay all Assessments and charges assessed during the time he or she is record Owner of such Unit.

**(ii) Personal Debt of Owner.** All Assessments permitted or required herein, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a separate, distinct and personal debt and a personal obligation of the Person who was the Owner of the Unit at the time the Assessment was levied.

**(iii) Liability of Subsequent Owner.** Any Grantee and/or Owner who acquires title to a Unit (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Unit so purchased that become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability.

**(iv) Liability of Prior Owner.** After a record Owner transfers, of record, any Unit he or she owns, he or she shall not be liable for any Assessments levied after the transfer with respect to that Unit. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and the previous Owner shall remain personally liable. A contract seller of any Unit shall continue to be liable for all Assessments and charges until a conveyance by deed of such Unit is recorded in the Office of the County Recorder of Santa Clara County.

**(c) Authority of Board to Levy Assessments.** The Board shall have the power, duty and authority to levy Regular and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law. The Board shall not levy or collect an Assessment or fee that exceeds the amount necessary to defray the costs for which it is levied. The Board shall also have the power and authority to levy Special Individual Assessments against particular Owners and their Unit(s).

**(d) Authority of Board to Record Assessment Lien.** The Board shall have authority to prepare and record a lien against any Unit for which assessments are delinquent, and to foreclose upon such lien pursuant to Section 5.9 of this Declaration.

**(e) No Avoidance of Assessment Obligations.** No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Unit or other property

owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Unit or any other portion of the Development.

**(f) Offsets.** All Assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided for by the Governing Documents. No offsets against any such Assessment shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Governing Documents.

### **Section 5.2. Regular Assessments.**

**(a) Purpose of Regular Assessments.** All Regular Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Development and, in particular, for the maintenance, operation and improvement of the Units, Common Area, and any real or personal property in which the Association holds an interest.

**(b) Annual Budget; Regular Assessments & Board Authority.** In accord with the timing provisions of Civil Code Section 1365 (or comparable superseding statute), if any, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities), prepare and then distribute to all Association Members a budget satisfying the requirements of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal year unless the Board first obtains the approval of Owners.

**(c) Board or Membership Approval Requirements.** The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in Subsections (d) and (f) below, the Board of Directors may not impose a total aggregate Regular Assessment that is more than twenty percent (20%) greater than the total aggregate Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members casting a majority of the votes at a duly called meeting or election of the Association (See Section 5.7, below).

For purposes of this Subsection (c), the phrase "total aggregate Regular Assessment" means the amount of Regular Assessment assessed to and due from all Units for that particular year.

**(d) Assessments to Address Emergency Situations.** The requirement of a membership vote to approve Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment shall not apply to Assessment increases necessary to address emergency situations. For purposes of this Subsection (d), an emergency situation is any of the following:

**(i)** An extraordinary expense required by an order of a court.

**(ii)** An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests that the Association is obligated to maintain where a threat to personal safety is discovered.

**(iii)** An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests that the Association is obligated to maintain and that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Subsection (a), above, provided that, prior to the imposition or collection of an assessment under this

Subsection (d)(iii), 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. The Board's resolution shall be distributed to the Members together with the notice of assessment.

**(e) Allocation of Regular Assessment.** Those items in the annual budget prepared pursuant to Section 5.2(b) above reflecting anticipated expenses for water and refuse disposal, insurance premiums and reserves for painting, heating system and roofs shall be allocated to and assessed among the Units in the same proportion that the square footage of the Unit to be assessed bears to the total square footage of all the Units in the Development. Such percentages for each Unit type within the Development are set forth in Exhibit B hereto. All other items in the budget shall be allocated to and assessed among all Units equally.

**(f) Failure to Make Estimate.** If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 5.3 for that year, shall be automatically assessed against each Owner and his or her Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

The failure of the Board to fix Regular Assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year. Failure to provide a copy of the budget to any Owner shall not affect the validity of assessments based thereon so long as that Owner receives reasonable notice before the Association commences any action or proceeding to enforce collection thereof.

**(g) Assessment Due Date, Installment Payments & Delinquency.** The Regular Assessment levied against each Owner and his or her Unit for the current fiscal year shall be divided into twelve (12) equal monthly installments so long as the respective Owner is not in default (*i.e.*, current on all assessments). Each monthly installment is due and payable on the first day of each month or in such other manner and/or on such other date or dates as may be established from time to time by the Association's Board of Directors.

Installments of Regular Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month that the Assessment is due (if on the weekend or holiday, then on the next business day thereafter). In the event of a default in the payment of any installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency.

**(h) Mailing Notice of Assessment.** The Board of Directors shall mail to each Owner at the street address of the Owner's Condominium, or at such other address as the Owner may designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year no less than forty-five (45) days prior to the beginning of the next fiscal year.

### **Section 5.3. Special Assessments.**

**(a) Purpose of Special Assessments.** Subject to the membership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Condominiums for the following purposes:

**(i) Insufficient Regular Assessment.** If, at any time, the Regular Assessment for any fiscal year is insufficient due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment for the purpose of defraying, in whole

or in part, any deficit that the Association may incur in the performance of its duties and the discharge of its obligations under the Governing Documents. However, the Board's assessment authority pursuant to this subsection shall be subject to the membership approval requirement set forth in Section 5.3(b) below.

**(ii) Capital Improvements.** Pursuant to Section 6.5, the Board may also levy Special Assessments for additional capital improvements within the Common Area (*i.e.*, improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, replacement, and repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article IX of this Declaration.

**(iii) Reimbursement of Reserve Account(s).** A Special Assessment may be levied to reimburse any Reserve Account for funds borrowed from it to meet current operating expenses or to deal with emergencies.

**(iv) Repair of Defects or Damage.** A Special Assessment may be levied to repair damage or defects discovered in the Common Area or Common Facilities or within those portions of a Unit that are the responsibility of the Association to maintain and repair, where the reserve funds are inadequate to pay for such repairs, or where the affected component is not a component included in the reserve funding program.

**(b) Membership Approval.** No Special Assessments described in Section 5.3(a) hereof that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written approval of the Owners. This Owner approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in Section 5.2(d).

**(c) Allocation and Payment of Special Assessments.** Special Assessments shall be levied in the same manner as Regular Assessments, except that a Special Assessment for major repair or reconstruction of Building Common Area containing Units shall be based upon the ratio that the square footage of the floor area of the Unit to be assessed bears to the total square footage of the floor area of all Units in the Development, as set forth in Exhibit B hereto.

**(d) Due Date for Special Assessments.** Unless the time for payment is extended by the Board, payment of all Special Assessments shall be due thirty (30) days after the Board gives the Owners written notice thereof or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment.

**(e) Installment Payments of Special Assessments.** The Board may, in its discretion, prorate the amount of any permitted Special Assessment over a period of months. The monthly prorated amount of any Special Assessment shall be due and payable at the same time as the Regular Assessment monthly installments. Installments of Special Assessments shall be delinquent if not actually received by the Association or its designated agent by the fifteenth (15th) day of the month in which the Special Assessment installment is due (if on a weekend or holiday, then on the next business day). In the event of a default in the payment of any Special Assessment installment, the Association may pursue the remedies set forth in Section 5.9, below, as to said delinquency and the Board in its discretion may declare the entire amount of the Special Assessment immediately due and payable.

#### **Section 5.4. Special Individual Assessments.**

**(a) Circumstances Giving Rise to Special Individual Assessments.** In addition to the Special Assessments levied against all Owners in accordance with Section 5.3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (i) through (v), below or as otherwise provided in this Declaration or the Governing Documents, provided that no Special Individual Assessments may be imposed against an Owner pursuant to this Section 5.4 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 14.6 hereof, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

**(i) Damage to Common Area or Common Facilities.** In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of a Unit that the Association is obligated to repair and maintain is caused by the willful misconduct and/or negligent act or omission of any Owner, any Member of Owner's Family, or any of Owner's tenants, lessees, guests, contract purchasers, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses, including but not limited to any costs or expenses incurred in deterring, apprehending and/or identifying those persons causing damage, incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

**(ii) Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair, maintenance or replacement to any portion of the Development that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his or her Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

As long as Civil Code Section 1367.1(e) (or comparable superseding statutes) places restrictions upon the Association's foreclosure powers, any lien that is based upon one or more Special Individual Assessment imposed by the Board as a disciplinary measure (*i.e.*, fines or penalties imposed under Article XIV) can only be enforceable by the sale of said Condominium pursuant to judicial foreclosure. All other liens under Subsection (ii) may be enforceable by the sale of said Condominium under nonjudicial foreclosure by power of sale pursuant to Civil Code Sections 2924, 2924b and/or 2924c or comparable superseding statute(s).

**(iii) Required Maintenance on Condominiums.** As more particularly provided in Section 4.5(b) and 6.3(b) (and without limiting the generality of those subsections), if the Board, in its discretion, determines that any Condominium is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk, or improper weed or vegetation control, the Association shall have the right to enter said Condominium, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(iv) Diminution in Insurance Proceeds.** As more particularly provided in Section 9.5, the Association shall levy a Special Individual Assessment for the amount of the loss in insurance proceeds against any Owner who, in violation of Sections 3.4(c) and 9.5, caused any diminution in the insurance proceeds otherwise payable to the Association due to the Owner's individual casualty insurance.

**(v) Increase in Insurance Burden.** The Association shall have the authority to levy a Special Individual Assessment for the amount of the increased insurance premium against any Owner who, in violation of the Governing Documents, caused any increase in the rate of insurance paid by the Association to reimburse the Association for any such increase in the rate of insurance, including any increase due to the existence of a fireplace within any Unit.

**(b) Levy of Special Individual Assessment and Payment.** Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in Section 5.4(a), notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Installments of Special Individual Assessments shall be delinquent if not actually received by the Association or its designated agent by the forty-fifth (45th) day after mailing of notice of the Assessment. In the event of a default in the payment of any Special Individual Assessment, the Association may declare that Owner's Special Individual Assessment to be in default and pursue the remedies set forth in Section 5.9, below, as to said delinquency.

**Section 5.5. Reasonableness of Assessments.** Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Condominium against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

**Section 5.6. Exemption of Certain Parts of the Development From Assessments.** The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Development dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Condominium owned by the Association.

**Section 5.7. Notice and Procedure for Member Approval.** In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 5.2 and/or 5.3, approval of the requisite percentage of the Members shall be solicited either by written ballot conducted in accordance with Corporations Code Section 7513 and Section 3.6 of the Bylaws or at a meeting of the Members called for that purpose, duly noticed in accordance with Section 4.4 of the Bylaws. The quorum required for such membership action shall be the percentage required by Section 4.5(a)(I) of the Bylaws.

#### **Section 5.8. Maintenance of Assessment Funds.**

**(a) Bank Accounts.** All sums received or collected by the Association from Assessments, together with any interest or other charges thereon, shall be promptly deposited in two (2) or more insured checking, savings or money market accounts in a bank, savings and loan association or other financial institution selected by the Board of Directors that has offices located within the United States of America, which accounts shall be clearly designated as either an "operating" or "reserve" account.

There shall be established and maintained a cash deposit account into which shall be deposited the operating portion of all Assessments. Disbursements from such account shall be for the general operation of the Association including, but not limited to, wages, repairs, betterments, maintenance, and other operating expenses of the Development. The Board shall maintain any other accounts it shall deem necessary to carry out its purposes, including (at minimum) a reserve account for replacement of capital improvements as set forth in this Article V.

In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees.

The Board, and such officers or agents of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in Subsection (b), below.

**(b) Separate Accounts & Commingling of Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to Section 5.3 shall be accounted for together with the receipts and disbursements of Regular Assessments.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

**(c) Checks.** All checks (or other demands for payments of Association money) and/or notes of the Association shall be signed by the President or by such other Directors and/or Officers or such other person or persons as the Board of Directors may from time to time designate. Notwithstanding the foregoing, any withdrawal of funds from Association reserve accounts shall require the minimum signature requirements of Civil Code Section 1365.5 (*i.e.*, two Directors or an Officer (who is not a Director) and a Director).

## **Section 5.9. Collection of Assessments; Enforcement of Liens.**

**(a) Delinquent Assessments.** If any payment of a Regular or Special Assessment (installment or lump sum) or any payment of a Special Individual Assessment assessed to any Owner is not actually received by the Association or its designated agent within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to impose late charges for any delinquent Assessments in the amount of ten dollars or ten percent (10%) of the delinquent amount, whichever is greater.

### **(b) Effect of Nonpayment of Assessments.**

**(i) Creation and Imposition of Liens for Delinquent Assessments.** The amount of any delinquent Regular, Special or Special Individual Assessment together with any late charges, interest, costs and/or reasonable attorneys' fees attributable thereto or incurred in the collection thereof, shall become a lien upon the Unit of the Owner so assessed from and after the time the Association causes to be recorded with the Alameda County Recorder a Notice of Delinquent Assessment in conformance with Civil Code Section 1367.1 or comparable superceding statute. Each default shall constitute a separate basis for a lien. Upon the Association's receipt of payment of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded in the Office of the County Recorder of the County of Alameda, State of California, a Notice of Satisfaction and Release of Lien.

**(ii) Partial Payment of Assessments.** Subject to the limitations imposed by Civil Code Section 1367.1 or comparable superseding statute, if any, any partial payments the Association receives will be applied as specified in the Association's Delinquent Assessment Collection Policy and/or Association Rules.

**(iii) Remedies Available to the Association to Collect Assessments.** In the event of default in payment of any assessment, the Association may commence any procedure for collection upon its own decision. In addition to any other remedies herein or by law provided, the Association may enforce each such obligation as follows: The Association may initiate a legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Unit or accept a deed in lieu of foreclosure. Foreclosure by the Association of its lien may be by judicial foreclosure or by nonjudicial foreclosure. However, judicial or nonjudicial foreclosure shall only be available to collect assessments that are more than 12 months delinquent or are in excess of \$1800 exclusive of any accelerated assessments, late charges, fees and costs of collection, attorneys' fees or interest. The Association shall, in collecting any delinquent assessment, comply with the requirements for internal dispute resolution and alternative dispute resolution set forth in the Governing Documents and California law.

**(iv) Nonjudicial Foreclosure.** Nonjudicial foreclosure shall be commenced by the Association in compliance with California law. (See Civil Code Section 2924c, or comparable superseding statute). Each of the Owners does, by mere acceptance of a deed to a Unit, gives the Association the power to appoint a trustee and attorney-in-fact by special power of attorney to enforce and to foreclose such lien by private power of sale as provided in Division Third, Part 4, Title 14, Chapter 1, Article 1, Sections 2920 et seq. of the Civil Code of the State of California and further grants to the Association the authority and power to sell the Unit of such defaulting Owner, or any part thereof to satisfy said lien, for lawful money of the United States to the highest bidder. The Association shall have the rights conferred by California Civil Code Section 2934a to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust and for purposes of said Section 2934a, the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore,

in lieu of an assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial foreclosure hereunder.

(v) **Judicial Foreclosure.** In the event foreclosure is by action in court, reasonable costs, including attorneys' fees, shall be allowed.

(vi) **Actions for Money Judgment.** In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments, costs and attorneys' fees without foreclosure or waiver of the lien securing same.

(c) **Payment Plans.** The Board may, but is not required to adopt rules or polices (which shall become part of the Association Rules) permitting an owner to make installment payments on any delinquent assessments, accelerated assessments, late charges, fees and costs of collection, attorney's fees and/or interest, subject to reasonable terms and conditions, including payment of additional administrative costs for administering such a payment plan.

**Section 5.10. Transfer of Unit by Sale or Foreclosure.** The following shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Unit.

(a) **Assessment Liens Recorded Prior to Transfer.** Except as provided in Subsection (b), below, the sale or transfer of any Unit shall not affect any Assessment lien duly recorded with respect to that Unit before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) **Foreclosure by Holder of Prior Encumbrance.** The Association's assessment lien shall be extinguished as to all delinquent sums, late charges, interest, and costs of collection incurred before the sale or transfer of a Unit under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any First Mortgage or other mortgage or lien recorded before the Association's Notice of Delinquent Assessment is recorded.

(c) **Liability of New Owner for Future Assessments.** No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Unit (whether it be the former beneficiary of the First Mortgage or other prior encumbrance, or a third party acquiring an interest in the Unit) from liability for any assessments thereafter becoming due or from the lien thereof.

(d) **Personal Liability of Prior Owner for Assessments.** No sale or transfer of a Unit as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the Unit personally to collect the delinquent assessments, late charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.

**Section 5.11. Priorities.** Except as otherwise provided by law, the Lien securing each of the Assessments provided for under this Article V shall have priority, as of the date of recording of the Notice of Delinquent Assessment, over all other liens and encumbrances applicable to the Unit, except (a) all taxes, bonds, Assessments and other levies that, by law, would be superior thereto; (b) any lien or encumbrance recorded prior to the recording of the Notice of Delinquent Assessment; or (c) the lien or charge of any First Mortgage of record made in good faith and for value, provided that such subordination shall apply only to

the Assessments that have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such First Mortgage.

**Section 5.12. Estoppel Certificate.** A certificate executed by any two (2) members of the Board setting forth the amount of any due and unpaid assessments with respect to a Unit (or the fact that all assessments due are paid, if such is the case) shall be conclusive against the Board, the Association, and/or the Owners in favor of any and all persons who rely thereon in good faith. Any Owner shall be entitled to such a certificate within ten (10) days after demand therefore and upon payment of a reasonable fee not to exceed the greatest amount charged for a loan statement of condition by a major bank with headquarters in San Francisco, California.

**Section 5.13. Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Units, such taxes shall be included in the Regular Assessments imposed pursuant to Section 5.2 and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

**Section 5.14. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Unit owned by the Owner, now existing or hereafter made for the purpose of collecting all Assessments due the Association pursuant to this Declaration that are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies derived from any such lease or agreement as they become due and payable. Upon Owner's default, the Association after providing written notice to the defaulting Owner may, in its discretion, revoke the authority allowing the defaulting Owner to collect and retain rents and other monies. Upon revocation of such authority the Association may, pursuant to court order or by court-appointed receiver, collect and retain such monies, whether past due and unpaid or current. The Association's rights under this Section shall be subordinate to the rights of any First Mortgagor.

**Section 5.15. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article V, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Unit.

**Section 5.16. Secondary Address.** Any Member may provide the Association with a secondary address. Any notice of a secondary address shall be in writing and shall be mailed to the Association in a manner that shall indicate the Association has received it. If a secondary address is provided in accordance with this section, the Association shall send any and all correspondence and legal notices regarding assessments and foreclosures required by this Article V or by California law to both the primary and the secondary address.

## **ARTICLE VI: MAINTENANCE RESPONSIBILITIES.**

### **Section 6.1. Owner Maintenance Responsibilities.**

**(a) Duty to Maintain.** Each Owner of a Condominium shall be responsible, at the Owner's sole cost and expense, for maintaining his or her Unit as follows:

**(i) Appliances and Furnishings.** Maintain, repair, replace and restore all appliances, furnishings and equipment located in Owner's Unit.

**(ii) Doors and Frames for Windows and Doors.** Maintain, repair, replace and restore entry doors and all door hardware, maintain the interior surfaces of window frames, repair, replace and maintain all interior doors and door frames and sliding glass doors, including door hardware.

**(iii) Fireplaces and Chimneys.** Every three (3) years, the Owner(s) of any Unit with one (1) or more fireplaces are required to have said fireplace(s), including but not limited to the firebox, flue, chimney, spark arrester, chimney cap and/or other parts of the fireplace, cleaned and maintained in compliance with current industry standards.

For insurance purposes, those Owners with fireplaces shall forward a copy of the receipt, invoice or other proof of compliance with this Subsection (vi) to the Association. Owners that do not use the fireplaces in their Condo Project can complete, sign and file with the Association an affidavit declaring that said fireplace(s) are not used and, therefore, the Owners will not be complying with the maintenance requirements of this Subsection.

**(iv) Glass and Screens.** Maintain and clean the interiors of any skylights, windows and other glass surfaces of the Unit and maintain, repair and replace screens covering the doors and windows of the Unit.

**(v) Interior Surfaces.** Maintain, repair, replace and restore the interior surfaces of the perimeter walls, ceiling and floors, the interior nonloadbearing (partition) walls, and interior doors, including all painted surfaces and/or flooring materials.

**(vi) Property Damage.** Repair or replace damaged portions of the Development that is due to or caused by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees. The point of origin of the maintenance need determines responsibility for its cost. The term "point of origin" refers to the first event that sets in motion the series of other events leading to a maintenance need.

Each owner is responsible for maintenance necessitated by the negligent or intentional action or inaction of him/herself, his /her guests, employees and contractors, the occupants of his/her unit (including tenants), and the guests, employees and contractors of these occupants. The Association is responsible for maintenance necessitated by the negligent or intentional action or inaction of its employees and contractors.

Notwithstanding the foregoing, each owner shall repair, replace or restore personal property in that owner's unit, including personal property of any occupant, resident or Owner of any Unit, that is damaged or destroyed due to and/or resulting from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and or equipment; and/or from outside any Unit or any part of a building; and/or any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, manager and/or employees. Individuals bound by this Declaration agree to bear the risk of any such loss and that the Association shall not be liable to reimburse them for personal property damage.

**(vii) Utilities.** Maintain, repair, replace and restore utilities, fixtures and other services that provide service to the Owner's Unit and that are located within the finished surfaces of the Unit's walls, floors or ceiling, including (but not limited to) the plumbing, plumbing fixtures, the shower valve, electrical plugs and/or fixtures, telephone lines, television cables (if any), other utilities, lights, heating and air conditioning systems. In addition, Owners are also responsible for the maintenance, repair, replacement and restoration of telephone service lines running from the main box in each Building to the Owner's Unit and television service lines running from the main cable/distribution connection in each Building to the Owner's Unit.

**(viii) Heating and Air Conditioning.** Maintain, repair, replace and restore any and all parts of any heating and/or air conditioning system servicing the Owner's Unit, including any condenser/compressor situated adjacent to the Owner's Unit and any pipe or electrical conduit or wiring passing through the Common Area.

**(ix) Exclusive Use Common Areas.** Maintain, repair and replace all Improvements located within a Balcony and/or Patio, including the walking surface and waterproof membrane of any Patio.

**(b) Right to Decorate and Furnish.** Subject to the restrictions contained in the Governing Documents, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, with the following exceptions: (1) window coverings and (2) furnishings and improvements to Exclusive Use Common Area Decks, Balconies and/or Yards must comply with the specifications set forth in the Association Rules and/or the Design Review Committee's written Architectural Rules and Regulations, if any.

Owner, at Owner's sole cost and expense, may paint, paper, panel, plaster, tile or otherwise finish the interior surfaces of the ceilings, floors (subject to the restrictions of Section 3.13 of this Declaration), perimeter walls, window frames, door frames, trim and the surfaces of bearing walls located within the Unit. Owner's right, however, refers only to interior surfaces and to the airspace within Owner's Unit and specifically does not include the exterior surfaces of doors, fire escapes, light wells, or other portions of the Common Area.

This Subsection 6.1(b) shall not entitle any Owner to impair the structural integrity of any Building; increase the noise-carrying capacity of common floors, walls and/or ceilings; interfere with the use and enjoyment of the Common Area or of the other Units; and/or violate any other provision of the Governing Documents.

**(c) Obligation to Keep Exclusive Use Common Areas Clean.** Each Owner shall be responsible for keeping in a clean, sanitary and attractive condition those portions of the Exclusive Use Common Areas to which the Owner has an easement as set forth in Section 2.3 including but not limited to Balconies, Carports, and Patios. Said obligation shall specifically include the duty to promptly repair and/or replace all damaged furnishings, improvements and/or landscaping or plantings installed or placed thereon or therein by the Owner or resident of such Unit; to sweep; to keep the Balconies and Patios free from rubbish, litter and/or weeds; and to remove vehicle fluids and stains from such fluids from assigned Parking Spaces.

**(d) Duty to make Timely Repairs.** Every Owner must perform promptly all maintenance and repair work within his own Unit that, if omitted, would affect the Common Area or another Unit, and shall be expressly responsible for any and all damages and liabilities that his failure to do so may engender. All such repairs shall comply with local building codes and, if in excess of \$500 in value, shall be performed by licensed contractors.

**(e) Vacant Units.** The owner of any unoccupied Unit shall make periodic inspections of the Unit at least once each month to identify and repair any problems such as water leaks that may cause damage to adjacent Units or the Common Area if not corrected. The Owner shall either immediately repair any such conditions or, if such condition is the responsibility of the Association, report it to a Director or the association manager.

## Section 6.2. Association's Responsibilities.

**(a) Duty to Maintain General Common Area.** Except as to the extent that maintenance, repair, replacement, painting and/or restoration is expressly and clearly made the responsibility of the Owners in

Section 6.1, above, the Association shall be responsible for any and all maintenance, repair, replacement, painting and/or restoration of the Association's General Common Area, including the Common Facilities. However, if maintenance, repairs, replacement, painting and/or restoration of any part of the Development is due to negligence and/or willful conduct of an Owner or an Owner's family, guests, tenants or invitees, the Association has a right to recover its costs and expenses from the responsible Owner.

**(b) Duty to Maintain Exclusive Use Common Area.** The Association shall paint and provide structural repair and replacement of the interior and exterior surfaces of any fences and/or railings enclosing Balconies and Patios. The Association shall paint, repair and provide general cleaning and maintenance of Parking Areas. Except as expressly set forth in this subsection, maintenance, repair and replacement of all Exclusive Use Common Areas shall be the responsibility of the Owner of the Unit to which the Exclusive Use Common Area is appurtenant.

**(c) Modifications and Changes to Common Area.** No person other than the Association (or its duly authorized agents and/or employees) shall construct; reconstruct; refinish; alter (or maintain) any Improvement upon the Common Area; create any excavation; fill (or change) the natural or existing drainage of any portion of the Common Area; and/or change (modify or otherwise disturb) the Common Area without express written approval of the Association. In addition, no person other than the Association (or its duly authorized agents and/or employees) shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express written approval of the Association.

**(d) Right of Entry.** Pursuant to Subsections 4.5(b) and 5.4(a), above, the Association, and/or its agents/representative shall have the right, when necessary, to enter any Unit, including Exclusive Use Common Area(s), to perform the Association's obligations under this Declaration, including making necessary repairs that an Owner has failed to perform and/or perform work because any Unit or any part thereof has become a nuisance, fire or safety hazard and then recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

**(e) Excluded Maintenance.** Notwithstanding the preceding, the maintenance obligation of the Association shall not include:

**(i)** the duty to maintain, repair, or replace Unit interiors, Unit furnishings, Unit and/or utility installations, appliances and/or fixtures that service a single Unit.

**(ii)** the duty to pay the utility cost for Units and/or for operation of any heaters or air conditioners, except to the extent that said heaters or air conditioners service Common Areas.

**(iii)** the duty to repair or replace any portion of the Development whose damage was due to or caused by the willful or negligent act/omission of an Owner, or Owner's Family, contract purchasers, lessees, or tenants, or their licensees, guests, or invitees, unless such repairs and replacements are covered by insurance carried by the Association, and then the Association is only responsible to the extent of such insurance coverage;

**(iv)** the duty to repair, replace or restore separately owned property in the Development, including personal property of any occupant, resident or Owner of any Unit, that is due to and/or results from water infiltration and/or water leaks from any pipes, drains, conduits, appliances and/or equipment; and/or from outside any Unit or any part of a building; and/or any other place or cause, unless caused by the gross negligence of the Association, its Board, Officers, manager and/or employees. Individuals bound by this Declaration agree to bear the risk of any such loss; or

(v) the duty to repair, replace, or restore public or quasi-public utility installations that are owned or operated by utility districts, sanitary service providers, energy providers, telephone service providers, cable and/or satellite service providers, their successors and assigns, or any other public or quasi-public utility or similar entity that customarily repairs, replaces, or restores such installations.

The maintenance, repair, and replacement described in (I) through (v) above shall be the responsibility of the Owner of the affected Unit and/or the Owner to whom the willful or negligent act is attributed.

**Section 6.3. Landscaping.** All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality as originally established at the time the Development was constructed and in a condition comparable to that of other first class residential subdivisions in the City of Newark. Specific restrictions on landscaping may be established in the Rules. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be neatly mowed and trees and shrubs shall be neatly trimmed.

(a) **Common Area.** The Association shall be responsible for all landscaping located on the Common Area, excluding Exclusive Use Common Area, but including landscaping up to the curb lines of adjacent public streets.

(b) **Exclusive Use Common Area.** Each Owner shall be responsible for all landscaping located within his Patio and/or Balcony. If landscaping within Patios is not installed by Declarant, each Owner shall install, plant and complete permanent landscaping within his Patio within six (6) months after the close of escrow for the sale of the Condominium to the Owner.

#### **Section 6.4. Recovery of Costs of Certain Repairs and Maintenance.**

(a) **Willful or Negligent Acts.** In the event the need for maintenance or repair that would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, Owner's Family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 5.4 and the procedural requirements of Section 14.6.

(b) **Owner's Failure to Perform Required Maintenance.** In the event that an Owner fails to perform maintenance functions for which Owner is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within thirty (30) days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance within the allotted time, the Association may exercise its rights under Subsections 4.5(b) and 5.4(a) to enter the Owner's Unit and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 14.6, hereof.

**Section 6.5. Cooperative Maintenance Obligations.** To the extent necessary or desirable to accomplish the maintenance obligations hereunder, individual Owners and the Association shall cooperate in the performance of maintenance work.

#### **Section 6.6. Capital Improvements.**

(a) **Petition; Association Approval; Owner Approval.** One-third (1/3) of the Owners may from time to time, in writing, petition the Association for the construction, installation or acquisition of capital improvements on or to the Common Area. Such petition shall be in such form and shall contain such

information as the Association may require, including, without limitation, preliminary plans and cost estimates. The Association, through the Board, may from time to time and on its own motion move for the construction, installation or acquisition of a capital improvement, in which case such motion shall be treated as if it were a petition duly submitted by the Owners.

**(b) Approval of Petition.** The Association may approve the petition if it determines that the proposed capital improvement is desirable for the beneficial use and enjoyment of the Common Area and/or the Units, is economically feasible, is in conformance with applicable zoning, and has received all governmental required approvals.

**(c) Bids.** Upon the approval of such petition by the Association, the Association shall obtain firm bids on the total cost of constructing, installing, or acquiring the proposed capital improvement, and the lowest acceptable bid or bids shall be deemed the estimated total cost of such capital improvement.

**(d) Approval by Owners.** If during the fiscal year aggregate expenditures for capital improvements exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the Association shall present the proposed capital improvements and the estimated total cost thereof to all Owners for approval and obtain the Owners approval. (See Sections 4.7 and 5.5(a)(I) of the Bylaws for quorum and vote requirements). Upon approval by the Owners, a Special Assessment for Capital Improvement shall be levied as provided in Section 5.3.

**(e) Construction.** After the levy of the Capital Improvement Assessment, and at such time and upon such terms and conditions as the Association may deem appropriate, but not at a cost exceeding the estimated total cost of such capital improvement as determined above, the Association shall construct, install, or acquire, or contract for the construction, installation or acquisition of the proposed capital improvement.

## **ARTICLE VII: EASEMENTS & RESERVATIONS.**

**Section 7.1. Encroachment Easements.** If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If the dimensions or location of a Unit, Balcony, Parking Space, Patio, Water Heater Closet or other Improvement differs from that shown and depicted on the approved plans, the actual dimensions and location shall prevail over that shown and depicted on the Map for any and all purposes. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. In no event shall a valid easement for encroachment be created in favor of an Owner or Owners, if said encroachment occurred due to the willful conduct of said Owner or Owners.

**Section 7.2. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Development for ingress, egress, installation, replacing, repairing, operating and maintaining all utilities, including but not limited to water, sewers, storm water drains and pipes, water systems, sprinkling systems, heating and gas lines or pipes, gas, telephones, drainage and electricity and the master television antenna or cable television system if any, and similar public or quasi-public improvements or facilities.

By virtue of this easement, it shall be expressly permissible for the providing utility company and/or service provider to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed

or relocated on said Development except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Section 7.2 shall in no way effect any other recorded easement on the Development.

**Section 7.3. Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company or contractor selected by the Association to enter in or to cross over the Common Area, including Exclusive Use Common Area, and any Unit, including any Yard, to perform the duties of maintenance and repair of the Units, Common Area and/or Common Facilities provided that any entry by any Member, the Association or its agents into any Unit shall only be undertaken in strict compliance with Section 4.5(b).

**Section 7.4. Other Easements.** Each Unit and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Development and each Unit and Common Area as shown on the Map or on the Plans.

## **ARTICLE VIII: DESIGN REVIEW.**

**Section 8.1. No Improvements Without Approval.** No "Improvement" (as defined in this Declaration) of any kind shall be commenced, erected or maintained within the Development, nor shall any addition to or change or alteration be made in or to the exterior of any Unit, structure containing Units, or to any Exclusive Use Common Area (nor shall anything be done in, on, or to any part of the Development that would: (a) impair the structural integrity, (b) structurally change any Improvement, (c) affect the common utility services or installations, or (d) increase the noise-transmitting capacity of common floors, walls, or ceilings until plans and specifications have been submitted to and approved in writing by the Association pursuant to this Article VIII.

**Section 8.2. Appointment of Design Review Committee.** If created, the Design Review Committee (referred to in this Article as "Committee") shall consist of a chairman and no less than two (2) additional members. At least one of the members of the Design Review Committee shall be a current member of the Board and all members must be Members of the Association. If no Committee is appointed, the Board shall exercise the functions of said Committee, and in such case, references to the Committee in this Article shall mean the Board.

**Section 8.3. Design Review Duties of Committee.** It shall be the duty of the Committee to consider and act upon the proposals and plans submitted to it and to carry out all other duties imposed upon it pursuant to the Governing Documents. Upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Committee shall execute an estoppel certificate to any requesting Owner certifying whether Improvements to that Owner's Unit comply with this Declaration. The vote or written consent of a majority of the Committee shall constitute the action of the Committee. The Committee shall keep and maintain a written record of all actions taken.

**Section 8.4. Architectural Rules and Policies.** The Board may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules and Policies." In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

**Section 8.5. Submission of Plans; Action by Committee.** Plans, specifications and such information and documentation, as the Committee may require, for all proposed Improvements shall be submitted to the Association's manager or to such person as may be designated in the Architectural Rules and Policies.

All approvals and rejections of requests shall be in writing. Approval of the Committee may contain conditions or requests for modification of particular aspects of the Owner's plan and specifications. In the event the Committee fails to approve or disapprove the proposed work within forty-five (45) days after said plans and specifications have been submitted to it, the written request may be resubmitted. If the Committee fails to approve or disapprove such resubmitted application within thirty (30) days of its resubmittal, the request shall be deemed approved.

**Section 8.6. Basis for Approval of Improvements.** The Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

- (a) The Owner has complied with those provisions of the Architectural Rules and Policies pertaining to the content, and procedures for submittal, of plans and specifications;
- (b) The Owner's plans and specifications (I) conform to this Declaration and to the Architectural Rules and Policies in effect at the time such plans are submitted to the Committee; and (ii) will not interfere with the reasonable enjoyment of any other Owner of his or her property; and
- (c) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Development, in harmony with the external structures and/or landscaping within the Development and are consistent with the overall plan and scheme of development and the purposes of this Declaration.

The Committee shall be entitled to determine that a proposed Improvement or component thereof is unacceptable when proposed for a particular Condominium, even if the same or a similar improvement or component has previously been approved for use at another location within the Development if factors such as drainage, topography or visibility from roads, Common Areas or other Condominiums or prior adverse experience with the product or components used in construction of the Improvement, design of the Improvement or its use at other locations within the Development militate against erection of the Improvement or use of a particular component thereof on the Condominium involved in the Owner's submittal. The Committee shall be entitled to make subjective judgments and to consider the aesthetics of a proposal when considering an Owner's request so long as the Committee acts reasonably and in good faith.

**Section 8.7. Appeal of Decision of Committee to Board.** Unless the Board is acting as the Design Review Committee, upon its own initiative or upon the written request of the Committee or any Association Member, the Board may review (and affirm or alter) any decision of the Committee, provided that any such request for review shall be presented to the Board within thirty (30) days after the Committee's findings and decision has been mailed or delivered to the Owner who submitted the subject application, or, in the case of Common Area Improvements, to the managing agent of the Association. The Board shall review such request and render a decision within sixty (60) days of receipt thereof or at the time of the next regular Board meeting, whichever is later. A written notice of the Board's decision shall be sent to the person or persons who submitted the request for review within fifteen (15) days after the decision is made.

**Section 8.8. Non-Waiver; Variances.** The approval by the Committee of any plans, drawings or specifications for any work, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval. The Committee shall be entitled to allow reasonable variances in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships.

**Section 8.9. Compliance with Governmental Requirements.** Each Owner bears sole responsibility for obtaining all necessary governmental permits/authorizations and/or complying with all governmental requirements including specifically applicable building codes.

**Section 8.10. Commencement and Completion.** Commencement of construction by Owner shall occur, in all cases, within ninety (90) days from the date of such approval. The Owner shall complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof. If an Owner fails to comply with this Section 8.10, the Committee shall proceed in accordance with the provisions of Section 8.11, below, as though the failure to complete the improvements was a non-compliance with approved plans.

Upon the completion, the Owner shall give written notice thereof to the Committee. Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If noncompliance exists, the Committee can require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling.

**Section 8.11. Enforcement.** In the event that it comes to the knowledge and attention of the Association that a work of Improvement is proceeding without proper approval and/or is not in compliance with the approved plans and specifications, the Association shall be entitled to exercise enforcement remedies specified in Article XIV, including, without limitation, ordering an immediate cessation and abatement of all aspects of the work of Improvement until such time as proper Committee review and approval is obtained.

**Section 8.12. Liability.** Neither the Committee (nor any Member thereof) shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed where the Committee (or such member) has acted in good faith on the basis of such information as may be possessed by it (or him/her). Without in any way limiting the generality of the foregoing, the Committee (or any member thereof) may consult with (or hear the views of) any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Committee.

## **ARTICLE IX: INSURANCE.**

**Section 9.1. Types of Insurance Coverage.** The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance with the coverages described below:

(a) **Fire & Casualty Insurance.** The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance for all insurable Common Area Improvements, including but not limited to the walls, floors, ceilings, doors, windows and fireplaces of each Unit to their interior unfinished surfaces, Building interiors that are not part of any Unit, Building exteriors, fixtures, building service equipment and Common Facilities, excluding land, foundations, excavations and other items normally excluded from coverage. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Nothing in this Article IX shall be construed to limit coverage for damages to Unit interiors or Owner Improvements that may otherwise be covered by the policy.

Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Subsection 9.1(a) shall contain (1) an agreed amount endorsement or its equivalent, (2) an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, (3) an extended coverage endorsement, (4) vandalism, malicious mischief coverage, (5) loss or damage by fire coverage, (6) other standard extended-coverage risks and all other perils customarily covered in projects similar in construction, location and use, including all perils normally

covered by the standard "all risk" endorsement, and (7) a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction, if available.

The policies required hereunder shall provide amounts of coverage as shall be determined by the Board and, if practical, shall be in amount or amounts necessary to provide for full replacement (one hundred percent (100%) of current replacement cost). The Board shall have the power and authority to have an insurance appraisal and/or yearly insurance appraisal updates performed to aid the Board in determining the amounts of coverage needed by the Association.

The policies shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear and shall further provide for a separate loss payable endorsement in favor of the First Mortgagee of each Unit. (See Section 9.10, below, regarding deductibles).

**(b) Public Liability & Property Damage Insurance.** The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Units, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and any other Association owned or maintained real or personal property including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than three million dollars (\$3,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 1365.7 and 1365.9) for claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

**(c) Directors & Officers Insurance.** The Association shall obtain and maintain a policy of directors' and officers' errors & omissions insurance naming the Association's directors and officers and appointed committee members as insured parties. The limits of such insurance shall not be less than one million dollars (\$1,000,000.00) (or such higher amounts as may be required under California law, including but not limited to Civil Code Section 1365.7). Directors' and officers' errors & omissions insurance (*i.e.*, D&O coverage) shall insure against claims arising out of or based upon negligent acts, errors, omissions, or alleged breaches of duty of any Director, officer, or committee member while acting in his or her capacity as such.

**(d) Fidelity Bonds/Insurance.** The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than the level required by Federal Home Loan Mortgage Corporation (Fannie Mae) and shall contain an endorsement for officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. If the Association has delegated some or all of the responsibility for the handling of funds to a management agent, a bond shall be obtained for the managing agent's officers, employees and/or agents that handle or are responsible for the funds of, or administered on behalf of, the Association. The bonds shall name the Association as an obligee and shall contain a waiver by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

**(e) Personal Property Insurance.** The Board shall purchase and maintain such insurance on personal property owned by the Association that it deems necessary or desirable, or that is required by any institutional First Mortgagee.

**(f) Additional Insurance and Bonds.** To the extent such insurance is available at a reasonable premium cost, the Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section 9.1(e), umbrella insurance, demolition insurance, earthquake insurance, flood insurance, and workers' compensation insurance. The amounts of said coverage shall be determined by the Board. The Association shall be the owner and beneficiary of any such insurance obtained.

**Section 9.2. Owners Right to Copies of Policies.** Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Association Members at any reasonable time. Pursuant to Civil Code Section 1365(e)(2) or comparable superseding statute, the Association shall notify Members if any insurance policies are not immediately renewed or replaced upon cancellation or lapse and/or if there is a significant change in the policy.

**Section 9.3. First Mortgagees' Minimum Coverage Requirements.** An Eligible First Mortgagee for any Unit in the Development has the right to supply the Association with its minimum insurance requirements. If the Association's insurance policies do not currently meet the minimum requirements of those Eligible First Mortgagees who have provided said minimum requirements to the Association, the Eligible First Mortgagees can request that the Association increase its coverage to match those minimum insurance requirements. The requesting Eligible First Mortgagee(s) shall be responsible for the payment of any increase in the Association's insurance premiums due to said request. All First Mortgagees for any Unit in the Development have the right, upon written request, to obtain copies of current insurance polies and/or satisfactory evidence of the Association's payment of premiums.

Notwithstanding any provision to the contrary elsewhere in this Declaration, the Association shall continuously maintain in effect such fire, casualty, and liability insurance and fidelity bonds meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation) so long as said agency(ies) have notified the Association in writing that it is a Mortgagee, Owner of a Condominium, an insurer of any Mortgage, or under contract to purchase a Mortgage, except to the extent that such coverage is not available or has been waived in writing by the Federal National Mortgage Association (or the Federal Home Loan Mortgage Corporation). Such insurance requirements may include, but not by way of limitation, a "Special Condominium Endorsement" or an "Inflation Guard Endorsement."

**Section 9.4. Coverage Not Available.** In the event any insurance policy, or any endorsement thereof, required by Section 9.1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available that provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

**Section 9.5. Individual Fire & Casualty Insurance Limited.** Except as provided in this Section, no Owner can separately insure his or her Unit or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 9.1(a). If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.1(a) that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. The Association shall levy a Special Individual Assessment against such Owner and his or her Condominium in the amount of such diminution.

An Owner can insure his or her personal property against loss. In addition, any Improvements made by an Owner within his or her Condominium 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's Improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any First Mortgagee of said Condominium.

**Section 9.6. Insurance Trustee.** If a dispute arises as to allocation or use of insurance proceeds worth one million dollars (\$1,000,000.00) or more, said insurance proceeds shall be paid over to an insurance trustee. The insurance trustee shall hold the funds in trust and expend the funds for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said insurance trustee shall be a commercial bank or other institution with trust powers within the Bay Area that agrees in writing to accept such trust.

**Section 9.7. 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 pursuant to Section 9.1. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

**Section 9.8. Distribution to Mortgagees.** Subject to the provisions of Article XV hereof, any Mortgagee has the option to apply insurance proceeds payable on account of a Unit in reduction of the obligation secured by the Mortgage of such Mortgagee.

**Section 9.9. Owner's Liability Insurance.** An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Condominium that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable by the Board and to any institutional First Mortgagee.

#### **Section 9.10. Deductibles.**

**(a) Owner Responsible for Loss.** Except with respect to insurance for earthquake damage, an Owner responsible for causing an insurable loss (by either the Owner's acts and/or the acts of Owner's Family members, contract purchasers, tenants, guests, or invitees) shall be obligated to contribute the Owner's proportional share of the insurance deductible, if any, corresponding to the insurance covering the loss. The proportional share of each Owner responsible for causing the insurable loss under this Section 9.10(a) shall be based upon the ratio that the responsibility of each Owner responsible for causing the insurable loss bears to the total responsibility of all Owners responsible for causing the insurable loss.

**(b) No Owner Responsible for Loss.** If the insurable loss is not caused by the act or omission of any Owner (or the acts or omissions of the Owner's Family members, contract purchasers, tenants, guests, or invitees), the deductible shall be paid by each Owner in proportion to the amount the insurable loss suffered by his or her Unit and Exclusive Use Common Area bears to the total insurable loss of all Owners resulting from the same event.

**(c) Earthquake Damage.** With respect to a loss covered by earthquake insurance, all Owners shall be obligated to contribute his or her proportionate share of the insurance deductible whether or not that Owner's Unit and/or Exclusive Use Common Area suffered damage. Each Owner's proportionate share of the deductible shall be as set forth in Exhibit B hereto.

**(d) Association Responsibility.** The Association shall be responsible for payment of the insurance deductible for any insurable loss to the General Common Area or Common Facilities, unless such loss was caused by the acts or omissions of an Owner or an Owner's Family members, contract purchasers, tenants, guests, or invitees. In the event of any insurable loss involving both the General Common Area/Common Facilities and individual Units and/or Exclusive Use Common Area, the Association shall be

treated as an owner of the General Common Area/Common Facilities for purposes of applying subsections (a) or (b) above. Unit Owners must repair at their sole cost, any damage to their Units or Exclusive Use Common Areas not covered by the Association's insurance.

(e) **Failure to Pay Deductible.** If, within thirty (30) days of notice by the Association to an Owner regarding that Owner's proportionate share under Subsection (a), (b) or (c) of this Section 9.10, any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Unit of such Owner which may be enforced under the lien provisions contained in Article V or in any other manner provided in this Declaration.

(f) **Objection to Payment of Deductible.** Within fifteen (15) days of the date that the notice to the Owner of his or her share of the liability is mailed, any Owner may contest the amount of his or her proportionate liability under Subsections (a), (b) or (c) of this Section 9.10 by submitting to the Board written objections supported by cost estimates or other information that the Owner deems to be material. Upon receipt of said written objections, the Board shall set a hearing date on the matter. The Owner(s) contesting liability may be represented by counsel at this hearing. Following such hearing, the Board shall give written notice of its decision to all affected Owners, including any recommendation that adjustments be made with respect to the liability of any Owner(s). The Board's decision shall be final and binding.

#### **ARTICLE X: DAMAGE OR DESTRUCTION.**

**Section 10.1. General Provisions.** This Article X shall apply in the event substantial portions of the Common Area or Common Facilities or those portions of the Units that the Association is required to maintain, repair and replace are substantially damaged or destroyed as a result of fire, earthquake or other casualty. In such event, the Association shall have exclusive authority to negotiate losses/insurance proceeds covering such losses.

(a) **Use of Separate Trust Account.** All insurance proceeds (except insurance procured by Owner(s)), shall be held by the Association in a separate trust account in trust for the Association, the Owner(s) and their Mortgagees as their respective interests may appear to be in accordance with the terms and provisions of any applicable Mortgage.

(b) **Power to Contract with Insurance Trustee.** Should a controversy arise as to the disbursement of insurance proceeds and the amount in controversy is over one million dollars (\$1,000,000.00), the Board is authorized to enter into an agreement with an Insurance Trustee pursuant to Section 9.6 of this Declaration, relating to Insurance Trustee's powers, duties, and reasonable compensation.

(c) **Determination of Adequate Insurance.** The Board shall, within sixty (60) days of the casualty event, meet with general contractors, architects and/or other construction professionals to make a preliminary determination if the proceeds from available insurance will probably be sufficient to fund the necessary repairs and reconstruction and shall report its determination to the Members and Eligible First Mortgagees in writing. Thereafter the Board shall diligently attempt to reach a final settlement and adjustment of its insurance claims with the insurers. The Association shall make good faith efforts to keep interested Owners and Eligible First Mortgagees apprised as to the status of negotiations.

(d) **Insurable Losses to Individual Units.** If one or more residential Units suffers damage covered by the Association's property insurance, the Board may, in its discretion, pay the insurance proceeds to the Unit Owner and the Unit Owner shall be responsible for repair of the Unit. All such repairs shall be completed within one year and shall be in accordance with the requirements of this Declaration, including Article VIII. Other than the routine maintenance and repairs required under Section 6.1 of this Declaration,

the Association shall not be responsible repair of damage or destruction to any portion of a Unit not covered by the Association's insurance.

### **Section 10.2 Repair and Reconstruction if Adequate Insurance is Available.**

**(a) Board's Authority to Contract for Repairs.** Upon a determination that insurance proceeds will be adequate, the Board shall have the authority, without a vote of the Members, to enter into written contracts with general contractors, design professionals and other construction professionals for the repair and reconstruction of damaged or destroyed property covered by insurance, pursuant to Section 10.5 below.

**(b) Funding of Repair and Reconstruction.** The Board may borrow from the Reserve Account to fund any repair or reconstruction covered by insurance, so as not to delay reconstruction. Any such borrowed funds shall be immediately replaced upon receipt by the Association of the insurance proceeds.

### **Section 10.3. Minor Deficiency in Insurance Proceeds.**

**(a) Reconstruction Unless Vetoed by Members.** If the available proceeds from the insurance maintained pursuant to Article IX are sufficient, after payment of any insured losses to individual Units, to cover at least seventy-five percent (75%) of the anticipated costs of repair and reconstruction of the Common Area and the anticipated costs of repair and reconstruction do not exceed available insurance proceeds by more than One Million Dollars (\$1,000,000), the damaged portions of the Common Area shall be rebuilt unless, within ninety (90) days from the date of destruction, sixty-six and two-thirds percent (66-2/3rds %) of the total voting power of the Association determine that such repair and reconstruction shall not take place. Reconstruction and repair shall proceed as set forth in Section 10.5 below.

**(b) Special Assessment.** Any sums in excess of available insurance proceeds required to repair or rebuild the Common Area and Common Facilities under this section shall be obtained by Special Assessment levied equally against all Units in the Development. Such Special Assessment shall be allocated among the Owners in equal shares.

**(c) Advancement of Special Assessment.** If any Member fails to pay, within thirty (30) days of the levy, the Special Assessment levied against that Member's Unit, the Board may advance (without relieving the Member(s) or the Members' Unit(s) from liability therefor) an amount equal to the unpaid assessments.

**Section 10.4. Major Deficiency in Insurance Proceeds.** If the deficiency in insurance proceeds exceeds the limits set forth in Section 10.3 above, this Section shall apply. Within ninety (90) days of the casualty or event causing the damage, the Board shall call a Special Meeting of Members for the purpose of deciding upon the appropriate course of action. At the meeting (or through a written ballot in lieu of a meeting) the Members shall decide whether to proceed with reconstruction of the Common Area and Common Facilities. A vote in excess of sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Association shall be required to determine that repair and reconstruction of the Common Area and Common Facilities will not take place. If the Members vote not to repair or rebuild the Common Area and Common Facilities, the Association shall be authorized to remove any debris from the Development and to clean up the area of damage to the extent necessary to make it safe, sanitary and presentable.

**Section 10.5. Repairs and Reconstruction.** This section shall apply if repair and reconstruction is authorized under one of the provisions of this Article.

**(a) Board's Authority to Contract.** The Board shall have the sole authority to contract for repair and reconstruction of the Common Area and Common Facilities under this Article and to hire appropriate

contractors, design professionals and other necessary consultants for the work. The Board shall award the contract(s) for repair and reconstruction to the lowest responsible bidder, or to such bidder as the Board determines is more favorable for the Association. The Board shall make every reasonable effort to execute the necessary contracts and complete the work within one year of the casualty event. It shall be the obligation of the Board to take all steps necessary to assure the commencement and the completion of authorized repairs and reconstruction occur at the earliest possible date.

(b) **Licensed Contractors.** Only contractors duly licensed in the State of California shall be employed by the Association for the work.

(c) **Scope of Repairs and Reconstruction.** The damaged or destroyed improvements shall be rebuilt to the condition existing immediately prior to the event causing the loss, subject to current building codes and ordinances, unless the Board, Owners and Eligible First Mortgagees agree upon a different scope of work.

**Section 10.6. Emergency Repairs.** Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as the Board may deem necessary or desirable under the circumstances, and the Board may charge the maintenance fund for the costs thereof where such repairs are done prior to settlement of insurance claims.

## **ARTICLE XI: CONDEMNATION.**

**Section 11.1. Sale by Unanimous Consent or Taking.** The Board or a trustee appointed by the Board to act on behalf of the Association shall represent all of the Owners in any condemnation proceeding, negotiations, settlements and/or agreements. Each Owner by accepting a deed to a Condominium in the Development hereby grants the Board or its appointed trustee an irrevocable power of attorney to act on behalf of the Association and all Owners in any condemnation or proposed/threatened condemnation.

If an action for condemnation of a portion or all of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and Eligible First Mortgagees, the Development, or a portion thereof, may be sold and conveyed to the condemning authority by the Board or the Association's appointed trustee for a price deemed fair and equitable by the Board.

If the requisite number of Owners or Eligible First Mortgagees do not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

### **Section 11.2. Distribution and Sale Proceeds of Condemnation Award.**

(a) **Total Sale or Taking.** A total sale or taking of the Development means a sale or taking that (I) renders more than fifty percent (50%) of the Condominiums uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (ii) renders the Development as a whole uneconomical as determined by the vote or written consent of fifty-one percent (51%) of those Owners and their respective Eligible First Mortgagees whose Condominiums will remain habitable after the taking.

Any determination that a sale or taking is total must be made before the proceeds from said sale or award are distributed. The proceeds of any such total sale or taking of the Development, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees,

as their respective interests may appear, in the proportion that the fair market value of each Condominium bears to the fair market value of all Condominiums in the Development. The fair market value of Units shall be determined in the condemnation action, if such be instituted, or by an appraiser as specified in Section 10.1.

**(b) Partial Sale or Taking.** In the event of a partial sale or taking of the Development, meaning a sale or taking that is not a total taking, as determined in Subsection 11.2(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgments of condemnation shall include the following provisions as part of its terms:

**(i)** 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

**(ii)** To Owners and to their respective Mortgagees, as their interests may appear, of Condominiums in the Development whose Condominiums have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the court in the condemnation proceeding or by an appraiser (pursuant to Section 10.1), less such Owners' share of expenses paid pursuant to Subsection 11.2(b)(I) (which share shall be in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Condominiums).

After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map, if any, and this Declaration to eliminate from the Development the Units so sold or taken; then

**(iii)** To any remaining Owner(s) and to their Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Condominiums, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to Section 10.1), an amount up to the total diminution in value; then

**(iv)** 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 of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser (pursuant to Section 10.1).

**Section 11.3. Appraiser.** The costs of such appraisals shall be paid from the condemnation/sale proceeds as an expense of the Association.

## ARTICLE XII: PARTITION OF COMMON AREA.

**Section 12.1. Suspension or Right of Partition.** Except as expressly provided in this Article XII, an Owner shall have no right to partition or divide his or her ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article X (relating to damage or destruction) or in Article XI (relating to condemnation) or in California Civil Code Section 1359 have been met.

Nothing in this Declaration shall prevent partition of a co-tenancy in a Condominium; provided, however, that any such judicial partition of a co-tenancy shall require the prior written consent of any First Mortgagee holding a Mortgage on such Condominium.

**Section 12.2. Distribution of Proceeds Upon Partition.** Proceeds resulting from a partition of property shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined by appraisal as provided in Section 10.1(g). The fair market value shall be determined as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

**Section 12.3. 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 dispose of the entire Development, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration.

The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (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 a majority of the Total Voting Power of the Owners (as defined in Section 10.4); and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under Civil Code Section 1359. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

#### **ARTICLE XIII: NONSEVERABILITY OF COMPONENT INTERESTS.**

**Section 13.1. Severance Prohibited.** An Owner shall not be entitled to sever his or her Unit from his or her membership in the Association. Nor shall an Owner be entitled to sever his or her Unit or his or her membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered or hypothecated. Any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to his or her Unit over the Common Area from the Owner's Condominium. Any attempt to do so shall be void.

Notwithstanding anything to the contrary contained herein, however, this restriction shall not extend beyond the period that the right to partition the Development is suspended pursuant to the provisions of Article XII.

However, an Owner (or tenant) can sublet the Parking Space assigned to Owner's Unit. The Association shall be promptly notified of any sublet pursuant to Section 2.7(a)(ii) and any such sublease shall terminate upon the Owners' sale, conveyance or transfer of ownership of the Unit.

**Section 13.2. Limitation on Interests Conveyed.** Unless otherwise expressly stated, any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section 13.2 shall preclude the Owner of any Condominium estate from creating an estate for life or an estate for years or from creating a co-tenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

#### **ARTICLE XIV: BREACH & DEFAULT:**

**Section 14.1. Remedy at Law Inadequate.** The provisions of the Declaration, the Bylaws, the Association Rules and/or Resolutions of the Board, as the same may be adopted or amended from time to

time, shall constitute enforceable servitudes which shall inure to and bind each Owner, Owner's Family, lessees, tenants, contract purchasers, guests, invitees and/or licensees. Any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest may enforce, by any proceeding at law or in equity, said provisions of the Governing Documents against any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities. Further, the failure of any Owner, Member of Owner's Family, lessee, tenant, contract purchaser, guest, invitee, licensee, occupant or user of any Condominium, or any portion of the Common Area or Common Facilities, to strictly comply with any provision of the Governing Documents shall be grounds for (1) an action to recover sums due for damages and/or (2) an action to enjoin by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest. (Allows Assoc to sue for specific performance).

Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and the Association's Governing Documents is inadequate.

**Section 14.2. Nuisance.** Without limiting the generality of Section 14.1, the result of every act or omission whereby any covenant contained in this Declaration or the Association's Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance. In addition to any other remedies that may be available, such nuisance may be abated or enjoined by the Association, its Officers, the Board of Directors and/or any Owner.

Further, every remedy against nuisance, either public or private, shall be applicable against every such act or omission; provided, however, the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the discretion of the Board, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

**Section 14.3. Violation of Law.** Any violation of a federal, state, county, municipal, local or other governmental law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Development is hereby declared to be a violation of this Declaration and subject to any and all enforcement procedures set forth herein.

**Section 14.4. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and not exclusive. The exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration or the Governing Documents.

**Section 14.5. Failure Not a Waiver.** The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration and/or the Association's Governing Documents shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

#### **Section 14.6. Rights and Remedies of the Association.**

(a) **Rights Generally.** In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, the Owner's Family, guests, contract

purchasers, employees, servants, invitees, licensees, lessees and/or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's right to use recreational Common Facilities or suspension of the Owner's voting rights as a Member of the Association. The Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section 14.6. The initiation of legal action shall be subject to Section 14.7, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code Section 1354 or otherwise by law.

Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing pursuant to Subsections 14.6(f) and (g), that said Member has violated any provision of the Governing Documents, including but not limited to a failure to pay any Assessment when due, the Board may give notice in writing to such Member that the Member is deemed to be a Member not in good standing. Such Member shall be deemed to be a Member not in good standing until such time as the Board shall determine in writing that the violation that resulted in the Board's determination that the Member was not in good standing has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member of the Association in good standing.

(b) **Schedule of Fines.** The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment and shall be enforceable as a Special Individual Assessment pursuant to Section 5.4.

(c) **Definition of "Violation".** A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) **"Meet and Confer" Requirement.** In the event of a dispute between the Association and a Member concerning an alleged violation of the Governing Documents, either party may request in writing to meet with the other party to discuss the dispute. The Association shall comply with any request by a Member by notifying the requesting Member of the date and time for such a meeting within thirty (30) days of receipt of the written request. If such a request is made by the Association to a Member, the Member may, but is not required to, respond in writing within ten (10) days agreeing to the requested meeting on the terms set forth in the Association's request. The meeting shall be attended by the Board or the Board's designated representative and the requesting Member. If the meeting is not attended by the entire Board, the Member may appeal any resolution resulting from the meeting to the entire Board. Any agreement between the Association and the Member as a result of such a meeting shall be reduced to writing and signed by the Association and the Member. Once signed by both parties, such agreement shall become final, binding and unappealable. The Association may comply with any "Meet and Confer" request by a Member pursuant to this Subsection by a disciplinary hearing pursuant to Subsection 14.6(f) below. However, if the meeting is

to be in conjunction with a disciplinary hearing, the notice required by Subsection 14.6(g) must be given to the Member.

**(e) Limitations of Disciplinary Rights.**

**(I) Loss of Rights: Forfeitures.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Condominium due to the failure by the Owner (or Owner's Family members, tenants, lessees, contract purchasers, guests, invitees and/or licensees) to comply with any provision of the Governing Documents, including, but not limited to any duly enacted Association Rule, except where the loss or forfeiture is the result of A) the judgment of a court of competent jurisdiction, B) a decision arising out of arbitration, C) a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or D) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Sections 14.6(f) and (g).

**(ii) Liens Against Member's Condominium.** Except as provided in the Association's Delinquent Assessment Collection Policy, or Association Rules, if any, an assessment imposed by the Association as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the Member and/or the member's Family, guests, lessees, tenants, contract purchasers, employees, invitees and/or licensees were responsible may become a lien against the Member's Condominium enforceable by the sale of the Condominium under Civil Code Sections 2924, 2924b, and 2924c.

**(f) Hearings.** No penalty or temporary suspension of rights shall be imposed pursuant to this Article XIV unless the Owner alleged to be in violation is given prior notice of the proposed penalty or temporary suspension, and is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) as provided in Association Rules adopted by the Board pursuant to Section 14.6(h). However, this Subsection shall not prevent the Board from taking emergency action (such as towing of vehicles) to eliminate an immediate threat to the health or safety of residents or a nuisance causing substantial interference with the property rights of other residents. The required disciplinary hearing shall be scheduled as soon as practicable after any such emergency action has been taken, and if it is determined that such action was unnecessary or improper, the Association shall compensate the Member for any costs incurred as a result of such action. The Association Rules may specify those violations justifying emergency action pursuant to this subsection.

**(g) Notices.** Any notice of a disciplinary hearing pursuant to Subsection 14.6(f) above shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association. The Association's notice of a disciplinary hearing shall be delivered to the Member at least ten (10) days prior to any hearing. Notice of the Board's action as a result of the disciplinary hearing must be delivered to the Member within fifteen (15) days after the Board's decision.

**(h) Rules Regarding Disciplinary Proceedings.** The Board shall be entitled to adopt rules that set forth the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code Section 1354 or comparable superseding statute.

**Section 14.7. Court Actions; ADR.** Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board. As long as Civil Code Sections 1369.510 - 1369.590 (or comparable superseding statutes requiring alternative dispute resolution) are in force, this Section 14.7 shall control the initiation of a legal action by the Association and/or its Members. This Section 14.7 shall automatically be repealed from this Declaration should the above Civil Code Sections (or comparable superseding statutes) be repealed by the California Legislature.

(a) **Alternative Dispute Resolution.** Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents (including either of those actions coupled with a claim for monetary damages not in excess of \$5000), the Association and/or Members shall first comply with the provisions of Civil Code Sections 1369.510 - 1369.590, or comparable superseding statutes, relating to alternative dispute resolution. The Board shall have discretion as to the form of ADR that shall be proposed to a Member to satisfy the requirements of this Subsection and Civil Code Sections 1369.510 - 1369.590.

(b) **Actions Relating to Assessments.** Disputes related to Association Assessments are expressly exempted from the provisions of this Section 14.7 except to the extent ADR is required by California law as part of the lien and foreclosure process.

(c) **Small Claims Court Actions.** If any claim, dispute or controversy involves a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of the alternative dispute resolution procedures required by this Section 14.7.

(d) **Statement and Admissions During ADR.** Unless mutually agreed to in writing by all parties to the dispute, evidence of anything said or of any admissions made in the course of the alternative dispute resolution process shall not be admissible into evidence in any legal proceeding. Testimony referring to such statement or admission shall not be admissible. Nor shall disclosure of any such statement or admission be compelled in any civil action. Documents prepared for the purpose of, in the course of or pursuant to alternative dispute resolution procedure shall not be admissible into evidence and disclosure of such documents may not be compelled in any legal proceeding.

**Section 14.8. Joint and Several Liability of Co-Owners.** If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner thereof in connection with the obligations of Owners imposed by this Declaration shall be joint and several.

**Section 14.9. Costs and Attorneys' Fees.** In the event that the Association takes any action because of any alleged breach or default of any Member or other party hereto under the Association's Governing Documents (whether or not any legal proceeding, including an arbitration, is initiated) the Association shall be entitled to recover from that Member (or other party) the costs, including attorneys' fees, the Association incurred as a result of the alleged breach or default. The Association's remedies to recover its costs and attorneys' fees shall include, but are not limited to, the imposition of a Special Individual Assessment pursuant to Section 5.4.

In the event an action (including an arbitration) is brought by a Member (or other individual with the right to enforce the Governing Documents) because of any alleged breach or default by any party hereto under the Association's Governing Documents, the court may award to the prevailing party in any such action (as defined by Civil Code 1717 or comparable superceding statute) such attorneys' fees and other costs, including by way of example, but not limited to court costs and experts' fees, incurred in connection therewith as the court deems just and reasonable.

## **ARTICLE XV: PROTECTION OF MORTGAGES.**

**Section 15.1. Mortgage Permitted.** Any Owner may encumber the Owner's Condominium with a mortgage.

**Section 15.2. Subordination.** Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Development, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the holder of the first mortgage expressly subordinates his interest in writing, to such lien. All taxes, assessments and charges that may become liens prior to the First Mortgage under local law shall relate only to the individual Unit(s) there charged and not to the Development as a whole.

**Section 15.3. Restrictions on Certain Changes/Amendments.** Unless after receiving written notice, fifty-one percent (51%) of the Eligible First Mortgagees holding mortgages on Condominiums have given their prior written approval (one vote for each Unit secured by a Mortgage), neither the Association nor the Owners:

(a) shall be entitled to effect any material amendment to the Governing Documents. As used in this Section, the term "any material amendment" means amendments to those provisions that establish, provide for and/or govern any of the following subjects:

(i) The pro rata interest or obligations of any Unit/Owner 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 Unit in the Common Area;

(ii) The fundamental purpose for which the Development was created. (*i.e.*, change from residential use to a different use); and

(iii) Any provision, that by its terms, is specifically for the benefit of First Mortgagees, or specifically confers rights on First Mortgagees.

An addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, for clarification, or to comply with changes in the legal requirements applicable to the Association and its members.

(b) shall be entitled to:

(I) Seek to abandon or terminate the Development, except for abandonment provided by statute in case of substantial loss to the Units and Common Area;

(ii) Partition or Subdivide any Unit; and

(iii) Use hazard insurance proceeds for losses to Units or Common Area in the Development for other than the repair, replacement or restriction of Improvements, except as provided by statute in case of substantial loss to the Units or Common Area of the Development.

A Mortgagee who receives a written request to approve any of the above acts, including but not limited to, additions or amendments to the Governing Documents and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

**Section 15.4. Right to Examine Books and Records.** Eligible First Mortgagees can examine the books and records of the Association and can require the submission of financial data concerning the Association, including annual audit reports, if any, and operating statements as furnished to the Owner. Any Owner, at the expense of such Owner, or the holders of fifty-one percent (51%) or more of First Mortgagees, at the First Mortgagees' expense, may request at anytime an independent audit of the Association.

**Section 15.5. Distribution of Insurance and Condemnation Proceeds.** Notwithstanding any other provision of this Declaration, no Unit Owner or any other party, shall have priority over any right of First Mortgagees of Units pursuant to their mortgages in case of a distribution of insurance proceeds or condemnation awards for losses to (or a taking of) Units or Common Area. Any such distribution shall be made pursuant to the terms and provisions of the applicable Mortgage. Any provision to the contrary, in this Declaration or in the Bylaws or other documents relating to the Development, is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the first mortgagees, as their interests may appear.

**Section 15.6. Notices to Eligible First Mortgagees.** The Association shall give written notice to all Eligible First Mortgagees of any lapse (or cancellation) of any insurance policy or fidelity bond maintained by the Association that is not renewed, restored or replaced within a short period of time or of any significant change to the coverage, limits and/or deductible for any of those policies or bonds issued to the Association;

The Association shall also give written notice to those Eligible First Mortgagee(s) who hold the mortgage for any affected Unit of any condemnation loss or any casualty loss to any Unit covered by a mortgage, if such loss exceeds \$50,000.00, or on any loss to the Common Area, if such loss exceeds \$500,000.00.

**Section 15.7. Effect of Breach.** If any Condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to effect or impair the lien of the first mortgage. On foreclosure of the First Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the First Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale.

On taking title to the Condominium, the foreclosure-purchaser shall be bound to all covenants, conditions and restrictions contained in the Governing Documents, but shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Condominium.

Nothing in this Section shall be construed to release any prior Owner from the Owner's obligation to pay for any assessment levied pursuant to this Declaration.

**Section 15.8. Non-Curable Breach.** 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 Declaration that is non-curable or of a type that is not practical or feasible to cure.

**Section 15.9. Payment by Mortgagees.** Mortgagees of Units may, jointly or singularly, pay taxes or other charges that are in default and that may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association. Upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association.

This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees. Upon the request of any Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Section 15.9.

**Section 15.10. Loan to Facilitate.** Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by 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 this Article XV.

**Section 15.11. Appearance at Meetings.** Because of its financial interest in the development, any Eligible First Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of the Governing Documents that have not been corrected or made the subject of remedial proceedings or assessments and/or other matters of concern to the Mortgagee.

**Section 15.12. Right to Furnish Information.** Any Mortgagee can furnish information to the Board concerning the status of any mortgage.

**Section 15.13. Inapplicability of Right of First Refusal to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the consent of any Eligible First Mortgagee of the Condominium. Any right of first refusal or option to purchase a Unit that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Unit, whether voluntary or involuntary, to a mortgagee that acquires title to or from or ownership of the Unit pursuant to the remedies provided in its mortgage or deed or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Further, no such right shall impair the rights of a First Mortgagee to:

- (a) Foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, or
- (b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or
- (c) Sell or lease a Condominium acquired by the Mortgagee.

**Section 15.14. Amendments to Conform with Mortgagee Requirements.** It is the intent of the Association that this Declaration and the Articles and Bylaws of the Association, and the Development in general, meet all reasonable requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Unit in the development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veterans' Administration. The Board and each Owner shall take any action or shall adopt any resolutions necessary to conform the Governing Documents and/or the Development to the reasonable requirements of any of said entities or agencies. Each Owner, by the acceptance of a deed to a Condominium, grants to the Board an irrevocable power of attorney to act as attorney-in-fact for such purpose. The provisions of this Declaration and the Association's other Governing Documents shall be liberally interpreted so as to comply with the reasonable requirements of institutional lenders, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

## **ARTICLE XVI: AMENDMENT OF DECLARATION.**

**Section 16.1. Amendment in General.** This Declaration may be amended or revoked in any respect by the vote or assent of Members representing at least fifty-one percent (51%) of all Members in Good Standing. Notwithstanding the foregoing, the percentage of the Members necessary to amend a specific clause or provision of this Declaration shall be at least the percentage of affirmative votes prescribed in said clause or provision.

**Section 16.2. Effective Date of Amendments.** Any amendment to this Declaration will be effective upon the recording in the Office of the Recorder of Alameda County a Certificate of Amendment, duly executed and certified by the president and secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 16.1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any governmental authority, Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

**Section 16.3. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

## **ARTICLE XVII: GENERAL PROVISIONS.**

**Section 17.1. Effective Date.** This Declaration shall become effective upon its recordation in the Official Records of the County of Alameda, State of California.

### **Section 17.2. Notices.**

**(a) Mailing as Alternative to Personal Service.** Any communication or notice of any kind permitted or required pursuant to any provision of the Governing Documents shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows: to an Owner at the Owner's Unit or to such other address as the Owner by designate from time to time in writing to the Association; to the Association at the principal office of the Association manager or to such other address as the Board may from time to time designate in writing to the Association Members; and to Eligible First Mortgagees at the most recent address of the Eligible First Mortgagee provided in writing to the Association. Any mailing by the Association based upon the information in its records at the time of the mailing shall be deemed effective for any notice required under the Governing Documents.

**(b) Personal Service Upon Co-Owners & Others.** Personal service of a notice or demand to one of the co-Owners of any Unit, to any general partner of a partnership that is the Owner of Record of the Unit, or to any officer or agent for service of process of a corporation that is the Owner of Record of the Unit, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**(c) Deemed Delivered.** All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail. All notices and demands served by personal delivery are delivered upon service.

**Section 17.3. No Public Rights in Development.** Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Development to the general public or for any public use or purpose whatsoever.

**Section 17.4. Construction of Declaration.**

**(a) Restrictions Construed Together.** All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Development as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

**(b) Restrictions Severable.** Notwithstanding the provisions of Subsection (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provisions, which shall remain in full force and effect.

**(c) Singular Includes Plural/Gender.** The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

**(d) Captions.** All captions, titles or headings used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

**(e) Conflicts.** In the event of any conflict between any of the provisions of this Article XIX and any other provisions of this Declaration, the provisions of this Article XIX shall control. In the event of any conflict between any of the provisions of this Declaration and any other provisions of the Governing Documents, the provisions of this Declaration shall control. Further, neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration; and, in the event of any inconsistency, the provisions of this Declaration shall control.

**(f) Exhibits.** All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

**Section 17.5. Power of Attorney.** To the extent necessary to carry out and enforce the provisions of this Declaration and the Association's Governing Documents in general, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners.

**Section 17.6 Term of Declaration.** The provisions of this Declaration shall be effective to bind the Owners, the Association, its Board of Directors, its officers and agents and their successors in interest for a period of 60 years from the date this Declaration is recorded. After the expiration of this term, the term of this Declaration shall be automatically extended for successive periods of 10 years each, unless within 6 months before the expiration of the initial 60-year term established by this Section, or any 10-year extension period, a recordable written instrument approved by Owners entitled to vote and holding a majority of the voting power of the Association (or such other majority of Owners as may be required by California law) terminating the effectiveness of this Declaration is recorded.

### Certification

We, the undersigned hereby certify, under penalty of perjury, that this Declaration of Covenants, Conditions and Restrictions set forth herein was duly adopted with the vote or written consent of the Members (the Members consisting of at least seventy-five percent (75%) of the total voting power held by the membership of the Association).

Dated: 4-6-07

MURRIETA OWNERS' ASSOCIATION

By: May McMan  
May McMan, President

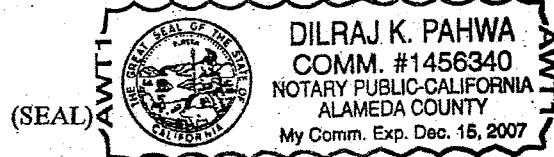
By: Karen Barry  
Karen Barry, Secretary

STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss.

On 4-6-2007, before me, Dilraj K. Pahwa, Notary Public, personally appeared Mary Elaine McMan personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dilraj  
Notary's Signature

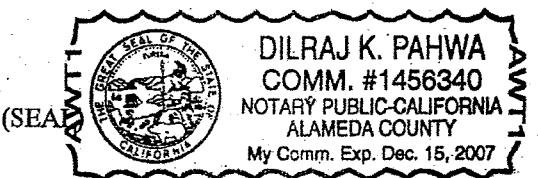


STATE OF CALIFORNIA )  
COUNTY OF Alameda ) ss.

On 4-6-2007, before me, Dilraj K. Pahwa, Notary Public, personally appeared Karen Barry personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their/ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Dilraj  
Notary's Signature



## **EXHIBIT A**

### **Ownership Interest of Each Unit as Tenant in Common in Building Common Area**

<b>Unit Location</b>	<b><u>Ownership Interest in Building Common Area</u></b>
Building 1	1/48
Building 2	1/33
Building 3	1/33
Building 4	1/48
Building 5	1/48
Building 6	1/33
Building 7	1/33
Building 8	1/48

## **EXHIBIT B**

### **Proportional Allocation of Assessments**

<b>UNIT TYPE</b>	<b>QTY</b>	<b>SQ. FTG.</b>	<b>% OF TOTAL SQ. FTG.</b>
A	51	776.5	.22%
B&C	206	1071	.31%
D	67	1283	.37 %

**RECEIVED**

APR 11 2007

**ANGIUS & TERRY LLP  
WALNUT CREEK**

**HAND DELIVERED**

TIME: 12:20