



STAFF REPORT CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: Gregory Wade, City Manager
MEETING DATE: April 14, 2021
ORIGINATING DEPT: Community Development Department
SUBJECT: **Consideration of the Draft Covenants, Conditions and Restrictions (CC&Rs) for the Approved Subdivision at 127-129 N. Granados Avenue, Solana Beach and Resolution 2021-044 Approving the CC&Rs**
2021-052

BACKGROUND:

At the June 10, 2020 City Council meeting, the City Council was able to make the required findings to adopt Resolution 2020-078 conditionally approving a Development Review Permit (DRP), Structure Development Permit (SDP), and Minor Subdivision (SUB) to consolidate two existing parcels and construct four detached, single-family condominium residences, a new driveway entry and associated site improvements. Planning Department Condition XV indicated that, "The City Council shall review and approve the proposed Covenants, Conditions and Restrictions (CC&Rs) for the development prior to the approval of the final map." Condition XVI required that, "The CC&Rs shall clearly restrict the garage space use from impeding the ability to park two automobiles in the garage at all times." Therefore, the Applicant, Granados Avenue Partners, LLC, has provided draft CC&Rs for the City Council's review and approval.

This item is before the City Council to review and adopt Resolution ²⁰²¹⁻⁰⁴⁴ 2021-052 (Attachment 1) if the Council approves the attached CC&Rs (Attachment 2) for the approved subdivision at 127-129 N. Granados Avenue.

DISCUSSION:

The Applicant has drafted the proposed CC&Rs for the subdivision as provided in Attachment 2. Section 11.11.3 of the CC&Rs contains the garage restriction as required by the City Council, which states:

11.11.3 Parking Spaces: Garages shall be used only for parking vehicles. There shall be no parking in the driveways to avoid obstruction of free traffic flow; parking

CITY COUNCIL ACTION:

outside of the Garage or designated parking spaces shall be considered a “nuisance” under this Declaration. **No use of the garages shall impede the ability to park two vehicles in each garage at all times.**

Section 11.12 of the CC&Rs restates and expands upon this restriction as follows:

11.12. USE OF GARAGES; PARKING SPACES.

Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an Owner's household goods. **Garages shall not be converted into any use (such as recreational room) or so filled that would prevent its use as parking spaces for at least two vehicles at all times. Specifically, no use of the garages shall impede the ability to park two vehicles in each garage at all times.** Owners are to use their Garages, as applicable for parking of their vehicles so that any street parking will be available for guests. Parking of vehicles on the Property shall be limited to within in Garages and the one designated Guest Parking Spaces; there shall be no parking of vehicles on unpaved surfaces, within the Drive or any private driveway.

Additionally, a condition was added in Section 18.6 that indicates that any amendment to Section 11.11.3 would require written approval from the City. If the Council determines that the draft CC&Rs are sufficient to meet Planning Department Conditions XV and XVI., Resolution ²⁰²¹⁻⁰⁴⁴ ~~2021-052~~ should be adopted to allow the Applicant to proceed with the approval of the final map and the issuance of building permits for the approved subdivision.

CEQA COMPLIANCE STATEMENT:

The original project was found exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction or Conversion of Small Structures) of the State CEQA Guidelines. The Approval of the CC&Rs would not be considered a project under CEQA.

FISCAL IMPACT: N/A

WORK PLAN: N/A

OPTIONS:

- Adopt Staff recommendation approving the CC&Rs by adopting Resolution ²⁰²¹⁻⁰⁴⁴ ~~2021-052~~
- Approve Staff recommendation subject to additional specific revisions to the CC&Rs.
- Deny Staff recommendation and provide direction.

DEPARTMENT RECOMMENDATION:

Staff recommends that the City Council adopt Resolution ²⁰²¹⁻⁰⁴⁴ 2021-052 approving the CC&Rs for the development at 127-129 N. Granados Avenue, Solana Beach, CA.

CITY MANAGER'S RECOMMENDATION:

Approve Department Recommendation.



Gregory Wade, City Manager

Attachments:

1. Resolution ²⁰²¹⁻⁰⁴⁴ 2021-052
2. Draft CC&Rs

RESOLUTION NO. 2021-044
2021-052

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, APPROVING THE COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs) FOR THE APPROVED FOUR-UNIT CONDOMINIUM SUBDIVISION AT 127-129 N. GRANADOS AVENUE, SOLANA BEACH

APPLICANT: Granados Avenue Partners, LLC
CASE NO.: 17-17-47 DRP/SDP/SUB

WHEREAS, Granados Avenue Partners, LLC (hereinafter referred to as “Applicant”) submitted an application for a Development Review Permit (DRP), Structure Development Permit (SDP), and Minor Subdivision Tentative Parcel Map (SUB) pursuant to Title 16 (Subdivisions) and Title 17 (Zoning), of the Solana Beach Municipal Code (SBMC); and

WHEREAS, at the Public Hearing on November 20, 2019, the City Council received and considered evidence concerning the proposed application; and

WHEREAS, the Public Hearing was conducted pursuant to the provisions of Solana Beach Municipal Code Section 17.72.030; and

WHEREAS, at the Public Hearing, the City Council adopted Resolution 2020-078 approving the project; and

WHEREAS, one of the conditions of Resolution 2020-078 required that the City Council shall review and approve the proposed Covenants, Conditions and Restrictions (CC&Rs) for the development prior to the approval of the final map; and

WHEREAS, the City Council has reviewed the proposed CC&Rs.

NOW, THEREFORE, the City Council of the City of Solana Beach, California, does resolve as follows:

1. That the foregoing recitations are true and correct.
2. That the proposed CC&Rs attached hereto as Attachment 1 are sufficient to meet Planning Department Conditions XV and XVI of Resolution 2020-078.
3. That the proposed CC&Rs for the four unit condominium subdivision at 127-129 N. Granados Avenue, Solana Beach, CA are approved.

PASSED AND ADOPTED this 14th day of April 2021, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California, by the following vote:

AYES: Councilmembers –

NOES: Councilmembers –

ABSENT: Councilmembers –

ABSTAIN: Councilmembers –

LESA HEEBNER, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA CANLAS, City Attorney

ANGELA IVEY, City Clerk

RECORDING REQUESTED BY:

WHEN RECORDED, MAIL TO:

GRANADOS AVENUE PARTNERS, LLC,
a California Limited Liability Company
418 Santa Domingo
Solana Beach, CA 92075
ATT: Jeff M. Wagner

APN: 263-372-26 & 27

(Space above this line for Recorder's Use Only)

Index as "CC&R's" and "SUBORDINATION AGREEMENT"

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
"127 - 129 N. GRANADOS"**

City of Solana Beach, County of San Diego, California

CERTAIN DISPUTES ARISING UNDER THIS DECLARATION, INCLUDING DISPUTES CONCERNING THE DESIGN OR CONSTRUCTION OF THE COMMUNITY, SHALL BE SUBMITTED TO ALTERNATIVE DISPUTE RESOLUTION IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION.

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Exhibit “A” – LEGAL DESCRIPTION

Subordination Agreement

Draft

THIS DECLARATION ("Declaration" or "CC&RS") is made on the day and year hereinafter written, by **GRANADOS AVENUE PARTNERS, LLC, a California limited liability company**, hereafter called "**Declarant.**" The first-letter capitalized words used herein shall have the meanings given them in **ARTICLE 3** herein. This Declaration is made with reference to the following:

ARTICLE 1.

RECITALS

1.1. THE PROPERTY

Declarant is the Owner of the real property (the "Property") and improvements therein located in the City of Solana Beach, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto, and by this reference made a part hereof. Collectively the Property and improvements therein may be referred to herein as the "Community" or "Project".

1.2. INTENTION: COMMON INTEREST DEVELOPMENT

Declarant intends by Recordation of this Declaration to (a) Establish the Community as a Common Interest Development by development of the Property as a "condominium project" (the "Project" or "Condominium Project") within the meaning of Business And Professions Code §11004.5(c) and Civil Code §4100 and §4125(a), in conformance with the provisions of the Subdivided Lands Law (Business And Professions Code §11000 et seq.) and Government Code §66427, whereby Declarant has or will subdivide the Property into four (4) separate interest "Units," each of which will be similar to a "residential lot," although the Property will legally be a Condominium Project; and (b) Subject the Community to certain mutually beneficial limitations, restrictions, conditions, covenants, easements, Assessments and liens, as hereinafter set forth, in accordance with the provisions of the Davis-Stirling Common Interest Development Act (Civil Code §4000-6150), as a comprehensive plan of improvement and development as a residential community called "127 - 129 N. GRANADOS" (the "Community") for: (i) the lease and/or sale of the Units to the general public, (ii) the use and management of the Project as a Common Interest Development, and (iii) enhancing and protecting the value, desirability and attractiveness of the Property for the benefit of Declarant and any and all present and future Owners and Occupants of the Property or any portion thereof.

1.3. DESCRIPTION OF COMMUNITY

1.3.1 General Description: Generally, the Community includes four Units, Common Area, Association Property, Easements and membership in the Association, each which is more specifically described below:

(a) **Detached Dwellings:** The Community consists of a single subdivision lot divided into four (4) "Condominium Units" (sometimes called "Units"); the 4 Units include single family homes with a two-car garage enjoying separately-metered utility facilities (electricity, gas, water, cable television, telephone and internet) and private balconies and patios.

(b) **Association Property:** The Association Property consists of certain real estate, Improvements and Easements owned by the Association for the common use and enjoyment of Owners; generally, the Association Property consists of a common driveway, a guest parking space, an outdoor landscaped, open area for use by all Owners, together with certain improvements (including, among other things, a ganged mailbox, landscaping, seating areas, irrigation and other systems, and perimeter fencing).

(c) **Common Area:** The Common Area, as more fully defined below in Section 1.3.3, consists of cloud of air space located high above Ground Elevation as exists to comply with Civil Code §4500.

(d) **Project Easements:** Generally there are non-exclusive, reciprocal easements within the Property, benefiting the Owners, their Units and Dwellings, intended to provide (i) vehicular and pedestrian access, (ii) utility facilities rights-of-way and use locations, (iii) maintenance access and/or (iv) landscaping operation. The Association is granted non-exclusive easements over certain areas in order to fulfill its maintenance and other obligations outlined herein. Specific easements are described more fully in Articles 3 and 9 of this Declaration.

(e) **Association:** A nonprofit mutual benefit corporation, called the "**127 - 129 N. GRANADOS OWNERS ASSOCIATION,**" (the "Association") of which the Owners of all Units shall automatically be members, is assigned the responsibility and obligation for (i) maintaining the

Master Insurance Policy on behalf of the Owners for coverage of the Master Insurance Areas, (ii) maintenance and operation of the Association Property and certain Exterior Areas (such as building roofs & exterior surfaces and Easement Areas) as defined below; (iii) the collection of funds from the Owners to pay for the costs of the Master Insurance Policy, maintenance and the administration of the Association itself, and (iv) ownership of the Association Property; and (v) such other purposes as are more fully described in this Declaration.

1.3.2. CONDOMINIUM UNITS

Each Condominium Unit consists of a separate interest in space containing all of the earth, air and improvements located within its boundaries. The lower boundary of a Condominium Unit extends to the center of the earth below Ground Elevation; the upper boundary of a Condominium Unit extends above Ground Elevation up to its boundary of the "Common Area," as shown on the Condominium Plan and described hereinafter. The lateral (side) boundaries of each Condominium Unit are shown on the Plan by "Unit Boundary" depiction lines.

1.3.3. COMMON AREA

The "Common Area" depicted and more fully defined on the Condominium Plan, is a three-dimensional portion of the Property consisting exclusively of a volume of air space located high above Ground Elevation, beginning at a point that is ten feet (10.00') below infinity and extending upwards into infinity. It contains no earth or any natural or constructed physical objects or improvements. The Common Area exists in order to comply with Civil Code §4500 for the establishment and existence of a condominium project Common Interest Development, and shall be owned by all Unit Owners in one-fourth (1/4th) undivided, equal "Fractional Interests" as tenants-in-common.

1.4. CONDOMINIUM PLAN

Declarant will Record or has Recorded concurrently with this Declaration a Condominium Plan (the "Plan") covering the Property in compliance with Civil Code §4120. The Plan diagrammatically establishes three-dimensional divisions of the Property into (a) "Common Area"; (b) "Unit" Separate Interests; (c) Association Property; and Easements.

1.5. CONDOMINIUM OWNERSHIP.

The Owner of a Condominium will receive title to a Condominium Unit, together with an undivided one-fourth (1/4) fractional interest as tenant-in-common in the Common Area. By virtue of owning a Condominium, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Condominium.

1.6. NOTICE OF STATUTORY PROCEDURES FOR CERTAIN CLAIMS PURSUANT TO CIVIL CODE §912(f)

Declarant hereby notifies each Owner and the Association that Chapter 4 (commencing with §910) of Title 7 of Part 2 of Division 2 of the Civil Code sets forth non-adversarial procedures and remedies that may apply to claims for construction defect which may arise in connection with the Project. The non-adversarial procedures impact the legal rights of Owners and the Association. The statute allows Declarant to elect not to use its procedures. The statute also allows Declarant, by contract with Owners or the Association, to provide alternative non-adversarial procedures and remedies in lieu of the procedures and remedies contained in Civil Code §910 *et seq.*

ARTICLE 2. DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Property, shall be, held, conveyed, transferred, hypothecated, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved subject to the declarations, limitations, reservations, covenants, conditions, restrictions, servitudes, easements, liens and charges herein set forth, all of which are imposed as equitable servitudes pursuant to a general plan for the development and ownership of the Property, and all of which are declared and agreed to be for the purpose of uniformly enhancing, maintaining and protecting the value, attractiveness and desirability of the Property. These provisions are imposed upon the Association, Declarant, the Owners, Occupants and their respective Invitees, and shall bind all of the foregoing.

These provisions shall be a burden upon and a benefit to not only the original Owner of each Condominium and the Association, but also to their respective successors and assigns, including Residents and Invitees thereof. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

ARTICLE 3. DEFINITIONS

3.1. ADJACENT DWELLING; ADJACENT UNIT

"Adjacent Dwelling" shall mean and refer to each of the Dwellings within the Property with respect to the location of one to the other. "Adjacent Unit" shall mean and refer to each of the two Units in the Property with respect to the location of one to the other.

3.2. ANCILLARY INSTRUMENT

"Ancillary Instrument" shall mean and refer to any instrument, document, agreement or warranty, whether Recorded or not Recorded, which (a) encumbers or affects the use and/or Operation of the Property or appurtenant Easements, (b) is intended to enable the establishment or continued Operation of the Property or appurtenant Easements; or (c) creates or involves a duty or obligation on the part of Declarant, the Owners and/or the Association to perform or cause to be performed certain Operations to the Property or appurtenant Easements which are either an Association Obligation or a Shared Responsibility.

3.3. ARCHITECTURAL STANDARDS

"Architectural Standards" shall mean and refer to such design, construction and similar criteria that may be adopted by Declarant and thereafter the Board or its Architectural Committee, pursuant to the Article 12 entitled "Architectural And Design Control" herein.

3.4. ARTICLES.

"Articles" shall mean and refer to the Articles of Incorporation of the Association, including such amendments thereto as may from time to time be made.

3.5. ASSOCIATION.

"Association" shall mean and refer to **127 - 129 N. GRANADOS OWNERS ASSOCIATION**, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "Association" as defined in Civil Code §4080.

3.6. ASSOCIATION PROPERTY.

"Association Property" shall mean all real property (including Improvements) and easements owned by the Association from time to time for the common use and enjoyment of the Owners. The Association Property to be conveyed in fee (unless via easement or license, as described herein) to the Association shall consist of all portions of the Community except (i) the Unit Separate Interests and (ii) the Common Area as shown on the Condominium Plan. It is intended that the Association Property include portions of the project other than the Unit Separate Interests, and shall include, but not be limited to: a) the common drives and any parking spaces therein, the shared yard with benches, planters and landscaping improvements, BMP's and drainage facilities which benefit multiple Owners, and all improvements located on the Association Properties, which areas are depicted on the Condominium Plan as "AP"; b) Any Utility Facilities, which connect to or are utilized by more than one Separate Interest, but which are not owned and maintained by a governmental entity or public utility; television cable and related CATV equipment and other communication equipment may be owned by the cable supplier or another third party; c) Off-site maintenance easements/licenses which are transferred to the Association and areas subject to encroachment maintenance and removal agreements; and d) Easements on or over the Association Maintenance Areas.

3.7. ASSESSMENT

"Assessment" shall mean and refer to a charge which the Board may levy against an Owner and/or such Owner's Unit in accordance with the provisions of the Article 7 herein entitled "ASSESSMENTS."

3.8. ASSOCIATION RESPONSIBILITY; ASSOCIATION OBLIGATION(S); ASSOCIATION MAINTENANCE AREA(S) OR OBLIGATIONS

"Association Responsibility," "Association Obligation(s)" or "Association Maintenance Areas or Obligation(s)" (as the context may infer) shall mean and refer to the Association's obligation to Maintain: (a) the Association Property (including the driveway, community year and landscaped areas and perimeter fence described below and depicted on the Condominium Plan, (b) the Master Insurance Coverage on the Association Property; (b) the Improvements on the Association Property, including, if any, the ganged mailbox(es) (except for the locks), the lighting, signage, fire suppression system and equipment, trash receptacles, and the perimeter fencing on the boundaries of the Property; and (c) other Areas assigned to the Association for maintenance in Article 13, and any other responsibility, duty and/or obligation the Association may have pursuant to this Declaration, Applicable Law or Ancillary Instrument. Any cost or expense associated with an Association Responsibility or Obligation shall be a Common Expense.

3.9. BOARD

"Board" shall mean and refer to the Board of Directors of the Association.

3.10. BUDGET

"Budget(s)" or shall mean and refer: (a) during the initial year of operation of the Project and the Association, to that detailed "budget" prepared in accordance with DRE requirements for common interest developments, estimating the Common Expenses (the "DRE Budget"); and, thereafter, (b) to a pro forma operating budget described in Civil Code §5300(b)(1), prepared or caused to be prepared by the Board for the second and each subsequent Fiscal Year of Operation of the Project and the Association (the "Association Budget"). The Budget shall define the monthly and annual costs of estimated Common Expenses and the amount to be allocated to and assessed against the individual Units and their respective Owners in accordance with the provisions of Article 7 entitled "ASSESSMENTS" herein.

3.11. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be made.

3.12. BUILDING

"Building" shall mean and refer to any physical building structure, , including, but not limited to, any Garage portion of such building structure, and all framing, walls, drywall, insulation, HVAC, rough plumbing, rough electric, trim, exterior siding and/or paint or other exterior surfaces, stairs, foundation, trusses, Roofs, sub-roofs, ceilings, sub-ceilings, balconies, decks, windows, window frames, perimeter doors, garage doors, walkways; together with any ancillary Improvements to the foregoing; but excluding the personalty of the Owner.

3.13. CC&RS

"CC&RS" shall mean and refer to the covenants, conditions and restrictions contained in this Declaration and the other Documents, as they may from time to time be amended.

3.14. CITY.

"City" shall mean and refer to the City of Solana Beach, a municipal corporation located in the County of San Diego, State of California.

3.15. CLOSE OF ESCROW.

"Close of Escrow" shall mean and refer to the date on which a deed from Declarant is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Public Report.

3.16. COMMON AREA.

"Common Area" shall mean and refer to that three-dimensional portion of the Property consisting exclusively of a volume of air space located high above Ground Elevation, beginning at a point that is ten feet (10.00') below infinity and extending upwards into infinity. It contains no earth or any natural or constructed physical objects or improvements.

3.17. COMMON EXPENSES.

"Common Expenses" means and includes the actual and estimated costs and expenses incurred or to be incurred by the Association (including those of the *pro-forma operating budget* described in Section 3.10 herein):

- (a) expenses for Master Insurance Coverage
- (b) expenses for the Maintenance of the Association Property and the Association Maintenance Obligations;
- (c) performing the duties and obligations of the Association set forth in this Declaration and the other Governing Documents; expenses incurred in the implementation of Association Responsibilities and obligations (such as complying with the Governmental Entitlements and Applicable laws); maintaining the legal status and qualifications of the Association as an entity in good standing and entitled to do business in the State of California; conducting inspections; administering Association committees;
- (d) expenses for management and administration of the Association, including without limitation compensation paid by the Association to managers, accountants, attorneys and architects and consultants
- (e) any real property taxes or assessments paid by the Association, which are not charged separately to each Unit or Owner thereof
- (f) reasonable reserves as deemed appropriate by the Board or otherwise required pursuant to the Governing Documents or Applicable Laws
- (g) any other expenses incurred by the Association in connection with the Operation of the Association Obligations as required under the Governing Documents and
- (h) any other sums designated to be a common expense by or pursuant to these CC&RS, or as may be mutually agreed upon in writing by the Members pursuant to Voting Policy.

Common Expenses shall not include any costs arising from any damages or injury as a result of the gross negligence or willful misconduct of an Owner, Occupant or respective Invitee thereof.

3.18. COMMON EXPENSE AREAS

"Common Expense Area(s)" shall mean and refer to the areas associated with the Common Expenses described in Section 3.17 above, and such other areas and Improvements within the Property and responsibilities of the Association which are designated to be a Common Expense Area by or pursuant to these CC&RS or as agreed by the Members of the Association in accordance with its Voting Policy.

3.19. CONDOMINIUM.

"Condominium" shall mean and refer to an estate in the Property, or portions thereof, as defined in Civil Code §4125(b), or any similar statute hereinafter enacted, and shall consist of (i) a Separate Interest in space called a "Unit," (herein also referred to as a "Condominium Unit"); (ii) an appurtenant Fractional Interest in the "Common Area" as described herein and described and depicted in the Condominium Plan; (iii) and certain easements over the Association Property which has been conveyed to the Association and elsewhere on the Property, subject to the Association rules and regulations.

3.20. CONDOMINIUM PLAN; DIAGRAMMATIC PLAN; PLAN.

"Condominium Plan," "Diagrammatic Plan" and/or "Plan" shall mean and refer to the diagrammatic plan Recorded pursuant to Civil Code §§4285 and 4290, covering the Property, which depicts the Common Area and each Unit therein. The Condominium Plan may be amended from time to time in accordance with the provisions herein, and/or in compliance with Civil Code §4295 and Government Code §66427.

3.21. COUNTY RECORDER

"County Recorder" shall mean and refer to the San Diego County Recorder, San Diego County, California.

3.22. DECLARANT.

"Declarant" shall mean and refer to Granados Avenue Partners, LLC, a California limited

liability company, its respective successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Condominiums within the Property. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant, encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale. A successor shall also include any Person to whom the Declarant assigns any of its rights by an express written assignment, who acquires substantially all of Declarant's assets by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law, or otherwise.

3.23. DECLARATION.

"Declaration" shall mean and refer to this Declaration recorded with the Office of the County Recorder of San Diego County, California, covering the Property, including such amendments thereto as may from time to time be recorded. The foregoing notwithstanding, the effect of any new or any amendment to a California statute(s) or Federal law which is applicable to the Association shall prevail over the then current Declaration, notwithstanding the absence of an amendment to the Declaration by the Association.

3.24. DRAINAGE FACILITIES.

"Drainage Facilities" shall mean and refer, as applicable, to (a) any area drains which run along the surface of the Property; (b) any subterranean drains below the Property surface; and (c) such other drainage facilities described herein.

3.25. DWELLING.

"Dwelling" shall mean and refer to a single-family residence in a Building or portion of a Building located within the boundaries of a Unit/Condominium Unit that is used exclusively by the Owner or Occupant thereof for residential purposes.

3.26. EASEMENTS

"Easements" shall mean and refer to those non-exclusive easements and rights shown on the Map and otherwise of Record, and those specifically granted and reserved in Article 9 herein and elsewhere this Declaration and the other Governing Documents.

3.27. ELIGIBLE MORTGAGE HOLDER

"Eligible Mortgage Holder" shall mean and refer to the holder of a First Mortgage or First Deed of Trust on a Unit, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Unit number or the street address of the secured Unit.

3.28. EMERGENCY

"Emergency" is an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property; provided, however, the term "emergency situation" with respect to an action or attention taken by the Board of Directors shall exist if there are circumstances that could not have been reasonably foreseen by the Board, that require immediate attention and possible action by the Board, and that, of necessity, make it impracticable to provide "notice" [Civil Code §4930(d)(1)].

3.29. ENTRY; ENTRY NOTICE.

"Entry" or "Entry Notice" shall mean and refer to the protocols for providing notice of entry and actual entry:

(a) onto one Unit that one Owner or Occupant (the "Entering Party") or its authorized Invitee is required to give to the Owner or Occupant of another Unit in order to enter upon such other Owner's or Occupant's ("Entered Party" or "Other Party") Exterior Area not located within an Easement Area, when reasonably necessary for purposes of performing such Operations on Improvements owned by the Entering Party but which may require access from within the Entered Party's Exterior Unit Area (e.g. accessing exterior surface areas of Dwelling), including access to areas which constitute an easement for lateral support of land or Improvements of the Entering Party's Adjacent Unit; or

(b) onto one Unit or the Dwelling therein by the Association or its duly authorized

agent, when necessary in connection with the Association's Obligations and Responsibilities for maintaining Insurance Coverage on the Master Insurance Areas, and for the evaluation, estimation, restoration, repair or replacement of Improvements comprising the Master Insurance Areas or maintenance areas of the Association;

3.30. EXCLUSIVE USE EASEMENT AREA; EXCLUSIVE USE AREAS

Exclusive Use Easement Area(s) shall mean and refer to those portions of the Property and the Improvements located therein designated for the exclusive use of one Unit Owner and which is or will be appurtenant, assigned and/or conveyed to such Unit as an Exclusive Easement. Exclusive Use Areas may include, but not be limited to certain external Utilities Facilities, including, but not limited to, telephone, television, computer and other electrical wiring, and other utility installations, if any of the foregoing are designed to exclusively serve a single Unit, but located outside the boundaries of such Unit (*e.g.* any utility lines running through the Association Property), which serve or are intended to serve just one Unit.

3.31. EXTERIOR AREA

"Exterior Area" shall mean and refer to those areas of the Property which the Association shall maintain or otherwise operate. These Exterior Areas may be Association property, an association maintenance Area or part of the Unit, but assigned to the Association for maintenance or operation.

3.32. EXTERIOR SURFACE AREA

"Exterior Surface Area" shall mean and refer to the surface of the exterior portion of a Building and/or Structural Improvement (such as the roof or painted surface of the exterior walls) which are assigned to the Association for maintenance but otherwise Owned by and used exclusively by a Unit owner.

3.33. FACILITIES

"Facilities" shall mean and refer to tangible Improvements within the Property, including, but not limited to, Utility Facilities, Drainage Facilities, Structural Improvements and Landscaping Improvements,

3.34. FHLMC

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

3.35. FNMA

"FNMA" shall mean and refer to the Federal National Mortgage Association.

3.36. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a First Deed of Trust as well as a First Mortgage.

3.37. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage as well as to a Beneficiary under a Deed of Trust defined herein as a First Mortgage.

3.38. FIRST PURCHASER

"First Purchaser" shall mean and refer to a Person who purchases a Unit from Declarant authority of a Public Report and any and all Improvements located thereon, whether such Improvements are existing or proposed. Neither Declarant nor any successive Declarant shall be First Purchasers.

3.39. FISCAL YEAR

"Fiscal Year" shall mean and refer to the fiscal accounting and reporting period of the Association; initially, the Fiscal Year shall *commence on* January 1 and end on December 31 of each year; provided, however, the Fiscal Year may be changed from time to time by the Owners, acting as Members of the Association, as they shall mutually determine.

3.40. FRACTIONAL INTEREST

"Fractional Interest" shall mean and refer to each equal, undivided fractional interest in the Common Area appurtenant to each Unit owned by an Owner. Each Fractional Interest shall be equal to the fractional proportion of one Unit to all of the Units in the Project – that is, "one-fourth (1/4th)".

3.41. GARAGE

"Garage" shall mean and refer to that portion of a Dwelling which is designed and intended for the parking of motor vehicles and storing such other Personalty as may be permitted by this Declaration.

3.42. GOVERNING DOCUMENTS

"Governing Documents" means and includes this Declaration, the exhibits, if any, attached hereto, the Condominium Plan, Articles of Incorporation, Bylaws and any Operating Rules for the Members as established from time to time.

3.43. HAZARDOUS MATERIALS.

"Hazardous Materials" shall mean and refer to (a) any toxic substance, material or waste, which is or becomes (i) regulated by any local governmental authority, the State of California or the United States Government; and/or (ii) defined as a "Hazardous Substance" under Health and Safety Code §25316, or (b) an excessive quantity of otherwise non-toxic materials.

3.44. GROUND ELEVATION.

"Ground Elevation" shall mean and refer to the finish grade(s) of the Property, as referenced on the Condominium Plan.

3.45. IMPROVEMENTS

"Improvement" shall mean and refer to any one or all of the following, as the context may infer or require:

3.45.1. STRUCTURAL IMPROVEMENTS

All structures and appurtenances thereto of every type and kind, including, but not limited to, Buildings/Dwellings, Garage, windows, window frames, window tinting, doors, door frames, hardware, glass, skylights, screens, Roofs, foundations, paintings or other surface applications of any exterior surfaces of any building or other structure, skylights, stairs, walkways, fences, gates, screens, screening walls, retaining walls, awnings, balconies, decks, deck covers, trellises, poles, masts, antennas, solar or wind powered energy systems or equipment, heating or air-conditioning fixtures or equipment, swimming pools, heating, ventilating, cooling and electrical systems; plumbing, water-lines, pumps, sump-pumps, manhole-covers, sewer pipes or lines, fire-sprinkler systems, alarms, exterior wiring and other utility facilities;

3.45.2. LANDSCAPING IMPROVEMENTS; LANDSCAPING

"Landscaping" or "Landscaping Improvements" shall mean and refer, but not be limited to: (a) Landscape and Utilities Easement Area(s) (b) landscaping – including flowers, grass, plants, trees, shrubs and bushes, including natural or artificial plantings, (c) the planting, clearing or removing landscaping, (e) landscape facilities – including landscape-focus lighting, real and/or faux stones, rocks, timbers, edgers, walls and boxes, pavers, planters, (f) irrigation facilities – including irrigation pipes, pipe heads, sprinklers, controllers, (g) with respect to Unit 1, a private side yard located within the Unit; and (h) drainage facilities related to any of the foregoing.

3.45.3. PERSONALTY; PERSONALTY IMPROVEMENTS

"Personalty" or "Personalty Improvements" shall include, but not be limited to, umbrellas, signs, water softeners, above ground hot spas, appliances, cabinets, carpeting, added flooring atop sub-floors, interior added wall surfaces, finish plumbing including plumbing fixtures, finish electric including interior lights, lighting fixtures, furnishings, furniture, whether built-in or free-standing; landscaping and similar items of personalty located within a Unit. Personalty Improvements shall also include bicycles and motorized vehicles within a Unit.

3.45.4. ELIMINATION OF IMPROVEMENTS

Demolition or destruction by voluntary action of any Improvement or appurtenance thereto of every type and kind;

3.45.5. GRADING

The grading, excavation, filling or similar disturbance to the surface of the land, including, without limitation, change of grade, change of ground level, change of drainage pattern or change of stream bed;

3.45.6. MODIFICATION

"Modification" shall mean any addition, alteration or modification to the any of the foregoing, including, without limitation, any change of material exterior appearance, color or texture, room partitions, structural alterations to any portion of a Building.

3.46. INCORPORATOR

"Incorporator" shall mean and refer to the incorporator of the Association.

3.47. INSTITUTIONAL MORTGAGEE

"Institutional Mortgagee shall mean and refer to each of the following: (a) a Mortgagee which is a bank savings and loan association, insurance or mortgage company or other entity or institution chartered under Applicable Laws; (b) an insurer or governmental guarantor of a First Mortgage; (c) a First Mortgagee which is a Federal or State Agency; or (d) any other institution specified by the Board in a recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Condominium.

3.48. INSURANCE COVERAGE

"Insurance Coverage" shall mean and refer to the insurance coverages of the Property that are required pursuant to the provisions of ARTICLE 14 herein. There are two (2) types of Insurance Coverage: Master Insurance and Unit Insurance.

3.49. INVITEE.

"Invitee" shall mean and refer to any person, who is not an Occupant, whose presence within the Project is approved by or is at the request of a particular Owner, Occupant or the Association, and shall include, but not limited to, an Owner's or an Occupant's Family, agents, guests, employees, licensees or service personnel.

3.50. JOINT FOUNDATION

"Joint Foundation" shall mean and refer to each Building foundation or slab, built as part of the original construction of the Buildings within the Units, which is shared with and serves Adjacent Units.

3.51. MAP; FINAL MAP.

"Map" or "Final Map" shall mean and refer to that certain Final Map filed in Office of the County Recorder of San Diego County, as more particularly described in EXHIBIT "A" hereto.

3.52. MASTER INSURANCE AREAS

"Master Insurance Areas" shall mean and refer to all Association Property and Association Maintenance Areas within the Property.

3.53. MASTER INSURANCE COVERAGE

"Master Insurance Coverage" shall mean and refer to liability and casualty insurance coverage over the Master Insurance Areas that is required to be put in place and supervised by the Association in accordance with ARTICLE 14 herein.

3.54. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust and/or mortgage encumbering a Unit.

3.55. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

3.56. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

3.57. NOTICE AND HEARING

"Notice and Hearing" shall mean and refer to the procedure, pursuant to Civil Code §5855 that gives an Owner notice of the Board's intention to consider or impose a discipline against a Member, and the opportunity for a hearing before the Board, as more fully described in the Article entitled "RIGHTS OF OWNERS" herein.

3.58. OCCUPANT; RESIDENT

"Occupant" or "Resident" shall mean and refer to a Person who either owns and occupies a Unit, or who leases a Unit from an Owner and occupies the same.

3.59. MAINTAIN; MAINTAINENCE; MAINTAINING

"Maintain" (and its related word forms) shall mean and refer to the day-to-day cleaning, repair, maintenance, replacement and/or other operation of Improvements in the Property or in the administration of the Association.

3.60. OWNER.

"Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to a Unit, including Declarant. The term "Owner" shall include a seller under an executory contract of sale, but shall exclude Mortgagees.

3.61. PERSON

"Person" shall mean a natural individual, and/or any public or private corporation, general or limited partnership, limited liability company, trust, trustee and any other form of organization permitted by law, or one or more of them, and the heirs, executors, administrators, legal representatives, successors and assigns of any of them, as the context may require, including Owners, who has the legal right to hold title to or an interest in real property, including, but not limited to, a leasehold interest or an easement.

3.62. PROJECT; CONDOMINIUM PROJECT

"Project" or "Condominium Project" shall mean and refer to all of the real property described in **EXHIBIT "A"** together with all improvements situated thereon.

3.63. PROPERTY

Property shall also mean and refer to all of the real property described in Exhibit A.

3.64. PURCHASER

"Purchaser" shall mean and refer to a Person who was a First Purchaser or any subsequent Owner thereof.

3.65. RECORD; RECORDED, RECORDATION

"Record," "Recorded" or "Recordation" shall mean and refer to, with respect to any document, the recordation or filing of such document in the Office of the County Recorder, California in which the Property is located; the use of such term shall automatically imply that the parties shall provide properly authorized signatures and notarization thereof.

3.66. RULE; OPERATING RULE

"Rule(s)" or "Operating Rule(s)" shall mean and refer to a regulation(s) adopted by Declarant and thereafter the Board under Civil Code §§4340-4370 that applies generally to the Operation of the Project or the conduct of the business and affairs of the Association, Owners, Occupants and their respective Invitees within the Project.

3.67. ROOF

"Roof" shall mean and refer to the roof area of each Dwelling, which is a separate and independent roof system located exclusively within the boundaries of the Unit in which each such Dwelling is located, and is not physically connected to any other Dwelling whatsoever.

3.68. UNIT; UNIT SEPARATE INTEREST; CONDOMINIUM UNIT.

"Unit," "Unit Separate Interest," "Condominium Unit", which terms are synonymous in these CC&RS, shall mean and refer to an estate in the Property, or portions thereof, as defined in Civil Code §§4125(b) and 4185(a)(2), or any similar statute hereinafter enacted, each of which is not owned in common with the Owners of any other Unit in the Property. Said Units are described and depicted in the Condominium Plan, where they are identified as UNIT 1, UNIT 2, UNIT 3, and UNIT 4. Each Unit is a three-dimensional division of land (including airspace, earth, water and Improvements) the lateral boundaries of which are vertical planes at the limits of the horizontal dimensions of each such respective Unit as shown on the Condominium Plan, the lower limit of which extends from the ground elevation down to the center of the earth, and the upper limit which extends from ground elevation to the lower boundary of the Common Area. The Unit does not include those areas defined herein as "Common Area" or "Association Property". Each Unit is subject to easements and/or encroachments, whether they now exist or may be later caused or created in any manner referred to in the Section entitled "Easements" herein.

3.69. UNIT IMPROVEMENTS

"Unit Improvements" shall mean and refer to those Structural and Landscaping Improvements, which are located within the boundaries of a separate interest Unit.

3.70. UNIT RESPONSIBILITY; UNIT OWNER RESPONSIBILITY

"Unit Responsibility" and/or "Unit Owner Responsibility" (as the context may infer) shall mean and refer to any responsibility, duty and/or obligation the Unit Owner and/or Occupant may have pursuant to this Declaration, any other Governing Document, Applicable Law, resolution by the Board or Ancillary Instrument, and shall include any responsibility for the cost thereof.

3.71. UNIT INSURANCE COVERAGE

"Unit Insurance Coverage" shall mean and refer to the individual liability and casualty insurance coverage over each Unit Area that each Owner is required to maintain in accordance with Article 14 herein.

3.72. UTILITY AREA

"Utility Area" shall mean and refer to any area within the Property in which Utility Facilities and/or Systems are located and/or for which easements are reserved and granted to one or more Owners for purposes of installation, maintenance and use of such Utility Facilities and Systems.

3.73. UTILITY FACILITIES; UTILITY SYSTEMS.

"Utility Facilities" and/or "Utility Systems" shall mean and refer, but not be limited to: (a) those electrical, cable, computer, television, telephone and similar transmission devices and/or media available now or in the future; (b) gas, water, sanitary sewer and drainage facilities; (c) plumbing, lighting, heating and air conditioning facilities, including air conditioning compressors and condensers and all such other types of utility systems and facilities, any of the foregoing of which is or is intended to be an individual or shared utility service to any Unit, Building or Improvement therein.

3.74. VA

"VA" means the U.S. Department of Veterans Affairs, including any successors thereto.

3.75. VOTING AND ELECTION PROCEDURES POLICY; VOTING POLICY

"Voting Policy" or "Voting and Election Procedures Policy" shall mean and refer to specific procedures adopted by the Board for Member decision-making as described in the Bylaws, pursuant to Civil Code §§5100-5145, or its successor statute, including any quorum requirement not otherwise addressed by statute or specific provision of the Governing Documents.

3.76. VOTING POWER

"Voting Power" shall mean those Members of the Association who are eligible to vote, as provided in the Bylaws.

ARTICLE 4. THE ASSOCIATION

4.1. THE ORGANIZATION

The Association is a nonprofit mutual benefit corporation formed under the Nonprofit Mutual Benefit Law of the State of California.

4.2. COMMENCEMENT OF ASSOCIATION

The Association shall commence business at such time that a Board of Directors has been either appointed by the Incorporator of the Association or elected pursuant to the provisions therefor contained in the Bylaws.

4.3. INTERIM PERIOD

The "Interim Period" shall mean and refer to that period of time from (a) the date of conveyance of the first Condominium to a Purchaser in the Project, until (b) the date that a Board of Directors of the Association has been appointed by the incorporator or elected by the membership pursuant to the provisions therefor contained in the Bylaws. During the Interim Period, Declarant or its designated agent may operate and handle the affairs for the Master Insurance Area of the Project. The foregoing notwithstanding, during the Interim Period, the powers granted to the Association and the Board herein, in the Bylaws and in the other Governing Documents, shall inure to the Declarant or its agent.

4.4. POWERS AND DUTIES OF THE ASSOCIATION

The Association, acting through its Board of Directors, shall have all of the powers of a California nonprofit mutual benefit corporation, and to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, as described and subject to the limitations set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association.

ARTICLE 5. MEMBERSHIP, VOTING, FIRST MEETING

5.1. MEMBERSHIP IN GENERAL

Every Owner of a Unit against which Assessments have been levied, including Declarant, shall be a Member of the Association. Ownership of a Unit or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until such owner's interest in the Unit(s) in the Project ceases, at which time such Owner's membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Unit to which it is appurtenant, and then only to the purchaser. Any attempt to make a prohibited transfer shall be void. The transfer of title to a Unit or interest therein shall operate automatically to transfer the appurtenant membership to the new Owner. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Governing Documents.

5.2. COMMENCEMENT OF VOTING RIGHTS

An Owner's right to vote, including Declarant, shall not vest until Regular Assessments have been levied upon such Owner's Unit as provided in this Declaration. All voting rights shall be subject to the CC&RS provided for herein and in the other Governing Documents.

5.3. CLASSES OF VOTING RIGHTS

The Association shall have two (2) class(es) of membership:

5.3.1. CLASS A

Each Member, other than the Declarant, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Unit of which he or she is record owner. If a Unit is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each Unit.

5.3.2. CLASS B

Declarant shall be the sole Class B Member. Class B membership entitles the holder to three (3) membership votes for each Unit owned. The Class B membership shall be irreversibly converted to Class A membership on the date which is the later of: (i) one hundred twenty (120) days after the close of escrow of seventy-five percent (75%) of the Condominiums planned for the Project; (ii) five years after the date of recordation of this Declaration; or (iii) Two (2) years following the first Close of Escrow to a First Purchaser. At the first election following the Class B conversion, the Declarant or his agent may continue to serve as an ex officio member of the Board, possessing all rights of Board membership except voting and attending executive sessions of the Board.

5.3.3. SPECIAL VOTING RIGHTS OF CLASS A MEMBERS FOR ELECTION OF DIRECTORS

For so long as the Class B Member has the right to designate a majority of the members of the Board as provided above, the Class A Members shall be entitled to elect at least one-third (33.3%) of the members of the Board by their sole vote.

5.4. APPROVAL OF MEMBERS

Member decision-making shall be accomplished pursuant to the Association's Voting and Election procedures as described in the Bylaws, pursuant to Civil Code §§5000 and 5100-5145.

5.5. FIRST MEETING OF THE ASSOCIATION

The first meeting of the Members shall be held no later than six (6) months after the first Close of Escrow in the Project. Thereafter, Annual Meetings shall be scheduled and conducted by the Board at least once in each subsequent Fiscal Year. As provided in the Bylaws, at the first meeting of the Association, the Class A Members shall elect one Board member and the Declarant shall elect two Board members.

5.6. ELECTION OF BOARD OF DIRECTORS

Election of the directors shall be accomplished by secret ballot with cumulative voting, in accordance with the election provisions described in the BYLAWS, pursuant to Civil Code §§5100-5145. A Report Meeting may be scheduled to be conducted concurrently (a) with the tabulation of secret ballots for such election of directors and prior to (b) a Board meeting, so that the Board may thereafter elect officers and/or make such other decisions as may be necessary for the Operation of the Board and the Association.

5.7. NO PERSONAL LIABILITY OF BOARD MEMBERS

No volunteer, officer or volunteer director of the Board or of any committee of the Association, or any officer of the Association, or any Managing Agent, as described in Civil Code §5350 *et seq.*, or Declarant, or any agent or employee of Declarant (each an "Association Agent"), shall be personally liable to any Owner, or to any other Person, including the Association, for any error or omission of any Association Agent, if such Person has, on the basis of such information as may be possess by him or her, acted in good faith without willful or intentional misconduct. In addition to the foregoing, as more particularly specified in Civil Code §5800, or any successor statute or law, any person who suffers bodily injury, including, but not limited to, emotional distress or wrongful death as a result of the tortious act or omission of a member of the Board who resides in the Project either as a tenant or as an Owner of no more than two Units, and who, at the time of the act or omission, was a "volunteer" as defined in Civil Code §5800, or any successor statute or law, shall not recover damages from such Board member, if such Board member committed the act or omission within the scope of such member's Association duties ("Official Act"), while acting in good faith and without acting in a willful, wanton or grossly negligent manner, provided that all of the requirements of Civil Code §5800, or any successor statute or law, have been satisfied.

5.8. INDEMNIFICATION OF ASSOCIATION AGENTS

The Association shall indemnify, defend, protect and hold harmless each Association Agent for all damages, and expenses incurred (including, without limitation, reasonable attorneys' fees), and satisfy any judgment or fine levied as a result of any action or threatened action brought because of an act or omission what such Person reasonably believed was an Official Act. Association Agents are

deemed to be agents of the Association when they are performing Official Acts for purposes of obtaining indemnification from the Association pursuant to this Section. The entitlement to indemnification under this Declaration inures to the benefit of the estate, executor, administrator and heirs of any Person entitled to such indemnification. The Association has the power, but not the duty, to indemnify any other Person acting as an agent of the Association for damages incurred, pay expenses incurred, and satisfy any judgment or fine levied as a result of any action or threatened action because of an Official Act. The Association also has the power, but not the duty, to contract with any person to provide indemnification in addition to any indemnification authorized by law on such terms and subject to such conditions as the Association may impose.

5.9. ADDITIONAL PROVISIONS

Certain laws apply to the operation of the Association and the Property by the Association, including, without limitation, the Davis Stirling Common Interest Development Act (Civil Code §§4000 *et seq.*), and the Association shall comply with all Applicable Law.

ARTICLE 6. RIGHTS, POWER AND DUTIES OF ASSOCIATION AND BOARD

Except as to matters requiring the approval of Members as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws. Except as otherwise provided in this Declaration, the Articles and the Bylaws, all matters requiring the approval of Members shall be deemed approved if Members holding a majority of the total voting rights assent to them by written consent as provided in the Bylaws or if approved by a majority vote of a quorum of Members at any regular or special meeting held in accordance with the Bylaws.

6.1. POWERS OF ASSOCIATION AND BOARD

The Association shall have all the powers of a nonprofit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the CC&RS, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

6.1.1. PERFORMANCE OF DUTIES

The Association shall have the power to undertake all of the express duties required under the Section below entitled "Duties of the Association" to be done by the Association.

6.1.2. DELEGATION OF POWERS: PROFESSIONAL MANAGEMENT

The Association, acting by and through the Board, may delegate its power, duties and responsibilities to committees, employees or, by contract, to a professional managing agent ("Managing Agent"). The maximum term of any such contract ("Management Contract") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association or in which case the maximum term of the Management Contract shall be three (3) years. Each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days written notice to the other party. A Managing Agent shall be an Association Agent, as described herein.

6.1.3. RIGHT OF ENFORCEMENT; PENALTIES; NOTICE AND HEARING

A. ENFORCEMENT ACTIONS

The Association in its own name and on its own behalf, or on behalf of any Owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of the Governing Documents or any resolutions of the Board, and to enforce by mandatory injunction, or otherwise, all of these provisions. In addition, the Association

can temporarily suspend the membership rights and privileges for any violation of the Governing Documents.

B. PENALTIES AGAINST MEMBERS

The Board shall have the right to impose the following penalties:

(1) Suspension of the membership rights and privileges (but may never suspend access to and from the Owner's Unit), together with the voting rights of any Member of the Association, for any period of time during which the Assessment on a Member's Unit remains unpaid;

(2) Suspension of the membership rights and privileges to the greatest extent allowed by the California Civil Code and other Applicable Laws.

(3) Imposition of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Governing Documents or Board resolutions, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in bringing the Member and his or her Condominium to compliance with the Governing Documents or Board resolutions; provided, however, no such monetary penalty may be characterized or treated as an Assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Civil Code §§2924, 2924(b) and 2924(c).

(4) The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, the Board may assess against a Person for the failure of such Person to comply with the Governing Documents. Such fines or penalties may only be assessed pursuant to Civil Code §§5650 *et seq.*

The provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments as more fully described in this Declaration.

C. SETTLEMENT PRIOR TO JUDGMENT

In the event legal counsel is retained or legal action is instituted by the Board pursuant to this Section, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

D. RIGHT TO NOTICE AND HEARING

A Member shall have the right to Notice and Hearing prior to the Board's decisions to impose any suspension or monetary penalty, as more fully described in Section 9.2 hereafter entitled "Notice and Hearing."

6.1.4. ENTRY BY ASSOCIATION

The Association and the Association's agents or employees shall have the right to Enter into any Dwelling to perform such Operations required or related to any Association Obligations and/or in the event of an Emergency.

6.1.5. CONTRACTS FOR GOODS AND SERVICES

The Association shall have the power to contract for goods and services for the benefit of the Project necessary for the Association to perform its Obligations hereunder, subject to such limitations as set forth in this Declaration or the Bylaws.

6.1.6. TITLE POLICIES

The Association shall have the power to pursue any title claims regarding the Common Area made by any third party, pursuant to any title insurance policy held by the Owners or the Association. Each Owner hereby delegates, on a non-exclusive basis, and assigns to the Association any rights it may have under its title insurance policies to the extent that the title claim relates to the Common Area.

6.1.7. BORROW FUNDS

The Association shall have the right to borrow money to improve, repair or

maintain the Association Property and to hypothecate any or all real or personal property owned by the Association, including pledging as collateral the assessment liens levied thereon provided that, the borrowing of any money or hypothecation of any real or personal property in excess of five percent (5%) of the budgeted gross expenses of the Association shall require the consent of fifty-one percent (51%) of each class of Members.

6.1.8. CLAIMS AND ACTIONS

Subject to the provisions of this Declaration, the Association shall have the power, but not the duty, to initiate, defend, settle or intervene in mediation, arbitration, judicial or administrative proceedings on behalf of the Association in matters pertaining to: (a) the application or enforcement of this Declaration and (b) damage to the Master Insurance Area not covered by insurance.

6.1.9. POWER OF ATTORNEY TO AMEND

Except as may otherwise be provided in this Declaration, Declarant hereby reserves, for itself and grants to the Incorporator and the Association, powers of attorney to act on behalf of the Owners (including Declarant and the Association, when Declarant or Incorporator alone is exercising the power of attorney herein reserved) and their respective Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, to amend the Condominium Plan or any amendment thereto, by executing on behalf of the affected Owners and Mortgagees an amendment thereto and such instrument(s) to effect any conveyances or partial reconveyances necessary to effect such amendment; provided, however, such powers of attorney hereby reserved or granted are limited as follows: (a) to cure or correct any manifest or technical errors, especially any technical error which may limit or restrict an Owner's access, ingress or egress to or from its Unit or Exclusive Use Area, any ambiguity or defective or inconsistent provisions or any clerical omission or mistake, as evidenced by a written statement in such amendment describing any of the foregoing; or (b) to reconfigure the boundaries of any Unit; provided, however, such power may not be exercised if such exercise would result an actual physical reduction in the living area square footage of an Owner's (other than Declarant's) Unit, without the written approval of the Owner of such Unit and any Mortgagee thereof (i.e. if a Plan is amended to reflect the *actual* living area square footage of Unit, which is less than any "stated" square footage noted in any Governing Document or Ancillary Instrument, no written approval would be required). In the event any such foregoing amendment requires the revision or recalculation of any diagrammatic element of the Condominium Plan, then any such amendment shall be duly signed by a land surveyor, civil engineer or other California licensed professional as authorized by Applicable Law to sign a Condominium Plan or any amendment thereto for such purpose(s).

6.2. DUTIES OF ASSOCIATION

6.2.1. ASSESSMENTS

The Association through its Board shall have the power and duty to establish, fix, and levy Assessments against the Owners and their Condominiums, and to enforce payment of such Assessments in accordance with the provisions of the Governing Documents.

6.2.2. TAXES AND ASSESSMENTS

The Association shall have the duty to pay all real and personal property taxes and assessments and all other taxes levied against the Common Area or against the Association. Such taxes and assessments may be contested or compromised by the Association; provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

6.2.3. MAINTENANCE

The Association shall have the duty to Maintain the Association Maintenance Obligation Areas expressly assigned to the Association pursuant to these CC&RS. The Association's obligation and responsibility for such Maintenance shall commence upon the commencement of Regular Assessments.

6.2.4. RULES AND REGULATIONS

(a) The Board shall have the power to adopt, amend or repeal any Operating Rule; provided, however, that any Operating Rule shall be valid and enforceable only if all of the following requirements are satisfied: (1) The Rule is in writing; (2) The Rule is within the authority of the Board conferred by and not inconsistent with Applicable Law, these CC&RS or the other Governing Documents; (3) The Rule is adopted, amended or repealed in good faith and in substantial compliance with the requirements of this Section; and (4) The Rule is reasonable.

(b) An Operating Rule may govern the use of the Exterior Areas by all Owners, Occupants and their Invitees, and the conduct of Owners, Occupants and their Invitees with respect, but not limited to actions or activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. An Operating Rule may also provide that the Owner or Occupant of a Unit or their Invitee who leaves property within any Easement Area areas in violation of the Rules may be assessed, after Notice and Hearing, an amount to cover (i) the expense incurred by the Association in removing such property and storing or disposing thereof, or (ii) the expense incurred by the Association in correcting such violation or the results of such violation.

6.2.5. ARCHITECTURAL CONTROL

The Association shall have the duty to maintain Architectural and architectural control of the Building and Exterior Areas through the Board pursuant to the Architectural Standards and the provisions of **ARTICLE 12** herein.

6.2.6. LIENS AND CHARGES

The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Common Area, or any other property or interest of the Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said Owner(s).

6.2.7. BUDGET; FINANCIAL STATEMENTS; RESERVES

The Association shall establish, adopt and distribute an annual budget, provide regular financial statements as required by the Bylaws, and maintain a reserve fund for the replacement of Improvements and all Common Expense Areas only to the extent that the Board deems it necessary in order to assure timely replacement of Improvements and other Common Expense Areas. Among other things, the Board shall prepare and distribute an annual report in accordance with the requirements of California Corporation Section 8321. If required by California Civil Code Section 5300(b)(3)(b), the Board shall prepare and distribute a review of the financial statement of the Association prepared in accordance with the requirements of that statute. For the second and each subsequent fiscal year of the Association, the Board shall cause a pro forma operating statement (budget) for the Association to be prepared and distributed to Members in accordance with the requirements of California Civil Code Sections 5300 and 5305, or any successor statutes, and any other applicable California law.

Reserve funds shall be used solely for those purposes for which the reserves were established or allowed by law. (Civil Code §5510). The Board shall comply with the requirements of California Code Section 5500 et. seq. regarding the Association's operating and reserve accounts, including conducting and reviewing studies of the Association's reserve accounts as required by California Civil Code Sections 5550 and 5560.

6.2.8. INSURANCE

The Association shall accept the obligation of maintaining Insurance Coverage over the Master Insurance Area in accordance with these CC&RS, and shall obtain, from reputable insurance companies and maintain the Master Insurance Coverage described in the Article hereof entitled INSURANCE.

6.2.9. PROPERTY MANAGEMENT

The Association may employ a management or accounting company

("Association Agent") to handle Assessment collection and related Association Operation, subject to the contract term and termination provisions hereof.

6.2.10. CONTRACTS

Any agreement for management of the Project, or any portion thereof, or any agreement providing for services by Declarant, or any contract or lease, including franchises and licenses to which Declarant is a party, shall have a term of not more than one (1) year, without the consent of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party "without cause" and without payment of a termination fee upon not more than ninety (90) days written notice, and "with cause" upon thirty (30) days written notice.

6.2.11. LIMITATIONS ON AUTHORITY OF BOARD

The Board shall not take any of the actions listed below except with the vote or approval by written ballot of: (a) a majority of the Members of each of Class A and Class B during the time the two-class voting structure set forth in this Declaration is in effect; or (b) except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code §7513 of at least one hundred percent (100%) of the Members of the Association. Specifically, the Board may not:

A. LIMIT ON COMPENSATION

Pay compensation to members of the Board for services performed in the conduct of the Association's business. However, the Board may cause a member of the Board to be reimbursed for expenses incurred in carrying on the business of the Association. The foregoing notwithstanding, nothing herein shall limit the Association from paying compensation to any members of the Board, any committees appointed by the Board or consultants to such committees, including any architectural or Architectural committee, who may provide services to the Association in their professional capacity other than as a member of the Board.

B. LIMIT ON THIRD PERSON CONTRACTS

Enter into a contract with a third person wherein the third person will furnish goods or services for the Common Maintenance Area or the Association for a term longer than one (1) year unless a longer term is, by vote at a meeting or by written ballot without a meeting pursuant to California Corporation Code §7513, approved by a majority of the voting power of Members of the Association, other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of Members of the Association other than Declarant, with the following exceptions:

- (i) A management contract, the terms of which have been approved by the Federal Housing Administration or the United States Department of Veterans Affairs;
- (ii) A contract with the public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate;
- (iii) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;
- (iv) Agreements for cable, television services and equipment, internet services or similar telecommunications services and equipment, or satellite dish television services and equipment, where the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years;
- (v) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services, where the supplier or suppliers are not entities in which the Declarant has a

direct or indirect ownership interest of ten percent (10%) or more may exceed a term of one (1) year but may not exceed a term of five (5) years; and

(vi) Contracts for management of the community and any other contract with a term not to exceed three (3) years which are terminable by the Association without cause, penalty or other obligation after one (1) year upon ninety (90) days written notice of termination given by the Association to the other party.

ARTICLE 7. ASSESSMENTS

7.1 COVENANT FOR ASSESSMENTS.

Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property, (b) special assessments (including compliance and emergency assessments provided for in this Article). The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in §7.4 or disallowed by law, be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

7.2 PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Community and for the improvement and maintenance of the Association Property for the common good of the Community, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in §10.4.

7.3 LIMITATION ON REGULAR AND SPECIAL ASSESSMENTS.

The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration the Bylaws, and California Civil Code §5600; provided, however, except for assessment increases necessary for emergency situations:

7.3.1 The Board may not increase the regular assessments for any fiscal year unless (i) the Board has complied with the provisions of California Civil Code §§5600, 5605, and 5300(b) with respect to the fiscal year or (ii) the increase is approved by Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with (A) the Common Interest Development Open Meeting Act, as set forth in California Civil Code §§ 4925 through 4955, inclusive, and any election rules adopted by the Board in conformance therewith; (B) Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California Corporation Code; and (C) §7613 of the California Corporation Code at which a quorum was present or participated; and

7.3.2 The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a

meeting or election of the Association conducted in accordance with (A) the Common Interest Development Open Meeting Act, as set forth in California Civil Code §§4925 through 4955, inclusive, and any election rules adopted by the Board in conformance therewith; (B) Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California Corporation Code; and (C) §7613 of the California Corporation Code at which a quorum was present or participated.

7.3.3 The Board may increase Assessments within this framework for emergency situations (Civil Code section 5610); an "emergency" situation is any one of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Community or any part of the Community for which the Association is responsible where a threat to personal safety in the Community is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Community or any part of the Community for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under California Civil Code Section 5300 *et. seq.* However, prior to the imposition or collection of an assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

7.3.4 For purposes of this Section 7.3, "quorum" means more than fifty percent (50%) of the Owners. The term "regular assessment for the Association's preceding fiscal year" as used in this Section 7.3 is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this Section. 7.4. to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

7.3.5 The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

7.4 NON-LIEN ASSESSMENTS (COMPLIANCE).

The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of this Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of §§5700 and 5855 of the California Civil Code, as set forth in the Bylaws, and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

7.5 SCHEDULE OF MONETARY PENALTIES.

If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail (or electronically to the degree allowed by the Civil Code), a schedule of the

monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

7.6. RATE OF REGULAR ASSESSMENTS.

Both regular and special assessments shall be levied upon each Condominium at an equal rate. However, this Section does not apply to the sums payable by reason assessment against a specific member as provided herein.

7.7 RATE OF SPECIAL ASSESSMENTS FOR REPAIRS.

Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Association Property shall be levied against each Condominium in the Community against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the ratio of the square footage of the floor area of the Separate Interest of the Condominium to be assessed to the total square footage of the aggregate floor area of the Separate Interests in all Condominiums to be assessed.

7.8 DATE OF COMMENCEMENT OF REGULAR ASSESSMENTS.

The regular assessments shall commence as to all Condominiums in a particular Phase of the Community on the first day of the month following the conveyance of the first Condominium to a First Purchaser in that Phase, at which time Voting rights shall vest.

7.9 ADJUSTMENT OF ASSESSMENTS; DUE DATES.

The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. Although the amount of regular assessments (other than special assessments) shall be determined at least annually, commencement of regular assessments against an additional Phase during the marketing period may cause the regular assessment amounts to change. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of the calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

7.10 EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.

Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within four (4) days after the due date shall be delinquent. If an assessment is delinquent, the Association may recover any of the following: (i) reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees, (ii) a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars (\$10.00) or ten percent (10%) of each assessment, and (iii) commencing thirty (30) days after the assessment becomes due until paid, interest at the rate of twelve percent (12%) per annum on the delinquent assessment and all sums imposed by this Section, including reasonable fees and costs of collection and reasonable attorney's fees. After any assessments levied by the Association affecting any Condominium have become delinquent, the Board may utilize all remedies available under California statutes, judicial or non-judicial foreclosure of a lien against the delinquent Owner's Condominium as provided in California Civil Code §5725(a). To that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien. **THE ASSOCIATION SHALL COMPLY WITH ALL APPLICABLE STATUTORY REQUIREMENTS IN EXERCISING ITS REMEDIES, INCLUDING §§ 2924, 2924(B), 2924(C), 2934(a), 2924(f), 2924 (g), 2924 (h), 5675, 5700, and 5710, OF THE CALIFORNIA CIVIL CODE, AND ALL OTHER APPLICABLE STATUTES.**

7.11 SUBORDINATION OF LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES.

The lien of the assessments, interest, costs, attorney's fees and late charges shall be

subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

7.12 ESTOPPEL CERTIFICATE.

The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

7.13 NON-USE OF ASSOCIATION PROPERTY.

No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or because of abandonment of the Condominium.

7.14 TAXATION OF ASSOCIATION.

In the event that any taxes are assessed against the Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

7.15 PAYMENT OF ASSESSMENTS BY DECLARANT.

Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

7.16 CAPITALIZATION OF ASSOCIATION.

Upon conveyance to a First Purchaser of each Condominium from Declarant, the First Purchaser shall contribute to the capital of the Association an amount equal to two times the then regular assessment for the Condominium as determined by the Board of the Association. This amount shall be deposited by the First Purchaser into the purchase and sale escrow and disbursed therefrom to the Association at close of escrow. Amounts paid pursuant to this Section are not advance payments of assessments and are in addition to and not in lieu of regular and special assessments of the Association. The capital contributions will be the Association's funds and may not be used by Declarant to defray its expenses, construction costs or assessments.

7.17 CODE SECTIONS SUBJECT TO CHANGE.

This Article relies on provisions of California statutory law which have been revised frequently. The Board is cautioned to have its legal consultant carefully review statutes in effect as of the date any notices or other actions are taken pursuant to this Article

ARTICLE 8. OWNERS; OWNERSHIP; PROPERTY RIGHTS

8.1. OWNERSHIP INTERESTS.

Each Unit in the Project shall be conveyed to a Purchaser who shall thereupon become an Owner. Ownership of a Condominium shall include those interests described in Section 1.5 hereinabove. Each Exclusive Use Area shall be appurtenant to the Separate Interest it serves unless otherwise so depicted on the Condominium Unit. Conveyance of a Separate Interest will automatically convey all appurtenant Exclusive Use Areas and all Improvements therein unless otherwise provided in this Declaration. Any and all Exclusive Use Areas which are appurtenant to a Separate Interest are for the exclusive use and enjoyment of the Owner of that Separate Interest. No Owner shall make any improvements to an Exclusive Use Area unless such improvements have been previously approved in writing by the Architectural Committee.

The Units as described below are hereby reserved and granted as an appurtenance to the stated Unit and/or

Owner thereof, for the intended exclusive use and/or benefit of that Unit, its Owner or Invitees thereof the following Exclusive Easements: All Units shall have the exclusive use of any external Utilities Facilities, including, but not limited to, telephone, television, computer and other electrical wiring; and of other utility installations, if any of the foregoing are designed to exclusively serve a single Unit, but located outside the boundaries of such Unit (*e.g.* any utility lines running through an Adjacent Unit or Association Property).

8.2. CONVEYANCE OF ASSOCIATION PROPERTY AND COMMON AREA.

Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association any Association Property free and clear of all encumbrances and liens, except non-delinquent taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration.

The Common Area shall be conveyed from Declarant to an Owner as a one-fourth (1/4th) Fractional Interest appurtenant to such Owner's Unit Separate Interest, and thereafter owned.

8.3. NO SEPARATION OF INTERESTS.

No Owner may sell, assign, lease or convey such Owner's Fractional Interest in the Common Area separate and apart from his Unit, nor any portion of, or appurtenance to his Unit apart from the entire Unit. Any conveyance of any Unit shall automatically transfer its appurtenant Fractional Interest in its related Common Area without the necessity of express reference in the instrument of conveyance.

8.4. PARTITION.

(a) **Suspension.** The right of partition is suspended pursuant to Civil Code §4610 as to the Project. Nothing in this Section shall be deemed to prohibit partition of a co-tenancy in a Condominium.

(b) **Partition.** Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other person acquiring any interest in any Condominium in the Project seek any such judicial partition. A Fractional Interest in the Common Area may not be altered or changed as long as the prohibition against severability of interests in a Condominium remains in effect as provided in this Declaration. The foregoing notwithstanding, judicial partition shall be permitted as allowed by Applicable Law, including Civil Code §4610, as the same may be amended from time to time.

8.5. AMENDMENT OF ARTICLE 8.

Anything in the Article entitled "AMENDMENTS" herein to the contrary notwithstanding, this ARTICLE 8 shall not be amended, modified or rescinded until Declarant has conveyed title to the last Condominium in the Property to a Purchaser or other Person, without (a) the prior written consent of Declarant, and (b) the Recording of said written consent.

ARTICLE 9. EASEMENTS

The ownership interests in the Property and the Condominium Units, and the Owners' rights of ingress and egress over the Property described in this Article, are subject to the easements and rights of the Association and the Owners as granted and reserved in this Declaration and the other Governing Documents, all easements and rights-of-way shown on the Final Map(s), and all other easements of record. Each of the easements reserved or granted under this Declaration shall be deemed to be established upon the Recordation of this Declaration and shall henceforth be deemed to be covenants running with the land for the use and benefit of the Owners, the Condominium Units and the Association superior to all other encumbrances applied against or in favor of any portion of the Community. Individual grant deeds to Condominiums may, but shall not be required to, set forth the easements specified in this Article.

9.1. EASEMENTS FOR OWNERS' ENJOYMENT (Over Association Property)

Subject to the limitations set forth in this Declaration, every Owner of a Condominium shall have a right and easement of ingress and egress, support for his or her Separate Interest and of enjoyment from the use of the Association Property. These rights shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Association Property, including the right to charge a fee for special or extraordinary use of the Association Property. Each Owner shall have the right of reasonable access to his or her Condominium and the right to reasonably utilize any private utilities that service his or her Condominium. The Association shall have no right to restrict reasonable access or utilities to a Condominium by the persons who have the right to possession of the Condominium nor shall the Association have the right to restrict Declarant access to the Community for construction or marketing purposes nor the right to restrict hooking up to and utilizing any private utility lines that were designed to service the Community.

(b) The right of the Board to suspend the voting rights of an Owner During the period of time any Association assessment against the Condominium remains delinquent;

(c) Subject to the limitations set forth in the Article entitled "**RIGHTS OF LENDERS**" and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, the right of the Board to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant in adjusting the boundaries of the Association Property and other portions of the Community or to adjust the boundaries of the Community with another property owner.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Association Property except as otherwise stated in this Declaration.

(e) The right of the Board to grant or dedicate to third parties permits, licenses (which may be irrevocable), and easements over the Association Property for utilities, roads and other purposes necessary for the proper operation of the Community; and the right of the Board to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant easements and licenses over the Association Property.

(g) The right of the Board, in accordance with this Declaration, to permit Owners to install improvements within Association Property, provided that the installation of such improvements would not materially and adversely affect any Owner's use of the Association Property. For example, the Board shall have the right to permit an Owner to install improvements necessary to provide private technology or entertainment services to the Owner's Separate Interest (e.g., satellite dishes, electric car charging station, cables and similar improvements).

(h) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(i) Declarant's right to construct and market homes and other improvements within the Community, including the following rights:

(1) Declarant and its sales agents, employees and independent contractors shall have the right to the non-exclusive use of the Association Property for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums in the Community. Declarant shall have the right, during its marketing of the Community, to control those hours in which Declarant, its agents, contractors and potential buyers to have access to the Community.

(2) Declarant shall also have a non-exclusive easement over the Association Property to provide access and utilities thereto for the purpose of constructing, marketing and utilizing portions of the Community owned by Declarant.

9.2. ENCROACHMENT AND DRAINAGE

Declarant hereby reserves for the benefit of Declarant, the Association and Owners of Units contiguous to other Units, reciprocal nonexclusive easements appurtenant to such Units for the purposes of (a) providing subjacent or sub-lateral support for encroachments or intrusions on the Units

by the Improvements thereon, caused by minor settlement, shifting or movement of such Improvements after construction or placement thereof on a Unit accommodating any existing encroachment that is a part of the structural Improvements thereon; provided, however, the foregoing shall not authorize, and there is hereby expressly prohibited, the initial placement of an Improvement on a Unit in such a manner that it immediately encroaches on another Unit; and (b) providing drainage from the Units of water resulting from the normal use of such Units and the Dwellings therein in accordance with the drainage pattern existing at the time of the Close of Escrow for the applicable Unit to a Purchaser from Declarant or in accordance with such drainage pattern as altered thereafter with the approval of the Association. In furtherance of the foregoing, no Improvement shall be hereafter placed on any Unit which may change, in a manner adverse to the other Units, the direction or flow of drainage facilities, or which may obstruct or retard the flow of water through drainage facilities, in the easement areas reserved pursuant to clause (b) of the immediately preceding sentence.

9.3. EASEMENTS FOR ACCESS AND TO PERFORM GOVERNING DOCUMENT DUTIES

Anything herein to the contrary notwithstanding, there is hereby reserved to Declarant, the Association, each Owner, and their respective duly authorized agents and representatives, such easements as may be necessary to perform their respective duties (including Maintenance), responsibilities, obligations and rights as are set forth in this Declaration or other Governing Document. Among other things, the Owners and the Association shall have a mutual, reciprocal and non-exclusive easement over the Premises where necessary for vehicular and/or pedestrian access to the Owner's Unit and/or common Improvements (such as the ganged mailbox). Further, certain reciprocal maintenance easements shall include:

(a) Reciprocal easements shall exist between Units and the Association for the necessary access to and repair, maintenance, and replacement of the Building and other Improvements located therein, so that each Owner, and such Owner's agents or the Association, as the case may be, shall have reasonable access to such Improvements, regardless of where located, over the Adjacent Unit and Building, for the limited purpose and only to the extent necessary and reasonable to Access his or her Unit and to conduct such repair, maintenance or replacement of such Improvements; provided, however, nothing herein shall permit the expansion or extension of any existing Improvement (and concurrent expansion or extension of the access easement therefor), without the express written consent of the Adjacent Unit Owner. Anything herein to the contrary notwithstanding, except in the case of an Emergency, access on, over, across or through the Adjacent Unit shall observe the maximum requirements of notice of Entry as provided herein, and performed to cause the least amount of disturbance to the Entered Party, its Occupants or Invitees.

(b) The Entering Party shall have a simultaneous obligation to restore to its original condition any portion of the Entered Party's Improvements which may be damaged as a result of the entering Owner's access and work. Work of restoration shall be reasonably agreed upon between the Owners as soon as possible following the conclusion of the Entering Party's remedial work on the other's Improvements, but not later than thirty (30) days after such conclusion. The cost of restoration shall be the borne by the Entering Party. In the event that the Owners fail to achieve agreement for the restoration of the Improvements within aforesaid mentioned thirty (30) day period, or the Entering Party fails to pay for the costs of such restoration, enforcement shall be conducted as an "Exigent Matter" pursuant to ARTICLE 22 herein.

(c) In connection with any entry of a Unit, the Entering Party shall assume all risks which may result from such Owner's access and conduct of work and such Owner shall indemnify defend and hold harmless the Other Party, the Association and Declarant from any and against any claim, demand, liability, loss, cost action, damage, suit, legal or administrative proceeding, expense or fee, judgment, reasonable attorney's fees and other obligations which arise out of or are incurred in connection with the access and conduct of work. The Entered Party may condition any such entry onto such Owner's Unit on the receipt of written evidence from the Entering Party of liability insurance in form and substance required or permitted to be maintained by such Owner pursuant to ARTICLE 14 herein, endorsed to the reasonable satisfaction of the Entered Party to cover the acts or omissions of the Entering Party while on the Adjacent Unit.

9.4. EASEMENTS FOR UTILITIES

Declarant hereby reserves for itself and for the benefit of each Unit, the respective Owners

thereof, the Association and utility companies and public agencies (including telephone, internet and television utility companies) acting in accordance with their governmental or private agreement functions and authority, exclusive and/or non-exclusive, as the case may be, surface, subsurface and Exterior Area easements and rights-of-way within the Easement Areas (as the case may be) and the Utilities Easement Area for the Operation of Utility Facilities and uses incidental thereto in accordance with these CC&RS and Applicable Law. Exclusive Use Areas may include, but not be limited to certain external Utilities Facilities, including, but not limited to, telephone, television, computer and other electrical wiring, Drainage Facilities; and other utility installations, if any of the foregoing are designed to exclusively serve a single Unit, but located outside the boundaries of such Unit (*e.g.* any utility lines running through an Exterior Unit Area, which serve or are intended to serve just one Unit).

The gas, electricity and other utilities to each Unit shall be under a separate meter/billing, and each Owner shall be responsible for paying his or her own utility costs.

9.5. VIEW OBSTRUCTIONS.

Each Owner acknowledges that (a) there are no protected views in the Property, and no Unit is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant, other Owners or owners of other real property in the vicinity of the Project may impair the view from any Unit and the Dwelling therein, and the Owners consent to such view impairment.

9.6. COMMENCEMENT AND DURATION OF EASEMENTS.

The easements reserved herein shall become effective upon the conveyance of the first Unit from Declarant or its successor in interest. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this ARTICLE. Except as provided herein, the Declarant's Easement reservations and rights shall transfer to the party for whom the Easement was reserved (whether the Association, Owner or both) commencing when the portion of the Property subject to the Easement reservation is first sold to a First Purchasers or transferred to the Association, or within three years from the date of recordation of this Declaration, whichever occurs first.

9.7. AMENDMENT

Anything in the Article entitled "Amendments" to the contrary notwithstanding, the provisions of this Article may not be amended, modified or rescinded prior to such time that Declarant no longer owns any Unit in the Property or until the termination of any Declarant contractual agreements or warranties with respect to any Improvements within the Property, whichever is later, without the (a) prior written consent of Declarant and (b) the Recording of said written consent Declarant.

ARTICLE 10. RIGHTS OF OWNERS

Owners, and, to the extent permitted by such Owner, such Owner's Invitees, and contract purchasers who reside in such Owner's Dwelling, shall have the following rights and limitations:

10.1. RIGHT OF ACCESS AND USE OF CONDOMINIUM

The right of access, ingress to and egress from such Owner's Condominium, and of enjoyment and full use of such Condominium, which right shall be appurtenant to and shall pass with title to the Owner's Unit, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Governing Documents or duly-enacted Rules, except by order of a court, order pursuant to a final and binding arbitration decision or as otherwise provided by Applicable Law.

10.2. NOTICE AND HEARING

(a) The rights to be notified in writing at least ten (10) days prior to a meeting by the Board to consider or impose discipline upon a Member. The notification shall contain, at a minimum, the date, time, and place of the meeting, the nature of the alleged violation for which the Member may be disciplined, and a statement that the Member has a right to attend and may address the Board at the meeting. The Board shall meet in executive session if requested by the Owner.

(b) Following the Board's imposition of discipline on a Member, the right to receive timely written notice of the disciplinary action.

(c) If the discipline imposed by the Board is one that suspends the privileges of a Member, such Member shall have the additional to have an opportunity to be heard by the Board orally or in writing, not less than five (5) days before the effective date of the suspension, to request reconsideration that such suspension not take place. Any action challenging a suspension of privileges, including any claim alleging defective notice, must be commenced within one (1) year after the date of the suspension. In the event such an action is successful the court may order any relief, including reinstatement, if it finds equitable under the circumstances, but no vote of the Members or of the Board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged suspension, unless the court finds further that the wrongful suspension was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(d) Such other rights and limitations provided under Corporations Code §7341 and Civil Code §5855, as each may be hereafter amended.

For purposes of this Section, "Notice" shall be given by any method reasonably calculated to provide actual notice. Notice may be hand-delivered to the Owner, sent by first class or registered mail or email if allowed by law, all of the foregoing addressed to the Owner at the last address of the Owner shown on the Association's records.

10.3. INSPECT AND COPY ASSOCIATION DOCUMENTS AND MEMBERSHIP LIST

The right of an Owner or such Owner's duly authorized representative to inspect and copy or to request copies of the Association's (i) financial records and accounting books (including financial documents, interim financial statements and the like), salary information (of association employee, vendors, or contractors), state and federal tax returns, reserve account information, and invoices, receipts cancelled checks or credit card statements; (ii) Governing Documents and records (including the Bylaws certified by the Secretary, CC&RS, Articles of Incorporation, and amendments thereto, Operating rules, election rules, any schedule of monetary penalties, and the like), (iii) association contracts; (iv) Board, committee and membership meeting agendas and minutes of proceedings (other than minutes, proposed minutes or summary minutes of a Board executive session) (collectively, "Association Documents"), and (v) election materials and ballots (excluding proxies); (iv) members' names, addresses and voting rights ("Membership List"), and Miscellaneous Materials (such as insurance policies, non-privileged reports, architectural plans, and escrow documents (as defined in Section 4525), all in accordance with Civil Code §§5200-5240, Corporations Code §§8330-8338, and such other Applicable Law, as more fully described in Bylaws.

10.4. ASSESSMENT STATEMENT

The right of an Owner to obtain a statement ("Assessment Statement") in writing from an authorized representative of the Association as to the amount of any Assessments levied upon the Owner's interest in his or her Condominium which are unpaid on the date of the Assessment Statement. Such Statement shall also include true information on late charges, interest and costs of collection which, as of the date of the Statement, are or may be made a lien upon the Owner's Condominium interest pursuant to Civil Code §5650(a), or any successor statute or law. A properly executed Assessment Statement by the Association shall be upon the Association as of the date of its issuance. The Association may charge a fee for production of the Assessment Statement, which fee shall not exceed the reasonable costs for preparation and reproduction thereof.

ARTICLE 11. USE RESTRICTIONS

11.1. USE OF UNITS

No Unit shall be occupied and used except for residential purposes by the Owners and their Invitees, and no trade or business shall be conducted therein, except that Units may be used as a combined residence and executive or professional business office by the Owner thereof, so long as such use (a) does not interfere with the quiet enjoyment by other Owners, (b) does not include unreasonable visitations by clients, (c) is in compliance with the Zoning Codes of the City, and (d) is otherwise authorized by such California

statutory or common law that may take precedence over City requirements and/or this Declaration. Provided however, Non-residential use cannot exceed twenty-five percent (25%) of the Unit's total floor area, and non-residential workspace of the total Project cannot exceed twenty-five percent (25%) of the Community's total floor area.

11.2. LEASE OF DWELLING.

11.2.1. REQUIREMENTS OF ALL LEASES.

Any Owner who wishes to lease his or her Unit must meet each and every one of the following requirements, and the lease will be subject to these requirements whether they are included within a lease or not:

- (a) All leases must be in writing;
- (b) No lease shall be for a period of less than thirty (30) days;
- (c) An Owner may lease, or any Lessee may sublease, a portion of a Unit for a use as set forth in Section 11.1, so long as the Lessee or Sublessee, as the case may be, of said portion of a Unit is a business entity owned by such Owner or Lessee. Provided however, Non-residential use cannot exceed twenty-five percent (25%) of the Unit's total floor area, and non-residential workspace of the total Project cannot exceed twenty-five percent (25%) of the Community's total floor area;
- (d) All leases shall be subject in all respects to the provisions of this Declaration and the other Project Documents.

11.2.2. FAILURE OF TENANT TO COMPLY WITH PROJECT DOCUMENTS.

- (a) Any failure of a tenant to comply with the Project Documents shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;
- (b) If any tenant is in violation of the provisions of the Project Documents, any Owner or the Association, upon its activation, may bring an action (in his name, or in the case of the Association, in its own name and/or in the name of the Owner of the Unit in which the tenant is an occupant) to have the tenant evicted and/or to recover damages. If the court finds that the tenant is violating, or has violated any of the provisions of the Project Documents, the court may find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not the plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease. For purposes of granting an unlawful detainer against the tenant, the court may assume that the Owner or person in whose name a contract (the lease or rental agreement) was made was acting for the benefit of all of the Owners or Units in the Project, and/or the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies which an Owner, or the Association, has. If permitted by present or future law, any Owner and/or the Association may recover all of his or its costs, including court costs and reasonable attorneys' fees incurred in prosecuting the unlawful detainer action.
- (c) The acting Owner or Association shall give the tenant and the Owner of the Unit of which the tenant is an occupant, notice in writing of the nature of the violation of the Project Documents, and twenty (20) days from the mailing of the notice in which to cure the violation, before the Owner and/or the Association may file for eviction.
- (d) Each Unit Owner shall provide a copy of the Project Documents to each tenant of his Unit. By becoming a tenant, each tenant agrees to be bound by the Declaration, the Bylaws, the Rules of the Association and any other Project Document, and each tenant recognizes and accepts the right and power of any Owner and the Association to evict a tenant for any

violation by the tenant of the Declaration, the Bylaws, the Rules of the Association and any other Project Document. Notwithstanding the foregoing, each Owner is responsible and liable to the other Owners and the Association for the acts or omissions of its tenant, including reasonable attorneys' fees.

11.3. INSURABILITY.

No Unit or improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause the rate of insurance to increase, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof. To ensure insurability, no waterbeds or other furniture filled with liquid shall be permitted on the premises. The presence of such furniture shall nullify any warranty directly or indirectly associated with damage caused thereby.

11.4. PETS.

Owners may keep and maintain such pets as may be permitted by City ordinances; provided, however, any Owner may impose such restrictions on any tenant who occupies such Owner's Unit as such Owner may deem appropriate. The foregoing notwithstanding, no pets may be kept on the Property that result in an annoyance or are obnoxious to other Owners or occupants. No dog whose prolonged barking (or other prolonged noise-producing pet) unreasonably disturbs other Owners or occupants shall be permitted to remain in the Project. Persons bringing or keeping a pet within the Project shall prevent their pets from soiling all portions of the Project where other persons customarily walk or otherwise occupy from time to time and shall promptly clean up any mess left by their pets. Each person bringing or keeping a pet within the Project shall be absolutely liable to the other Owners and their Invitees, and the Association, if activated, for any damage to persons or property caused by any pet brought upon or kept upon the Project by such person or such Owner's Invitees.

11.5. INTERFERENCE OF OTHER OCCUPANTS.

No Unit shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit. No area of the roof of the Unit shall be used for any purpose that would interfere with the view of any other Unit.

11.6. SIGNS.

All Signage must comply with Solana Beach Municipal Code. No signs, placards, decals or other similar objects, visible from other Units, neighboring property or streets, shall be erected or displayed on any Unit, without the prior permission of the Board; provided however, the following signs shall be permitted, all of the foregoing of which shall conform with applicable local governmental ordinances:

- (a) Such signs as may be required by legal proceedings;
- (b) One or more signs displayed by an Owner or the Owner's agent, on such Owner's Unit or on real property owned by another with that Owner's consent, which is reasonably located, in plain view of the public, and is of reasonable dimensions and design, advertising the following: (i) that the Unit is for sale, lease or exchange by the Owner or the Owner's agent (ii) directions to the Unit, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number;
- (c) Two (2) signs not to exceed 1'x 1' in size, advertising or noticing the existence of a security system on which such sign is located, and any number of security system window signs not to exceed sixty-four inches (64") square in size. No such security signs shall be attached to the exterior of a Building;
- (d) Customary window dressings placed in observance of national or religious holidays;
- (e) One (1) sign displayed by an Owner or the Owner's Lessee which is reasonably located in plain view of the public, dimensions not to exceed 2'x 1' in size, exclusively used to advertise the service or business of Owner or Lessee, as set forth in Section 7.1.
- (f) Pursuant to §4705 of the California Civil Code, the display of the flag of the United States by an Owner on or in the Owner's Unit. For purposes of this section, "display of the flag of the United States

means a flag of the United States made of fabric, cloth or paper displayed from a staff or pole or in a window, and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora or balloons, or any other similar building, landscaping or decorative component.

(g) Pursuant to §4710 of the California Civil Code, the display or posting of noncommercial signs, posters, flags or banners on an Owner's Unit, except as for the protection of public health or safety or if the display or posting would violate a local, state or federal law. For purposes of this section, a noncommercial sign, poster, flag or banner may (i) be made of paper, cardboard, cloth, plastic, or fabric, and may be displayed or posted from the yard, window, door, balcony, or outside wall of the Unit, but may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping or decorative component, or include the painting of architectural surfaces, and (ii) noncommercial signs and posters may not exceed more than nine (9) square feet in size and noncommercial flags or banners may not exceed four (4) square feet in size.

Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right, during the time period described in the Section entitled "Declarant Exemption" in the Article herein entitled "GENERAL PROVISIONS", to install and maintain such signs, flags, poles and advertisements as it deems appropriate in connection with its sales, financing, or construction program for the sale to the public of Units, provided such signs shall comply with the local zoning ordinances, that all City or other governmental approvals therefore shall be obtained and that they do not unusually interfere with the right of use and quiet enjoyment of the Owners and occupants.

11.7. EXTERIOR LIGHTING.

Any exterior lighting installed on a Dwelling or within a Unit shall be sufficient to assure safe nighttime use and yet be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Dwellings in the neighborhood All exterior light shall comply with all Standards adopted by the Architectural Committee and with Solana Beach Municipal Code 17.60.060.

11.8. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be undertaken in any Unit. No odor shall be permitted to arise from any Unit that renders the Unit or any portion thereof unsanitary, unsightly or offensive to any portion of the Project or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Unit so as to be unreasonably offensive or detrimental to any other part of the Project or to its occupants. No exterior speakers, horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes) which unreasonably disturb other Owner (s) or their tenants shall be located, used or placed in any Unit. Alarm devices used exclusively to protect the security of a Dwelling and its contents shall be permitted, provided that the devices do not produce annoying sound or conditions as a result of frequently occurring false alarms.

11.9. GARBAGE AND REFUSE DISPOSAL.

All rubbish, trash and garbage shall be regularly removed from each Unit, and shall not be allowed to accumulate therein. All equipment for storage or disposal of trash, garbage, and other waste such materials shall be kept in a clean and sanitary condition and stored either within each Owner's Unit and/or placed inside the trash receptacles provided on the Property, except for purposes of trash removal from the Property. Certain portions of the Association Property may be designated as trash container drop off locations by the Developer or Board of Directors. The residents within the Project are required to place their trash inside such containers, and not place any items outside of the containers. The Board may adopt rules and regulations regarding the trash containers and shall require each Owner to comply with the City's approval trash plan for the Project.

11.10 CAR MAINTENANCE AND POWER EQUIPMENT.

No car maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in a Unit or the Project, except for minor repairs only performed inside a garage. The foregoing shall not be deemed to prevent the washing or polishing of motor vehicles together with those activities normally incident to such activity.

11. 11.

VEHICLE RESTRICTIONS.

11.11.1. "Prohibited Vehicles" A Prohibited Vehicle is defined as any commercial type of vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck); any inoperable vehicle or any other similar vehicle; or any vehicle or vehicular equipment, mobile or otherwise, constituting a nuisance. Prohibited Vehicles shall not be allowed in any Parking Space, driveway or other exposed parking areas, except for the purposes of loading, unloading, making deliveries or emergency repairs ("**Transitory Use**"), provided that no Transitory Use shall extend over more than twenty-four (24) hours during any seven (7) consecutive days. No excessively noisy inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Community in such a manner that it is visible from neighboring property and public and Common Area. Motorcycles and motorbikes shall be permitted, provided they are operated at noise levels not exceeding 45 decibels. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited unless conducted within a carport or in an area not visible from neighboring property

11.11.2 No "**Recreational Vehicles**" (as defined in this Section) shall be parked, stored or kept on any Unit, Association Property or within the Community. A Recreational Vehicle is defined as any truck or van which (A) is larger than one (1) ton capacity, or (B) has a mounted camper component which protrudes from the truck from either side or from beyond the rear gate or above the cab ceiling, or any camper shell which is detached from a vehicle, bus, dune buggy, boat, trailer, mobile home or motor home. Recreational Vehicles shall be allowed in a driveway or other exposed parking areas, for the purposes of Transitory Use, provided that no Transitory Use shall extend over more than twenty-four (24) hours during any seven (7) consecutive days.

11.11.3 Parking Spaces: Garages shall be used only for parking vehicles. There shall be no parking in the driveways to avoid obstruction of free traffic flow; parking outside of the Garage or designated parking spaces shall be considered a "nuisance" under this Declaration. ***No use of the garages shall impede the ability to park two vehicles in each garage at all times***

11.11.4 Due to City restrictions regarding street width for emergency vehicle access, except for Garages depicted on the Condominium Plan and designated guest and other parking spaces on the Property, it is currently planned that there shall be no dedicated street parking.

11.11.5 No repairs or restorations of any vehicle or equipment shall be conducted upon any Unit or elsewhere within the Community except on an emergency basis within the Garage portion of the Unit.

11.11.6 No excessively noisy, inoperable or unlicensed vehicle shall be permitted to remain upon any area within the Community in such a manner that it is visible from neighboring property and public and Common Area. The storing, placing or parking of any vehicle, or any part thereof, which is disabled, unlicensed, unregistered, inoperative, or from which an essential or legally required operating part is removed, shall be prohibited unless conducted within a carport or in an area not visible from neighboring property.

These restrictions shall not be interpreted in a manner which would permit any activity which would be contrary to any ordinance of the City or other governmental agency having jurisdiction over the Community. **VEHICLES PARKED OR OTHERWISE IN VIOLATION OF THESE PROVISIONS OR SECTION 11.12 ARE SUBJECT TO BEING TOWED IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA VEHICLE CODE SECTION 22658 AND ANY AMENDMENTS THERETO AT THE OWNER'S EXPENSE. The Association shall not be liable to any Owner or resident for any damages or costs of any nature incurred by the owner because of a removal in compliance with his section.**

11.11.7. PERMITTED VEHICLES.

Automobiles, standard-sized vans and pickup trucks shall be permitted vehicles within the Community. Permitted commercial vehicles shall include automobiles or standard sized vans and pickup trucks that are used both for business and personal use.

11.12. USE OF GARAGES; PARKING SPACES.

Garages shall be used only for the purpose of parking automobiles and other vehicles and equipment and storing an Owner's household goods. **Garages shall not be converted into any use (such as recreational room) or so filled that would prevent its use as parking spaces for at least two vehicles at all times. Specifically, no use of the garages shall impede the ability to park two vehicles in each garage at all times.** Owners are to use their Garages, as applicable for parking of their vehicles so that any street parking will be available for guests. Parking of vehicles on the Property shall be limited to within in Garages and the one designated Guest Parking Spaces; there shall be no parking of vehicles on unpaved surfaces, within the Drive or any private driveway.

11.13. WATER QUALITY PROTECTION

Each Owner acknowledges that water that enters a storm drain flows directly to natural sources of water, including waterways, creeks, drains, rivers, lakes and that erosion has an impact on the environment. Unlike the water in the sewer system in the Units, which flows to wastewater treatment plants, water that enters a storm drain flows directly, without any treatment, to waterways, creeks, streams, rivers, lakes and/or oceans. Accordingly, the National Pollutant Discharge Elimination System ("NPDES"), the Federal Clean Water Act, and the policies and ordinances of the City prohibit discharging anything other than natural rain water into storm drainage systems. Toxic chemicals or hydrocarbon compounds such as gasoline, motor oil, antifreeze, solvents, paints, paint thinners, wood preservatives, detergents, pet waste, paints and other such materials and pollutants shall not be discharged into any storm water conveyance systems within the Project. Each Owner further acknowledges that the disposal of such pollutants and materials into a storm drain system within the Project may result in significant penalties and fines. Owners are encouraged to consult with the City, and other governmental authorities. (e.g. California State Water Resource Control Board Internet site at <http://www.swrcb.ca.gov/>), concerning the proper disposal of any toxic or hazardous materials. Dumping any such materials into sewers, gutters or storm drains is against the law.

11.14. USE OF EASEMENT AREAS

Except as otherwise provided herein, all Easement Areas shall be improved and used only for the following purposes for which they were designed and no part of the Easement Areas shall be obstructed so as to interfere with its use for the purposes hereinabove permitted. Each Owner shall be legally liable to the Association and the respective Owners for any damages to the Common Expense Area or to any improvements therein that may be sustained by reasons of the negligence of that Owner and/or such Owner's Invitees, as such liability may be determined under California law

11.15. USE OF BALCONIES/DECKS

Balconies/Decks or other outdoor areas of a Unit (together "Decks"), regardless of location, are open to view from various vantage points outside of the boundaries of the Unit, including the Adjacent Unit, the public street and neighboring properties. For this reason the use of Decks can affect the attractiveness and desirability of the overall Property and the value of the Units therein. In order to uniformly enhance, maintain and protect the foregoing, the following conditions and restrictions are imposed on the use of Decks:

(a) Decks shall be used only for traditional deck/balcony purposes for the quiet enjoyment of Occupants and their Invitees. Personalty Improvements may include, but not be limited to, deck furnishings, including tables, chairs, lounge chairs, umbrellas, a gas barbecues and live/artificial plants.

(b) Nothing may be placed on or hung/draped over Deck railings at any time.

(c) Nothing may be thrown, swept, shaken or otherwise propelled off Decks.

(d) Decks may not be used for drying or airing of clothing, rugs, towels or for storage of items such as bicycles, boxes, baby carriages, cribs, beds, beach/surf boards, and similar non-Deck items if visible from the street or another Owner or if such storage causes damage to the Deck area; no storage cabinets may be placed on a Deck. The Owner shall be responsible for any damage caused to the Deck by virtue of the storage of items on the Deck.

(e) Should live plants be placed on a Deck, an Owner/Occupant shall take

adequate steps to capture or provide proper drainage of water from such plants and to prevent any unsightly appearances or damage to Master Insurance Areas or an Adjacent Unit's Owner's/Occupant's Improvements.

(f) An Owner shall be responsible for the cost of repairs or replacement to any Master Insurance Areas or an Adjacent Unit Owner's/ Occupant's Improvements which have been damaged as a result of a violation of the restrictions within this Section or conditions relating thereto (e.g. water run-off).

11.16. USE OF ASSOCIATION PROPERTY

(a) Except as otherwise provided in this Declaration, the Association Property shall be improved and used only for the purposes and in the in the manner described in this Declaration or for those additional purposes which may be allowed by the Board or as provided herein.

(b) No Owner shall use or interfere with use of the Association Property in any manner which shall increase the Association's cost of insurance or which shall result in cancellation of insurance or making insurance unavailable.

11.17. OWNERS' AGREEMENTS BY ACCEPTANCE OF DEED TO UNIT

Each Owner, by acceptance of deed or other conveyance of title to such Owner's Unit, agrees: (a) to be responsible for compliance with the provisions of this Declaration, the Articles, Bylaws and Rules of the Board or any Architectural Standards, and for compliance by such Owner's Invitees, (b) to hold each other Owner harmless from, and to defend each other Owner against, any claim of any person for personal injury or property damage occurring within such Owner's Unit, unless the injury or damage occurred by reason of the negligence of any other Owner; and (c) after written notice and an opportunity for a hearing as provided in Section 7.4 herein entitled "Non-Lien Assessments," to pay any fines and penalties assessed pursuant hereto, the Bylaws or the Rules or Architectural Standards, for any violation by such Owner or such Owner's Invitees.

ARTICLE 12. ARCHITECTURAL AND DESIGN CONTROL

12.1. APPROVAL FOR ARCHITECTURAL AND DESIGN MATTERS

Each Owner, other than Declarant, shall obtain the approval of the Board for any modification or installation of improvements as described in this Declaration, in accordance with the provisions set forth below.

12.2. SCOPE

Except as specifically stated in the Declaration to the contrary, no Owner shall make any improvements or exterior changes to any portion of a Condominium which would be within view outside of the Owner's Unit, which result in any structural change to any building, (including the structural integrity of the walls, floors, ceilings), which would alter the ornamental component of the Building, would impair water proofing, or would otherwise be in the jurisdiction of the Architectural Committee pursuant to this Declaration until the plans and specifications therefore showing the nature, design, kind, shape, height, width, color, materials and location have been submitted to and approved in writing by the Architectural Committee. In addition, the grade, level or drainage characteristics of the Unit or any portion thereof shall not be altered without the prior written consent of the Board. For purposes of this Article, this Declaration and the Governing Documents, the term "Architectural Control" shall mean and refer to the Plans and Specifications described herein.

12.3. GENERAL: THE COMMITTEE

The powers and duties set forth in this Article shall be vested in and exercised by Declarant until such time that a Board is elected; provided, however, the Board may, upon unanimous approval thereof, delegate its powers and duties to an Architectural Committee consisting of not less than three (3) nor more than five (5) members (in the event the Board elects to delegate such powers to an Architectural Committee, prior to conversion of the Class B membership in the Association to Class A membership, Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the first Close of Escrow; additionally, Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all

the Condominiums in the Project have been sold or until the fifth anniversary of the Close of Escrow, whichever first occurs.

After one (1) year from the first Close of Escrow, the Board shall have the power to appoint one (1) member to the Architectural Committee until ninety percent (90%) of all of the Condominiums in the development have been sold or until the fifth anniversary date of the issuance of the final Public Report, for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Architectural Committee, and thereafter the Board shall appoint such a successor).

12.4. DUTIES

The Board shall consider and act upon such proposals or plans, as described herein, submitted to it pursuant to the terms hereof.

12.5. MEETINGS; VOTING; WRITTEN CONSENT

The Board shall meet from time to time as necessary to properly perform its duties under this Article. The vote or written consent of at least fifty-one percent (51%) of the Board shall constitute an act by the Board under this Article, unless the unanimous decision of its members is otherwise required by this Declaration. The Board shall keep and maintain a record of all actions taken by it at such meeting or otherwise.

12.6. ARCHITECTURAL STANDARDS

The Board may, from time to time and in accordance with Civil Code §4355 adopt, amend and repeal such rules and regulations to be known as or "Architectural Standards," as it deems necessary in order to (i) to enhance maintain and protect the value, attractiveness and desirability of the Project, and (ii) to perform its responsibilities and obligations. Such Architectural Standards may include a broad range of regulations, including those that provide for "minimum standards" together with sufficient artistic and esthetic latitude that offer discretionary leeway, and, time frames for review, approval, and appeal of any Architectural Activity; provided, however, such Architectural Standards shall not be in derogation of the standards required by this Declaration. Architectural Standards may include, but not be limited to specific or general criteria, specifications and protocols for the architectural, landscape, placement or other form of design, color scheme, exterior finish, materials and similar features of all improvements, and as well as restrictions, conditions and other criteria relating to the use of improvements that are visible to Occupants and their Invitees.

Anything in this Article or Declaration notwithstanding, the Association and Architectural Committee shall comply with Section 4760 of the Act, which provides as follows:

- (a) Subject to the governing documents and applicable law, a member may do the following:
 - (1) Make any improvement or alteration within the boundaries of the member's separate interest that does not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.
 - (2) Modify the member's separate interest, at the member's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the separate interest for the purposes of this paragraph if the separate interest is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:
 - (A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(D) Any member who intends to modify a separate interest pursuant to this paragraph shall submit his or her plans and specifications to the association for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law."

Anything in this Article or Declaration notwithstanding, the Association and Architectural Committee shall comply with laws and regulations as they may be adopted from time to time regarding the approval of any Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5 shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Board pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits

12.7. DISTRIBUTION OF ARCHITECTURAL STANDARDS

The Association shall annually distribute to the Members notice of any requirements for Association approval of physical changes to improvements within the Project. Such notice shall describe the types of changes that require Association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change. Such notice shall be distributed either in conjunction with its annual distribution of the Budget described in the Section hereinbefore entitled "Budgeting," or such other time as the Board may deem appropriate, by mail or delivery to each Unit, or by newsletter or similar means of communication. The foregoing notwithstanding, upon written request from an Owner or Owner's authorized representative, the Association shall, in accordance with the procedures and provisions contained in Civil Code §4530, or any successor statute, provide the Owner a copy of the most current Architectural Standards.

12.8. APPROVAL OF PLANS & SPECIFICATIONS

Any Owner, other than Declarant, proposing to construct improvements requiring the prior approval of the Board pursuant to this Declaration shall first apply to the Board for approval by submission of Plans and Specifications in accordance with the Architectural Standards, unless otherwise exempted by such Architectural Standards and any other materials required by the Board. The decision of the Board shall be made in good faith, in accordance with any applicable Architectural Standard and consistent with Applicable Law, including, but not limited to the Fair Employment and Housing Act of Division 3 of the Title 2 of the Government Code. The Board shall notify the Owner of its approval or disapproval of the proposed improvements in writing within thirty (30) days of receipt of the Owner's application. If a proposed change is disapproved, the written decision shall include explanation of why the proposed change is disapproved within four (4) days of disapproval. The Owner shall be entitled to reconsideration of the disapproval by the Board at any open meeting of the Board, unless the initial decision was made at an open meeting of Board. Any such reconsideration by the Board shall not constitute "dispute resolution" within the meaning of Civil Code §5905.

However, the City of Solana Beach established certain conditions to the approval of the Project; in compliance with these Cit5y conditions, no approval will be given of any plans or change requests which: a) divert or otherwise alter the established drainage patterns approved by the City; b) proposed onsite fencing, walls, retaining walls, hedges, dense landscaping or other similar items unless approved by the City pursuant to Solana Beach Municipal Code Sections 17.20.040 and 17.60.070; c)

replace exterior lighting unless in conformance with the City lighting regulations; d) installation or use of any balcony, patio, or roof deck for occupancy or use on the second floor roof of any unit; e) installation or use of the first floor roof as a balcony, patio, or roof deck on the south side of Unit 3; or f) obstruct or otherwise limit fire department access on the Association Property driveway.

12.9. INSPECTION AND CORRECTION OF WORK

Inspection of work and correction of defects therein shall proceed as follows:

12.9.1. RIGHT OF INSPECTION DURING COURSE OF CONSTRUCTION

The Board or its duly authorized representative may enter into any Unit, from time to time, as provided below during the course of construction or installation of any improvements for the purpose of inspecting the construction or installation. If the Board determines that such construction and/or installation is not being done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner of such noncompliance. The Board may not enter into a Condominium without obtaining the prior permission of the Owner or Occupant of such Condominium; provided, however, that such prior permission shall not be unreasonably withheld and shall be given for entry by the Board during daylight hours within forty-eight (48) hours of the request for entry.

12.9.2. NOTICE OF COMPLETION

Upon the completion of any improvements for which approved Plans and Specifications are required under this Article, the Owner shall give written notice of completion thereof to the Board.

12.9.3. INSPECTION

Within thirty (30) days after receiving notice of completion, the Board, or its duly authorized representative, shall have the right to Enter into a Unit, to inspect the improvements to determine whether they were constructed or installed in substantial compliance with the approved Plans and Specifications. If the Board finds that such construction or installation, was not done in substantial compliance with the approved Plans and Specifications, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

12.9.4. NON-COMPLIANCE

If, upon the expiration of thirty (30) days from the date of notification of non-compliance, the Owner shall have failed to remedy such non-compliance, the Board, after affording the Owner a Notice and Hearing, shall determine whether there is non-compliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy an Enforcement Assessment against such Owner for reimbursement.

12.9.5. FAILURE TO NOTIFY

If for any reason the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the improvements shall be deemed to be in accordance with said approved Plans and Specifications.

12.9.6. GOVERNMENT REGULATION

If there is any conflict between the requirements or actions of the Board and any mandatory Applicable Law relating to the Property, the mandatory Applicable Law, to the extent that such Applicable Law is more restrictive, shall control, and the Board shall modify its requirements or actions to conform to the Applicable Law. The application to and the review and approval by the Board of any Plans and Specifications or other submittals by an Owner shall in no way be deemed to be

satisfaction or compliance with any building permit process or other Applicable Law (hereinafter collectively referred to as "*Additional Requirements*") the responsibility for which shall lie solely with the Owner; provided however, if the Additional Requirements are less restrictive than the provisions of this Declaration, the provisions of this Declaration shall nonetheless apply.

12.10. DILIGENCE IN CONSTRUCTION

Upon approval by the board of any Plans and Specifications, the Owner(s) shall promptly commence construction and diligently pursue the same to completion.

12.11. FEE FOR REVIEW; DEPOSIT FOR CONSTRUCTION CLEANUP

The Board shall have the right to establish a reasonable fee for the review and approval of Plans and Specifications which must be submitted to it pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

12.12. OWNERS RESPONSIBILITY FOR CLEANUP; DEPOSIT TO ASSOCIATION

(a) Each Owner shall be responsible for the daily cleanup of any and all construction debris that is left within the Common Expense Areas as a result of any construction activity within such Owner's Unit, and/or the ingress and egress of any construction-related vehicles or workers through the Common Maintenance Area.

(b) The Board may require that an Owner deposit funds from time to time with the Association in amount that the Board deems sufficient and appropriate, so that in the event any such Owner fails to cleanup any construction debris as required by the Board, the Association shall have sufficient funds to cause the cleanup thereof. The Board may require that such Owner's deposit be made to the Association (1) as a condition of its approval of an Owner's Plans and Specifications and (2) prior to the commencement and/or during the course of any such construction activity. In the event such Owner fails to remit the requested deposit, and the Association nonetheless proceeds to perform or cause to perform cleanup, the costs of such cleanup shall be assessed to such Owner as Compliance Assessment.

12.13. INTERPRETATION

All questions of interpretation or construction of any of the terms or conditions herein shall be resolved by the Board and its decision shall be final, binding and conclusive on all of the parties affected.

12.14. WAIVER

The approval by the Board of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, 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.

12.15. ESTOPPEL CERTIFICATE

Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall provide to the Owner an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

12.16. LIABILITY

The Board shall not be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) damage to the Project or any property within

the Project; or (d) the execution and filing of an estoppel certificate pursuant to the Section entitled "Estoppel Certificate" above, whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Board.

12.17. GOVERNMENT REQUIREMENTS

(a) The application to and the review and approval by the Board of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the applying Owner.

(b) Each Owner shall make available to the Board any building and/or other governmental permits obtained by such Owner in connection with any improvement work to be conducted on such Owner's Unit.

12.18. VARIANCES

The Board may authorize variances from compliance with any of the architectural provisions of this Declaration. Such variances must be in writing, and must be signed and acknowledge by at least a majority of the members of the Board. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular Unit and particular provision hereof covered by the variance, nor shall it affect in any way affect the Owner's obligation to comply with all Applicable Law affecting its use of the Unit, including, but not limited to, zoning ordinances and lot setback lines or requirements imposed by the City or any other governmental authority.

12.19. NON-APPLICABILITY TO DECLARANT

Any architectural control provisions of this Article, this Declaration or any other Governing Document shall not apply to any improvements installed or to be installed by the Declarant, or any affiliate or agent of Declarant, and neither the Board nor any Member shall have any rights of review or approval with respect thereto.

12.20. AMENDMENTS

Notwithstanding the Article of this Declaration entitled AMENDMENTS, no amendment, verification or rescission of this Article may be made, prior to last Close of Escrow without the (a) written consent of Declarant and (b) the Recording of such consent.

ARTICLE 13. RESPONSIBILITIES OF MAINTENANCE AND OPERATION

13.1. OWNER RESPONSIBILITY

With the exception of Maintaining the Association Property and the Association Maintenance Areas; the Unit Exterior Surface Areas, including Roofs; specific Improvements (namely, the ganged mailbox and any perimeter fencing), which are Association Obligations, Owners are required to Maintain (including clean, maintain, repair and replace) all Improvements located within their respective Units, including the Dwelling, Garage, Building, Utility Facility Areas, windows and doors, lighting fixtures (including bulb replacement), and fencing located within the boundaries of their Unit. All such maintenance shall comply with the City municipal code and regulations and be conducted in a safe, attractive and neat manner and at a professional quality level that is consistent with the highest standards of the properties in the City and similar Projects. The replacement of exterior items shall be subject to Architectural and Design Control requirements. Among other things, each Owner of a Condominium Unit shall be responsible for the Maintenance and repair of:

(a) His or her Separate Interest (except for those items of maintenance which the Association is required to maintain in this Declaration).

(b) The Structural Improvements (except for the Exterior Surfaces) and interior of the Unit including all appliances, equipment or personalty whether "built-in" or freestanding within the Separate

Interest. Each Owner shall be responsible for the repair and maintenance of the Unit occasioned by the presence of wood-destroying pests or organisms, and to notify the Association as soon as reasonably possible of the presence of wood-destroying pests;

(c) The Utility Facilities (including the solar systems and equipment and the air conditioning units and systems) servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. No Owner may permanently remove or revise the type of appearance of any porch or lighting fixtures servicing his or her Separate Interest without the approval of the Architectural Committee.

(d) Each Owner shall be responsible for maintaining and replacing any and all windows and doors associated with or attached to the Unit. (Any changes to the color or design of the windows and doors shall require architectural review and approval.) Each Owner shall be responsible for maintaining and replacing the light bulbs of all exterior lighting fixtures appurtenant to his or her Condominium. All exterior lighting shall conform with the uniform lighting described herein.

(e) Each Residential Unit Owner shall be responsible to do all routine maintenance (for example, sweeping and cleaning), of the Balconies, Decks and Patio areas. The Owner shall not do anything which would impair the proper operation of any drainage systems including those that may be located within a Balcony, Deck or Patio. Each Owner shall take steps to minimize siltation from entering the drainage system.

(f) Should a fence or wall separate a Unit from another Unit, the Owners of the Separate Interests to which fence or wall is adjacent shall be responsible to maintain the fence, sharing the cost; however, the Association shall have the right to paint or stain any portion of the fence facing the Association Property.

(g) The Project is serviced by public sewer and water mains with private sewer laterals which deliver waste from each Unit to the public sewer main and water to each Unit from the public water mains, services and meters. Each Owner shall be responsible for the proper operation and maintenance of any portion of the private sanitary sewer and water delivery systems which lie within such Owner's Unit. Any portion of such systems which does not lie within a Unit and is shared by more than one Unit, up to the point where they connect to the public sewer main or the public water meter, will be the responsibility of the Association to operate and maintain.

13.2. FAILURE TO MAINTAIN

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within a reasonable time from the giving of such Notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may cause such work to be done and the cost thereof charge to the Owner as an Assessment, which shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve (12%) percent per annum (but no greater than the maximum rate authorized by law).

13.3. ASSOCIATION RESPONSIBILITY

The Association shall be responsible for the Maintenance of the named Association Property, Association Maintenance Obligations and Areas, including the driveway, community open space and landscaped areas, parking spaces, trash receptacles (if servicing the whole community), mailbox, the right of way and Improvements therein (such as any seating areas, bike racks, landscaping, signage, backflow and irrigation systems, or other similar improvements), and any other areas depicted on the Condominium Plan, and all the Improvements located on the Association Property or as identified herein as Association Maintenance Obligations. Among other things, the Association shall maintain:

(a) **Exterior Surfaces:** In order to maintain a quality and uniform aesthetic, the Exterior Surface Areas of each Building (including the Roof and Exterior Surfaces of the Decks and Balconies) shall be waterproofed, repaired and or replaced by the Association. (The Owner shall be responsible for routine cleaning and maintenance of these areas.) The Exterior surfaces include the repainting or refacing of exterior siding, roof repair and replacement, and similar items. All exterior surfaces made of wood, including all wood fencing adjacent to public right-of-way and/or visible from the public right-of-way will be stained or otherwise finished with a waterproof material similar to that as constructed by the Declarant. All mechanical rooftop and ground

equipment shall be screened from public view to the degree possible and any roof solar, mechanical equipment, screens and vents shall shielded or screened to avoid reflection and maintain an aesthetic appeal.

(b) **Fire Code Compliance:** Building and Unit Addresses of a minimum of four inches in height shall be maintained on all building locations and or monuments pursuant to the City's Ordinances and be visible at all times; the driveway shall be properly painted to identify fire lanes and be maintained in good condition to allow emergency access. The Association shall regularly paint (including demarcation of "NO PARKING FIRE LANE) and stripe all areas to assure unobstructed access.

(c) **Fencing:** The Association shall be responsible for the maintenance and repair of the structure and exterior of each wall or fence separating Separate Interests from Association Property and shall maintain both the exterior and interior surfaces and the structure of any perimeter wall located along any boundaries of the Property.

(d) **Improved and Landscaped Open Space:** The Association shall maintain the portion of the Association Property on the west side of the property (generally "common open space") and the Improvements thereon (consisting of landscaped and/or open space, improved with benches, shrubs and other foliage) for the use and enjoyment of all Units. To the maximum extent practicable, landscaping and plantings shall be used to screen parking areas, storage areas, access roads, and other service uses of the site. The Association shall provide landscaping, pruning and gardening properly to maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed in areas it is obligated to maintain and to remove trash and debris from the Association Property. The Association shall take such maintenance actions as are necessary to avoid erosion and to assure proper drainage of all areas it is obligated to maintain. The Association in its maintenance activities shall comply with any City, insurance and other applicable governmental standards, requirements or restrictions that are applicable to the Project, including any City brush removal requirements. Among other things, the irrigations system is and shall continue to be designated for use of recycled water, and shall be fed from its own separate water meter, with backflow preventer.

All landscaping within the Association Property shall be kept free from weeds, trash and debris, and shall be maintained at least to the standards set by the City. Under no circumstances shall the Association or any Owner plant any root invasive plant material. Notwithstanding the foregoing, the Association shall at all times comply with any City open space regulations or other applicable restrictions pertaining to the Association Property, and shall maintain the vertical clearance of access and driveway areas to meet Fire Department requirements. All trees shall be trimmed when/if they obstruct the required clearance area and/or any view corridor. Drought tolerant plant materials and water conserving irrigation systems shall be incorporated into all landscaping plans, pursuant to the current water efficient landscaping regulations of SBMC Chapter 17.56. The Association shall maintain all irrigation systems associated with the Association Property in operating condition.

(e) **Drainage and Best Management Practices:** The Association shall monitor and maintain all drainage systems and the Storm Drain Facilities which are located within the Association Property, including the cross-lot drainage system, if any. The Association shall complete all such monitoring and maintenance in strict compliance with the Storm Water Facility Maintenance Agreement described in the Ancillary Instrument definition and shall educate all owners on at least an annual basis on the Association and Member duties thereunder. However, the individual Owners of all Condominiums shall be responsible for the routine maintenance and cleaning out and filter inlets (or other drainage inlets) located within his or her Unit, including Exclusive Use Areas. The Owners and the Association shall provide the City with access to site for the purpose of BMP inspection and maintenance and shall complete & retain for any City required forms to document all operation, inspection, and maintenance, which shall be made available to the City upon request. The Association maintenance activities and agreements shall require the training, inspection and maintenance of all BMPs on an annual basis and shall grant all implementing parties with offsite and on-site access easements or rights necessary for the operation and maintenance of BMPs, which duty runs with the land. The BMPs may not be altered in any way, unless reviewed and approved by the City Engineer.

(f) **Common Driveway:** The Association shall be responsible for the maintenance, repair and replacement of the hardscape area and Improvements located within the Association Property, including the driveway, Parking Spaces, and walkways within the Association Property or right-of-way, any driving gates or entry systems, and the like.

(g) **Public Areas/City Right of Way:** The Association shall maintain any public areas within or adjoining the Community which the City requires to be maintained by the Association.

13.4. WATER FOR LANDSCAPE IMPROVEMENTS

Each Owner is responsible for the Maintenance of the Landscaping located on his or her Unit and for the costs, including water, associated with performing such maintenance. As of the date of Recordation of these CC&RS, water for the Landscape Improvements within the Association Property is supplied by a separate "house" meter or sub-meter(s), the purpose of which is to separate the water supplied to irrigate these respective areas from the water supplied to the Dwelling for potable domestic water purposes. The cost of the house meters shall be included in the Association budget and shared equally by the Owners as a Common Expense.

13.5. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS

All work of repair or replacement required to be performed pursuant to this Article shall be performed only by reputable and experienced contractors, appropriately licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified, and shall be U.S. citizens, legal residents or otherwise legally approved to be in the United States. If building or other permits are required for such work, then such permits shall be obtained before the work is commenced.

13.6 MAINTENANCE MANUALS.

Declarant may provide its original purchasers and/or the Association with manuals ("Maintenance Manuals") which outline Declarant's or manufacturers' recommended homeowner and/or Association maintenance obligations and schedules.

(a) Each Owner who receives a Maintenance Manual shall provide the same to any purchaser or other transferee of his or her Condominium.

(b) The Association shall keep and make available to any Owner the Maintenance Manual(s) provided by Declarant (including any Maintenance Manual which pertains to Association or Owner maintenance). The Association shall have the right to require an Owner to reimburse the Association for its costs of copying any such Maintenance Manual which the Association provides to an Owner.

(c) The Association and each Owner, respectively, shall follow the recommendations set forth in the applicable Maintenance Manual provided by Declarant, as the same may be updated from time to time.

13.7 MOLD

The Association, with respect to the Association Property, and each Owner, with respect to his or her Condominium, shall take all reasonable and appropriate steps to prevent conditions that may cause mold or mildew to develop, including following any recommendations contained in the Maintenance Manual or in any applicable publications of the California Department of Public Health ("CDPH") or the United States Environmental Protection Agency ("EPA"). As of the date of this Declaration, the EPA and CDPH have Web sites which contain information and publications regarding mold and other biological pollutants. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA Web site (<http://www.epa.gov>); and "Indoor Air Quality Info Sheet: Mold in My Home: What Do I Do" on the CDPH Web site (<http://www.dhs.ca.gov>). An Owner shall promptly report to the Association any evidence the Owner may discover of moisture accumulation or mold in the Community. Should an Owner fail promptly to report to the Association any evidence of moisture accumulation or mold in the Owner's Separate Interest that may affect the Association Property or should an Owner fail promptly to report to another Owner any evidence of such moisture accumulation or mold that may affect the Owner's Separate Interest or another Separate Interest, such Owner shall be obligated to reimburse the Association and the other Owner for all costs incurred by the Association or other Owner as a result of the unreasonable delay in reporting the condition to the Association or other Owner.

13.8 INSPECTION OF FIRE PREVENTION, BACK FLOW & ELEVATED SYSTEMS

The Association shall comply (or cause the Owner to comply) with all applicable City requirements for regular testing and inspection of fire prevention systems and/or back flow systems, if any including, but not limited to, visual inspections within the Separate Interest. All Owners shall cooperate with the Association in performance of its inspection obligations, and grant access to the Unit as necessary. As

part of its maintenance performance, the Association (or its agents and employees) may inspect all Units on an annual basis (unless required on an emergency basis) if such inspection is necessary to the maintenance of such items. For example, any sump or heat pump, fire safety and fire prevention system or similar Facilities located within a unit may be inspected upon appropriate Notice. If the Inspection Report indicates that remedial work is recommended to ensure the proper functioning of such item, the Board shall send notice to the Owner along with a copy of the Inspection Report. The Owner of such Condominium shall have thirty (30) days to complete the recommended remedial work at Owner's cost from the date of the notice unless an alternate time period is specified in the notice. Upon completion of any work, the Owner shall provide proof satisfactory to the Board that the remedial work has been completed.

If applicable and necessary, on or before January 1, 2025 the Association shall comply with Civil Code Section 5551 by conducting visual inspections of load-bearing components six feet above ground, supported substantially by wood and reinspect such areas every nine years. The inspection shall be completed by a licensed structural engineer or architect and comply with all aspects of Civil Code Section 5551, including the inspector submitting a report to the board providing the physical condition and remaining useful life of the load-bearing components and associated waterproofing systems and the Board taking preventative measures and arranging repairs as required by law. If the Inspection Report indicates that remedial work is recommended to ensure the safe use or functioning of such item, the Board shall send notice to the Owner along with a copy of the Inspection Report. The Owner of such Condominium shall have sixty (60) days to complete the recommended remedial work at Owner's cost from the date of the notice unless designated an emergency. Upon completion of any work, the Owner shall provide proof satisfactory to the Board that the remedial work has been completed.

ARTICLE 14. INSURANCE

14.1. MASTER INSURANCE POLICY

Master Insurance: Each Building is separate and not attached to the adjacent Building(s), and shall be insured by the individual Owners; however, the Association shall maintain one common insurance policy ("Master Insurance Policy") for casualty coverage of all of the Association Property and Improvements, together with liability coverage for the Exterior Areas of the Property (collectively, the "Master Insurance Areas"). Specifically, the Association shall acquire and maintain the following insurance policies:

14.1.1. PROPERTY / FIRE INSURANCE

(a) A master or blanket policy of fire and casualty (property) insurance in an amount as near as possible equal to the full replacement value of the Association Property and Master Insurance Areas including Improvements thereon; all fixtures, machinery and equipment permanently affixed to the Association Property, exterior lighting fixtures; exterior signs; foundations and personal property owned or maintained by the Association. If possible, coverage should be written with an "Agreed Amount Endorsement" (or similar endorsement that waives any co-insurance penalty) and should contain affording automatic increases in coverage values for inflation. If available and applicable, construction code coverage should be included.

(b) This insurance shall be maintained for the benefit of the Association and, as "additional insureds," Declarant, for so long as Declarant is the Owner of a Unit, the Owners and their First Mortgagees, as their interests may appear as named insured, subject, however, to any loss payment requirements set forth in this Declaration.

(c) **Unit Area Exclusions:** the master policy of fire and casualty/property insurance covering the Master Insurance Area **is not intended** to and shall not cover the Building or Improvements located within the Unit except as described herein; specifically, such Master Insurance Coverage shall not cover the Dwelling, or its interiors (including appliances, cabinets, flooring surfaces added atop sub-floors, such as carpeting and hard-floor surfaces, interior wall surfaces [e.g. wall- paper, wood paneling and similar wall surface improvements], finish plumbing including plumbing fixtures, finish electric including interior lights, lighting fixtures).

14.1.2. LIABILITY INSURANCE

(a) The Association shall obtain and maintain a policy(ies) insuring the Association and its agents, and, as "additional insureds," Declarant, as long as Declarant is the Owner of a Unit, the Owners and Occupants and their respective Invitees against any liability for bodily injury, death and property damage arising from the ownership and/or Maintenance or use of the Association Property and Association Maintenance Areas and the performance by the Association and the Owners of their duties under this Declaration and any real or personal property owned or maintained by the Association, including non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the area of the Project, with a "Severability of Interest Endorsement" (or equivalent) coverage which would preclude the company from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

(b) Coverage should include all claims for death, personal injury and property damage arising out of a single occurrence protection, liability for non-owned and hired automobile, liability for property of others and, if applicable: garage-keeper's liability, host liquor liability and such other risks as shall customarily be covered with respect to improvements similar in construction, location and use.

(c) Limits of liability under the insurance shall not be less than the minimum amounts required by Civil Code §5800 and §5805. The limits and coverage shall be reviewed at least annually by the Owners and increased or decreased in their mutual discretion.

14.1.3. WAIVER OF SUBROGATION

The Association shall waive all claims against the Owners for any damage to the Master Insurance Area (including without limitation, any loss of use of such property), except to the extent that such damage is not covered by the property insurance required by this Declaration to be maintained by the Association or the property insurance actually maintained by the Association (whichever is greater), and such damage is caused by the gross negligence or willful misconduct of an Owner. All rights of subrogation between the Association's insurer and the Owners are waived. The insurance policies obtained by the Association shall include a waiver of all subrogation rights of the Association's insurer against Owners; provided, however, that any failure to obtain such a waiver from the insurer shall not defeat or impair the foregoing waiver between the Association and the Owners set forth herein. If an Owner is liable for damage under this Section, the Association may, after Notice and Hearing, levy a Reimbursement Assessment equal to the cost of repairing the damage, and the increase, if any, in insurance premiums directly attributable to such damage.

14.1.4. DISHONEST ACTS; FIDELITY BOND

The Association shall maintain such insurance covering directors, officers and employees of the Association and employees of any manager or managing agent, or administrator, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or a management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments, including reserve funds, against all Units then subject to assessment.

14.1.5. DIRECTORS' AND OFFICERS' INSURANCE

Civil Code §5800 provides for a partial limitation on the liability of a tenant of a Unit, or an Owner of not more than two (2) Units in a Condominium Project, who is a volunteer officer or director of the Association, provided that certain requirements, as set forth in said Civil Code, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts.

The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions, the minimum coverage of which shall be not less than \$500,000 Dollars for all claims arising out of a single occurrence, or such other minimum amount which meets the requirements of Civil Code §§5800.

(a) The Association's liability coverage policy for the directors and officers of the Association that lists all of the following:

(b) The name of the insurer;

(c) The limits of the insurance.

The foregoing notwithstanding, the Board shall, as soon as reasonably practical, notify the Members by first-class mail if any of the insurance policies have been canceled and not immediately replaced. If the Board renews any of the policies a new policy is issued to replace an insurance policy of the Association, and where there is no lapse in coverage, the Board shall notify the Members of that fact in the next available mailing to all Members pursuant to Corporations Code §5016, or any successor statute thereto.

To the extent that the information to be disclosed pursuant to this Section is specified in the insurance policy declaration page, the Board may meet the requirements of this Section by making copies of that page and distributing it to all Members.

14.1.6. WORKERS COMPENSATION INSURANCE

Worker's compensation insurance covering any employees of the Association to the extent required by law.

14.1.7. EARTHQUAKE, FLOOD, TSUNAMI AND OTHER COVERAGE

The Association shall have the authority, but not the obligation, to obtain earthquake, flood, tsunami, and such other insurance coverage for the insured property as the Board or Owners, acting as the Association, deem advisable or necessary. Any such insurance coverage provided shall be in an amount recommended by one or more reputable insurance brokers or consultants. The Association must have the prior approval of one hundred percent (100%) of the Members of the Association before choosing to cancel or not renew any existing earthquake insurance policy for the insured property.

In the event any insurance policy, or any endorsement or provision thereof, covering the Master Insurance Areas is for any reason not available, then the Association and/or the respective Owner, as the case may be, shall obtain such other or substitute policy or endorsement as may be available, which provides, as nearly as possible, the coverages described above. The Association and the respective Owners shall have a duty to notify the other Owner and the Association, as the case may be, of any material adverse changes in insurance coverage.

14.1.8. FNMA; FHLMC

The Association shall maintain such insurance coverage as may be specifically requested by VA, FNMA or FHLMC so long as the VA, FNMA or FHLMC, respectively, holds a Mortgage on or owns any Condominium.

14.1.9. ADDITIONAL INSURED; ADEQUACY OF INSURANCE

The insurance policies shall name as insured the Association, the Owners, the Declarant, as long as Declarant is the Owner of any Condominium and/or has any rights under this Declaration, any Association manager, and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the Trustee (as defined below). The Board, acting as the Association, shall review the adequacy of the Master Insurance Policy as least once every year. The review shall include an estimate of the replacement cost of all Master Insurance Area Improvements without respect to depreciation. The Board shall adjust and modify the policies to provide coverage and protection that is customarily carried by and reasonably available to prudent owners of similar property in the area in which the Project is situated.

**14.1.10. INSURANCE AND CANCELLATION NOTICES;
ADDITIONAL INSURANCE PROVISIONS AND LIMITATIONS**

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times. All insurance policies shall provide that they shall not be cancelable by the insurer or substantially modified, without first giving at least thirty (30) days' prior notice in writing to the Association; provided, however, ten (10) days prior written notice shall be required if the cancellation is for

non-payment of premiums. Owners and their respective First Mortgagees may file written requests with the insurance carrier for receipt of such notices. All property and liability insurance policies shall be subject to the following provisions and limitations:

(a) The named insured under any such policies shall be the Association or its authorized representative, including any trustee with whom the Association may enter into any insurance Trust Agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies

(b) Policies shall provide that coverage shall not be prejudiced by [a] any act or neglect of the Owners which is not within the control of the Association [b] failure of the Association to comply with any warranty or condition with regard to any portion of the Project over which the Association has no control and [c] making a cash settlement, such option shall not be exercisable without the prior written approval of the Association or which are in conflict with the provisions of any Insurance Trust Agreement which the Association may be a party or any requirement of law.

In accordance with §5810 of the Civil Code, the Association shall, as soon as reasonably possible, provide individual notices pursuant to section §4040 to all members if any policy described in the Budget report has lapsed, been cancelled, (and are not immediately renewed, restored or replaced), or if a significant change or reduction in coverage occurs. If the Association receives a Notice of Non-renewal of a policy in the Budget report pursuant to §5300 of the Civil Code, then the Association will immediately notify its members if replacement coverage will not be in place upon termination of the lapsing or non-renewed policy.

14.1.11. BOARD'S AUTHORITY TO REVISE INSURANCE COVERAGE

Subject to the provisions herein, the Board shall have the power and right to deviate from the insurance requirements contained in this ARTICLE in any manner that they, in their discretion, consider to be in the best interests of the Owners and their respective interests in the Property or if mandated Insurance is unavailable. If the Board elects to materially reduce the coverage from the coverage required in this ARTICLE, the Board shall give notice to the Owners of such reduction in coverage and the reasons therefor at least 60 days prior to the effective date of the reduction.

14.1.12. BOARD'S AUTHORITY RE: LOSS; TRUSTEE; ADJUSTMENT OF LOSSES

If the Master Insurance Area or any portion thereof is damaged or destroyed ("Affected Area"), the Board shall, within sixty (60) days of the date of such damage (or, or as soon thereafter as may be practicable, given the nature of the damage), ascertain the cost of restoring such Affected Area by obtaining fixed price bids from at least two (2) duly licensed contractors, which bids shall include the obligation of the contractor to obtain a performance bond, if the Board deems that such bond is necessary or appropriate. The Board is authorized to negotiate and agree on the value and extent of any loss under the Master Insurance Policy carried by the Association, including, but not limited to, the right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer; provided, however, the Board shall give notice to the Owner(s) ("Affected Owner(s)") of any Unit(s) which is directly affected by any such loss ("Affected Loss") and shall confer and obtain approval with such Affected Owner(s) during and prior to, in each instance, negotiating and agreeing upon any value and extent of such loss and/or compromising, settling or enforcing any claim ("Affected Action"). The foregoing notwithstanding, in the event an Affected Owner refuses to confer with the Board or unreasonably refuses to approve an Affected Action, the effect of which shall negatively affect the value of the Units of the non-Affected Owners, the Board shall approve such Affected Action as it deems will best benefit both the Affected Owner and non-Affected Owners. Any Dispute with respect to the foregoing shall be conducted as an "Exigent Matter" pursuant to Article 22 herein.

EACH OWNER, BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE TO SUCH OWNER'S UNIT:

A. ASSOCIATION; TRUSTEE

Hereby agrees that all insurance proceeds payable under Sections 14.1.1 and 14.1.2 above, shall be paid to the Association or, at the direction of the Board, to a trustee (the "Trustee") appointed by the

Board, to be held and expended for the benefit of:

- (1) the Affected Owner's(s') Unit(s) or the Affected Owner
- (2) the Affected Owner's(s') and/or their respective Mortgagees, and/or;
- (3) the non-Affected Owners and/or the Association.

as the circumstance(s) shall determine or as their respective interests shall appear, as determined by the Board in accordance with Applicable Law (NOTE: three types of beneficiaries are described above for the potential different circumstances by which insurance proceeds may arise. These may, but not be limited to, (a) the Affected Loss applies to one (1) Unit or one (1) Unit Owner only, (b) the Affected Loss applies to more than one (1) but less than all Units in the Property; (c) the extent or magnitude of Affected Loss, (d) whether the Affected Loss includes or consists only of the Association, etc.). The foregoing notwithstanding, no funds intended for the repair or replacement of Affected Loss Improvements within a Unit shall be used for any other purpose, other than as described herein and – with respect to the damage and destruction of Improvements within the Master Insurance Area – in accordance with the provisions of ARTICLE 15 herein.

B. ADJUSTMENT OF LOSSES

Irrevocably appoints the Association or its duly appointed Trustee described in Section A immediately above, as the Affected Owner's(s') attorney-in-fact for purposes of procuring, negotiating, accepting, compromising, releasing, settling, distributing and taking other related actions in connection with the Master Insurance Policy and any losses or claims related thereto, and agrees to be bound by the actions so taken as if the Owners had personally taken the action; subject to the rights of the Affected Owner(s) described in Section 14.1.13 above.

14.1.13. BOARD'S DUTY TO CONTRACT; RIGHT OF ASSIGNMENT; ASSIGNED AFFECTED OWNER

If repair or reconstruction is authorized as a result of damage or destruction, the Board or its duly appointed Trustee, shall have the duty to contract for such work in accordance with Section 15.1 hereafter. The foregoing notwithstanding, the Board shall have the express right to assign the obligation and duty to contract for such work to the Affected Owner of each Affected Unit; provided that any such Affected Owner agrees to accept such obligation and the Board deems each such Affected Owner capable thereof, such Affected Owner becoming an "Assigned Affected Owner." The Board shall have the express right to oversee any such work and to subject payment for such work to a "fund control" by an agent duly appointed by the Board for such purpose and appropriately license therefor in accordance with Applicable Law.

14.2. DUTY OF OWNERS TO INSURE THEIR UNIT AREA

It is the responsibility of each owner to provide insurance on the Unit, personal property and upon all other property and Improvements within the Unit for which the Association has not purchased insurance in accordance with the above provisions hereof. Nothing herein shall preclude the Owner from carrying any of the below described insurance at his or her sole cost and expense, for:

14.2.1. PROPERTY / FIRE INSURANCE

Property and fire insurance for any losses to the Owner's Unit, upgrades and to Personalty located within such Owner's Unit as described hereafter. Specifically, each owner shall obtain and maintain, at no expense to other Owners or to the Association, such fire, casualty, and liability coverage as (may be required by the Owner's Mortgagee), or if none, in sufficient amounts to replace the Unit Area in the event of a fire or casualty. The Association's Master Insurance Policy of fire and casualty insurance is intended to insure the Master Insurance Areas only and is specifically intended to exclude from its coverage the Unit and all Improvements and personal property therein.

14.2.2. LIABILITY INSURANCE

Liability insurance in such amounts as such Owner deems appropriate to cover its individual liability for damage to person or property occurring inside such Owner's Unit. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association and duplicate copies of such other policies shall be deposited with the Board and/or the other

Owner upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent to such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. Each Owner is responsible for integrating any personal insurance with the Association's insurance, to confirm that such Owner's Improvements and personal property will be protected in the event of a loss.

14.2.3 WAIVER OF SUBROGATION

Each Owner waives all claims against the Association for any damage to the real and personal property that such Owner is obligated under this Declaration to insure (including without limitation any loss of use of such property), except that an Owner may claim against the Association for property damage to the extent that the damage is caused by the gross negligence or willful misconduct of the Association or its managing agent. Any property insurance policy obtained by an Owner must contain a waiver of subrogation rights by the insurer consistent with this Section; provided, however, that the failure or inability of an Owner to obtain such a waiver from an insurer shall not defeat or impair the waivers between the Owners and the Association set forth herein. The waivers of claims and subrogation set forth in this Subsection apply only in favor of the Association and do not limit or waive, release or discharge any claims that an Owner (or its insurers) may have against any third party, including without limitation any contractor, service provider, agent, other Owner, or Invitee; provided, that such waivers shall also apply in favor of the Association's managing agent if and to the extent that the Association has similarly agreed in a written management agreement to a waiver of claims and subrogation against such managing agent.

14.3. LIABILITY FOR DAMAGE TO MASTER INSURANCE AREAS BY UNIT OWNER

In the event it is determined that damage to the Master Insurance Area within a Unit has been sustained by reason of the negligence of an Owner, such Owner ("*Liable Owner*") shall, except to the extent such damage is covered by insurance (regardless of whose insurance coverage it may be), be legally liable for such damage and such Liable Owner shall be obligated for the cost of restoring such damaged Master Insurance Area to its original condition in accordance with the provisions set forth below.

14.3.1 INDEMNITY

(a) Each Owner (the "Indemnifying Owner") who acquires title to a Unit by deed or other conveyance, acknowledges and agrees that he or she shall for himself and his Invitees, subject to Section 14.4(b) below, indemnify the other Unit Owners and hold such other Owners harmless from and to defend such other Owners against any claim arising as a result (directly or indirectly) of or in connection with (i) any accident, injury, loss, or damage, to any person or loss or damage to property occurring on (or resulting from acts committed on) the Indemnifying Owner's Condominium, or (ii) use of the Indemnifying Owner's Condominium by the Indemnifying Owner or his or her Invitees.

(b) Notwithstanding anything to the contrary above, (i) no Person shall be entitled to indemnification for any damage arising from such Person's gross negligence or willful misconduct or the gross negligence or willful misconduct of such Person's Invitees and (ii) each Owner, for himself or herself and his or her Invitees, waives any right of recovery against the Adjacent Owner and his or her Invitee for any loss, damage, or injury to the extent the loss, damage or injury is actually covered by insurance.

ARTICLE 15. DAMAGE AND DESTRUCTION

15.1. MASTER INSURANCE AREA (ASSOCIATION PROPERTY)

15.1.1. **Duty to Rebuild** If the Master Insurance Area or portions thereof within the Units is destroyed or damaged by fire or other casualty as a result of a loss or claim, then the Board shall

be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of first Mortgages upon the Condominiums. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Special Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Board may levy a Special Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have first been satisfied: (a) the levy of a Special Assessment to pay the costs of restoration and repair of the Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the Owners and by the written consent of the Beneficiaries of fifty-one percent (51%) of the first Mortgages on the Condominiums in the Project; and (b) within six (6) months after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Special Assessment does not occur following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair, it shall be conclusively presumed that the Owners have determined not to proceed with restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in this Section below.

15.1.2. Sale of Property and Right to Partition. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 4610 of the California Civil Code as amended or in any successor statute. For purposes of Subsection 4 of said Section 4610 partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described above have failed to occur; and (b) within six (6) months after the date on which destruction occurred restoration or repair has not actually commenced; and (c) the Owners of sixty-seven percent (67%) of the Condominiums in the Project approve the partition by vote or written consent. In such event, the Association, acting through a majority of the Board, shall prepare, execute and Record, as promptly as practical, a certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners, and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing herein shall be deemed to prevent partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

15.2. DAMAGE OR DESTRUCTION TO A UNIT

If there is damage or destruction to the Unit, the Owner thereof shall, at its own cost and expense, perform repair and restoration. The Owner shall be entitled to the benefit of any Master Insurance Proceeds to the extent it covers the damage or destruction of elements of the Unit, if any, and

which are the obligation of the Owner to repair as provided in this Declaration. With the exception of any casualty or damage insured against by the Association pursuant to Section 14.1 herein, the Restoration of any damage to a Unit, including without limitation all fixtures, cabinets and improvements therein, together with all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Unit so damaged; provided, however, that nothing contained in this Section shall be construed as a waiver of claims that the Owner of a damaged Unit may have against another Owner who caused the damage. In the event of a determination to rebuild the damaged or destroyed Association Property after partial or total destruction, as provided in this ARTICLE 15, such interior restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, and, to the extent required under the Architectural Standards, in accordance with plans approved by the Board.

15.3. ASSOCIATION REPRESENTS OWNERS REGARDING ASSOCIATION PROPERTY.

The Association is hereby designated to represent each Owner with respect to proceedings, negotiations, settlements or agreements pertaining to condemnation, destruction or repair of the Association Property, and any proceeds from settlement shall be payable to the Association for the benefit of the Owners and their Mortgagees and are to be used as set forth in this Declaration. Each Owner hereby grants the Association a power of attorney to so represent each Owner. Any condemnation proceeds that are wholly due to severance damages to a particular Separate Interest shall belong to the Owner or Mortgagee of that Separate Interest, as their respective interests then appear.

ARTICLE 16. CONDEMNATION

Generally, in the event of a taking by eminent domain of all or any part of a Unit, the award shall be disbursed to the Owner of said Unit subject to the rights of the Owner's Mortgagees. If the taking is for all of a Unit, the Unit Owner, after acceptance of the award therefor, and the Unit's Mortgagee, shall be divested of all interest in the Property. In such event, said Owner shall grant his remaining interest in the Common Area that may be appurtenant to such Owner's Unit to the other Owners owning a Fractional Interest in the same Association Property or Common Area, such grant to be in proportion to the Fractional Interest in the such Areas then owned by each.

16.1 TAKINGS

(a) If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration of such Units can be accomplished at a cost less than or equal to the sum of (A) the amount of the condemnation awards for such takings plus (B) any amounts the Owners of the taken Units wish to contribute to restoration plus (C) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "Allowable Cost"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; provided, however, that such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

(b) Minor Takings Exceeding Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Members. If more than fifty percent (50%) of the Members are represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a

Reconstruction Assessment, and the condemnation awards Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

(c) Major Takings. If the requisite approval is not obtained at the Special Meeting referred to in Section 11.5(b), or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units as residential dwellings is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use Common Areas shall become part of the Property, and the Owners of such taken Units, by acceptance of the award allotted to them in taking proceedings, hereby relinquish (i) to the Association such remaining portions of the taken Units, and (ii) to the other Owners, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area. Each Owner relinquishing his interests pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence shall not be liable for assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award.

16.2 PORTIONS OF AWARDS IN CONDEMNATION NOT COMPENSATORY FOR REAL PROPERTY VALUE.

Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

16.3. NOTICE TO OWNERS AND MORTGAGEES.

The Board, upon learning of any taking affecting a material portion of the Property, or any threat thereof, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of Mortgages on Condominiums in the Project. The Board, upon learning of any taking affecting a Unit, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Unit.

ARTICLE 17. RIGHTS OF LENDERS

17.1. GENERAL

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any part of the Project or on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Governing Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article. A Mortgagee who receives a written request to approve amendments to any governing document (including additions) who does not deliver or mail to the requesting party a negative response within sixty (60) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested. Such written request shall be deemed properly given if deposited in the United States mail, postage prepaid, and addressed to the Mortgagee at its address appearing of record in the first Mortgage (or assignment thereof, if applicable) unless such Mortgagee has previously notified the Association in writing of a different address for purposes of notices under this Declaration or the Bylaws

17.2. NO RIGHT OF FIRST REFUSAL

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, (b)

accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

17.3. UNPAID COMMON EXPENSES OR ASSESSMENTS.

17.3.1. NON-VA, NON-FHA MORTGAGES

With respect to any non-VA or non-FHA First Mortgage, in the event this Declaration provides for a lien of assessment, any such lien of assessment, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any previously recorded First Mortgage upon one or more Units. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, excepting such assessments which became due for the six (6) months prior to such sale. No sale or transfer shall relieve such Unit from liens for any assessments thereafter becoming due. When the Mortgagee of a First Mortgage of record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure of the First Mortgage, such Person, its successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person, excepting such assessments which became due for the six (6) months prior to such acquisition. Such remaining unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums including such Person, its successors and assigns.

17.3.2. VA, FHA MORTGAGES

With respect to any VA or FHA First Mortgage, in the event this Declaration provides for a lien of assessment, any such lien of assessment, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any previously recorded First Mortgage upon one or more Units. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to judicial or nonjudicial foreclosure of a First Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Unit from liens for any assessments thereafter becoming due. When the Mortgagee of a First Mortgage of record or other purchaser of a Unit obtains title pursuant to a judicial or nonjudicial foreclosure of the First Mortgage, such Person, its successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such Person. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums including such Person, its successors and assigns.

17.4. PRIORITY OF PROCEEDS OR AWARD DISTRIBUTION

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Governing Document shall give a Condominium Owner, or any other party, priority over any rights of the First Mortgagee of a Condominium pursuant to its Mortgage in the case of a distribution to such Condominium Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.5. NOTIFICATION TO ELIGIBLE MORTGAGEE HOLDER

Any Eligible Mortgage Holder will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Project or the Condominium insured or guaranteed by such Eligible Mortgage Holder;
- (b) Any default in the performance by an Owner of any obligation under the Governing Documents not cured within sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required by the Governing Documents.

17.6. INSPECTION OF GOVERNING DOCUMENTS, BOOKS AND RECORDS

The Association shall make available to Eligible Mortgage Holders current copies of the Governing Documents and the books, records and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances.

17.7. 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. A "breach", as used herein, shall not apply to any lien of or obligation for Assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

17.8. 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 an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

17.9. DOCUMENTS TO BE MADE AVAILABLE

The Association shall make available to First Mortgagees and to holders, insurers or guarantors of any First Mortgage, current copies of the Governing Documents, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Eligible Mortgage Holders who represent at least fifty-one percent (51%) or more of the Condominiums subject to a Mortgage shall be entitled to have an audited statement for the immediately preceding Fiscal Year prepared at their own expense, if one is not otherwise available. Any financial statement so requested shall be furnished within a reasonable time following the request.

17.10. MORTGAGEES FURNISHING INFORMATION

Any Mortgagee shall have the right without liability to furnish information to the Board concerning the status of any Mortgage.

17.11. FINANCIAL STATEMENT

The Association, at its expense, shall prepare a financial statement for the immediately preceding Fiscal Year and furnish the same within one hundred twenty (120) days after written request from any Eligible Mortgage Holder or Eligible Insurer or Guarantor.

17.12. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION

Neither the Association nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project without the written consent of Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the mortgaged Condominiums.

ARTICLE 18. AMENDMENTS

18.1. PRIOR TO FIRST CLOSE OF ESCROW

Prior to the first Close of Escrow, Declarant may amend this Declaration by filing an Amendment with the Office of the County Recorder's Office provided that if the Project has been approved by the FHA and/or VA, Declarant shall obtain their prior consent if the Amendment is a Material Amendment as defined herein.

18.2. AFTER FIRST CLOSE OF ESCROW

Except as may be in accordance with the provisions of Civil Code §§4260, 4270, 4275 and 5115(e) or any amendment or successor statute thereto, during the period of time after the first Close of Escrow and prior to conversion of the Class B membership in the Association to Class A membership, this

Declaration may be amended at any time and from time to time by the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (a) *sixty-seven percent (67%)* of the total voting power of the Association, and (b) *sixty-seven percent (67%)* of the voting power of the Members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any such amendment shall become effective upon the recording with the County Recorder of a Certificate of Amendment signed and acknowledged by and Officer of the Association or by the Incorporator of the Association, in the event that no Board of Directors has yet been elected to establish officers of the Association, certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the Officer or Incorporator of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the County Recorder. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to Mortgages held by such Eligible Mortgage Holders. "*Material amendment*" shall mean any amendment to provisions of this Declaration that establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- (c) Reduction in reserves for Maintenance of the Common Area
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Project, or rights to their use;
- (f) Redefinition of the boundaries of any Unit;
- (g) Convertibility of Units into Common Area or vice versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage; (j) Leasing of Dwellings;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Dwelling;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs, or for other reasons
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors; or
- (p) Any provision of a material adverse nature to mortgagees.

Any Eligible Mortgage Holder who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within sixty (60) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested. The foregoing, however, shall not apply to the VA or FHA.

18.3. AMENDMENTS FOR MANIFEST ERRORS, AMBIGUITY AND/OR CHANGES IN LAW

Each Owner by acceptance of conveyance of title to a Condominium and each Mortgagee

by acceptance of a Mortgage or Deed of Trust secured by a Condominium, hereby agrees and consents to the amendment of this Declaration, the Condominium Plan, the Bylaws and any other Governing Document (including any amendments respectively thereto) and the subordination of their respective interests in the Property for the purpose(s) of correcting manifest and technical errors, omissions or clarifications and/or to effect compliance of one or more provisions of this Declaration or other Governing Document with such amendments, repeals and/or additions made to statutory law, whereby the provisions contained in this Declaration or any other Governing Document are in conflict therewith. The foregoing notwithstanding, to the extent that the provisions set forth in this Declaration are intended to comply with the provisions of the Common Interest Development Act as set forth at Civil Code §4000 et seq. ("CID Act"), and any other statutory law, upon any changes to the CID Act or other statutory law relating to such provisions of this Declaration, the Board shall comply with such provisions of the CID Act and statutory law and the Board shall have the right to amend this Declaration or any other Governing Document as a result of the changes to the CID Act and other Applicable Law without any vote of the Members. Any such amendment may be executed by the President or Vice-President and Secretary or Assistant Secretary ("Officer(s)") or the Incorporator of the Association (and, in the case of the Condominium Plan only, the Declarant), each of whom is hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner and Mortgagee in certifying and executing and recording any such correctional, clarification addition or statutory law compliance amendment instrument with the County Recorder, each of which such amendments shall become effective upon its Recordation.

18.4. SUPPLEMENTAL DECLARATION

The Incorporator, Declarant, or the Association may record a Supplemental Declaration, or similar instrument containing such complementary additions and modifications of the CC&RS contained in this Declaration as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplemental Declaration revoke or add to the covenants established by this Declaration, discriminate between Owners within the Project, change the general common plan created by this Declaration, or affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The foregoing notwithstanding, so long as Declarant owns at least one Unit in the Project, the Recordation by the Association of a Supplemental Declaration shall require the written approval of Declarant prior to Recordation of a Supplemental Declaration.

18.5. APPROVAL BY FHA AND VA

So long as there is a Class B membership, and provided that the Project has been approved by the FHA and/or VA, the following shall require the prior approval of FHA and/or VA: annexation of additional properties, de-annexation, mergers and consolidations, any special assessments and any amendment of this Declaration. A draft of any amendment to this Declaration should be submitted to the VA for its approval prior to its approval by the membership of the Association.

18.6. APPROVAL BY CITY

Amendment of section 11.11.3 of this Declaration or any Supplemental Declaration shall require the written approval of the City of Solana Beach.

ARTICLE 19. CC&RS: TERM

These CC&RS shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Member, their respective legal representatives, heirs, successors and assigns, for a term of sixty (60) years from the date this Declaration is Recorded, after which time said CC&RS shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by sixty-seven percent (67%) of the then Members has been recorded, at least one (1) year prior to the end of any such period in the manner required for a conveyance of real property, in which it is agreed that this Declaration shall terminate at the end of the then applicable term.

ARTICLE 20.

ENFORCEMENT OF GOVERNING DOCUMENTS

By accepting deed or other form of conveyance to a Unit, each Owner hereby agrees to the conditions, covenants, restrictions, protocols and provisions contained in this ARTICLE.

The following dispute resolution procedures are implemented for the Community with the intent to avoid costly and potentially lengthy traditional court proceedings, and have been submitted as part of the Public Report application.

20.1. ENFORCEMENT OF GOVERNING DOCUMENTS; NON-WAIVER

Except for the enforcement of the following: (a) delinquent Assessments as described in ARTICLE 10; (b) provisions relating to Architectural Control and Standards and the Operating Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has "standing" shall have the right to undertake such enforcement; (c) disputes which do not involve an amount in controversy that is subject to the Small Claims Act (Civil Procedure §§116.110, *et seq.*), or (d) actions subject to the Calderon Act Civil Code section 6000 *et seq.*; and (e) actions subject to the Defect Law (Civil Code §895, Civil Code §§910 TO 938), the Board, the Association, the Declarant and any Owner may enforce the Governing Documents as described in this Article, subject to Civil Code §5900 *et seq.* and §5925 *et seq.* Each Owner has a right of action against the Association for the Association's failure to comply with the Governing Documents. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive. The failure of the Association, Declarant or any Owner to enforce any of the CC&RS herein shall in no event be deemed a waiver of the right to do so thereafter.

20.1.1. VIOLATIONS IDENTIFIED BY THE ASSOCIATION

If the Board or its delegated committee determines that there is a violation of the Governing Documents, then the Board shall give written notice to the responsible Owner identifying (a) the condition or violation complained of, and (b) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit *plans* to the Board or its delegated committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Board or its delegated committee. If an Owner ("Defaulting Owner") does not remedy the violation or perform corrective action within the allotted time, the Board may:

- (a) remedy such condition or violation complained of, and any costs therefor shall be charged to the Defaulting Owner;
- (b) seek injunctive relief to require the Defaulting Owner to remedy the violation or perform the corrective action;
- (c) seek after Notice and Hearing compensation for damages arising or resulting from the failure of the Defaulting Owner to remedy the violation or to perform the corrective action; and/or
- (d) seek after Notice and Hearing to consider or impose a penalty or temporary suspension of Member rights upon the Defaulting Owner in the Bylaws. Any penalties imposed may only be assessed pursuant to Civil Code §§5658, 5725 and 5850;
- (e) direct the officers of the Association to Record a "Notice of Noncompliance" (if allowed by Applicable Law) against a Condominium owned by any Owner who has violated any provision of this Declaration. The notice shall include a legal description of the Condominium and shall specify the provision of this Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the non-complying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to Record a notice that the noncompliance has been remedied

With respect to foregoing Sections (a) through (e): (i) any cost or charge imposed shall be assessed against the Defaulting Owner as a Reimbursement Assessment; (ii) any penalty imposed shall be assessed as a Compliance Assessment. The foregoing may be collected pursuant to the Non-Lien Assessment procedures of Section 10.24 hereinabove.

20.1.2. VIOLATIONS IDENTIFIED BY AN OWNER

If an Owner alleges that another Person is violating the Governing Documents (other than nonpayment of any Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Civil Code §§ 5925 – 5965. The Parties may by mutual agreement determine the form of alternative dispute resolution to be utilized under the foregoing Civil Code provisions; provided, however, in the event the Parties cannot agree upon a form of alternative dispute resolution, the Parties shall submit the Dispute to the "Mediation" procedures of Section 21.5 hereinafter and, absent a resolution pursuant to Mediation, the Dispute shall then be submitted to "Arbitration" under Section 21.6 herein.

20.1.3. LEGAL PROCEEDINGS

Failure to comply with any of the terms of the Governing Documents by any Person is grounds for relief which may include an action to recover damages, injunctive relief, foreclosure of any lien, or any combination thereof; however, the procedures established in Civil Code §5900 and §§5925 *et seq.* must first be followed, if they apply.

20.1.4. LIMIT ON EXPENDITURES

(a) The Association shall not incur litigation expenses, including attorneys' fees, or borrow money to fund litigation, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings, unless the Association first obtains the consent of a majority of the Voting Power (excluding the Voting Power of any Owner who would be a defendant in such proceedings) and, if applicable, complies with the requirements of Civil Code §§5900, 5980 and 5925 *et seq.*

(b) The foregoing approval is not necessary if the legal proceedings are initiated (i) to enforce the use restrictions contained in ARTICLE 11 (ii) to enforce the Architectural and landscaping control provisions contained in ARTICLE 12, (iii) to collect any unpaid Assessments levied pursuant to the Governing Documents, (iv) for a claim, other than a Defect Claim, or a Dispute (defined in Section 21.4(b) herein) the total value of which is less than Five Hundred Thousand Dollars (\$500,000), or (v) as a cross-complaint in litigation to which the Association is already a party. If the Association decides to use or transfer Reserve Funds or borrow funds to pay for any litigation, the Association must notify the Owners of the decision by US Mail. Such notice shall provide an explanation of why the litigation is being initiated or defended, why Operating Funds cannot be used, how and when the Reserve Funds will be replaced or the loan will be repaid, and a proposed budget for the litigation. The notice must state that the Owners have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. If the Association action to incur litigation expenses or borrow money to fund litigation concerns a Defect Claim, then the voting requirements of Section 20.1.4(a) must be met.

20.2. PROCEDURE FOR NOTICE AND DELIVERY BY PARTIES

Anything herein to contrary notwithstanding set forth in Section 20.1 above, in enforcing any action under the Governing Documents for injunctive relief, declaratory relief and/or monetary damages (excluding actions in Small Claims Court), the parties shall comply with the notice and delivery requirements of Civil Code §§4040 and 4050.

ARTICLE 21. DECLARANT-RELATED DISPUTE

21.1. NOTICE OF ACTIONS AGAINST DECLARANT, INCLUDING BOND ENFORCEMENT

21.1.1 NOTICE: Subject to the provisions of Section 21.3, to the extent applicable, the Association shall comply with the notice provisions of Civil Code §6150 and §§910 through 938 (and the 2-10 HBW Warranty issued to Owner, as applicable) prior to the filing of any civil action by the Association against the Declarant or other developer of the Project for either alleged damage to the Project that the Association is obligated to maintain or repair, or alleged damage to any other portion of the Project that arises out of, or is integrally related to, such damage to the Common Maintenance Area the Project that the Association is obligated to maintain or repair. Such notice shall specify all of the matters set forth in Civil Code §6150 and/or §§910 through 938, as applicable.

21.1.2 ENFORCEMENT OF DECLARANT'S BOND OBLIGATIONS In the event that Declarant has not completed Common Area Improvements prior to issuance of a Public Report and the Association is an obligee under a bond or other arrangement to secure his performance ("Bond"), then the Board shall formally consider enforcing the Board with respect to any Improvement which has not been completed within 60 days of the date required in the Bond Planned Construction Statement (or within 30 days of any ranted extension); in the event that the Board fails to act or elects not to initiate enforcement, then a special meeting may be called between 35 and 45 days after the Board's request for a special meeting signed by members representing at least 5% of the total voting power of the Association. All members except the Declarant may vote in such meeting, and the decision of a majority of such members shall be final and implemented by the Board.

21.2. WARRANTY CLAIMS AND DISPUTES

The enforcement and resolution of any claim and/or dispute by any Owner or the Association with respect to any "limited warranty" or "maintenance program" provided by Declarant (including any affiliated general contractor of Declarant as described in Civil Code §911) ("Warranty Claims") shall be governed and resolved solely by the dispute resolution procedures herein (unless otherwise provided in a "limited warranty" or "maintenance program" such as a 2-10 HBW Warranty received by Owner at purchase). Regardless, Declarant has elected to adopt the standards and procedures set forth in the California Civil Code commencing at Section 895 et. seq. (the "Code"). Declarant has notified Buyer that it intends to follow the pre-litigation procedures in the Code commencing at Section 910, *et. seq.* In the event Buyer makes a Claim within the purview of the Code, Declarant and Buyer agree that the pre-litigation procedures within the Code, as adopted by Builder, shall control the claim process. In the event the pre-litigation procedures do not result in resolution of Buyer's claim and Buyer pursues a further action, Buyer and Builder acknowledge the applicability of, and shall be bound by the Arbitration Agreement contained herein (or in a HBW Limited Warranty Booklet, the terms of which shall control the arbitration process, if any; in such case, Buyer and Builder shall be limited to seeking redress within the specific terms of the 2-10 HBW Arbitration provisions.)

21.3. CONSTRUCTION DEFECT DISPUTES PER CIVIL CODE §895 et seq.; NON-ADVERSARIAL PROCEDURES (CIVIL CODE §§ 910 TO 938 ("Defect Law"))

Any claims or disputes for construction defects pursuant to Civil Code §895, et. seq., which are not Warranty Claims which arise during the first year after first purchase, shall be referred to as "Construction Defect Claims." Construction Defect Claims shall be subject to the non-adversarial procedures set forth in Civil Code §§910 through 938 ("Non-Adversarial Procedures") prior to the initiation of any mediation, arbitration or other proceeding. These procedures impact the legal rights of Owners with respect to the Property. If the Non-Adversarial Procedures provided in Civil Code §§910 through 938 fail to resolve any Construction Defect Claims, such Construction Defect Claims shall be resolved in accordance with the procedures set forth In Section 21.4 hereafter. According to the terms of the Civil Code, the Non-Adversarial Procedures will not apply if Declarant does not or cannot comply with the requirements set forth therein if a claim arises, in which case the Construction Dispute provisions shall be used, as provided below.

21.4. CONSTRUCTION DISPUTES

The following words will have the following meanings for purposes of this Section 21.4:

(a) "**Affiliated Contractor**" shall mean and refer to each general contractor and contractor who, as of the time of sale of the portion of the Project that is the subject of a Dispute: (i) is in the business of building, developing or constructing the Project for public purchase; and (ii) is a partner, member of, subsidiary of, or otherwise similarly affiliated with Declarant,

(b) "**Construction Dispute**" shall mean and refer to any dispute between an Owner or the Association and Declarant or between an Owner or the Association and any employee, agent, partner, contractor, subcontractor or material supplier of Declarant which dispute relates to the use or condition of the Project or any improvements to the Project. Construction Disputes include, but are not limited to, disputes regarding boundaries, surveys, soils conditions, grading, design, specifications, construction, installation of improvements or disputes which allege breach of implied or express

warranties as to the condition of the Project.

(c) **"Construction Party"; "Development Party"** shall mean and refer to Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or any Affiliated Contractor.

(d) **"Claimant"** refers to any party (including any Owner or the Association) who intends to make a claim for Construction Dispute against a Construction Party.

21.4.1. DISPUTE NOTIFICATION AND RESOLUTION PROCEDURE

Any Construction Dispute shall be subject to the following provisions of:

(i) an initial "right to inspect and corrective action," followed by mediation ("Mediation"), and, thereafter, binding arbitration ("Arbitration") governed by the Federal Arbitration Act (9 U.S.C. §1-16) ("FAA").

21.4.2. CORRECTIVE ACTION

A. NOTICE

Any Claimant with a claim against a Construction Party shall notify the Construction Party in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the "Claim Notice"); in addition, and if applicable, the Claimant shall follow the terms of the 2-10 HBW booklet for reporting a claim.

B. RIGHT TO INSPECT AND RIGHT TO CORRECTIVE ACTION

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, each Construction Party and the Claimant shall meet at mutually-acceptable place within the Property to discuss the claim. At such meeting or at such other mutually-agreeable time, each Construction Party and its/their representatives shall have full access to the property that is subject to the claim for the purposes of inspecting the same. The parties shall negotiate in good faith in an attempt to resolve the claim. If a Construction Party elects to take any corrective action, the Construction Party and its representatives and agents shall be provided full access to the property subject to the claim to take and complete corrective action.

C. CIVIL CODE §§ 6150 AND §§6000 *ET SEQ*

Nothing contained herein shall be deemed a waiver or limitation of the provisions of Civil Code §6150. If the claim is subject to the provisions of Civil Code §§6000 *et seq.* as it may be amended from time to time, compliance with the procedures of Civil Code §§6000 (b), (d) and (e) shall satisfy the requirements of Sections A and B above.

If the Parties cannot resolve the Construction Dispute pursuant to the procedures described in Section 21.4.2 above, (including, if applicable, Civil Code §§6000 *et seq.* procedures) the matter shall be submitted to Mediation as provided in Section 21.5 hereafter

21.5. MEDIATION

If the parties cannot resolve the Construction Dispute pursuant to the procedures described in Section 21.4.2 above, (including, if applicable, Civil Code §§6000 *et seq.*), then the matter shall be resolved either pursuant to the terms of the 2-10 HBW Warranty procedures, if applicable, or as described below, if not covered by such 2-10 HBW Warranty:

(a) Mediation shall be conducted pursuant to procedures adopted by the adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. The Declarant/Development Party shall advance the fees necessary to initiate the mediation. No person shall serve as a mediator in any Construction Dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(b) Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The

mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within four (4) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project is located or such other place as is mutually acceptable to the parties.

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

(d) Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to Evidence Code §1152.5(e) or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent Construction Dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to Evidence Code §1152.5(a), the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

(e) Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(f) The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne as the parties may agree and if they cannot agree, then they shall be paid as determined by the mediator. Each Owner covenants that each shall forbear from commencing any litigation against the Construction Party without complying with the procedures described in this Section.

21.6. ARBITRATION

Subject to the provisions of Section 21.2, if the parties cannot resolve the Construction Dispute pursuant to the procedures described in Section 21.5 above, the matter shall be submitted and resolved exclusively in San Diego County through Arbitration, pursuant to the below stated terms, and within timeframes and procedures required by Real Estate Regulation 2791.

21.6.1 Arbitration Agreement.

The Declarant, the Association and all Owners agree that any claim arising from or related to the sale of any Unit or the Common Elements, or to any defect in or to any Unit or any real property on which such Unit is situated, or which is part of the Common Elements and/or Association Property, including without limitation, any claim of breach of contract, negligent or intentional misrepresentation or nondisclosure in the inducement, execution or performance of any contract, including this Arbitration Agreement, any alleged statutory violation, and any claim of bodily

injury, shall be settled by arbitration.

Any dispute concerning the interpretation or enforceability of this Arbitration Agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitratable issues, and any defense based upon waiver or estoppel, shall be decided by the arbitrator. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any court of competent jurisdiction.

This Arbitration Agreement shall inure to the benefit of, and be enforceable by, Declarant's subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person alleged to be liable for any defect in or to any Unit or the Association Property; and shall be binding upon all family members and tenants of all Owners. Any party shall be entitled to recover reasonable attorney's fees and costs incurred in enforcing this Arbitration Agreement.

The arbitration shall be conducted by the American Arbitration Association, by Construction Arbitration Services, Inc., or by DeMars & Associates, Ltd., pursuant to their applicable arbitration rules not inconsistent with this Arbitration Agreement if available. The choice of arbitration service shall be that of the claimant. All administrative fees of the arbitration service and fees of the arbitrator shall be borne equally by the parties to the arbitration, subject to the discretion of the arbitrator to reallocate such fees in the interests of justice, with the Declarant advancing fees necessary to initiate the dispute resolution if required by law.

The parties expressly agree that this Declaration and this Arbitration Agreement involve and concern interstate commerce and are governed by the provisions of the Federal Arbitration Act (9 U.S.C. § 1, et seq.) to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any state or local law, ordinance or judicial rule shall be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding. California Code of Civil Procedure section 1281.2, subd. (c) shall have no application to this Arbitration Agreement.

No participation by any party in any judicial proceeding involving a matter which is arbitrable under this Arbitration Agreement shall be deemed a waiver of the right of such party to enforce this Arbitration Agreement.

If any provision of this Arbitration Agreement shall be determined by the arbitrator or by any court to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and

enforceable according to their terms.

21.6.2 Limitation Upon Amendments

The Declarant, the Association and all Owners hereby acknowledge and agree that no amendment of this Declaration shall modify, alter or delete any portion of the Arbitration Agreement in this Declaration without the written consent of the Declarant attached to and recorded with such amendment, regardless of whether Declarant continues to maintain an ownership interest in any Unit or membership in the Association.

21.6.3 Binding Upon Successors and Assigns

The Declarant, the Association and all Owners hereby acknowledge and agree that, by virtue of the recording of this Declaration, this Arbitration Agreement shall run with the title to the real property subject to this Declaration, and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors- in-title, and assigns, and shall be for the benefit of the Declarant and all Owners of the property subject to this Declaration, regardless of whether Declarant continues to maintain an ownership interest in any Unit or membership in the Association.

IF ANY PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT.

21.6.4. FEDERAL ARBITRATION ACT

The Parties acknowledge that because many of the materials and products incorporated into the home are manufactured in other states, the purchase of a Condominium evidences a transaction involving interstate commerce, and the Federal Arbitration Act (9 U.S.C. §§1, *et seq.*) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions in this Article.

21.6.5. FINAL AND BINDING AWARD

The decision of the arbitrator shall be final and binding. A petition to confirm, vacate, modify or correct an award may be filed in any court of competent jurisdiction in the county in which the Property is located, but the award may be vacated, modified or corrected only as permitted by the Federal Arbitration Act.

21.6.6. SEVERABILITY

If the arbitrator or any court determines that any provision of this Article is unenforceable for any reason, that provision shall be severed, and proceedings agreed to in this Article shall be conducted under the remaining enforceable terms of this Article,

21.6.7. APPLICATION; CONFLICT

This Section shall apply only with respect to Disputes in which either: (a) Declarant or any director, officer, partner, employee, subcontractor or agent of Declarant or an Affiliated Contractor is a party, or (b) the Association or any director, officer, partner, employee, subcontractor or agent of the Association is a party. In the event of a conflict between this Section and

any other alternative dispute resolution procedures, this Section shall prevail.

21.6.8. THIRD-PARTY BENEFICIARY: AFFILIATED CONTRACTOR

The Parties intend and agree that any entity that falls within the definition of "Affiliated Contractor" is an intended third-party beneficiary of the provisions of this Article.

21.7. EXCEPTIONS TO DISPUTE RESOLUTION PROVISIONS; STATUTES OF LIMITATION

Nothing in this ARTICLE 21 shall be considered to toll, stay, waive, reduce or extend any applicable statute of limitations and benefits thereof or any equitable defense by any Party; provided, however, that the Parties shall be entitled to commence a legal action which in the good faith determination of any Party is necessary to preserve the Parties' respective rights under any applicable statute of limitations, provided that a Party shall take no further steps in prosecuting the action until it has complied with the procedures described in this ARTICLE 21. Notwithstanding any other provision of this Declaration, this Article may not be amended without the prior written consent of Declarant.

21.8. SURVIVAL; SUCCESSORS AND ASSIGNS

The rights and obligations of the Parties pursuant to this ARTICLE 21 shall survive the Close of Escrow. This ARTICLE 21 and the rights, duties and obligations of the Parties shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective Parties.

ARTICLE 22. EXCEPTIONS TO MEDIATION AND ARBITRATION; MISCELLANEOUS PROVISIONS REGARDING ENFORCEMENT AND LEGAL ACTION

22.1. EXCEPTIONS TO MEDIATION AND ARBITRATION

The resolution or determination of the following issues and matters are exempt from the requirements of ARTICLE 20 and ARTICLE 21:

(a) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage or installment land sale contract as defined in Civil Code §2985.

(b) an unlawful detainer action.

(c) the filing or enforcement of a mechanic's lien.

(d) any matter that is within the jurisdiction of a probate, small claims or bankruptcy court.

(e) **Specific Procedure:** An alternative or required enforcement procedure described by a particular clause or Section within this Declaration, or within the first 10 year of sales of a Unit, within the 2-10 HBW Warranty Policy purchased by Declarant for the benefit of the Owner, a copy of which was delivered at purchase and transferrable to subsequent Owners pursuant to its terms.

(f) **Escrow-Related Matter:** Any dispute arising with a prospective purchaser which concerns or affects the *close of escrow* or matters concerning the close of escrow for the purchase of any Residential Unit.

(g) An **Exigent Matter**, which shall mean and refer to only any of the following: (i) an Emergency, (ii) any matter relating to the abatement of a nuisance, (iii) any enforcement procedure contained in a particular clause or section within this Declaration which is declared to be an Exigent Matter; or, (iv) an Owner's breach of payment of Common Expenses.

22.1.1. REMEDY OR RESOLUTION OF A NON-EMERGENCY EXIGENT MATTER.

A Party (the "Claiming Party") who seeks to make a claim with respect to any non-Emergency Exigent Matter shall – following not less than ten (10) days' prior written notice to

the Party (the "Responding Party") against whom such Claiming Party alleges a breach or default constituting an Exigent Matter – have the right to:

(a) Seek injunctive relief to require the Responding Party to perform a specific Exigent Matter (e.g. duty or obligation);

(b) Seek compensation for damages arising or resulting from the failure of the Responding Party to perform an Exigent Matter;

22.1.2. REMEDY OR RESOLUTION OF AN EMERGENCY/EXIGENT MATTER.

In the case of an Emergency, the Party who seeks to remedy an Emergency (the "Claiming Party") shall have the right to:

(a) Cause such action to be performed as may be deemed necessary to abate or remedy any such Emergency, in which event all sums expended by the Claiming Party in causing such abatement or remedy to be performed shall become a demand obligation owed by the other Party (the "Responding Party") to the Claiming Party, shall bear interest at the lesser of ten percent (10%) per annum or the maximum non-usurious rate permitted by law from the date expended by the Claiming Party until repaid by the Responding Party, and shall be subject to collection by suit in any court of competent jurisdiction; or

(b) Exercise all rights or remedies otherwise available at law, in equity or by statute; all rights and remedies shall be cumulative and not exclusive. In any legal or equitable proceeding for the enforcement of any of the duties or obligations of this Section, or for damages of the breach of any such duties or obligations, the losing Party shall pay the attorneys' fees and courts costs of the prevailing Party.

22.2. MISCELLANEOUS PROVISIONS: ENFORCEMENT AND LEGAL ACTION

22.2.1. FAILURE TO ENFORCE

Failure by any Owner, including Declarant, to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

22.2.2. VIOLATION OF LAW

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Unit within the Project is hereby declared to be a violation of this Declaration and subject to the enforcement procedures herein set forth.

22.2.3. GOVERNING LAW

This Declaration shall be governed by and construed under the laws of the State of California and the County.

ARTICLE 23. GENERAL PROVISIONS

23.1. SEVERABILITY

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment of court order, the remaining provisions hereof shall be and remain in full force and effect.

23.2. ANNEXATION

Upon approval in writing of the Association, pursuant to sixty-seven percent (67%) majority of the voting power of its Members, excluding the voting power of the Declarant, the Owner of any property who desires that it be added to the scheme of this Declaration and be subjected to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (a) sixty-seven percent (67%) of the voting power of Members of the Association, and (b) sixty-seven percent (67%) or more of the voting power of Members of the Association

other than Declarant.

23.3. INCORPORATOR

The Incorporator shall have the right to do all things necessary and proper to perfect the organization of the Association, in a manner consistent with this Declaration, including, but not limited to adopting or amending the Bylaws, supplementing or amending this Declaration, the Condominium Plan, any other Governing Document, including any respective amendment of any Governing Document, and taking any other action with respect to the Association not prohibited by Applicable Law.

23.4. NOTICE; DEMAND; DOCUMENT DELIVERY

Except as may otherwise be prescribed in a particular clause or Section within this Declaration or by Applicable Law which specifies a particular method of service or delivery, in each instance in which notice, demand or a document is to be given or delivered ("Notice") to the Owner of a Unit, the same shall be served in one or more of the following methods:

23.4.1. PERSONAL SERVICE

By personal service to the Owner or to any one or more co-Owners of the Unit; to any general partner of a partnership which is the Owner of Record of the Unit; to the manager of a limited liability company which is the Owner of Record of the Unit; and/or to any officer or agent for service of process of a corporation which is the Owner of Record of the Unit, shall be deemed delivered to such Owner, co-Owners, partnership, limited liability company or corporation, as the case may be. Service and/or delivery by personal service shall be deemed completed at the time of such service or delivery.

23.4.2. SERVICE BY U.S. POSTAL SERVICE

By First Class U.S. Mail or by Express Mail, deposited in a post office, mailbox, subpost office, substation or mail chute or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with proper postage paid, addressed:

(a) **TO OWNER:** To the Owner or Co-Owners of the Unit at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Unit;

(b) **TO THE ASSOCIATION:** To the Association at its principal office address (or to such other address as the Association may from time to time designate in writing to the Owners).

Service and/or delivery by: (i) First Class U.S. Mail shall be deemed completed three (3) days after deposit; and, (ii) Express Mail shall be deemed completed one (1) day after deposit.

23.4.3. E-MAIL; FACSIMILE

Service by E-mail or facsimile, provided that the recipient has previously agreed by a duly signed writing to such method of delivery. If service is delivered by e-mail or facsimile, delivery shall be deemed complete twenty-four (24) hours after the time of transmission.

23.4.4. OTHER METHOD

Any other method of delivery, provided that the recipient has agreed to such other method of delivery by a duly signed writing.

The foregoing notwithstanding, a notice, demand or document may be included in or delivered with a billing statement, newsletter or other document that is delivered by one of the methods provided above.

23.4.5. NOTICE TO OCCUPANTS

Notice and/or demand and completion thereof to an Occupant, shall be served in the same manner as described herein for service to an Owner.

23.5. CIVIL CODE §4525

The Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in Civil Code §2985, provide copies of the

Governing Documents and such disclosures and certificates as may be required by Civil Code §4525, or any successor statute or law. The Association shall, if requested by said Owner, provide copies of the same to such Owner within ten (10) days of the mailing or delivery of the request, in the same manner as prescribed in **Section 23.4** above for delivery of Notices.

23.6. NOTIFICATION OF SALE OR CONVEYANCE

Concurrently with the consummation of the sale or other conveyance of any Unit where the transferee becomes an Owner of the Unit, within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Unit purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "*Notice.*"

23.7. EASEMENTS RESERVED AND GRANTED

Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any Unit.

23.8. AMENDMENTS: DOCUMENTS AND/OR APPLICABLE LAWS

Reference in this Declaration and the other Governing Documents to any Applicable Law or to the Documents, individually or collectively, shall also include any amendment respectively thereof.

23.9. GOVERNING DOCUMENTS

In the event of a conflict between this Declaration and any other Governing Document, the provisions of this Declaration shall control.

23.10. SINGULAR INCLUDES PLURAL

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

23.11. LIBERAL CONSTRUCTION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience only and shall not be considered or referred to in resolving questions or interpretation or construction.

23.12. DECLARANT EXEMPTION.

Declarant is undertaking the work of construction of Units and Buildings/Dwellings therein and incidental improvements upon the Property. The completion of that work and the sale, rental and other disposal of said Unit and the Dwellings thereon is essential to the establishment and welfare of the Project Property as a residential community. In order that said work may be completed and said Project Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Project Property whatever, in the opinion of the Declarant, is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project Property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project Property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Project Property its business of completing said work, and of establishing a plan of Unit ownership and of disposing of said Units by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Units or Common Area as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Unit.

The rights of Declarant provided in said paragraphs (a) through (d) above may be exercised during the period of time commencing when the Units are first sold or offered for sale to the public and ending (i) when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners; or, (ii) three (3) years following the date of conveyance of the first Unit in the Project, whichever shall first occur.

Declarant, in exercising his rights under this Section shall make reasonable efforts to avoid disturbing the use and enjoyment of completed and occupied Dwellings, while completing any work necessary in the Project.

So long as Declarant, its successors and assigns owns one or more of the Units established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

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IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument
this _____ day of _____, 20__.

Declarant

**Granados Avenue Partners, LLC,
a California limited liability company**

**by: J Squared Development LLC
a California limited liability company**

**by: _____
Jeff M. Wagner
Managing Member**

Draft

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

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On _____, 20 __, before me, _____, a notary public

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

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

WITNESS my hand and official seal.

(seal)

Signature of Notary Public

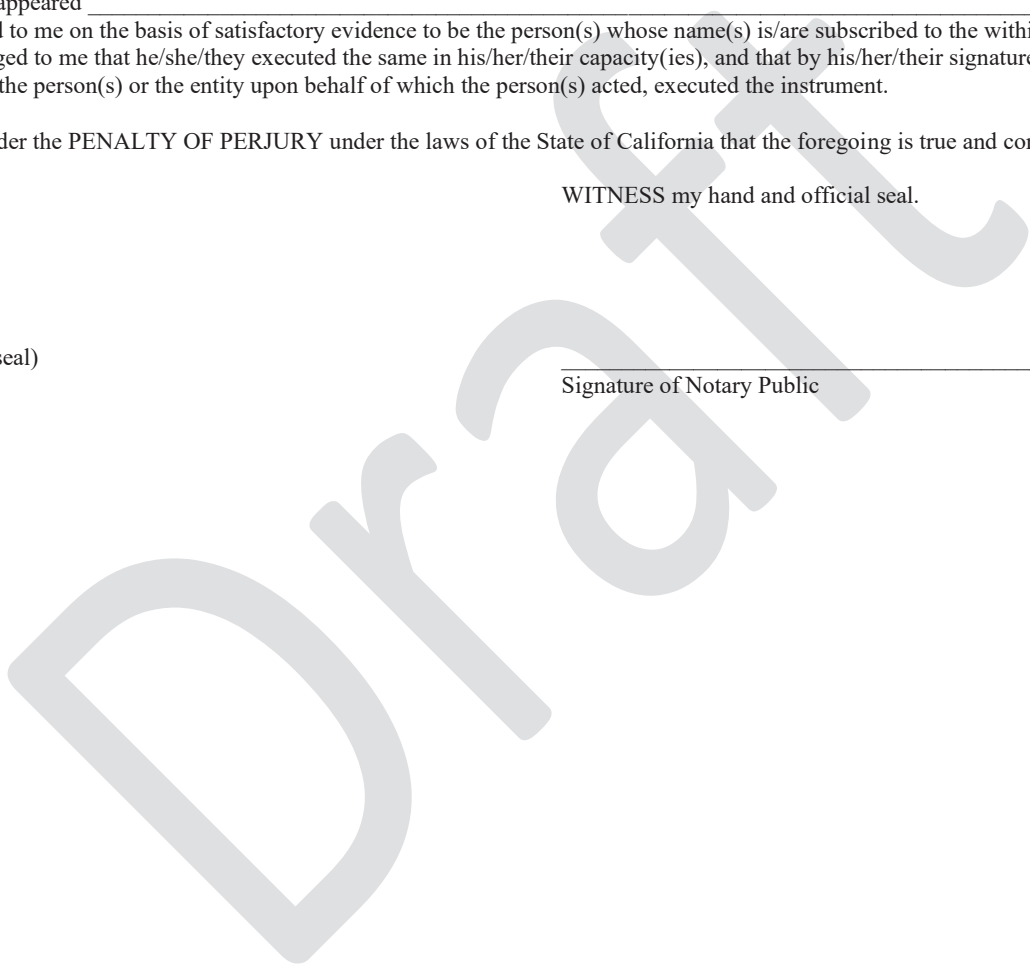


EXHIBIT "A" – LEGAL DESCRIPTION

Draft

SUBORDINATION AGREEMENT

Growers Holdings Inc., a Panamanian Company, holder of the beneficial interest in that certain Note originally secured by Deed of Trust dated September 13, 2016 and recorded in the official records September 22, 2016 as Document No. 2016-0502862 affecting that certain property more particularly described in said Deed of Trust.

Does hereby subordinate its interest in said Note and Deed of Trust to that certain **Declaration of Covenants, Conditions and Restrictions for 127 - 129 N. GRANADOS**” executed by Granados Avenue Partners, LLC, a California limited liability company, affecting said property, which Declaration of Restrictions are recorded concurrently herewith.

DATED this _____ day of _____, 20__.

**Western Alliance Bank,
An Arizona corporation**

**By: Scott Pritchard
Its:**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

Civil Code §1189

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

STATE OF CALIFORNIA)

COUNTY OF SAN DIEGO)

On _____, 20__, before me, _____, a notary public

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

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

WITNESS my hand and official seal.

(seal)

Signature of Notary Public